

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN THE MATTER OF )  
 )  
DORIS J. SMITH, ) CASE NO. 01-36098 HCD  
 ) CHAPTER 13  
 )  
DEBTOR. )

Appearances:

Debra Voltz-Miller, Esq., attorney for debtor, 108 North Main Street, Suite 328, South Bend, Indiana 46601; and

Christina J. Cloutier, Esq., attorney for Settlement Funding, LLC, Ancel, Glink, Diamond, Bush, DiCiani & Rolek, P.C., 140 South Dearborn Street, Suite 600, Chicago, Illinois 60603.

MEMORANDUM OF DECISION

At South Bend, Indiana, on February 19, 2003.

Presently before the court are the Proof of Claim filed by the creditor Settlement Funding, LLC (“Settlement Funding” or “creditor”) on April 3, 2002; the Objection to Claim filed by the debtor Doris J. Smith (“debtor”), on April 15, 2002; her Amended Objection to Claim, filed on June 18, 2002; and her Second Amended Objection to Claim, filed on June 20, 2002. Settlement Funding responded to the original Objection on May 15, 2002, and to the Second Amended Objection on July 22, 2002. On July 25, 2002, the court held a hearing on the objection to Settlement Funding’s claim. It directed counsel to submit simultaneous briefs and responses. The court then took the matter under advisement. For the reasons that follow, the court denies the debtor’s objection to Settlement Funding’s claim and allows the claim in its entirety.

Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and determination. After reviewing the record, the court determines that the matter before it is a core proceeding

within the meaning of § 157(b)(2)(B) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rule of Bankruptcy Procedure 9014. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

### Background

On June 21, 1994, Doris Smith entered into a Settlement Agreement and Release that resolved a pending medical malpractice claim. Under the agreement, she received periodically certain future monthly and lump sum payments (“periodic payments”). Five years later, she entered into three separate loan agreements with WebBank, a Utah industrial loan corporation. The loans were for \$13,880.88 (made on December 28, 1999); \$25,100.00 (made on January 17, 2000), and \$26,248.40 (made on April 27, 2000). For each loan, the debtor executed a Loan Agreement, Secured Promissory Note, and Security Agreement. Each loan was secured by the periodic payments as collateral. On March 15, 2000, WebBank filed a UCC-1 Financing Statement to perfect its security interest. WebBank later assigned its rights under the loan agreements to Settlement Funding. Settlement Funding, in turn, subsequently assigned its rights under the agreements to Peachtree Finance Company, LLC, which then contracted with Settlement Funding to service the agreements. The debtor defaulted on the loans in the fall of 2000. The parties stipulated that “Settlement Funding, Peachtree Finance Company and WebBank have fully performed their obligations under the loan agreements.” R. 57, Joint Stipulation of Facts Regarding Debtor’s Motion to Determine Estate’s Interest in Property.<sup>1</sup>

The debtor filed her chapter 13 petition in bankruptcy on December 5, 2001, and her plan on December 17, 2001. Settlement Funding filed its proof of claim, based on the three loans it made to the debtor,

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<sup>1</sup> On August 22, 2002, the court denied the debtor’s Motion to Withdraw Joint Stipulation of Facts. *See* R. 98, Order of August 22, 2002.

on April 3, 2002. The amount of the claim at the time the case was filed was \$187,457.26. The claim was secured by structured settlement payments valued at \$436,408.00. According to the claim, the amount of arrearage and other charges, at the time the case was filed, that was included in the secured claim was \$16,480.00.

On March 4, 2002, the debtor filed her Motion to Determine Estate's Interest in Property, asking that the court find that Settlement Funding does not have a cognizable security interest in any sums due to the debtor. After a hearing on the issue, the court found that Settlement Funding's secured claim was allowed:

Prior to the hearing, the parties at the hearing agreed that Settlement Funding is a secured creditor and that JG Wentworth has defaulted on any claim it may have had in this bankruptcy case. The court finds both determinations well reasoned. As the documentation of record indicates, Settlement Funding has a security interest in each loan agreement. The court finds that the claim is allowed as a secured claim.

*See* R. 63 at 5 (Memorandum of Decision, June 21, 2002). In fact, the court determined that the debtor had conceded that Settlement Funding had a proper security interest in the debtor's periodic payments. *See id.* at 4. The debtor made clear that she objected only to the claimed amount of the secured claim. *See id.* at 4 n.4.

Nevertheless, in her Second Amended Objection to the creditor's secured claim, the debtor raised four objections to the claim and requested that the claim be disallowed or bifurcated into a secured and unsecured claim. Because it is clear from the parties' stipulated facts, as well as the court's Judgment and Memorandum of Decision of June 21, 2002, that Settlement Funding is a secured creditor with an allowed secured claim, and because that determination was not appealed by the debtor, the court will not relitigate it.<sup>2</sup> The court now considers each objection raised by the debtor that does not challenge the allowance of the secured claim.

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<sup>2</sup> In light of the parties' concessions and agreements concerning the status of Settlement Funding, the court did not find expressly, in its Memorandum of Decision, that the debtor executed the appropriate security agreements, in conjunction with the loan agreements and promissory notes, when obtaining each loan. However, the court in fact had concluded, based on its examination of the documents in the record, that Settlement Funding had a valid security interest in the debtor's periodic payments and that it had perfected its security interest under the original and subsequent loans through its filing of a financing statement.

## Discussion

The issue before the court is the debtor's objection to the claimed amount of Settlement Funding in its proof of claim. In general, proofs of claim filed by creditors in a bankruptcy case are deemed allowed unless a party in interest raises an objection. *See* 11 U.S.C. § 502(a); *Adair v. Sherman*, 230 F.3d 890, 894 (7th Cir. 2000). As long as they are properly executed and filed, the claims constitute "prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f); *see Adair*, 230 F.3d at 894 (citing cases). The debtor's objections to the claim creates a contested matter within the meaning of Bankruptcy Rule 9014. The debtor has the burden of producing sufficient evidence to negate one or more of the sworn facts in the proof of claim. When the debtor has met her responsibility, the burden of proof reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Carlson*, 126 F.3d 915, 921-22 (7th Cir. 1997), *cert. denied*, 523 U.S. 1060 (1998).

The debtor first asserts that the creditor's claim does not conform to 11 U.S.C. § 502(b)(2) because it improperly includes unmatured interest. Section 502(b) states, in pertinent part, that, when a party in interest objects to a proof of claim, "the court, after notice and a hearing, shall determine the amount of such claim as of the date of the filing of the petition, and shall allow such claim . . . in such amount, except to the extent that . . . (2) such claim is for unmatured interest." Section 502(b)(2) suspends the accrual of interest on claims once the petition is filed. That policy establishes a "rule of convenience providing for equity in distribution." 4 *Collier on Bankruptcy* ¶ 502.03[3][a] at 502-26 (Alan N. Resnick & Henry J. Sommer, eds., 15th ed. rev'd 2002). As the Seventh Circuit Court of Appeals has explained, "the age-old rule in bankruptcy, adopted from the English system, is that interest on claims stops accruing when the bankruptcy petition is filed." *In re Fesco Plastics Corp., Inc.*, 996 F.2d 152, 155 (7th Cir. 1993). That rule has been codified in the Bankruptcy Code at § 502(b)(2).

However, one exception to the no-unmatured-interest rule of § 502(b)(2) is found in § 506(b), which allows postpetition interest "for secured creditors whose security is worth more than the sum of the principal and

all interest due.” *Id.* at 156; *see also Albion Prod. Credit Ass’n v. Langley (In re Langley)*, 30 B.R. 595, 602 (Bankr. N.D. Ind. 1983). Stated slightly differently, payment of postpetition interest is permitted to secured creditors when the value of the collateral exceeds the value of the claim, because that collateral acts as security for both the interest and the principal debt, eradicating concerns about administrative convenience and fairness. *See* 11 U.S.C. § 506(b); 4 *Collier*, at ¶ 502.03 [3][d], at 502-31; *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241, 109 S. Ct. 1026, 1030, 103 L.Ed.2d 290 (1989). The Supreme Court has held that the language of § 506(b) is plain:

The natural reading of the phrase entitles the holder of an oversecured claim to postpetition interest and, in addition, gives one having a secured claim created pursuant to an agreement the right to reasonable fees, costs, and charges provided for in that agreement. Recovery of postpetition interest is unqualified. Recovery of fees, costs, and charges, however, is allowed only if they are reasonable and provided for in the agreement under which the claim arose.

*Ron Pair Enters.*, 489 U.S. at 241, 109 S. Ct. at 1030. In this case, the value of the collateral, \$436,408.00, exceeds the amount of the secured claim, \$187,457.26. Because the creditor is oversecured, it is entitled to postpetition interest under § 506(b).

The debtor next alleges that the creditor’s exhibits do not support the amounts claimed in the proof of claim. The debtor points out the error in the January 17, 2000 loan for \$25,100.00: The underlying promissory note states that the borrower promises to pay \$13,880.88 (rather than \$25,100.00) plus interest. The debtor describes this error as a major discrepancy. However, the court finds only a scrivener’s error. It notes that the debtor stipulated that the loan agreement in question was made for \$25,100. Moreover, the debtor actually received \$25,100 in loan proceeds on January 17, 2000, from WebBank. The loan repayment schedule, establishing monthly payments of \$416.00 from February 15, 2000, through August 15, 2009, and a \$15,000 lump sum payment on July 15, 2004, required the debtor to repay the full amount of the loan. The debtor also stipulated that she executed a secured promissory note, security agreement, and related loan documents to obtain a loan of \$25,100. Clearly the parties agreed to such a loan. There was a meeting of the minds, and the scrivener’s error

had no legal effect upon the amount of the loan. The court finds that the debtor has cited to no case and has presented no ground for overturning the claimed amount. *See My Favorite Muffin Too, Inc. v. DK Holdings, Inc.*, 61 F. Supp.2d 781, 783-84 (N.D. Ill. 1999) (determining that the franchise agreement naming a nonexistent corporation was merely a scrivener's error).

The debtor also claims that the creditor is charging a usurious rate of interest to the debtor. The court notes that the interest rate was listed as 18.05% in the Terms Rider but as 26.2% in the Truth in Lending Disclosure Form. The loan agreement provides that the loan documents are governed, construed and enforced in accordance with the laws of Utah, the location of the lender's principal place of business. *See* R. 45, Ex. B, Loan Agreement, ¶¶ 11, 12. The court finds that, under the Utah Code, "parties to a lawful contract may agree upon any rate of interest for the loan." Utah Code § 15-1-1. The court concludes, therefore, that, despite the creditor's sloppy execution of the second loan documents, neither rate exceeds the legal rate in Utah and neither therefore is usurious. *Cf. Federal Sav. & Loan Ins. v. Kralj*, 968 F.2d 500, 505 (5th Cir. 1992) (concluding that a note charging 18% interest was not usurious under Texas law in 1992).

The debtor questions the role of Peachtree Finance Company, LLC, in these transactions. Settlement Funding produced documents establishing that WebBank assigned its interest in all three loans to Settlement Funding, and that Settlement Funding thereafter assigned its interest in all three loans to Peachtree Finance Company. The court finds that the debtor proffered no evidence to disprove the validity of those assignments of WebBank's interest in the loans. The court determines that the assignments were proper and valid.

The debtor contends that the creditor's proof of claim did not provide a breakdown of the debtor's payments or supporting documentation of arrearages. The court finds that the creditor, using the official form for a proof of claim, properly executed the proof in accordance with the dictates of Federal Rule of Bankruptcy Procedure 3001. The creditor attached a four-page explanation of the debtor's settlement agreement, the loans executed between the debtor and WebBank, and the history of those loans. The creditor also attached the

documentation pertaining to the three underlying loans, the assignments of the loan agreements, and the copy of the UCC-1 financing statement that was evidence of perfection of its security interest.

An objector to a claim must overcome the prima facie effect to that claim by producing sufficient evidence to negate one or more of the sworn facts. *See, e.g., Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039-40 (9th Cir. 2000); *United States v. Walters (In re Walters)*, 176 B.R. 835, 868 (Bankr. N.D. Ind. 1994). In the view of the court, the debtor has not produced sufficient evidence to negate Settlement Funding's stated amount of the claim, of the collateral, or of the arrearages in the proof of claim. Nor has the debtor requested that Settlement Funding cure an obvious defect in its proof of claim by amending it. *See In re Stoecker*, 5 F.3d 1022, 1028 (7th Cir. 1993) (stating that a creditor should be allowed to amend an incomplete proof of claim to comply with the requirements of Rule 3001 as long as other creditors are not harmed by the late amendment). The court concludes that the debtor did not shoulder her burden of proof when making such broad, unsubstantiated allegations of lack of documentation. Her objections concerning supporting documentation therefore do not warrant an overturning of the creditor's proof of claim.

The debtor's final objection<sup>3</sup> is that the egregious misrepresentations made by Settlement Funding amount to a violation of 18 U.S.C. § 152(4), a criminal statute dealing with the filing of false proofs of claim or the commission of bankruptcy fraud.<sup>4</sup> The court finds that this argument fails in all respects. First, courts have found that a debtor has no claim under this statute because there is no private right of action arising under 18

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<sup>3</sup> The court notes that certain other arguments, raised in the debtor's brief but not found in the Second Amended Objection, were not properly before the court and, in any case, were without merit.

<sup>4</sup> 18 U.S.C. § 152(4) provides: A person who— . . .

(4) knowingly and fraudulently presents any false claim for proof against the estate of a debtor, or uses any such claim in any case under title 11, in a personal capacity or as or through an agent, proxy, or attorney;

shall be fined under this title, imprisoned not more than 5 years, or both.

U.S.C. § 152(4). See *Clayton v. Raleigh Fed. Sav. Bank*, 194 B.R. 793, 795-96 (M.D.N.C. 1996). Indeed, a bankruptcy court hears only civil matters arising in and related to title 11, pursuant to its jurisdiction under 28 U.S.C. § 157. See *In re Szabo Contracting, Inc.*, 283 B.R. 242, 255 (Bankr. N.D. Ill. 2002) (finding that, because § 152(4) is a criminal, not civil, statute, it is beyond the limited subject matter jurisdiction of the bankruptcy court to enforce). Even if the debtor had been entitled to bring an action under this criminal statute, her allegations of fraud have not been stated with the particularity required under Federal Rule of Civil Procedure 9 or Federal Rule of Bankruptcy Procedure 7009.

The court concludes that the debtor's Second Amended Objection to Settlement Funding's claim is denied. The claim filed by Settlement Funding is allowed as a secured claim in the amount of \$187,457.26.

SO ORDERED.



HARRY C. DEES, JR., CHIEF JUDGE  
UNITED STATES BANKRUPTCY COURT

Copy served by United States mail on February 19, 2003, on:

Doris J. Smith, Debtor, 928 N. Sheridan, South Bend, IN 46628  
Debra Voltz-Miller, Esq., 108 North Main Street, Suite 328, South Bend, IN 46601  
Christina J. Cloutier, Esq., LLC, 140 South Dearborn Street, Suite 600, Chicago, IL 60603  
Tedd E. Mishler, Trustee, 1912 East U.S. 20, Suite 10, Michigan City, IN 46360