IT IS ORDERED as set forth below:

Date: March 23, 2010

_____
James E. Massey
U.S. Bankruptcy Court Judge

_____

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

_____||

IN RE: CASE NO. 05-73970

Sarah Brock Bentley,

                                               CHAPTER 7

        Debtor.   JUDGE MASSEY
_____||

S. Gregory Hays, Trustee

        Movant,
v.   CONTESTED MATTER

Saxon Mortgage Services, Inc.,

        Respondent.
_____||

ORDER ON OBJECTION TO CLAIM

The Chapter 7 Trustee objects to Respondent's proof of claim no. 15, which was filed as a

fully secured claim, on the ground that the Trustee abandoned the property securing the claim

and that Respondent should look to its collateral for satisfaction of its debt. The relief sought is

disallowance of the claim in its entirety.

The Trustee misunderstands the statutory framework for disallowance of claims.   A proof

of claim is deemed allowed unless there is an objection. 11 U.S.C. § 502(a). Section 502 deals

with the disallowance of claims generally in various subsections on various grounds. For

example, a claim may be disallowed on the ground that it is "is unenforceable against the debtor

and property of the debtor under any agreement or applicable law" other than because it is

contingent or unmatured. Nothing in section 502 permits a bankruptcy court to disallow a claim

merely because the creditor has collateral or because the trustee has abandoned the collateral.

The Trustee's contention is that the claim is fully secured, which is what the proof of

claim states. Hence, the Court assumes that the Trustee is not asking for a determination of

whether the claim is in fact a secured claim under section 506(a)(1) of the Bankruptcy Code.

Under that section, "[a]n allowed claim of a creditor secured by a lien on property in which the

estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim

to the extent of the value of such creditor's interest in the estate's interest in such property . . . ."

11 U.S.C. § 506(a)(1). A claim that is secured (by a lien on property) for bankruptcy purposes

will also be a secured claim under other applicable law, but under section 506(a)(1), a claim that

would be deemed a secured claim under other applicable law is not necessarily a secured claim

for bankruptcy purposes. The variables are (1) the value of the creditor's interest in (2) property

of the bankruptcy estate. If no one seeks a determination under section 506(a)(1), a proof of a

fully secured claim that is not disallowed under section 502 will be treated as an allowed secured

claim and not as an allowed unsecured claim.

> Language and structure thus demonstrate that §§ 502 and 506 should be read in
> tandem with one another, for they address complementary but different questions.
> Section 502 deals with the threshold question of whether a claim should be
> allowed or disallowed. Once the bankruptcy court determines that a claim is

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allowable, § 506 deals with the entirely different, more narrow question of whether certain types of claims should be considered secured or unsecured.

In re Welzel, 275 F.3d 1308, 1317-1318 (11th Cir. 2001).

The fact that Respondent has collateral for its fully secured claim is not a basis for disallowing that claim for the reason stated - it is not one of the grounds for disallowance set forth in section 502. Nor is the Trustee authorized to distribute funds that are not the collateral of holder of a secured claim to such a holder under section 726. The holder of a claim the proof of which is filed as fully secured is not entitled to participate in a distribution made pursuant to section 726 to holders of unsecured claims.

Based on this analysis, to the extent the objection seeks disallowance of Respondent's claim, it is DENIED, but to the extent that the objection is seeking a determination that Respondent does not hold an unsecured claim, it is GRANTED. Respondent does not at present hold an unsecured claim, having filed its claim as fully secured, and is therefore not entitled to participate in a distribution made by the Trustee with respect to unsecured claims.

<div align="center">***END OF ORDER***</div>