



**IT IS ORDERED as set forth below:**

**Date: February 02, 2011**

**W. H. Drake  
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

<b>IN THE MATTER OF:</b>	:	<b>CASE NUMBER</b>
	:	
MICHAEL JOSEPH WATSON,	:	10-10424-WHD
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
DEBTOR.	:	BANKRUPTCY CODE

**ORDER**

Before the Court is the Objection to Claim, filed by Michael Joseph Watson (hereinafter the “Debtor”) and the Response to Objection and Motion to Reconsider Disallowance of Claim, filed by Americredit Financial Services, Inc. (hereinafter “AFSI”). Following a hearing on these matters, the Court finds that the order disallowing the AFSI claim should be reconsidered.

On February 5, 2010, the Debtor filed a Chapter 13 petition and a proposed plan. The Debtor’s plan provided for the surrender of a 2005 Ford F-250 Truck (hereinafter the

“Collateral”) to AFSI. The Court confirmed the plan on May 14, 2010. On February 25, 2010, AFSI filed proof of its \$26,314 secured claim. On April 2, 2010, the Debtor objected to AFSI’s claim and requested its disallowance on the basis that the claim “does not reflect the sell [sic] of collateral and deficiency balance.” It appears that, as of the time of the filing of the Debtor’s objection, the Debtor retained possession of the Collateral and the automatic stay remained in place.

AFSI did not respond to the Debtor’s objection and failed to appear at the hearing held on May 13, 2010. Accordingly, on May 20, 2010, the Court entered a “no-opposition” order. The May 20<sup>th</sup> Order disallowed AFSI’s claim in its entirety. On June 24, 2010, AFSI attempted to amend its proof of claim to account for the sale of the Collateral, which did not occur until June 8, 2010. The Debtor filed an objection to the second proof of claim on the basis that the original claim had been disallowed and the second claim was late. AFSI now seeks reconsideration of the May 20<sup>th</sup> Order disallowing its original claim, pursuant to section 502(j).

Under section 502(j), “[a] claim that has been allowed or disallowed may be reconsidered for cause.” 11 U.S.C. § 502(j); *see also* Rule 3008 (“A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate.”). “A reconsidered claim may be allowed or disallowed according to the equities of the case.” 11 U.S.C. § 502(j). Having considered the totality of the circumstances and having balanced the preference for resolving disputes on their merits against the importance of

finality in legal proceedings, the Court finds cause to reconsider the disallowance of AFSI's claim. *See* 11 U.S.C. § 502(j); *see also In re Coxeter*, 2009 WL 4893170 \*4 (Bankr. N.D.N.Y. Dec. 10, 2009) (noting the "preference in American jurisprudence that matters should be resolved on their merits, and not by procedural fiat").

AFSI states that it did not consult an attorney to respond or otherwise oppose the Debtor's objection because, due to its past experience with such objections, AFSI expected that its claim would be disallowed as filed (*i.e.* as a secured claim), rather than disallowed in its entirety. There is no indication that AFSI acted in bad faith in doing so.

It also is clear that AFSI had not only a meritorious defense to the disallowance of its claim, but a complete defense, since it had not yet liquidated its Collateral (a fact of which the Debtor was presumably aware at the time he filed his objection). *See Gelibert v. United States of America, ex rel., The Internal Revenue Service*, 08-84618-jem (Bankr. N.D. Ga. Feb. 26, 2010) (Massey, J.) (holding that an objection to a secured claim based on the fact that collateral has been surrendered through the debtor's Chapter 13 plan failed to state a claim upon which relief could be granted).

Finally, the Debtor will not be prejudiced by the reconsideration of AFSI's claim. The Debtor was not "surprised or caught unaware" by the assertion of AFSI's deficiency claim, as he was fully aware that AFSI held a claim against him for the full amount owed on the promissory note and that the sale of the Collateral would not bring enough money to cover the entire debt. *See* Debtor's Schedule B (valuing the Collateral at \$12,775); Debtor's

Schedule D (listing the amount owed to AFSI as \$25,734). In fact, AFSI's filed unsecured claim indicates that it received \$15,450 from the sale of the Collateral, which is \$2,600 more than the value of the Collateral as scheduled by the Debtor. Reconsidering the claim will merely place the Debtor in the same position he occupied previously and, should the Debtor have any other defense to AFSI's unsecured claim, reconsideration will not prevent the Debtor from raising it.

For these reasons, AFSI's Motion to Reconsider is **GRANTED**. The Debtor's Objection to Claim of American Financial Services, Inc. (Claim Number 2-2) is **DENIED**. Claim Number 2-2 shall be considered an amendment to a timely filed claim (Claim Number 2-1).

The parties shall have twenty (20) days from the date of the entry of this Order to submit a consent order regarding the Debtor's objection to Claim Number 2-1, or to request a hearing. If no action is taken within this time, the Court may enter an order allowing AFSI's claim as amended by Claim Number 2-2 without a further hearing.

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