




**SO ORDERED,**

  
Judge Neil P. Olack  
United States Bankruptcy Judge  
Date Signed: July 10, 2020

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

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**HEATHER M. MANGUM-BARNES**

**CASE NO. 19-04069-NPO**

**DEBTOR.**

**CHAPTER 13**

**ORDER OVERRULING OBJECTION TO PROOF OF CLAIM**

This matter came before the Court for a telephonic hearing on June 29, 2020 (the “Hearing”), on the Objection to Proof of Claim (the “Claim Objection”) (Dkt. 61)<sup>1</sup> filed by the debtor, Heather M. Mangum-Barnes (the “Debtor”), and the memorandum brief filed in the form of a letter (the “Letter Brief”) (Dkt. 73) by the Debtor in the above-styled bankruptcy case (the “Bankruptcy Case”). At the Hearing, G. Adam Sanford represented the Debtor. No one appeared at the Hearing on behalf of AmeriCredit Financial Services, LLC d/b/a GM Financial (the “Creditor”), but the Court has an independent duty to ensure compliance with the U.S. Bankruptcy

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<sup>1</sup> The full title of the pleading is “Objection to Proof of Claim Filed by Verizon.” Because “Verizon” appears in the title and nowhere else in the Claim Objection, the Court ignores its appearance in the title as a typographical error.

Code.<sup>2</sup> The Court, having fully considered the matter and being fully advised in the premises, finds that the Claim Objection should be overruled for the following reasons.<sup>3</sup>

### **Jurisdiction**

The Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (B).

### **Facts**

1. On November 13, 2019, the Debtor filed a voluntary petition for relief pursuant to chapter 13 of the Bankruptcy Code. (Dkt. 1). On the same date, the Debtor filed her chapter 13 plan (the “Plan”) (Dkt. 2) and schedules (Dkt. 4). A hearing on the confirmation of the Plan was scheduled for January 27, 2020 (the “Confirmation Hearing”). (Dkt. 10).

2. On November 21, 2019, the Creditor timely filed its proof of claim (the “Original POC”) (Bankr. Cl. 3-1), indicating it had a claim in the amount of \$13,096.48, secured by a lien on a 2013 Chevrolet Malibu (the “Collateral”). The Creditor had repossessed the Collateral in September of 2019 (Dkt. 61), prior to the Debtor’s bankruptcy filing.

3. On November 21, 2019, the Creditor also filed its Motion for Relief from Stay as to the Collateral and Motion to Compel Abandonment (Dkt. 21).

4. On December 13, 2019, the Order Lifting Stay and Abandonment as to the Collateral (Dkt. 31) was entered.

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<sup>2</sup> See *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 277 (2010) (holding that bankruptcy courts have obligation to ensure that a debtor conforms his chapter 13 plan to the requirements of the U.S. Bankruptcy Code).

<sup>3</sup> The Court makes the following findings of fact and conclusions of law in accordance with Rule 7052 of the Federal Rules of Bankruptcy Procedure.

5. On January 16, 2020, the Creditor sold the Collateral for \$3,800.00, resulting in a deficiency balance of \$9,887.98 (Bankr. Cl. 3-2).

6. The deadline for non-governmental creditors to file a proof of claim expired on January 22, 2020. (Dkt. 10).

7. On January 30, 2020, the Creditor filed an amended proof of claim (the “Amended POC”) for the deficiency balance. (Bankr. Cl. 3-2).

8. Harold J. Barkley, Jr., the chapter 13 trustee (the “Trustee”), filed the Trustee’s Objection to Confirmation (the “Confirmation Objection”) (Dkt. 36) on December 23, 2019. Among other matters, the Trustee questioned as excessive the amount of the Debtor’s ongoing mortgage payment and her household expenses. (Dkt. 36). Prior to the Confirmation Hearing, the Trustee and the Debtor entered into an agreement. The Debtor agreed to modify the Plan to pay all non-priority, general secured creditors in full, and the Trustee agreed to withdraw the Confirmation Objection. Thereafter, the Court entered the Agreed Order (Dkt. 46) withdrawing the Confirmation Objection, and on February 28, 2020, the Plan was confirmed without a hearing. (Dkt. 50).

9. On March 5, 2020, the Trustee moved to allow the late-filed Amended POC (Dkt. 55), and on March 27, 2020, the Debtor filed the Claim Objection (Dkt. 61).

### **Discussion**

An amendment to a timely filed proof of claim made after the bar date has passed may be permitted following a two-step inquiry. In *In re Kolstad*, the Fifth Circuit Court of Appeals adopted a two-part test to address whether amendments to proofs of claim should be allowed. *United States v. Kolstad (In re Kolstad)*, 928 F.2d 171, 175 n.7 (5th Cir. 1991). The first prong of the *Kolstad* test hinges upon foreseeability, while the second considers prejudice in the proceeding.

The test asks: (1) whether the creditor is attempting to stray beyond the perimeters of the original proof of claim to effectively file a “new” claim, unforeseeable from the earlier claim; and (2) the degree and incidence of prejudice, if any, caused by the amending party's delay. *Id.* The Court considers each prong separately.

**A. Relation Back to Original Proof of Claim**

Post-bar date amendments asserting an unsecured deficiency claim are among the amendments permitted if they relate back to the original proof of claim filing. *See, e.g., In re Breaux*, 410 B.R. 236, 239 (Bankr. W.D. La. 2009); *In re Vega*, No. 15-34014, 2017 WL 2954762 (Bankr. S.D. Tex. July 10, 2017); *In re Delmonte*, 237 B.R. 132 (Bankr. E.D. Tex. 1999). In the *Breaux* case, the court allowed the creditor to amend its original secured and unsecured claims to establish an exclusively unsecured claim after sale of the collateral. 410 B.R. at 239 (citing *Kolstad*, 928 F.2d at 175). The court reasoned that the right to the deficiency claim was inherent in the facts and events asserted in the original proof of claim. *Id.* Similarly, in *Delmonte*, the court held that the amended claim for the deficiency balance arose out of the same facts as the original claim and was allowable since it related back. *In re Delmonte*, 237 B.R. 132, 136 (Bankr. E.D. Tex. 1999).

In the Letter Brief, the Debtor cites *In re Mason*, a case from this Court. 520 B.R. 508 (Bankr. S.D. Miss. 2014). In *Mason*, three (3) months after the debtor completed his plan payments, the creditor filed its amended proof of claim, alleging that the debtor owed an additional \$12,608.52 in arrearage. *Id.* at 517. The Court found that the creditor’s amendment was foreseeable, satisfying the first part of the *Kolstad* test, because the creditor did not effectively seek to circumvent the bar date to file a new, unforeseeable claim. *Id.* at 515. In the case at bar, like in *Mason*, the Creditor is not “attempting to stray beyond the perimeters of its Proof of Claim

to file a new claim.” *Mason*, 520 B.R. at 515 (quoting *Kolstad*, 928 F.2d at 175 n.7). The Creditor filed the Amended POC, asserting a deficiency balance, reduced its total claim amount from \$13,096.48 to \$9,887.98, and recharacterized the debt from secured to unsecured.

The Debtor argues that because the amount reflected in the Amended POC strays from the Creditor’s original valuation of the Collateral, the Amended POC was not foreseeable. (Dkt. 73 at 2). In that regard, the Defendant points out that the Creditor valued the collateral equal to the amount owed on the loan. The Debtor provided no evidence at the Hearing that the sale of the Collateral was procedurally defective or that the amount of the Creditor’s deficiency claim is unreasonable. Instead, she alleges that the amount of the deficiency claim was unforeseeable. A proof of claim in a bankruptcy case “shall constitute prima facie evidence of the validity and amount of the claim.” FED. R. BANKR. P. 3001(f). When the Creditor timely filed the Original POC, it provided sufficient notice to the Debtor as to the total amount of its claim. The Amended POC was foreseeable because it recharacterized and reallocated pre-existing debt from the original proof of claim and did not attempt to claim a new, unforeseen dollar amount. Therefore, the Court finds that the Creditor did not attempt to stray beyond the perimeters of the Original POC.

**B. Prejudice Caused by the Delay**

The *Mason* case is similar to the case at bar as to the foreseeability of amended proofs of claim, but as to the prejudice caused by such amendments, considered in the second prong of the *Kolstad* test, the *Mason* case is factually distinguishable. The second part of the *Kolstad* test considers whether allowing the late amendment will result in undue prejudice. *Kolstad*, 928 F.2d at 175 n.7. In *Mason*, the Court determined that to permit the amendment would be unduly prejudicial because the amendment was made for such a large dollar amount, four (4) years after the bar date. *Mason*, 520 B.R. at 517. The creditor increased the amount of its claim by stating

the debtor owed an additional \$12,169.31 in arrearage, after the debtor already had completed all the payments under the plan. *Id.* The Court's concerns in *Mason*—the large lapse of time before the filing of the amendment, combined with the high dollar amount claimed in the amendment—are not present here. *Id.* In the case at bar, the Amended POC was filed eight (8) days late, before the chapter 13 plan was confirmed and before completion of the plan payments. Moreover, the Amended POC decreases the amount of the claim from a \$13,096.48 secured claim to a \$9,887.98 unsecured deficiency claim. The court in *Breaux* dealt with more analogous facts to the present case when it permitted an amendment asserting a deficiency claim that increased the amount of unsecured debt from \$4,022.51 to \$19,287.00, upon the sale of the collateral. *Breaux*, 410 B.R. at 237-38.

The Debtor argues that the Amended POC is prejudicial because in order to pay all non-priority, general unsecured claims in full, her monthly plan payment must be increased by \$201.50, resulting in a total monthly payment that exceeds her net income. In that regard, the Debtor apparently believes that the Trustee, who has asked this Court to allow the Amended POC, will demand that the Plan remain a 100% distribution to unsecured creditors. She further argues that the delay in filing the Amended POC caused her to lose her right to a hearing on the Confirmation Objection. The Court finds that the late-filed Amended POC does not unduly prejudice the Debtor. The Debtor was given proper notice of the Original POC as to the amount of the Creditor's claim as well as an opportunity to be heard at the Confirmation Hearing. The Debtor, while represented by counsel, made the decision to resolve the Confirmation Objection and forego the Confirmation Hearing. Moreover, the Debtor has rights available to her under chapter 13 to seek post-confirmation remedies.

### **Conclusion**

For the above reasons, the Court concludes that the Amended POC, though filed late, is not an attempt to stray beyond the perimeters of the original claim and does not result in undue prejudice to the Debtor. Because the Amended POC satisfies the Fifth Circuit's *Kolstad* test, the Claim Objection should be overruled.

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

##END OF ORDER##