UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

IN RE:	:	CASE NO. G10-24902-REB
CHRISTOPHER WALSTON,	:	
Debtor.	:	
	:	CONTESTED MATTER
CHRISTOPHER WALSTON,	:	
Movant,	:	
v.	:	CHAPTER 13
PYOD, LLC, Its Successors and Assigns as Assignee of Citibank, N.A.,	:	
Respondent.	:	JUDGE BRIZENDINE

ORDER

Before the Court is Debtor-Movant's Objection to Claim No. 1 (Docket Entry No. 31, filed on August 28, 2013) as filed by Respondent PYOD, LLC on May 13, 2013 in the amount of $6,401.64 (Claim Activity Entry No. 1-1), and Objection to Claim No. 2 (Docket Entry No. 32, filed on August 28, 2013) as also filed by Respondent on May 13, 2013 in the amount of $34,150.37 (Claim Activity Entry No. 2-1).[1] The matter came on for hearing, at which time the Court directed counsel to file written briefs. Debtor filed his brief on November 25, 2013 and Respondent filed its reply brief on December 11, 2013. Upon review of same and the matters of record, the Court concludes that the Objections

[1] Respondent amended both Claim No. 1 and Claim No. 2 on November 5, 2013 (*see* Claim Activity Entry Nos. 1-2 & 2-2), to include further documentation and an affidavit as discussed hereafter.

should be overruled.[2]

In this pair of Objections, Debtor argues that each claim must be disallowed because the respective proof of claim fails to provide proof of a written assignment of the underlying debt from Citibank, N.A. to Respondent. In addition, Debtor maintains that statements in an affidavit by an officer of Respondent are inadmissible as hearsay. Lacking competent evidence of an assignment from the original creditor to the assignee that is proper under Georgia law, therefore, Respondent cannot assert an enforceable right to payment based on these claims in accordance with 11 U.S.C. § 502(b)(1). *See Nyankojo v. North Star Capital Acquisition*, 298 Ga.App. 858, 658 S.E.2d 469 (2009); *see also Hutto v. CACV of Colorado, LLC*, 308 Ga.App. 469, 707 S.E.2d 872 (2011).

In response, Respondent contends that in the bankruptcy claim allowance process, a debtor does not join issue regarding an alleged insufficiency of documentation with respect to a claim merely by demanding that a claimant produce a copy of a written assignment of a claim as here where the claimant has substantially complied with the requirements of Federal Rule of Bankruptcy Procedure 3001. *See generally In re Crutchfield*, 492 B.R. 60, 72-73 (Bankr. M.D.Ga. 2013). Under Rule 3001, Respondent's claims, as supported by attached documentation, are entitled to a presumption of validity, and it is not required to produce an affidavit from the originating creditor or otherwise establish the bona fides of the assignment chain of title under state evidence law.[3] To succeed in his objections, Respondent insists,

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[2] Because each Objection advances the identical argument, the Court will address both Objections in this single Order.

[3] In any event, Respondent argues that if state law did apply, business records are admissible under a hearsay exception, and a corporate official, employee, or agent is competent to testify to the status of an account based on such records even if he or she lacks personal knowledge. *See e.g. Boyd v. Cavalry Portfolio Serv.*, 285 Ga.App. 390, 646 S.E.2d 496 (2007); *accord Angel Business Catalysts, LLC v. Bank of Ozarks*, 316 Ga.App. 253, 728 S.E.2d 854 (2012).

Debtor bears the burden of coming forward with equally probative evidence rebutting this presumption that tends to show the subject debts are unenforceable.

Attached to each proof of claim as amended are copies of certain documentation, allegedly regarding Debtor's accounts, along with the Affidavit of Lynn R. Hudson, identified as a paralegal in the Bankruptcy and Special Servicing Department of Resurgent Capital Services, LP, the entity that currently services loans for companies including Respondent as well as Sherman Acquisition, LLC ("SALLC"), an entity within the chain of assignments. In her Affidavit, Ms. Hudson states that she has been appointed as a Custodian of Records for these entities. Ms. Hudson states further that in this capacity, she has "personally reviewed" various documents of Resurgent and/or its principals regarding the sale and assignment of certain accounts from Citibank (South Dakota), N.A. to SALLC, and then from SALLC to Respondent PYOD.[4] In her review, Ms. Hudson examined books and records regarding Debtor's unsecured credit account, and states that she knows the facts set forth in her Affidavit concerning same "to be true of [her] own personal knowledge, or have gained knowledge of them from said books, records and files." Affidavit, ¶ 6.

According to her sworn statement, Ms. Hudson "personally accessed" certain electronic data regarding those accounts purchased by SALLC from Citibank and subsequently transferred to Respondent from SALLC, "to ensure that the Debtor's account was in fact among those purchased."

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[4] *See* Affidavit of Lynn R. Hudson, dated October 11, 2013, as attached to Amended Proofs of Claim, Entry No. 1-2, filed on November 5, 2013, and as attached to Claim Entry No. 2-2, filed on November 5, 2013. Claim 1-2 contains a copy of a billing statement for a Sears MasterCard account. Claim 2-2 contains a copy of a billing statement referencing an AT&T Universal Card account. Debtor's bankruptcy schedules reflect an unsecured claim in favor of "Sears/Cbsd" in the amount of $6,376.00, and an unsecured claim in favor of "Unvl/Citi" in the amount of $33,333.00. As shown on the face of these documents, both accounts were apparently issued by, or had some relationship with, Citibank (South Dakota), N.A.

Affidavit, ¶ 10.[5] Exhibit "B" as attached to the Affidavit is a copy of a Declaration of Account Transfer, and evidences the transfer of certain assets, including encrypted electronic files as stored business records provided by Citibank to SALLC, and from SALLC to Respondent PYOD. *See* Claim Entry No. 1-2 Part 3, pages 7 and 8 of 10); *and see* Affidavit, ¶ 9. Exhibit "C" to the Affidavit (Claim Entry No. 1-2 Part 3, pages 9 through 10 of 10), is described by Ms. Hudson as a partial list of purchased accounts as taken from "the original, electronic list of purchased accounts," and identifies Debtor's account by name and account number (ending in 6168), and associates it with Portfolio 15655. This particular portfolio, in turn, is listed on Exhibit "A" as attached to the Declaration of Account Transfer as among those receivables and assets transferred from SALLC to Respondent. *See* Exhibit "B," attached to Affidavit (Claim Entry No. 1-2 Part 3, pages 7 through 8 of 10). Respondent states that through the foregoing summary and supporting documents as referenced therein, Ms. Hudson describes in some detail the chain of assignments leading to Respondent as current assignee of Debtor's accounts.

Debtor believes these proofs of claim are deficient because they contain no proof of an assignment of Debtor's account, by either name or account number, at issue herein from Citibank to SALLC or proof of a further assignment to Respondent PYOD. Further, Debtor argues that Ms. Hudson cannot provide this evidence through her affidavit since she is not an agent of Citibank, and has only

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[5] According to Ms. Hudson, a true and correct copy of a Bill of Sale and Assignment between Citibank and SALLC, dated December 28, 2010, is attached to Claim Entry No. 1-2 at page 5 of 10, and includes Debtor's account ending in 6168. *See* Affidavit, ¶ 8. (Claim Entry No. 1-2, at pages 8 through 9 of 10). The sale occurred in accordance with a Purchase and Sale Agreement between Citibank and SALLC, dated December 29, 2006, pertaining to accounts for which Citibank would receive a bankruptcy notice. A copy of that agreement is stated as being available upon request. Debtor filed this case under Chapter 7 on October 30, 2010.

In addition, while the Court refers to Claim Entry No. 1-2 hereafter for purposes of simplicity, such references should be taken to include similar references in connection with the documentation associated with Claim Entry No. 2-2.

reviewed the records of SALLC and PYOD. She was not present when the original documents of transfer were signed, and they are not in her possession. Thus, Ms. Hudson cannot state that the subject accounts of the Debtor were in fact included in the transfer referenced in the documents filed with the Court as part of Respondent's claims.

Under Bankruptcy Rule 3001(f), a proof of claim that complies with the standards of these rules is "prima facie evidence of the validity and amount of the claim." As explained in *Crutchfield, supra*, the purpose of the disclosure requirements in Bankruptcy Rule 3001 is to allow a debtor sufficient information to identify a particular claim and match it with a known account. 492 B.R. at 72-73, discussing Fed.R.Bankr.P. 3001(c)(3). The Court has carefully reviewed each contested proof of claim and its supporting documentation and finds and concludes that Respondent has substantially complied with the requirements of this Rule. Each claim is properly filed and supported, and establishes a prima facie validity of the respective claim and its amount.

Beyond his mere assertions of error in the these claims as presented, Debtor has produced no probative evidence tending to place the claims in dispute or otherwise contradict an allegation essential to Respondent's rights if such evidence was accepted. The identity of the real party in interest as challenged by Debtor is an essential allegation. The documentation filed along with Ms. Hudson's Affidavit and the summary of her efforts in connection with same, however, are sufficient to establish presumptively that Respondent's claims are those of the Debtor herein. Thus, Debtor has failed to carry his burden in overcoming such presumption, and in seeking to have these claims disallowed on the basis set forth in his Objections.[6]

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[6] This Court observes that claims are analyzed in accordance with federal bankruptcy law such as Section 502 and Bankruptcy Rule 3001. Once an objecting party rebuts the presumption of validity, nonbankruptcy law that creates an underlying debt governs both its substance as well as the relative

Moreover, the Court finds in any event that the facts presented differ from those as confronted in *Nyankojo, supra.* Here, the Affidavit and documentation attached to Respondent's properly filed and supported claims show that Debtor's respective accounts as ultimately assigned to Respondent PYOD in each instance was the debt he owed to Citibank, N.A. on his revolving charge agreement with that entity. Ms. Hudson also states that she has some personal knowledge of the facts pertaining to the transfers in question unlike the officer in *Nyankojo* who had no knowledge and testified only to the contents of the records. 298 Ga.App. at 10, 679 S.E.2d at 60. In addition, the presumption described in Bankruptcy Rule 3001(f) differs from the burden described in *Nyankojo* and *Hutto, supra.* In those decisions, the court discussed an alleged assignee's burden of proof in the context of a motion for summary judgment. *Hutto*, 308 Ga.App. at 471, 707 S.E.2d at 874. As noted above, before the Court addresses the sufficiency of the subject claims under that test, Debtor must first offer some evidence tending to rebut the presumption of validity. To employ criteria for summary judgment with regard to Respondent's claims at this stage would impermissibly heighten the evidentiary burden for establishing the prima facie validity of a proof of claim as set forth in Rule 3001.

Further, unlike the facts in *Hutto*, in this case, the Bill of Sale from Citibank is authenticated in an affidavit, and the partial list of accounts transferred showing Debtor's accounts is attested as having been derived from electronic information provided by Citibank. 308 Ga.App. at 471-72, 707 S.E.2d at 875.[7] The Court also concludes that Respondent has adequately accounted for the non-production of the

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burden of proof in instances where such a claim is properly challenged in a bankruptcy case. *See Raleigh v. Illinois Dep't of Revenue*, 530 U.S. 15, 120 S.Ct. 1951, 1955, 147 L.Ed.2d 13 (2000). The parties have not addressed whether the obligations at issue were created under Georgia law.

[7] The Affidavit also describes the process by which such accounts are listed by computer, and thus may serve as circumstantial evidence linking the writings in question to their source.

original agreement and its attachments due to the voluminous scope of affected accounts and their listing in an electronic file (*see* Affidavit, ¶ 8), and that its terms may be established via affidavit by one with knowledge of the handling of such transactions and/or their recordation. In her Affidavit, Ms. Hudson explicitly states that the "books, records, files, and other documents" she reviewed and summarizes "were prepared in the regular and normal course of Resurgent and/or its principal's business, by its/their employees who have a duty to keep and maintain such records, at or near the time of the acts, conditions or events depicted." Affidavit, ¶ 5.

The Court recognizes the concern that the expedited procedure for claim allowance in bankruptcy not be used by creditors to collect on claims they could not prove under applicable state law. The Court also recognizes that debtors can sometimes be at a disadvantage in seeking to present evidence rebutting the validity of an assignment.[8] Perhaps the electronic records upon which Ms. Hudson bases her conclusions, if possible, could be made available to Debtor's counsel for inspection and review. Further, whereas this Debtor may not have dealt directly with PYOD, he never disputes his liability on the claims—only that PYOD has not shown it is the entity to which he in fact actually owes the credit card debt in question. Based on the structure of review set forth in Rule 3001, however, this challenge is met by the presumptive validity of Respondent's claims as heretofore acknowledged.

Based upon the foregoing discussion, the Court concludes that Debtor is not entitled to the relief as requested in his Objections, and, accordingly, it is

ORDERED that the Objection of Debtor-Movant (Docket Entry No. 31, filed on August 28, 2013) to Claim No. 1 filed by Respondent on May 13, 2013 in the amount of $6,401.64, and Debtor's Objection (Docket Entry No. 32, filed on August 28, 2013) to Claim No. 2 as filed by Respondent on

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[8] *See generally In re Pursley*, 451 B.R. 213, 219, 230-34 (Bankr. M.D.Ga. 2011).

May 13, 2013 in the amount of $34,150.37, be, and the same hereby are, **overruled**.

The Clerk is directed to serve a copy of this Order upon counsel for Debtor, counsel for Respondent PYOD, LLC, the Chapter 13 Trustee, and the United States Trustee.

IT IS SO ORDERED.

At Atlanta, Georgia this 17th day of March, 2014.

ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE