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Monday, June 15, 1987

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re

MARION LUCILLE HIXON,

No. 1-80-01405

[Debtor](#).

ORDER ON MOTION TO BAR CLAIM

The debtor in this matter filed her [Chapter 11](#) petition on December 15, 1980. At the time of the filing, the debtor was a [defendant](#) and counterclaimant in a state court lawsuit brought by her landlord, Oakland Village Corp. The debtor scheduled Oakland Village as a disputed [creditor](#) in the amount of \$56,000.00. On March 6, 1981, Oakland Village filed a complaint for relief from the [automatic stay](#) so that it could regain possession of the leased premises from the debtor. The complaint recited that there was due and owing from the debtor to Oakland Village in excess of \$50,000.00. Oakland Village continued to play an active roll in the debtor's Chapter 11 proceedings. When the debtor proposed to sell her home, Oakland Village made a motion that the proceeds be sequestered for the benefit of all creditors; when too much time passed without a [plan](#) being filed, Oakland Village made a motion to convert the proceedings to [Chapter 7](#) or have a [trustee](#) appointed. The debtor's plan, filed on December 27, 1982, and confirmed on May 4, 1984, contains special provisions for the [liquidation](#) of Oakland Village's claim in state court and the satisfaction of any judgment from real property not available to other unsecured creditors. The record before the court clearly establishes that Oakland Village did as much as it could to participate in the proceedings with one glaring exception; it never filed a [proof of claim](#). By the

instant motion, the debtor seeks to have Oakland Village barred from asserting any claim now. Oakland Village responds by arguing that at least one of its prior communications with the debtor constitutes an amendable informal proof of claim. Under the law in this circuit, the court has no difficulty finding that an informal proof of claim has been established by Oakland Village. An informal proof of claim may be found if some writing served during the period when claims can be filed, together with the creditor's active and continuing participation in the case, establish that the creditor intended to pursue its claim. In re Anderson-Walker Industries, Inc. (9th Cir.1986) 798 F.2d 1285, 1288; In re Pizza of Hawaii (9th Cir.1985) 761 F.2d 1374, 1380. The writing itself need only fairly reflect the existence of a claim; the intent to pursue the matter can be inferred. Sun Basin Lumber Co. v. United States (9th Cir.1970) 432 F.2d 48, 49. In this case, Oakland Village has always been an unsecured creditor. Its complaint for relief from the automatic stay filed early in the case was a sufficient document to satisfy the Sun Basin test. Indeed, applications for relief from the automatic stay have been specifically held to be amendable proofs of claim. In re Smith Atlantic Fin. Corp. (11th Cir.1985) 767 F.2d 814, 819; In re Guardian Mortgage Investors (Bkrcty.M.D.Fla.1981) 15 B.R. 284, 285-87. Oakland Village's subsequent conduct, including the filing of a motion to protect all creditors and a motion to convert the case, is inconsistent with any intent other than to pursue its claim. The debtor's motion to bar Oakland Village from asserting the claim is accordingly denied. The court cannot help but note in reviewing the file that the debtor's confirmed plan is both questionable and unconsummated. Oakland Village, as the squeaky wheel, has been given a specific fund to collect from while the other unsecured creditors have been given only a promise of payment, and in fact have received nothing at all. Under these circumstances, the case would be best converted to Chapter 7, which would result in a new claims bar date and moot the issue now before the court. Bankruptcy Rule 1019(2); In re Hall (Bkrcty.D.Utah 1985) 51 B.R. 326. Although the court has no sua sponte power to convert the case, it does have control over the funds from the sale of the debtor's real property which the court approved by order dated May 18, 1987, even though the sale was inconsistent with the terms of the plan. Both Oakland Village and the debtor are hereby ordered not to seek any disbursement of those funds except by motion noticed to all creditors.

Dated: June 15, 1987

ALAN JAROSLOVSKY

U.S. [BANKRUPTCY JUDGE](#) 

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