

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

IN RE:)
)
LARRY TRIPLETT,) Case No. 19-12508
)
Debtor.)

ORDER SUSTAINING OBJECTION TO CLAIM

This case is before the court on the debtor's objection (doc. 46) to claim no. 4 of Cenlar Federal Savings Bank ("Cenlar") as loan servicer for CitiMortgage, Inc. For the reasons set out below, the court sustains the objection and allows Cenlar's claim as secured in the amount of \$29,846.66.

According to Cenlar's proof of claim, Larry Triplett assumed a 1986 thirty-year mortgage loan in the original principal amount of \$67,314.00. In a prior bankruptcy before this court, case no. 15-01617, the debtor (represented by the same counsel) also objected to the claim of CitiMortgage/Cenlar. That objection was set for hearing seven times before the court finally overruled the objection without prejudice. The court soon thereafter dismissed the case for failure to make plan payments.

When the debtor objected to Cenlar's claim in this case, the court set the objection for an evidentiary hearing on February 28, 2020 (doc. 51). The scheduling order stated in part: "Witness and exhibit lists shall be filed and exhibits exchanged by February 21, 2020. Witnesses and exhibits not listed may not be used at the hearing except for impeachment." Despite this admonition, neither side filed any witness or exhibit list. Nor did the parties respond to an email inquiry from the undersigned's law clerk on February 26, 2020 asking the status of the contested matter and whether it had settled.

At trial, attorneys for both parties were present along with the debtor and the chapter 13 trustee. Counsel for the debtor asked for several more months for the debtor to come up with additional evidence of payments and insurance coverage. The court declined to continue the hearing and told the parties that it was taking the matter under submission without exhibits or witnesses because the parties had not listed any as required by the scheduling order.

Cenlar filed a secured proof of claim (executed by its counsel in this case) for \$72,280.12. The debtor filed an affidavit (doc. 44) contending that the claim did not properly credit him for \$42,433.46 of payments and that the correct amount of the claim should be \$29,846.66. The debtor's affidavit contains a listing of the alleged missed payments.¹

“When a proof of claim contains all of the information required under [Bankruptcy] Rule 3001, it ‘constitute[s] prima facie evidence of the validity and amount of the claim.’” *In re Walston*, 606 F. App’x 543, 546 (11th Cir. 2015) (citation and quotation marks omitted). “The burden then shifts to the objecting party to come forward with enough substantiations to overcome the claimant’s prima facie case.” *Id.* (citation and quotation marks omitted). Thus, under Rule 3001, “when a claimant attaches the documents required under the rule, it may refrain from presenting additional evidence because the documents establish prima facie evidence of the validity of the claim. *See id.* at 547 (citation, quotation marks, and brackets omitted). However, if the objecting party overcomes the prima facie case with evidence of equal probative force, the burden of proof shifts back to the creditor. *See id.* at 546; *In re James*, 308

¹ Because the mortgage matured prepetition, the claim is not subject to the anti-modification provision of Bankruptcy Code § 1322(b)(2) or the “cure and maintain” provision of Code § 1322(c)(1). The court earlier found that the value of Mr. Triplett’s residence which secures the mortgage is \$130,900.00 (doc. 42). The claim is thus oversecured by any measure, and Mr. Triplett has substantial equity in the property.

B.R. 569, 570-71 (Bankr. S.D. Ala. 2002); *In re Taylor*, 280 B.R. 711, 713-14 (Bankr. S.D. Ala. 2001).

The issue here is whether the debtor's affidavit constitutes sufficient evidence to overcome the claimant's prima facie case. The materials presented by the parties do not overlap in time. Cenlar's proof of claim contains an itemization of payments only during the year 2019. The debtor's allegedly uncredited payments (doc. 44, pp. 2-3) fall within the calendar years 2009-12, 2015, and 2018, and the court is unable to compare the list of allegedly missing credits to Cenlar's 2019 itemization. In summary, what the court has is a somewhat conclusory proof of claim with an incomplete payment history stating that the debtor owes \$72,280.12 and a somewhat conclusory affidavit with an incomplete list of payments stating that the debtor owes only \$29,846.66.

On this record, the court concludes that the debtor's affidavit with itemization constitutes sufficient evidence of equal probative force to overcome Cenlar's prima facie case and shift the burden of proof to Cenlar. The debtor presented competent evidence that certain specified payments have not been properly credited, and Cenlar did not present any evidence to rebut that contention in any filing or by evidence at trial. Cenlar took a calculated risk in not presenting any evidence at trial, which did not pan out in this instance. The court thus finds that Cenlar failed to meet its burden of proof, sustains the debtor's objection, and allows Cenlar's claim as secured in the amount of \$29,846.66.

This court tries hard to try to reach the best judgments it can based upon the merits of cases, and it is frustrating to have to make a decision in this case based upon an incomplete evidentiary record. The amount owed on this mortgage debt seems to the undersigned to be a mathematically ascertainable number which could be determined, perhaps by agreement, after

some investigation and sustained effort on both sides. But this dispute has been pending almost continuously since October 2018 throughout two bankruptcy cases (*see* case 15-01617, doc. 84). The current chapter 13 case was filed in July 2019 and cannot be confirmed until this claim objection is resolved. If the parties can reach an agreement as to a different resolution, more power to them. But for the time being, the court has made the best decision that it can based upon the skimpy record before it.

Dated: March 2, 2020


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE