

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE: )  
)  
OMAR DIAMOND, ) Case No. 19-14161  
)  
Debtor. )

IN RE: )  
)  
TUNDRA LEE HORNBUCKLE, ) Case No. 20-11106  
)  
Debtor. )

ORDER OVERRULING OBJECTIONS AND ALLOWING CLAIMS AS FILED

These two cases came before the court for hearing on objections to claims filed by the chapter 13 trustee based on state court judgments that were more than ten years old. For the reasons discussed below, the court overrules the objections (doc. 54 in case 19-14161 and doc. 13 in case 20-11106) and allows the claims as filed.

The pertinent facts in each of these cases are identical. The chapter 13 trustee objected to a creditor's claim based on an Alabama state court judgment that was more than ten years old and that the creditor had not revived. The creditor responded that while it may not execute on a judgment after ten years until a motion to revive is filed, the debt is not extinguished until the passage of twenty years. The debtor in each case included the debt owed to the judgment creditor in the debtor's sworn bankruptcy schedules and did not list it as contingent, unliquidated, or disputed. The debtor's attorney stated on the record in each case that the debtor does not object to the claim being allowed as filed.

Under Alabama law, “[i]f 10 years have elapsed from the entry of the judgment without issue of execution . . . , the judgment must be presumed satisfied, and the burden of proving it not satisfied is upon the plaintiff.” *See* Ala. Code § 6-9-191. “No execution shall issue on a judgment . . . on which execution has not been sued out within 10 years of its entry until the same has been revived by appropriate motion or action under the Alabama Rules of Civil Procedure.” *See* Ala. Code § 6-9-192. “A judgment cannot be revived after the lapse of 20 years from its entry.” Ala. Code § 6-9-190.

Here, the creditors overcame the presumption of satisfaction because the debtors’ sworn schedules show that the judgments have not been satisfied.<sup>1</sup> Although the creditors cannot execute on the judgments because they have not revived the judgments (at least not yet), the creditors still have a “claim” under the Bankruptcy Code. Specifically, 11 U.S.C. § 101(5) defines “claim” broadly to include the “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured . . . .” The creditors’ right to payment is not extinguished under Alabama law until 20 years after entry of the judgment. The court thus overrules the trustee’s objections and allows the claims as filed.

Dated: June 9, 2020

  
HENRY A. CALLAWAY  
CHIEF U.S. BANKRUPTCY JUDGE

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<sup>1</sup> This may not always be the case. This opinion should not be interpreted as a ruling by the court that the trustee should no longer object to claims that are based on judgments that are older than 10 years and have not been revived. The creditor always has the burden of proving that the judgment has not been satisfied.