



A handwritten signature in blue ink that reads "Neil P. Olack".

Judge Neil P. Olack  
United States Bankruptcy Judge  
Date Signed: December 8, 2016

The Order of the Court is set forth below. The docket reflects the date entered.

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF MISSISSIPPI

IN RE:

PAMELA LOUISE JOHNSON,

CASE NO. 16-10525-NPO

DEBTOR.

CHAPTER 7

**ORDER OVERRULING OBJECTION TO PROOF OF CLAIM**

This matter came before the Court for hearing on November 3, 2016 (the “Hearing”), on the Debtors’ [*sic*] Objection to Proof of Claim Filed by Ally [Financial] [Claim 1] (the “Objection”) (Dkt. 47) and the Proposed Order Dismissing Proof of Claim Filed by Ally [Financial] [Claim 1] (Dkt. 79) filed by the debtor, Pamela Louise Johnson (the “Debtor”), in the above-styled chapter 7 bankruptcy case (the “Bankruptcy Case”). At the Hearing, Derek D. Hopson (“Hopson”) appeared on behalf of the Debtor. After fully considering the matter, the Court finds as follows:

**Jurisdiction**

The Court has jurisdiction over the parties to and the subject matter of the Bankruptcy Case pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). Notice of the Objection was proper under the circumstances.

## Facts

1. The Debtor filed a voluntary petition for relief pursuant to chapter 13 of the Bankruptcy Code on February 17, 2016 (Dkt. 1).

2. On February 22, 2016, Ally Financial (“Ally”) filed a Proof of Claim (the “POC”) (Cl. No. 1). In the POC, Ally provided that it had a claim in the amount of \$8,061.76 for “Automobile Financing” secured by a 2012 Jeep Grand Cherokee (the “Jeep”). (POC at 2). According to the POC, the Jeep has a value of \$21,100.00. (*Id.*). Attached to the POC was the Retail Installment Sale Contract (the “Contract”) (POC at 6-7), which indicated that the Debtor borrowed \$22,783.72 to purchase the Jeep. (Contract at 1). The Contract also showed that the Debtor made a down payment of \$10,000.00 and would be required to make monthly payments of \$398.64 for sixty (60) months at a 1.90% rate of interest. (*Id.*).

3. The Debtor filed the Motion to Convert a Case Under Chapter 13 to a Case Under Chapter 7 (Dkt. 26) on March 15, 2016, which the Court granted on March 21, 2016 (Dkt. 27).

4. The Debtor filed the Objection on September 7, 2016. Citing § 502,<sup>1</sup> the Debtor argued in the Objection that Ally should “be made to show sufficient proof as required by the above statute.” (Obj. at 2).<sup>2</sup>

5. At the Hearing, Hopson stated that despite attempts to contact Ally, Ally would not provide him with a definite amount of its claim. Although Ally included the amount of its claim in the POC and attached the Contract to the POC, Hopson argued that he was nevertheless unable

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<sup>1</sup> Hereinafter, all code sections refer to the Bankruptcy Code found in title 11 of the U.S. Code unless indicated otherwise.

<sup>2</sup> The Objection provides that “Debtors Derek D. Hopson, Sr., and Tricia S. Hopson (“Hopsons”)” filed “their objection to the proof of claim filed by Creditor Ally Financial . . .” (Obj. at 1). Presumably, this was in error and the Objection was intended to be filed on behalf of the Debtor.

to discern the amount of Ally's claim. According to Hopson, he attempted to reach an agreement with Ally on the Debtor's behalf, but was unable to do so. Hopson acknowledged that the Debtor owes some amount of money to Ally, but contended that Ally should be required to prove the amount of its claim. Hopson contended that the Court should avoid Ally's lien on the Jeep because it "wouldn't come forward" and prove the amount of its claim. (Hr'g at 10:47:20).<sup>3</sup>

### **Discussion**

The Bankruptcy Case was converted from a chapter 13 case to a no-asset chapter 7 case. Although filing a proof of claim in a no-asset chapter 7 case is not required, nothing prohibits a creditor from doing so, and there "is never a claim filing period." *In re Mendiola*, 99 B.R. 864, 867 (Bankr. N.D. Ill. 1989) (citations omitted). Ally filed the POC before the case was converted, and even though it is not required to file a proof of claim in a no-asset chapter 7 case, "[a]ll claims actually filed by a creditor before conversion of the case are deemed filed in the chapter 7 case." FED. R. BANKR. P. 1019(3).

Section 502(a) provides that a proof of claim that is timely filed in accordance with § 501 is deemed allowed unless a party in interest objects to the claim. 11 U.S.C. § 502(a). Under § 502(a), a creditor, like Ally, is entitled to file a proof of claim. *Id.* Federal Rule of Bankruptcy Procedure 3001(f), provides that a proof of claim that is properly executed and timely filed "shall constitute prima facie evidence of the validity and amount of the claim." FED. R. BANKR. P. 3001(f). "Thus, under section 502(a), a proof of claim . . . which was properly filed pursuant to section 501(a) constitutes *prima facie* evidence of the validity and the amount of the claim." 4 COLLIER ON BANKRUPTCY ¶ 502.02[1].

This Court has held that the "general burdens of proof in proof of claim litigation are well

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<sup>3</sup> The Hearing was not transcribed. Citations are to the timestamp of the audio recording.  
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established.” *In re Starks*, No. 03-14360-NPO, 2010 WL 1538848, at \*1 (Bankr. N.D. Miss. Apr. 16, 2010). Once a creditor establishes a *prima facie* valid proof of claim, the party objecting to the claim “must then produce evidence rebutting the claim or else the claimant will prevail.” *Id.*, at \*2 (citing *Cal. State Bd. of Equalization v. Official Unsecured Creditors’ Comm. (In re Fidelity Holding Co.)*, 837 F.2d 696, 698 (5th Cir. 1988)). If the objecting party produces evidence rebutting the claim, “then the claimant must produce additional evidence to ‘prove the validity of the claim by a preponderance of the evidence.’” *Id.* (quoting *In re Fidelity Holding Co.*, 837 F.2d at 698). “The ultimate burden of proof always rests with the claimant.” *Id.*

Ally timely filed the POC before the Bankruptcy Case was converted to chapter 7. Under § 502(a), the POC is *prima facie* valid, and the Debtor presented no evidence to challenge the POC. At the Hearing, Hopson simply stated that Ally would not provide him with the total amount of its claim. Hopson contended that Ally should be required to produce evidence to prove the amount of the POC. Under § 502, however, Ally was not required to attend the Hearing and prove the amount of the POC because it attached to the POC proof sufficient to meet its initial burden. The Contract evidenced, in detail, the agreement between Ally and the Debtor, and the POC itself unequivocally provided that the amount of its claim is \$8,061.76. It then became the Debtor’s burden to produce evidence to rebut the *prima facie* valid POC. The Debtor presented no such evidence. Accordingly, the Court finds that the Objection should be overruled.

IT IS, THEREFORE, ORDERED that the Objection is hereby overruled.

##END OF ORDER##