ORDERED in the Southern District of Florida on JUL 14 2008

A. Jay Cristol, Chief Judge Emeritus
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

In Re: **Case No.: 07-21140-AJC**

DEBORAH D. DORWAY, **Chapter 13**

Debtor.
_____/

ORDER SUSTAINING DEBTOR'S
OBJECTION TO eCAST SETTLEMENT'S CLAIM

THIS CAUSE came before the Court on June 4, 2008, upon the Debtor, Deborah D. Dorway's Objection to claim filed by eCAST Settlement Corporation ("eCAST"). The Court conducted an evidentiary hearing and made the following findings.

FACTUAL AND PROCEDURAL BACKGROUND

On December 14, 2007, Debtor filed a voluntary petition for relief under Chapter 13, title 11, United States Code. In her Schedule F, the Debtor listed "Household Finance Corporation" as an

unsecured creditor on an account ending in the number 5907 for an amount of $10,992.00.

On March 19, 2008, eCAST filed a proof of claim with this Court (Claim No. 16), asserting an unsecured debt in the amount of $11,092.41. The claim references an account number ending in 8380 and states that eCAST was the current owner of the Debtor's note with Household Finance Corporation via assignment. No documents are attached to Claim 16 other than a statement indicating that documents supporting the claim are "currently unavailable, but will be provided through an amendment to this Claim if they become available, or upon request by contacting claimant's counsel at...."

The Debtor filed an objection to Claim 16 on the basis that there was insufficient documentation to establish the owner of the claim or otherwise support the claim. Apparently, it is undisputed that, prior to the filing of this case, on or about August 10, 2007, Household Finance Corporation, III ("HFC III") commenced a state court proceeding to collect sums due by the Debtor pursuant to a Personal Credit Line Account Agreement executed by the Debtor in favor of HFC III (the "Credit Line Account"). According to the Complaint, HFC III alleges that it owns and holds the Credit Line Account. On October 24, 2007, HFC III filed in the state court a motion for summary judgment as well as an "Affidavit in Support of Summary Judgment", signed by Diana L. Girgenti, the Custodian of the account who made the Affidavit upon personal knowledge. The a copy of the original Credit Line Account is attached to Ms. Girgenti's affidavit.

On May 19, 2008, eCAST filed an amendment to Claim 16 (designated in the Court's Claims Registry as #16-2) attaching copies of the Credit Line Account executed in favor of HFC III and an Assignment of Accounts. The Credit Line Account, signed by the Debtor, references an account ending in the number 5907. The Assignment of Accounts is dated October 1, 2006. It states that

HSBC Consumer Lending (USA) Inc., as managing corporation for HFC Company LLC and Beneficial Company LLC and its lending subsidiaries, is the Seller and eCAST Settlement Corporation is the Buyer of "unsecured consumer loan accounts which are described on computer files furnished by Seller to Buyer."

On June 3, 2008, one day prior to the hearing on Debtor's objection, eCAST filed a second amended proof of claim (designated as #16-3). Claim 16-3 is identical to Claim 16-2, except that it includes a "Declaration and Affidavit" of Alfred J. Marsh. Mr. Marsh states that he "works for and on behalf of HSBC Consumer Lending (USA) Inc." and states that Debtor's account was charged off by HSBC on or about September 17, 2007, at which time it was assigned account number ending in 8380 and subsequently sold to eCAST.

The Debtor testified that she executed the Credit Line Account, that all payments made on the Credit Line Account were made to HFC III, and that she was never advised of any change in ownership of the account nor was she ever directed to pay anyone other than HFC III.

DISCUSSION

eCAST's claim is founded upon its assertion that it is the assignee of the Credit Line Account executed by the Debtor in favor of HFC III. The Debtor disputes that the Credit Line Account was assigned to eCAST.

Pursuant to Rule 3001(f), Fed.R.Bankr.P., "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." eCAST having filed a claim, together with amendments, has initially satisfied it burden of proof and the claim is presumed valid.

When an objection to a claim is filed, the burden of proof shifts to the objecting party.

> Upon a dispute or objection concerning a proof of claim, the burden shifts to the objecting party to produce evidence at least equal in probative force to that offered by the proof of claim and which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency. This can be done by the objecting party producing specific and detailed allegations that place the claim into dispute, by the presentation of legal arguments based upon the contents of the claim and its supporting documents. . . in which evidence is presented to bring the validity of the claim into question. If the objecting party meets these evidentiary requirements, then the burden of going forward with the evidence shifts back to the claimant to sustain its ultimate burden of persuasion to establish the validity and amount of the claim by preponderance of the evidence.

In re Taylor, 363 B.R. 303, 309 (Bankr. M.D.Fla. 2007) quoting *In re Armstrong,* 320 B.R. 97, 104 (citing *In re Rally Ptnrs., LP*, 306 B.R. 165, 168-69 (Bankr. E.D.Tex. 2003)).

The Court believes the Debtor has carried her burden of proving there is a genuine question as to the ownership of the Debtor's account, and accordingly, the legal sufficiency of eCAST's claim. Based upon the Debtor's credible and unrefuted testimony, it was established that HFC III, the original creditor as named on the Credit Line Account, sued the Debtor in state court on August 10, 2007, approximately four months prior to the date this case was commenced. In its Complaint, HFC III alleged that it is the current owner and holder of the Credit Line Account ending in 5907, the same account number scheduled by the Debtor in her Schedule F. On October 24, 2007, over a month past the date eCAST proffers it was assigned the account pursuant to Mr. Marsh's affidavit, HFC III filed a motion for summary judgment in the state court action. In support of the summary judgment motion, HFC III filed the affidavit of Diana L. Girgenti, the Custodian of the Debtor's account. Ms. Girgenti states she has personal information and knowledge of this account; that the Debtor is indebted to HFC III in the principal amount of $8,980.77 plus accrued interest and that the attached Personal Credit Line Account Agreement is the original document(s) executed by the Debtor. Certified copies of the state court Complaint and Affidavit in Support of Summary

Judgment were offered by the Debtor and admitted into evidence without objection.

The Debtor having sustained her burden, the ultimate burden of persuasion rests with eCAST. In both of its amended claims (16-2 and 16-3), eCAST attached copies of an "Assignment of Accounts" dated October 1, 2006. While eCAST claims that it is the owner of the Credit Line Account by virtue of the Assignment, HFC III is not the named assignor, nor does the assignment indicate which account(s) are being transferred. The Assignment purports to assign "unsecured consumer loan accounts which are described on computer files furnished by Seller [HSBC Consumer Lending (USA) Inc.] to Buyer [eCAST]." However, no computer files are attached to the Assignment nor were they proffered at the evidentiary hearing. eCAST attached a single page computer screen printout, allegedly from HSBC's recovery management system, but this printout does not reference the account in question and does not otherwise substantiate eCAST's claim.

In addition, the Declaration and Affidavit of Alfred J. Marsh, included in Claim 16-3, is contradictory and unpersuasive. Mr. Marsh states that he works for and on behalf of HSBC Consumer Lending (USA) Inc. ("HSBC"), and that HFC III is a direct subsidiary of HSBC. Mr. Marsh contends he has knowledge of HSBC's record keeping policies and procedures as they relate to bankruptcy accounts and products issued, but his affidavit fails to indicate in what capacity he works for HSBC and how he has personal knowledge of *this* Debtor's account. The Court questions Mr. Marsh's personal knowledge of the account, as he claims to have knowledge of the policies and procedures concerning bankrupt accounts, but this Debtor was not even in bankruptcy at the time Mr. Marsh claims the account was charged-off and assigned to eCAST. Mr. Marsh states that the "Debtor's account was charged-off on or about September 17, 2007," at which time it was sold to eCAST Settlement Corporation, completely divesting HSBC of any interest in the debt. However,

the affidavit fails to reconcile and clearly contradicts HFC III's actions and Ms. Girgenti's affidavit in the state court proceedings against the Debtor. If, as Mr. Marsh contends, the Debtor's account was assigned to eCAST on September 17, 2007, HFC III should not have continued litigation by filing for summary judgment against the Debtor in late October 2007, claiming ownership of the debt. This action is entirely inconsistent with eCAST's claim of ownership through assignment. Ms. Girgenti, as the Custodian of the Debtor's account at the time in question, should not have attested to the fact the Debtor owed her debt to HFC III if in fact that debt had already been sold or assigned to eCAST. Because Ms. Girgenti was the Custodian of the Debtor's account at the time of the alleged assignment, the Court finds her affidavit to be more persuasive than Mr. Marsh's, and accordingly finds that eCAST has failed to meet its burden of proving it is the rightful owner by assignment of the claim owing to HFC III by the Debtor. eCAST having failed to prove the validity of its claim, it is

ORDERED AND ADJUDGED that Debtor's objection to Claim 16, and all amendments thereto, is SUSTAINED and Claim 16, as amended by Claims 16-2 and 16-3, filed by eCAST Settlement Corporation are STRICKEN in their entirety.

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Copies furnished to:
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Copies furnished to Jeffrey N. Schatzman, Esq., who is directed to serve copies of this Order on the parties listed below and file a certificate of service.