

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In re:)	
)	
JEFFERSON COUNTY, ALABAMA,)	Case No. 11-05736-TBB9
a political subdivision of the State of)	
Alabama,)	Chapter 9
)	
Debtor.)	

**JEFFERSON COUNTY’S OBJECTION TO PROOF OF CLAIM NUMBER 1383
FILED BY GARY L. OWEN AND ASSOCIATES, INC. CONSULTING ENGINEERS**

Jefferson County, Alabama (the “County”), pursuant to 11 U.S.C. § 502 and Federal Rule of Bankruptcy Procedure 3007, objects to Claim Number 1383 (the “Claim”),¹ filed by Gary L. Owen and Associates, Inc., Consulting Engineers (the “Claimant”), as follows:

BACKGROUND

A. Case Background.

1. On November 9, 2011, the County filed a voluntary petition for relief under chapter 9 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).
2. On March 4, 2012, this Court entered the order for relief in the County’s case [Docket No. 778], confirming the County’s eligibility to be a debtor under Chapter 9 of the Bankruptcy Code.

¹ The Claim is numbered as set forth in the claims register maintained by Kurtzman Carson Consultants LLC (the “Claims Agent”). Unless otherwise defined, all capitalized terms shall have the meaning provided in the Plan or Confirmation Order (as those terms are defined herein).



3. By order dated November 22, 2013 [Docket No. 2248] (the “Confirmation Order”), the Court confirmed the *Chapter 9 Plan of Adjustment of Jefferson County, Alabama (Dated November 6, 2013)* [Docket No. 2182] (the “Plan”).

4. The Effective Date of the Plan occurred on December 3, 2013. *See* Docket No. 2274.

B. The Claims Process in the County’s Case.

5. On April 6, 2012, the Court entered its *Order (i) Setting Bar Dates and Procedures for Filing Proofs of Claim; (ii) Setting the Bar Date and Procedures for Filing Requests for Allowance of Section 503(b)(9) Claims; and (iii) Approving Form and Manner of Serving and Publishing the Notice of Bar Dates and the Entry of the Order for Relief* [Docket No. 889] (the “Bar Date Order”).

6. Among other things, the Bar Date Order set June 4, 2012 as the deadline for filing proofs of claim. Moreover, the Court approved the County’s proposed Proof of Claim Form and Bar Date Notice (as those terms are defined in the Bar Date Order).

7. The Bar Date Order requires that all proofs of claim must, among other things, “set forth with specificity the legal and factual basis for the alleged [c]laim.” *See* Bar Date Order, p.3.

8. The County duly served the Bar Date Notice and Proof of Claim Form. The County also published notice of the General Bar Date in *The Birmingham News* and *The Bond Buyer*. *See* Docket No. 1057.

9. The Rejection Bar Date for Rejection Damage Claims arising from the rejection of an unexpired lease or an executory contract under the Plan was January 2, 2014. *See* Docket No. 2274.

C. Background Regarding the Claim.

10. On or about January 5, 2011, the Claimant and the County executed an agreement (the “Agreement”) providing, among other things, that the Claimant would perform construction review of the Valley Creek Wastewater Treatment Plan Improvements Phase VIII.

11. Pursuant to the Plan, Confirmation Order, and section 365 of the Bankruptcy Code, the County rejected the Agreement as of the Effective Date. *See* Docket No. 2253 (Notice of Filing Amended and Restated Schedule of Assumed Agreements); Plan § 3.2 (“On the Effective Date all executory contracts and unexpired leases that the County entered into on or before the Petition Date that (i) have not been previously assumed or rejected by the County and (ii) are not set forth on the Schedule of Assumed Agreements shall be rejected.”).

12. The Claimant filed the Claim on December 4, 2013 in the amount of \$140,000.00. The Claimant describes the “Basis for Claim” as “Breach of Contract/Rejection of Agreement.”

13. The County and the Claimant have been negotiating a resolution of all disputes between the parties, including the Claim.

JURISDICTION AND NOTICE

14. The County brings the instant objection (the “Objection”) pursuant to 11 U.S.C. § 502 and Federal Rule of Bankruptcy Procedure 3007.

15. The Court has jurisdiction over the Objection pursuant to 28 U.S.C. §§ 157 and 1334. The Objection is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue of the County’s case and the Objection is proper before the Court under 28 U.S.C. §§ 1408 and 1409.

16. The County will serve a copy of this Objection on the Claimant and all parties on the Master Service List, as that term is defined in the Court’s *Order Establishing Notice, Service, and*

OBJECTION TO THE CLAIM

17. The County anticipates that the County and the Claimant will execute a new agreement that will resolve all issues between the parties, including the Claim.

18. Pending execution of a new agreement among the parties, the County denies the Claim is enforceable against the County under applicable law. Among other things, the Claim does not reflect the Claimant's damages for breach of contract under applicable law. *See* 11 U.S.C. § 502(b)(1).

19. Without limitation or waiver of any other basis for objection or disallowance, the County denies the allegations on which the Claim is based and demands strict proof thereof.

20. The County reserves all rights, claims, and defenses with respect to the Claim.

21. The County files this Objection without prejudice to or waiver of the Claimant's right to withdraw the Claim at any time.

22. The County files this Objection without prejudice to or waiver of its rights pursuant to section 904 of the Bankruptcy Code, and nothing herein is intended as or shall be deemed to constitute the County's consent to this Court's interference with (a) any of the political or governmental powers of the County, (b) any of the property or revenues of the County, or (c) the County's use or enjoyment of any income-producing property.

WHEREFORE, the County respectfully requests the Court to enter an order disallowing the Claim in its entirety, expunging the Claim from the County's claims register, and granting such other, further, and different relief as may be just and proper.

Respectfully submitted this 27th day of May, 2014.

By: /s/ Patrick Darby

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