



SO ORDERED,

Judge Jamie A. Wilson
United States Bankruptcy Judge
Date Signed: January 17, 2024

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

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

IN RE:

JERLENE WINDHAM BROWN,

CASE NO. 23-01426-JAW

DEBTOR.

CHAPTER 13

ORDER SUSTAINING OBJECTION TO CLAIM

This matter came before the Court for hearing on January 8, 2024 (the “Hearing”), on the Objection to Proof of Claim of Wilmington Savings Fund Society, FSB, Not In Its Individual Capacity but Solely as Certificate Trustee of Bosco Credit III Trust Series 2010-1 (the “Objection to Claim”) (Dkt. #47) filed by Jerlene Windham Brown, the debtor (the “Debtor”); the Response to Debtor’s Objection to Proof of Claim of Wilmington Savings Fund Society, FSB, Not In Its Individual Capacity but Solely as Certificate Trustee of Bosco Credit III Trust Series 2010-1 Serviced by Franklin Credit Management Corporation (Dkt. #56) filed by Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as Certificate Trustee of Bosco Credit III Trust Series 2010-1, serviced by Franklin Credit Management Corporation (“Wilmington”); and Debtor’s Response to Creditor’s Response to Debtor’s Objection to Proof of Claim of Wilmington Savings Fund Society, FSB, Not In Its Individual Capacity but Solely as Certificate Trustee of Bosco Credit III Trust Series 2010-1 Serviced by Franklin Credit Management

Corporation (the “Reply”) (Dkt. #85) filed by the Debtor in the above-referenced bankruptcy case (the “Bankruptcy Case”). At the Hearing, Jim H. Arnold appeared on behalf of the Debtor and Randall R. Saxton appeared on behalf of Wilmington. The Debtor testified and entered one exhibit into evidence at the Hearing.¹ Wilmington did not present any witness to testify at the Hearing and did not introduce any exhibit into evidence.

Jurisdiction

The Court has jurisdiction over the parties to and 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)(B). Notice of the Hearing was proper under the circumstances.

Facts

The Debtor filed the Bankruptcy Case on June 22, 2023, and Wilmington filed its proof of claim for \$49,760.30 (the “Claim”) on July 11, 2023. (Dkt. #1; Cl. #5-1). Wilmington’s Claim is based on a mortgage transaction (the “Note”) dated December 27, 1999. (Dkt. #47, Cl. #5-1). The loan is repayable at an annual interest rate of 16.350%. (Cl. #5-1). The Note matured on April 1, 2011. (Dkt. #47). The Claim consists of \$11,768.71 in principal, \$34,657.95 in interest, \$4,747.42 in fees and costs, and \$586.22 in “escrow deficiency funds.” (Cl. #5-1 at 4).

The Debtor’s last pre-petition mortgage statement dated May 9, 2023, listed the total amount due on the Note as \$22,338.10 and the outstanding principal balance as \$11,768.71. (Dkt. #47). The Debtor received a post-petition mortgage statement on July 7, 2023. This post-petition statement again listed the outstanding principal balance as \$11,768.71 but added a new section, “Total Pre-Petition Arrearage,” listing a balance of \$49,760.30. (Dkt. #47).

¹ The Debtor’s exhibit is cited as “(Debtor #1)”

In its Objection to Claim, the Debtor asks the Court to require Wilmington to amend its Claim to reflect the correct amount owed. (Dkt. #47). Wilmington asserts that its Claim provides an accurate accounting of the total amount owed. (Dkt. #56). In her Reply, the Debtor raises Mississippi's statute of limitations as a defense. *See* MISS. CODE ANN. § 15-1-3, 15-1-21.

Discussion

The filing and allowance of proofs of claims are governed by 11 U.S.C. § 501 and 11 U.S.C. § 502. The form and content requirements for a proof of claim are set forth in Rule 3001 of the Federal Rules of Bankruptcy Procedure ("Rule 3001"). A proof of claim generally "shall be executed by the creditor or the creditor's authorized agent." FED. R. BANKR. P. 3001(b). If a claim is based on a writing, the creditor must generally include a copy of the writing. Fed. R. Bankr. P. 3001(c). If a claim alleges a security interest in property of the debtor, the claimant must include "evidence that the security interest has been perfected." FED. R. BANKR. P. 3001(d).

A proof of claim executed and filed in accordance with Rule 3001 constitutes *prima facie* evidence of the validity and amount of that claim pursuant to Rule 3001(f).² Under 11 U.S.C. § 502(a), the claim is deemed allowed unless a party in interest objects. Section 502(b)(1)-(9) lists the grounds for disallowing a proof of claim. 11 U.S.C. § 502(b)(1)-(9). Under 11 U.S.C. § 502(b)(1), a claim is not allowed if it is "unenforceable against the debtor and property of the debtor under any agreement or applicable law." 11 U.S.C. § 502(b)(1).

Rule 3001 allocates the burden of proof with respect to a proof of claim for which an objection has been raised. If the proof of claim has *prima facie* validity, a party objecting to the proof of claim must produce evidence that is at least as probative in force as that offered by the claimant in its proof of claim. *Gardner v. New Jersey*, 329 U.S. 565, 573 (1947); *Simmons v. Savell*

² Rule 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute *prima facie* evidence of the validity and amount of the claim." FED. R. BANKR. P. 3001(f).

(*In re Simmons*), 765 F.2d 547, 552 (5th Cir. 1985). If the objecting party succeeds in producing sufficient rebuttal evidence, the proof of claim loses the presumption of validity and the burden of going forward shifts back to the claimant who bears the ultimate burden of persuasion to establish the validity and amount of its claim. *In re Pursue Energy Corp.*, 379 B.R. 100, 105 (Bankr. S.D. Miss. 2006).

At the Hearing, the parties agreed that the \$11,768.71 principal balance reflected in the Claim is correct. They disagreed as to the amount of interest and costs. Counsel for Wilmington informed the Court that its mortgage software was unable to calculate the amount due on a loan with a maturity date unpaid for a period of more than 10 years. (Hr'g at 10:18 (Jan. 8, 2024)).³ According to Wilmington's counsel, because the Note matured in 2011, Wilmington had to calculate the amount due on the Note manually. (Hr'g at 10:18). He alleged that this manual calculation was the reason for the discrepancy in the amounts due in the Debtor's pre-petition and post-petition mortgage statements. (Hr'g at 10:18). Wilmington did not have a representative present at the Hearing to testify as to the methodology used in calculating the amount due on the Note. According to Wilmington's counsel, Wilmington has deemed the Note past the statute of limitations and uncollectable. (Hr'g at 10:17).

The Debtor testified at the Hearing that the correct amount of the Claim is \$11,768.71 and requested that the Claim be set at that amount.⁴ (Hr'g at 10:21-22). She further testified that she had received letters from Wilmington stating that the \$11,768.71 amount was the actual amount owed on the Note. (Hr'g at 10:21-22). The Debtor introduced her exhibit, Debtor #1, into evidence without objection, reflecting \$11,768.71 as the correct amount of the Claim. (Hr'g at 10:23). In

³ The Hearing was not transcribed. Citations are to the timestamp of the audio recording.

⁴ The Debtor proposes to pay this amount notwithstanding any statute of limitations defense.

her plan, the Debtor has proposed to pay the \$11,768.71 amount at the *Till* rate. (Hr'g at 10:24).
Counsel for Wilmington did not cross examine the Debtor at the Hearing. (Hr'g at 10:25).

Conclusion

Based on the foregoing reasons, the Court finds that the Debtor has met and exceeded her burden to submit sufficient rebuttal evidence to negate the Claim's *prima facie* validity and shift the burden of proof back to Wilmington. Wilmington did not provide any further evidence to the Court to ultimately establish the validity and amount of its Claim. The Court will set the Claim at \$11,768.71 to be paid at the *Till* rate over the life of the plan.

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

IT IS FURTHER ORDERED that the amount of the Claim is hereby set at \$11,768.71.

##END OF ORDER##