



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

**Date: March 19, 2015**

**W. Homer 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>
	:	
ROBERT E. COLE,	:	12-12773-WHD
	:	
	:	
	:	<b>IN PROCEEDINGS UNDER</b>
	:	<b>CHAPTER 7 OF THE</b>
Debtors.	:	<b>BANKRUPTCY CODE</b>

**ORDER**

Before the Court is the Objection to the Claim of Peggy A. Smith (hereinafter "Smith"), filed by Griffin Howell, III (hereinafter the "Trustee"), in his capacity as the trustee of the bankruptcy estate of Robert E. Cole (hereinafter "Debtor"). This matter constitutes a core proceeding over which this Court has subject matter jurisdiction. *See* 28 U.S.C. §§ 157(b)(2)(B); 1334.

### FINDINGS OF FACT AND PROCEDURAL HISTORY

On September 26, 2012, Debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code, and the Trustee was appointed. Smith filed a proof of claim on January 27, 2014, in which she originally asserted a priority unsecured claim in the amount of \$33,656 (hereinafter the "Claim"). *See* Claim No. 7-1. According to the Claim, the debt arose from Smith's purchase, on behalf of her grandson and his wife, of a 2007 Ford Shelby GT Mustang (hereinafter the "Vehicle"). At the time she filed the Claim, Smith claimed that the title to the Vehicle had never been transferred into her name. The Vehicle had an apparent total sales price with fees, taxes, and other charges of \$27,966.65. Smith claimed she was owed \$23,656 (the net amount financed for the purchase, which included paying off \$23,690 owed on a trade-in vehicle) and her \$10,000 cash down payment. The \$23,656 financed by Smith included a charge of \$799 for the purchase of "gap" insurance and an \$18 fee for transferring title.

On December 4, 2014, the Trustee objected to the Claim on the basis that the documents attached did not demonstrate that Smith had purchased the Vehicle from Debtor, but rather from a dealership. The Claim includes an attached bill of sale for the Vehicle to Smith from Gateway Mitsubishi. Accordingly, the Trustee speculated that any sale of the Vehicle must have been made by Gateway Mitsubishi, or possibly Southwest Georgia Motors, LLC. According to Debtor's Schedule B, Debtor is the owner of 100%

of the membership interests of Southwest Georgia Motors, LLC, but Debtor disclosed no interest in Gateway Mitsubishi.

When the Trustee's objection came before the Court, the parties waived the hearing and agreed to allow the Court to resolve the matter by considering informal letter briefs. In her brief, Smith reduced the amount of the claim she sought to \$832 on the basis that she has now obtained title to the Vehicle. Having considered the parties' briefs, the Court finds that the Trustee has overcome the presumption of validity of the Claim and Smith has failed to produce any evidence that Debtor was personally liable for any debt arising from the sale of the Vehicle, including the failure to ensure that title to the Vehicle was transferred or that the gap insurance was obtained.

#### **CONCLUSIONS OF LAW**

Section 501 of the Code provides that a "creditor . . . may file a proof of claim." 11 U.S.C. § 501(a). "Claim" is defined as a "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 . . . ." 11 U.S.C. § 101(5). Pursuant to section 502(a) of the Code, "[a] claim or interest, proof of which is filed under section 501 . . . , is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Upon objection to a claim, "the court, after notice and a hearing, shall determine the amount of such claim . . . as of the date of the filing of the petition, and shall allow

such claim in such amount, except to the extent that” the claim would not be enforceable against the debtor and property of the debtor “under . . . applicable law.” 11 U.S.C. § 502(b). For this purpose, a properly executed and filed proof of claim constitutes “prima facie evidence of the validity and amount of the claim.” FED. BANKR. P. 3001(f).

The objecting party bears the burden of establishing facts that “evidence a true dispute” sufficient to overcome the presumption of validity created by Rule 3001(f). *In re Gurley*, 311 B.R. 910, 915-16 (Bankr. M.D. Fla. 2001). “Upon introduction of sufficient evidence by the objecting party, the burden of proof must then be met by the claimant by a preponderance of the evidence.” *Id.*

Here, Smith has produced the documentation from the sale of the Vehicle. According to the documents, the transaction occurred between Smith, as purchaser, and Gateway Mitsubishi, as seller. It is clear that the written contract between the seller of the Vehicle and Smith is not one between Debtor and Smith. This fact is consistent with the lack of any evidence that Debtor owned the Vehicle. In fact, Smith’s brief suggests that Tim Robinson, a Mitsubishi sales person who told Smith that the Vehicle had been “his personal daily driver” and whose name appeared as the owner of the Vehicle on the tag receipt from Gateway Mitsubishi, was the owner of the Vehicle. Accordingly, any obligation of the seller of the Vehicle to transfer title to Smith or to obtain gap insurance was not a personal obligation of Debtor.

Further, there is no evidence that Debtor held any interest in Gateway Mitsubishi. Smith's brief suggests that an individual named Don Snow was the owner of Gateway Mitsubishi. As Debtor was not a principal of Gateway Mitsubishi, any attempt to hold Debtor liable for Gateway Mitsubishi's debt under a legal theory, such as alter ego or piercing the corporate veil, would fail, even if Smith had presented evidence sufficient to support such a theory.

Finally, every fact detailed by Smith in her brief is consistent with a finding that Debtor was acting as an agent of Gateway Mitsubishi, rather than in his individual capacity. Smith has not asserted, much less presented evidence, that Debtor personally retained or benefitted from the money Smith paid for having the title transferred or to purchase the gap insurance. Likewise, she does not claim that Debtor represented to her that he owned the Vehicle (or Mitsubishi Gateway) or that he would personally assume any obligations arising from Mitsubishi Gateway's failure to perform its contractual obligations. Accordingly, the Court has no legal basis to impose personal liability on Debtor or his bankruptcy estate and must sustain the Trustee's objection to the Claim.

#### CONCLUSION

For the reasons stated above, the Trustee's objection to the claim of Peggy Smith (Claim Number 7-1) is **SUSTAINED**. The Claim is hereby **DISALLOWED** in its entirety.

The Clerk is **DIRECTED** to serve a copy of this Order on the Trustee, Smith, Debtor, and Debtor's counsel.

**END OF DOCUMENT**