

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

IN RE: ALYCE MARIE REOPELLE, Debtor

**No. 5:09-bk-75706
Ch. 13**

ORDER

Before the Court are an *Objection to Proof of Claim Filed by Green Tree Servicing, LLC*, filed by the debtor on January 2, 2012; a *Response to Objection to Claim*, filed by Green Tree Servicing, LLC [Green Tree] on April 9, 2012; and an *Objection to Confirmation of Plan as Modified*, also filed by Green Tree on April 9, 2012. The debtor's modified plan that is the subject of Green Tree's objection to confirmation was confirmed by the Court on February 1, 2012.

When the Court called the case for hearing on September 12, 2012, the parties announced that the only issue before the Court was a question of law regarding Green Tree's proof of claim that was filed on April 26, 2010, almost two months after the claims bar date of March 4, 2010. Although Green Tree characterized its claim as an amendment of its original timely filed proof of claim, the debtor argues that Green Tree's second claim asserts a new claim, is not an amendment, and should not relate back to the original claim. The Court took the matter under advisement and allowed the parties sufficient time to present briefs in support of their respective arguments. For the reasons stated below, the Court finds that Green Tree's second proof of claim filed on April 26, 2010, is an amended claim that relates back to Green Tree's original claim that was filed on December 8, 2009. Accordingly, the Court overrules the debtor's objection to Green Tree's claim and allows the claim as an unsecured claim against the debtor's estate in the amount of \$24,966.90.

The Court has jurisdiction over this matter under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding under 28 U.S.C. § 157(b)(2)(B). The following order

constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052, made applicable to this proceeding under Federal Rule of Bankruptcy Procedure 9014.

According to the bankruptcy code, a claim, “proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). If a party in interest objects to a claim, then the court shall determine the amount of such claim as of the date of the filing of the petition, unless one of nine enumerated exceptions apply. 11 U.S.C. § 502(b)(1)-(9); *Dove-Nation v. eCast Settlement Corp. (In re Dove-Nation)*, 318 B.R. 147, 150 (B.A.P. 8th Cir. 2004). For the court to determine the allowance of a claim, the claimant and the objecting party must proceed under established burdens of proof. A proof of claim that conforms substantially with the bankruptcy rules is considered prima facie evidence of the validity and amount of the claim. Fed. Rule Bankr. P. 3001(f).

In this instance, the Court finds that Green Tree timely filed a proof of secured claim on December 8, 2009, in the amount of \$38,924.52. In support of its claim, Green Tree attached to the proof of claim form a Manufactured Home Retail Installment Contract and Security Agreement that was signed by the debtor and a Certificate of Title listing Conseco Finance Servicing Corp. as the first lienholder.¹ On April 26, 2010, Green Tree filed an additional proof of claim in the amount of \$24,966.90 and stated the basis of the claim was “deficiency.” Green Tree also checked the box on the top of the proof of claim form indicating this additional claim was an amended claim that related to its previously filed claim of December 8, 2009. In support of its amendment, Green Tree attached a summary document that referenced the debtor and her bankruptcy case, the

¹ The parties did not explain to the Court why the installment contract and title are in the name of Conseco Finance Servicing Corp. instead of Green Tree. However, this discrepancy was not before the Court, the debtor did not object to the documents attached to the proof of claim, and the parties stipulated that Green Tree filed the proof of claim for the subject property.

Green Tree account number, the subject collateral, the date the collateral was repossessed, the payoff amount owed on the debt, the sale price received when Green Tree sold the collateral, and the deficiency balance owed by the debtor. Based on the proof of claim with attached documents and the amended proof of claim with attached summary, the Court finds that Green Tree has presented prima facie evidence of the validity and amount of its claim.

The burden of proof now shifts to the debtor to prove one of the exceptions under § 502(b). In this case, the debtor is alleging an exception under § 502(b)(9), that Green Tree's second proof of claim was not timely filed. If the debtor presents evidence sufficient to support her objection to the claim, Green Tree would then have the ultimate burden of persuasion to establish its entitlement to the claim. *In re Dove-Nation*, 318 B.R. at 152; *In re Armstrong*, 320 B.R. 97, 104 (Bankr. N.D. Tex. 2005) ("If the objecting party meets these evidentiary requirements, then the burden of going forward with the evidence shifts back to the claimant to sustain its ultimate burden of persuasion to establish the validity and amount of the claim by a preponderance of the evidence.").

The debtor objected to Green Tree's April 26, 2010 proof of claim on January 2, 2012, 20 months after Green Tree filed its amended claim. For her objection, the debtor states that "the proof of claim by Green Tree Servicing, LLC, was untimely filed and should be disallowed." In support of her objection, the parties have stipulated that the deadline for filing proofs of claims in the debtor's case was March 4, 2010. They also stipulated that Green Tree filed its proof of claim relating to the deficiency on April 26, 2010. The debtor argues that the proof of claim filed on April 26, 2010, was not an amended claim that related to the first claim Green Tree filed; rather, it was an unrelated claim asserting a new claim for an unsecured deficiency and post-petition repossession fees. If the Court finds merit in the debtor's argument, the burden of persuasion will shift to Green Tree to establish its entitlement to the claim. *In re Dove-Nation*, 318 B.R. at 152. If, on the other hand, the Court finds that the debtor's argument fails, the Court must overrule the debtor's objection to Green Tree's claim and allow the amended claim as an unsecured

claim against the debtor's estate.

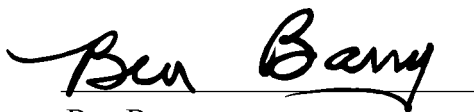
For the Court to determine whether Green Tree's second proof of claim is in the nature of an amendment or a new claim, the Court must look at the record before it. According to the Eighth Circuit Court of Appeals, "[i]f the record made within the statutory period . . . disclosed facts showing an assertion of a claim against the estate and an intention by the claimant to share in its assets, there would be a basis for the proposed amendment." *In re Donovan Wire & Iron Co.*, 822 F.2d 38, 39-40 (8th Cir. 1987) (quoting *Tarbell v. Crex Carpet Co.*, 90 F.2d 683, 685-86 (8th Cir. 1937)). The *Tarbell* court stated an initial requirement that a creditor must have filed a proof of claim within the statutory period that showed that a demand was made and that the creditor intended to hold the estate liable. *Tarbell*, 90 F.2d at 685. Green Tree met that requirement in this case. Green Tree timely filed its original proof of claim on December 8, 2009, in which it referenced a secured claim against the debtor's estate in the amount of \$38,924.52. Attached to Green Tree's proof of claim was the contract between the parties that states that in the event Green Tree lawfully takes possession of the property, that Green Tree may sue the debtor for any additional amounts if a subsequent sale does not satisfy the debtor's obligation to Green Tree. Further, as long as the second claim relates to and arises out of the same transaction as the original claim, it is deemed to relate back and be treated as a valid amended claim. *In re Delmonte*, 237 B.R. 132, 136 (Bankr. E.D. Tex. 1999). Such is the case here--the amended claim arose out of the same transaction as the original claim.

Green Tree's claim compares favorably to the debtor's schedules as well. The debtor listed Green Tree as holding a secured debt in the amount of \$33,496.00, and an unsecured debt in an unknown amount for a potential deficiency related to the subject collateral. Further, the debtor's initial plan, which was confirmed on March 22, 2010, referenced the subject collateral as property that the debtor intended to surrender and stated that "[t]he creditor may file a claim for the deficiency amount remaining and the claim will be treated as a non-priority unsecured claim."

After the Court approved an Agreed Order of Abandonment, Green Tree repossessed the subject property on February 24, 2010, and sold it on March 31, 2010. It then filed its second proof of claim on April 26, 2010, indicating a deficiency amount of \$24,966.90. The deficiency amount relates specifically to the collateral and was contemplated at the time the parties entered into the retail installment contract. Additionally, the debtor provided in her original chapter 13 plan that Green Tree may file a claim for the deficiency amount, an action that Green Tree performed within a reasonable time following liquidation of the property. The Court finds that a proper demand was made and that Green Tree intended to hold the estate liable for the debtor's debt to Green Tree. The Court also finds that this is the result contemplated by the debtor when she filed her original plan and stated unequivocally that the creditor may file a claim for the deficiency. Green Tree complied with the plan and filed its second proof of claim on April 26, 2010, which the Court finds is an amendment to Green Tree's initial proof of claim filed on December 8, 2009.

Because the amended proof of claim relates back to the filing of the original proof of claim, the Court overrules the debtor's objection to Green Tree's claim and allows the claim as an unsecured claim against the debtor's estate in the amount of \$24,966.90.

IT IS SO ORDERED.


Ben Barry
United States Bankruptcy Judge
Dated: 10/22/2012

cc: Vaughn-Michael Cordes
Martha Jett McAlister
Joyce B. Babin