

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 7
	:	
CLARENCINA D. WILLIS	:	Case No. 07-10046 (CSS)
	:	
Debtor.	:	
	:	Re: Docket Nos. 47, 48, 49,
	:	50, 51, 52 and 53

**MEMORANDUM ORDER DENYING, IN PART, AND CONTINUING,
IN PART, DEBTOR’S OBJECTIONS TO PROOFS OF CLAIM NOS. 1-7**

This matter having come before the Court on the Debtor’s Objections to Proofs of Claims Nos. 1-7 (D.I. 47, 48, 49, 50, 51, 52 and 53) (the “Objections”) for entry of an order expunging claims nos. 1-7;

THE COURT HEREBY FINDS AND HOLDS AS FOLLOWS:

1. On January 9, 2007, the above-captioned debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, and George L. Miller was appointed Chapter 7 Trustee (the “Trustee”) of the Debtor’s estate.

2. On that same date, the Debtor filed schedules (the “Schedules”) and statement of financial affairs (the Schedules were later amended by the Debtor).¹ Thereafter, the Debtor appeared and testified at the meeting of creditors on February 8, 2007.

¹ See D.I. 1 and 31.

3. On February 9, 2007, the Trustee filed a report of no distribution² and on May 1, 2007, the Court entered an Order approving the Trustee's report of no distribution and closing the estate.³ On May 1, 2007, the Debtor's bankruptcy case was closed.

4. On July 12, 2011, the Trustee filed a motion to reopen the case based upon newly discovered assets.⁴ On August 24, 2011, the Court entered an Order re-opening the Debtor's case.⁵ Thereafter, on September 24, 2012, the Trustee conducted a second meeting of creditors in this case.

5. On January 4, 2013, the Court set a bar date of April 5, 2013 for the filing of proofs of claims. Thereafter, eight proofs of claims (each a "Proof of Claim" and together, the "Proofs of Claim") have been filed in this case.

6. After review of the Schedules and each of the Proofs of Claim, the Court notes as follows:

Scheduled Creditor	Amount	Claim No.	Claimant	Amount	Additional Documentation
American Honda Finance	\$10,050.00	1	American InfoSource LP as agent for American Honda Finance	\$3,092.81	Statement of Accounts noting that American InfoSource LP is agent for American Honda Finance.

² D.I. 12.

³ D.I. 22.

⁴ D.I. 17.

⁵ D.I. 20.

Scheduled Creditor	Amount	Claim No.	Claimant	Amount	Additional Documentation
Citibank	\$6,815.00	2	PYOD LLC its successors and assigns c/o Resurgent Capital Services	\$6815.63	(i) Assignment and Assumption Agreement between Citibank (South Dakota), National Association and Sherman Acquisition LLC which simultaneously transfers the claim to LVNV Funding LLC; (ii) Sale and Assignment Agreement between and among LVNV Funding LLC, Sherman Acquisition and PYOD LLC; and (iii) Limited Power of Attorney between PYOD LLC and Resurgent Services LP
Citibank USA	\$962	3	PYOD LLC its successors and assigns c/o Resurgent Capital Services	\$962.86	(i) Assignment and Assumption Agreement between Citibank (South Dakota), National Association and Sherman Acquisition LLC which simultaneously transfers the claim to LVNV Funding LLC; (ii) Sale and Assignment Agreement between and among LVNV Funding LLC, Sherman Acquisition and PYOD LLC; and (iii) Limited Power of Attorney between PYOD LLC and Resurgent Services LP
Aspire/cb&t	\$2,378.00	4	Jefferson Capital Systems LLC	\$2427.94	Account Statement Summary noting that the claim was purchased from Compucredit Corporation ⁶ and that the debt originated from: Aspire Card
Gemb/pep Boys	\$559	5	Portfolio Investments II LLC c/o Recovery Management Systems Corp.	\$588.88	Claim notes that Debtor may have scheduled account as "PepBoys/Car Care One/GEC."
Jc Penney	\$1,888.00	6	GE Capital Retail Bank c/o Recovery Management Systems Corp.	\$1832.84	Claim notes that Debtor may have scheduled account as "JCPenney Credit Services."

⁶ The Court notes that, according to NASDAQ.com, CompuCredit Corp. is an information-based, technology-driven originator and purchaser of credit products and a direct marketer of fee based products and services. CompuCredit Corp.'s current credit product is the Aspire Visa credit card. See www.nasdaq.com/markets/ipos/company/compucredit-corp-1163=5539.

Scheduled Creditor	Amount	Claim No.	Claimant	Amount	Additional Documentation
Sams Club	\$603.00	7	GE Capital Retail Bank c/o Recovery Management Systems Corp.	\$643.29	Claim notes that Debtor may have scheduled account as "Sam's Club or GEMB."

7. Subsequently, the Debtor filed the Objections seeking to disallow and expunge Proofs of Claim nos. 1-7 because each was not entitled to *prima facie* validity. The Debtor alleged that all facts necessary to support the Proofs of Claim were not provided. More specifically, the Debtor alleged some or all of the following regarding each claim: (a) claimant appears to have executed the instrument as an agent for a third party, but there is no evidence of claimant's power of attorney or other authority to file a claim on the actual alleged creditor's behalf; (b) there is little or no supporting documentation attached to each Proof of Claim; (c) it appears that the Proofs of Claim may have been transferred at some point but there is not evidence of compliance with the procedures required under Fed. R. Bankr. P. 3001(e); (d) there is no evidence of the Debtor's intention to become obligated on each of these debts, nor a breakdown of the principal amounts allegedly claimed; and (e) it does not appear that the person executing the proof of claim has knowledge of the validity, priority, or amount of the claim asserted. The Trustee filed an omnibus response to the Objections.⁷

8. The Court held a hearing on the Objections on September 23, 2013. At the hearing, the Debtor requested, at the very least, an evidentiary hearing regarding the validity of each claim.

⁷ D.I. 64.

9. In a chapter 7 case, a proof of claim must be filed with the court for the claim to be allowed.⁸ Rule 3001(f) of the Federal Rules of Bankruptcy Procedure provides: “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.”⁹ However, if a claim is not *prima facie* valid on its face does not necessarily mean that it must be disallowed.¹⁰ It means only that “the burden of going forward and proving its claim by the preponderance of the evidence remains on the claimant.”¹¹

10. Rule 3001(e)(1) provides: “If a claim has been transferred other than for security *before* proof of claim has been filed, the proof of claim may be filed only by the transferee or an indenture trustee.”¹² Furthermore, the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware provides: “Any assignment or other evidence of a transfer of claim filed *after*

⁸ 11 U.S.C. §§ 501, 726(a); Fed.R.Bankr.P. 3002.

⁹ Fed.R.Bankr.P. 3001(f).

¹⁰ See generally *In re Kirkland*, 379 B.R. 341, 344 (10th Cir. BAP 2007) (after collecting cases, adopting the “exclusive view” that a claim may only be disallowed for reasons set forth in 11 U.S.C. § 502(b) and not for failure to comply with Rule 3001) (2–1 decision) (*later reversed on evidentiary grounds, see In re Kirkland*, 572 F.3d 838, 841 (10th Cir. 2009)).

¹¹ *In re Sacko*, 394 B.R. 90, 98 (Bankr. E.D. Pa. 2008) (citations omitted). See also *In re Kincaid*, 388 B.R. 610, 614 (Bankr. E.D. Pa. 2008) (“The law is well settled that failure to attach supporting documentation as required by a rule of procedure is not grounds for disallowance of a claim as § 502(b) supplies the exclusive basis for claim disallowance.”).

¹² Fed.R.Bankr.P. 3001(e)(1) (emphasis added). See also *VFB LLC v. Campbell Soup Co.*, 482 F.3d 624, 636 (3d Cir. 2007) (“Once a creditor alleges facts sufficient to support a claim, the claim is prima facie valid. . . . [T]he burden shifts to the debtor to produce evidence sufficient to negate the prima facie valid claim, that is, evidence equal in force to the prima facie case.” (citations and internal quotations marks omitted)).

the proof of claim has been filed shall include the claim number of the claim to be transferred.”¹³

11. Some Courts have found since assignment documents are expressly required when an assignment occurs *after* the filing of the proof of claim and are not required (as here) when the transfer occurs *before* the claim is filed, it follows that no evidence of the assignment need be attached to the proof of claim.¹⁴ This Court disagrees and finds that Rule 3001(e)(3) establishes who is entitled to file a proof of claim and not what evidence is necessary to provide its ownership. “By demanding the identification of the owner of a claim to ensure that Debtor has an obligation to pay that creditor and, in exchange, will receive a discharge of its debt, Debtor is not seeking to challenge the transfer but merely to confirm that one has taken place.”¹⁵

12. As to **ownership** of each of the Proofs of Claim:

Claim No.	Claimant	Amount	Rulings
1	American InfoSource LP as agent for American Honda Finance	\$3,092.81	Additional information regarding ownership needs to be provided. As such, the Court will hold an evidentiary hearing as to this claim.

¹³ Del. Bankr. LR 3001-1(b) (emphasis added).

¹⁴ *In re Cox*, 06-11717-CAG, 2007 WL 4219407, *4 (Bankr. W.D. Tex. Nov. 28, 2007). See also *In re Relford*, 323 B.R. 669, 680-81 (Bankr. S.D. Ind. 2004) (on reconsideration) (“According to the Advisory Committee notes to the 1991 amendments to Rule 3001, subdivision (e) was ‘amended to limit the court’s role to the adjudication of disputes regarding transfers of claim. If a claim has been transferred prior to the filing of a proof of claim, there is no need to state the consideration for the transfer or other evidence of the transfer...’”). But see *In re Kincaid*, 388 B.R. 610, 617 (Bankr. E.D. Pa. 2008) (“Rule 3001(e)(3) as merely establishing who is entitled to file a proof of claim and not what evidence is necessary to prove its ownership.”).

¹⁵ *In re Kincaid*, 388 B.R. 610, 617 (Bankr. E.D. Pa. 2008).

Claim No.	Claimant	Amount	Rulings
2	PYOD LLC its successors and assigns c/o Resurgent Capital Services	\$6815.63	Sufficient documentation was provided to establish the <i>prima facie</i> validity of proof of claim no. 2, including its ownership. As such, the Objection is denied.
3	PYOD LLC its successors and assigns c/o Resurgent Capital Services	\$962.86	Sufficient documentation was provided to establish the <i>prima facie</i> validity of proof of claim no. 3, including its ownership. As such, the Objection is denied.
4	Jefferson Capital Systems LLC	\$2427.94	Additional information regarding ownership needs to be provided. As such, the Court will hold an evidentiary hearing as to this claim.
5	Portfolio Investments II LLC c/o Recovery Management Systems Corp.	\$588.88	Additional information regarding ownership needs to be provided. As such, the Court will hold an evidentiary hearing as to this claim.
6	GE Capital Retail Bank c/o Recovery Management Systems Corp.	\$1832.84	Additional information regarding ownership needs to be provided. As such, the Court will hold an evidentiary hearing as to this claim.
7	GE Capital Retail Bank c/o Recovery Management Systems Corp.	\$643.29	Additional information regarding ownership needs to be provided. As such, the Court will hold an evidentiary hearing as to this claim.

13. As to the **amount and priority** of the Proofs of Claim, the Objections do not produce evidence sufficient to negate the *prima facie* validity the amount and priority of the Proofs of Claim. “In practice, the objector must produce evidence which, if believed, would refute at least one of the allegations that is essential to the claim’s legal sufficiency. If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the

validity of the claim by a preponderance of the evidence.”¹⁶ Furthermore, “[i]n cases in which the debtor has not disputed the debt on its schedules, the admission of the debtor is some evidence of the validity and amount of the claim.”¹⁷ Here, the Schedules further support each claimant’s *prima facie* claim in that the claims are substantially identical to the Debtor’s Schedules.

14. Here, the Debtor does not allege that the Schedules are incorrect, nor does she argue any substantive objections to each Proof of Claim (such as incorrect amount, incorrect priority, etc.). As such, the Debtor has not met her burden to negate the amount or priority of the sworn facts set forth in each Proof of Claim.

15. As such, the Objections (D.I. 48 and 49) to claims no. 2 and 3 will be **denied**. The Objections to claims nos. 1, 4, 5, 6, and 7 (D.I. 47, 50, 51, 52, and 53) will go forward at a hearing on December 10, 2013 at 11:00 a.m. on an evidentiary basis regarding ownership of each claim *only*.

16. This Court retains jurisdiction in connection with this Order and all matters related thereto.



Christopher S. Sontchi
United States Bankruptcy Judge

Dated: November 7, 2013

¹⁶ *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992) (citations omitted).

¹⁷ *In re Kendall*, 380 B.R. 37, 44 (Bankr. N.D. Okla. 2007).