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2
3 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
4 AT TACOMA

5 HYUN J. UM and JIN S. UM, THOMAS
6 W. PRICE and PATRICIA A. PRICE,

7 Debtors,

CASE NO. C14-5593 BHS

OPINION

8
9 ERIC D. ORSE,

10 Appellant,

11 v.

12 SPOKANE ROCK I, LLC,

13 Appellee.

14 This matter comes before the Court on Appellant Trustee Eric D. Orse's
15 ("Trustee") appeal of the bankruptcy court's order denying in part the Trustee's objection
16 to late filed claims. The Court has considered the pleadings filed in support of and in
17 opposition to the appeal and the remainder of the file and hereby affirms.

18 **I. PROCEDURAL HISTORY**

19 On August 17, 2010, Debtors Hyun and Jin Um and Debtors Thomas and Patricia
20 Price ("Debtors") separately filed voluntary chapter 11 bankruptcy petitions, which were
21 subsequently consolidated. Record of Appeal ("App.") 513. It is undisputed that January
22 11, 2011 was the deadline for filing claims in the proceeding. *Id.*

1 In January of 2012, Prium Companies LLC (“Prium”), a company managed by
2 Mr. Um and Mr. Price, filed suit against Appellee Spokane Rock I, LLC (“Spokane”) in
3 King County Superior Court for the State of Washington. App. 895. In January of 2013,
4 Spokane filed an amended answer asserting counterclaims against Prium and Debtors for
5 “fraud, fraudulent concealment, misrepresentation, breach of fiduciary duty, conversion,
6 breach of contract, breach of covenant of good faith and fair dealing, and a request for an
7 accounting.” *Id.* 895–896. On April 15, 2014, the state court entered default judgment
8 against Prium and Debtors as sanctions for discovery violations and other conduct. The
9 state court set the matter for trial in July of 2014 to determine the amount of damages.

10 On April 24, 2014, the Trustee filed an objection to Spokane’s claim in the
11 Debtors’ bankruptcy matter. The Honorable Paul Snyder, United States Bankruptcy
12 Judge, found the objection unusual because no claim had been filed, but converted the
13 objection into a motion. App. 897–898. Judge Snyder concluded that it was “undisputed
14 that Spokane Rock did not file a proof of claim by [the deadline].” App. 899. Judge
15 Snyder also concluded that Spokane had shown excusable neglect for missing the
16 deadline with respect to some claims. *Id.* 909.

17 The Trustee filed a timely notice of appeal. *Id.* 911–912.

18 II. DISCUSSION

19 A. Standard of Review

20 “Whether or not to extend a bar date is a matter within the sound discretion of the
21 bankruptcy court and such a decision will not be set aside absent an abuse of discretion.”
22 *In re Dix*, 95 B.R. 134, 136 (B.A.P. 9th Cir. 1988) (citations omitted). A court abuses its

1 discretion when it makes an error of law or relies on a clearly erroneous factual
2 determination. *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223 (9th Cir. 2000).

3 **B. Knowledge**

4 The Trustee argues that Judge Snyder erred as a matter of law because he applied
5 the wrong rule of law on the issue of Spokane's knowledge of its claims against the
6 Debtors. Dkt. 5 at 15. The Trustee asserts that Spokane's claim arose when the claim
7 was within Spokane's fair contemplation. *Id.* at 16–17. Based on this assertion, the
8 Trustee argues that Judge Snyder erred because he considered when Spokane had actual
9 knowledge of the claim. *Id.* The Trustee, however, fails to show that there exists a
10 subjective component on the issue of whether Spokane missed the claim filing date.

11 Before discharge, the sole question is whether Spokane filed claims by the court imposed
12 deadline. The answer to that question is undisputed, and then the claimant has the burden
13 to show excusable neglect. Fed. R. Bankr. P. 90006(b)(1); *In re Cahn*, 188 B.R. 627, 631
14 (B.A.P. 9th Cir. 1995). Therefore, the Trustee's argument that Judge Snyder erred as a
15 matter of law because he imposed the incorrect "knowledge" standard when determining
16 whether Spokane missed the claim filing deadline is without merit.

17 **C. Excusable Neglect**

18 To determine whether neglect is excusable, the Supreme Court has stated that the
19 test "is at bottom an equitable one, taking account of all relevant circumstances
20 surrounding the party's omission." *Pioneer Inv. Services Co. v. Brunswick Assocs. Ltd.*
21 *Partnership*, 507 U.S. 380, 395 (1993). These circumstances include:
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1 (1) the danger of prejudice to the debtor [or to the nonmoving party]; (2)
2 the length of the delay and its potential impact on judicial proceedings; (3)
3 the reason for the delay, including whether it was within the reasonable
4 control of the movant; and (4) whether the movant acted in good faith.

5 *Id.*

6 In this case, the Trustee essentially reargues his position to this Court. *See* Dkt. 5
7 at 24–30. The Trustee, however, must show that Judge Snyder either made an error of
8 law or relied on a clearly erroneous factual determination. *Bateman*, 231 F.3d at 1223.
9 At most, the Trustee attempts to show that Judge Snyder relied on a clearly erroneous
10 determination as to the length of the delay because he considered the delay from when
11 Spokane had actual knowledge of its claims instead of when Spokane could fairly
12 contemplate its claims. Dkt. 5 at 28–29. But the test is the length of the delay and its
13 impact on the proceeding. Judge Snyder concluded that, whatever delay existed, it did
14 not impact the proceeding because the Trustee has “sufficient time to begin formulating a
15 plan of reorganization.” App. 906. Therefore, in light of all of the circumstances, the
16 Court is unable to conclude that Judge Snyder abused his discretion in denying the
17 Trustee’s objection.

18 **AFFIRMED.**

19 Dated this 7th day of January, 2015.

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BENJAMIN H. SETTLE
22 United States District Judge