



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

**Date: June 17, 2015**

*Mary Grace Diehl*

Mary Grace Diehl  
U.S. Bankruptcy Court Judge

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

In re:	:	CASE NUMBER:
	:	
<b>CYNTHIA PERDUM,</b>	:	<b>15-50395-MGD</b>
	:	
Debtor.	:	CHAPTER 13
	:	
<b>CYNTHIA PERDUM,</b>	:	
	:	
Movant,	:	
	:	
v.	:	CONTESTED MATTER
	:	
<b>WELLS FARGO BANK, N.A.,</b>	:	
	:	
Respondent.	:	

**ORDER OVERRULING DEBTOR'S OBJECTION TO CLAIM OF  
WELLS FARGO BANK, N.A.**

Before the Court is Debtor's Objection to Proof of Claim No. 4 of Wells Fargo Bank, N.A. (Doc. 33) ("Objection"). Wells Fargo Bank, N.A. ("Respondent") filed a Response to the Objection (Doc. 36). The matter came for hearing June 17, 2015. Debtor Cynthia Perdum

appeared *pro se* and Delaycee Shannon Rowland appeared for the Respondent. At the hearing, the Court overruled Debtor's Objection and this Order memorializes the Court's ruling. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B) and venue is proper.

Respondent filed Proof of Claim 4-1 ("Proof of Claim") on April 13, 2015. The amount of the claim was \$158,732.63, secured by a security deed for 5100 King Arthur Lane, Ellenwood, GA 30294, Debtor's residence. The Proof of Claim lists \$40,361.31 in arrearages. Respondent attached several supporting documents to the Claim, including (1) a Loan Modification Agreement between Respondent and Debtor dated March 14, 2011 ("Loan Modification"), (2) an Assignment of Mortgage/Deed dated December 2, 2006 between Respondent and Washington Mutual Bank ("Assignment"), (3) a Security Deed dated November 22, 2002 between Debtor and Washington Mutual Bank, and (4) a Note dated November 22, 2002 between Debtor and Washington Mutual Bank, with endorsements to Respondent.

Debtor argues that she does not owe a debt to Respondent. In support of this argument, she advances two principal theories: First, that the endorsements on the Note from Washington Mutual Bank to Respondent were made by Respondent and thus invalid; and second, that the Assignment was the product of fraudulent "robo-signing," and thus also invalid. Debtor did not present any evidence to support her allegations and admitted she signed the Loan Modification, but asserted it was under duress and that her signature lacked required formalities.

The Court overrules Debtor's Objection for three reasons. First, Respondent's Proof of Claim was filed in accordance with Federal Rule of Bankruptcy Procedure 3001 and thus "constitute[s] prima facie evidence of the validity and amount of the claim." Debtor, as the objecting party, "overcomes a prima facie case by producing evidence that is sufficient to negate

one or more of the facts set forth in the proof of claim.” *In re Walston*, No. 14-14593, 2015 WL 3462325, at \*5 (11th Cir. June 2, 2015) (citing *Benjamin v. Diamond (In re Mobile Steel Co.)*, 563 F.2d 692, 701 (5th Cir.1977)). At the hearing, Debtor failed to produce adequate documentation to support her Objection, and therefore failed to overcome Respondent’s prima facie evidence of the validity and amount of its claim.

Second, Debtor signed the Loan Modification with Respondent in 2011. Having held out Respondent’s secured claim was valid in order to induce it to modify the loan, and having received the benefit of the modification, she is now estopped to deny that Respondent did not receive an assignment of the Security Deed and Note in 2006. Debtor presented no evidence of duress other than her own assertions and no authority for the proposition that her signature was not sufficient to authorize the loan modification.

Third, Debtor lacks standing to contest the validity of the Assignment under Georgia law, as Debtor was not a party to the assignment. *Montgomery v. Bank of Am.*, 740 S.E.2d 434, 438 (Ga. App. 2013). Assuming the Assignment was valid, it would have been sufficient under Georgia to transfer the indebtedness as well, negating Debtor’s endorsement argument. *Id.* at 437 n.5 (citing OCGA § 44-14-64(b)); *see also In re Dewberry*, No. 10-60155-WLH, 2010 WL 4882016, at \*2 (Bankr. N.D. Ga. Oct. 21, 2010) (“[U]nder Georgia law, a transfer of a note which is not sufficient to make the transferee a ‘holder’ can nevertheless constitute an assignment of the note.”) (citing *Bank of Danielsville v. Seagraves*, 305 S.E.2d 790 (Ga. App. 1983); *Tallahassee Bank & Trust Co. v. Raines*, 187 S.E.2d 320 (Ga. App. 1972)). The Court notes that no party purporting to represent Washington Mutual Bank, the assignor, has filed a

proof of claim in this case and that Debtor has presented no evidence that she has paid any other entity on account of the Note.

For each of these reasons, Debtor has failed to overcome the prima facie evidence of the validity and amount of Respondent's claim. Accordingly, it is

**ORDERED** that Debtor's Objection is **OVERRULED**.

The Clerk's Office is directed to serve a copy of this Order upon Debtor, Respondent, Counsel for Respondent, and the Chapter 13 Trustee.