IT IS ORDERED as set forth below:

Date: December 19, 2016

James R. Sacca
U.S. Bankruptcy Court Judge

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

IN RE:	:	Chapter 13
	:	
TYRA DYESS COOPER,	:	Case No. 15-22158-JRS
	:	
Debtor.	:	

ORDER ON OBJECTION TO PROOF OF CLAIM FILED BY COMMUNITY & SOUTHERN BANK

This matter is before the Court on Debtor's objections [Docs. 22 and 23] to the two proofs of claim filed by Community & Southern Bank (the "Bank"), those being Claim No. 2 in the amount of $1,328.09 and Claim No. 3 in the amount of $5,789.10. Claim No. 2 purports to be the balance due on a February 2009 loan arising from the purchase of a 2001 Chrysler Town & Country. Claim No. 3 purports to be the balance due on a February 2010 renewal of a debt

consolidation loan that states in one place that it is unsecured, while in another it states it is secured by any property which secures any other loan owed to the Bank.

Debtor objects to Claim No. 2 on two grounds: (1) the vehicle securing the loan was allegedly repossessed and the Bank did not send the required notice under Georgia law to preserve a deficiency and (2) the statute of limitations has expired with respect to the claim based on *Suntrust Bank v. Venable*, 299 Ga. 655, 791 S.E.2d 5 (2016). Debtor objects to Claim No. 3 on the grounds that Debtor only had one loan with the Bank as opposed to two so no amount is owed on that claim. The Bank denies that it repossessed the vehicle that secured Claim No. 2 and maintains that there are in fact two loans with the Debtor, so Claim No. 3 is valid.

The matter came on for hearing on May 19, 2016 at which hearing the Court heard the testimony of the Debtor and Gabbi North, a Vice President for the Bank who signed the proofs of claim, and the arguments of counsel, all of which was considered by the Court along with all other matters of record. At the conclusion of the hearing, the Court took the matter under advisement to consider the impact of the Georgia Court of Appeals decision in *Venable*, while also waiting to see if the Georgia Supreme Court would take certiorari, which it did. Now that the Georgia Supreme Court has ruled, the matter is ripe for determination.

Debtor filed her bankruptcy case on October 20, 2015. The Bank charged off both loans in 2010 because of the Debtor's failure to pay. The Debtor contends that under *Venable* a four year statute of limitations applies because the loan that was the subject of Claim No. 2 was used to purchase a vehicle so it was part of a sale transaction as opposed to being a pure loan transaction that would be subject to a six year statute of limitations. Because more than four years passed between the charge-off of that loan and the filing of the bankruptcy case, if a four

year statute of limitations applied, the debt would be time-barred and the claim disallowed. The Bank contends the loan was solely a finance transaction and not a sale transaction so a six year statute of limitations applies which would make the claim valid subject to any other defenses.

The Court finds that *Venable* does not apply to the facts of this case because the underlying transaction in this case was only a finance transaction as opposed to a sale transaction. In *Venable*, the debtor purchased a car from a car dealer and signed a sale contract that also included the financing terms. That contract was then assigned to SunTrust. Consequently, the Georgia Supreme Court affirmed the Georgia Court of Appeals that this was a sale transaction, albeit one that included a financing component. *Venable*, 299 Ga. at 657-58, 660. We do not have those facts here. The Bank here merely made a loan to enable the purchase of a car from a car dealer. The purchase contract was not assigned to the Bank. There is simply no sale component to the loan documents on which the Bank has asserted its claim.

With respect to the issue of whether the Bank repossessed the vehicle and failed to send the requisite notice under Georgia law to maintain a deficiency claim, the Court finds that the Bank did not repossess the vehicle but rather the vehicle was picked up by a towing company because the vehicle had been abandoned. The Bank's representative testified that the Bank did not repossess the vehicle and the Debtor had no evidence that the Bank did repossess the vehicle. The Debtor's testimony was merely that the vehicle was at her house one day and then was gone. The letter admitted into evidence from the towing company states that the vehicle had been declared abandoned pursuant to O.C.G.A. Section 40-11-5, which section discusses how a lien is foreclosed on an abandoned vehicle, in this case the lien being that of the towing company for impounding the vehicle. Also attached to the exhibit was an enclosure to the letter which detailed the fees payable to the towing company which described that the vehicle was marked

abandoned on June 10, 2011 and impounded on June 13, 2011. This type of letter and notice is not consistent with a car that has been repossessed. Because the Bank did not repossess and sell the vehicle, it was not required to send any notice to the Debtor to maintain a deficiency because it does not have a deficiency claim, just a regular claim for the balance due on the loan.

The Court also finds that the Debtor had two loans with the Bank instead of just one as alleged by the Debtor. Claim No. 2 shows on the face of the promissory note, dated January 2009, that the loan number was 100376979. Claim No. 3 shows on the face of the promissory note, dated February 2010, that the loan number was 100399856 which was a renewal of loan number 100341577, which loan was a debt consolidation loan. This is also consistent with the testimony of the Bank's officer and the Bank's records.

Based on the forgoing, the Debtor has not sustained her burden of proof on her objections to the claims filed by the Bank. Accordingly, it is hereby

ORDERED that the Debtor's Objections to Claims Nos. 2 and 3 filed by the Bank are DENIED and the claims are ALLOWED.

[END OF DOCUMENT]