

ORDERED.

Dated: February 11, 2019



Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	
)	
HAROLD L. HILLEY,)	Case No. 6:17-bk-02389-KSJ
)	Chapter 13
_____)	

**ORDER PARTIALLY SUSTAINING
DEBTOR’S OBJECTION TO CLAIM 11-2**

Nicole Hobbs-Hilley, the former wife of the Debtor, Harold Hilley, filed a detailed Amended Claim 11-2, asserting \$84,754.52 is due to her under the parties’ Final Judgment and Decree of Divorce (the “Divorce Judgment”).¹ Debtor objects to the amount sought² but agrees a lesser sum is owed in this Chapter 13 case. The Court will partially sustain the Debtor’s Objection and allow Claim 11-2 as an unsecured claim of \$14,747.90.

Parties bear shifting burdens of proof in asserting and challenging a bankruptcy claim. Section 502 of the Bankruptcy Code³ states a proof of claim is presumed valid until an interested

¹ Debtor’s Exh. 1, entered by the Superior Court of Cobb County, Georgia (the “Georgia Court”) in Case No. 14-1-08117-49 on May 26, 2016.
² Doc. No. 129 (the “Objection.”)
³ All references to the Bankruptcy Code refer to 11 U.S.C. §§ 101 *et. seq.*

party objects. Once an objection is filed, the burden of proof shifts to the objecting party, usually a debtor or a trustee, to rebut the *prima facie* validity of the claim.⁴ So what constitutes a *prima facie* claim?

A proof of claim filed under the bankruptcy rules “shall constitute *prima facie* evidence of the validity and amount of the claim.”⁵ Bankruptcy Rule 3001(c) specifies that when a claim is based on a writing, like the Divorce Judgment here,⁶ a creditor must attach the original or a duplicate of the underlying writing and other supporting documentation, such as “invoices, itemized statements of running accounts, contracts.”⁷

The rules rightfully require creditors to attach minimal supporting documentation for a claim so a debtor can evaluate its validity without discovery or extraordinary expense.⁸ Bankruptcy Rule 3001(c) provides a debtor with “fair notice of the conduct, transaction, and occurrences that form the basis of the claim.”⁹ Attaching supporting documentation is a mandatory prerequisite to establishing a claim’s *prima facie* validity.¹⁰ Here, Ms. Hobbs-Hilley’s Claim 11-2 meets the test for a valid *prima facie* claim. She used the official claim form and attached supporting documentation.

Debtor objects to this *prima facially* valid claim. He agrees that he owes his former wife approximately \$6,270.90¹¹ but asserts Ms. Hobbs-Hilley has greatly inflated the amount she seeks. After conducting a one-day trial¹² and considering the evidence, exhibits, and legal arguments, I agree and will allow Claim 11-2 in the reduced amount of \$14,747.90 as an unsecured claim.

⁴ *In re Eddy*, 572 B.R. 774, 778–79 (Bankr. M.D. Fla. 2017).

⁵ *In re Winn-Dixie Stores, Inc.*, 418 B.R. 475, 476 (Bankr. M.D. Fla. 2009) (internal quotation marks omitted).

⁶ Debtor’s Exh. No. 1.

⁷ *In re Taylor*, 363 B.R. 303, 307 (Bankr. M.D. Fla. 2007).

⁸ *Id.* at 308.

⁹ *In re Sandifer*, 318 B.R. 609, 611 (Bankr. M.D. Fla. 2004).

¹⁰ *Taylor*, 363 B.R. at 308.

¹¹ Doc. No. 129, p. 3.

¹² The trial was held on November 29, 2018.

Debtor and Ms. Hobbs-Hilley were married in 1990.¹³ They were divorced on May 26, 2016, when the Georgia Court entered the Divorce Judgment dividing their property after a two-day trial.¹⁴ At the time of the divorce, the parties had no minor children and substantial debt. They owned four parcels of real property and three vehicles, including a 2003 Harley Davidson motorcycle.¹⁵ The majority of the parties' dispute revolves around the way the Divorce Judgment divided up the real property (and its attendant debt).

On the real property, only one parcel had equity—the home at 223 Milsap Road, Ormond Beach, Florida (the “Milsap Property.”) The other three properties were encumbered with mortgage debt exceeding their value—two condominiums in Florida (the “Florida Condos”) and the ancestral family home of Ms. Hobbs-Hilley in Marietta, Georgia (the “Georgia Home”).¹⁶ Testimony established the parties “bought” the Georgia Home from the Creditor’s family (the “Hobbs Family”) in 2003, signed a mortgage, and had never made a single payment for at least ten years, when the parties separated in 2013. The Hobbs Family started collection efforts only *after* the divorce litigation started between the Debtor and Ms. Hobbs-Hilley.¹⁷ Debtor now has deeded three of these properties—the Georgia Home and the Florida Condos—to the Creditor and claims no interest in those properties.

After concentrated judicial effort, on August 2, 2018, the Bankruptcy Court approved the sale of the Milsap Property to a disinterested purchaser.¹⁸ The sales proceeds were used to pay the

¹³ Debtor’s Exh. 1, p. 1.

¹⁴ *Id.*

¹⁵ *Id.* at 1-3.

¹⁶ The Court will refer to the Milsap Property and the Florida Condos collectively as the Florida rental properties.

¹⁷ The Hobbs Grandchildren Trust filed a civil action in Georgia against the Debtor and Ms. Hobbs-Hilley in 2016. She consented to a Consent Judgment of \$196,416.38. Debtor’s Ex. 3. Debtor **never** consented to this judgment and still opposes the amount sought. The Consent Judgment, however, erroneously listed him as a Joint Judgment Debtor. The Hobbs Family recorded this erroneous judgment to assert an invalid and unenforceable lien on the Milsap Property. The judgment later was amended to remove the Debtor. Debtor’s Ex. 4. But the damage already was done. The recording of this improper lien impaired and delayed the sale of the Milsap Property.

¹⁸ Doc. No. 97 as amended by Doc. No. 104. The sale closed on September 18, 2018.

majority of the outstanding joint marital debts.¹⁹ Debtor agrees Ms. Hobbs-Hilley still is due \$6,270.90, which represents 50% of the capital gains tax owed once the Milsap Property was sold.²⁰

These recent sales and transfers, however, were contrary to the Divorce Judgment. And, I specifically find that neither the Debtor nor Ms. Hobbs-Hilley complied with the Georgia Court's directions. Both used financial woes and changes in circumstances to complain about the other's non-performance. I conclude they simply could not stop the domestic bickering between them and neither of them lived up to the letter or intent of the Divorce Judgment.

Now, I am left with unscrambling this mess to award Ms. Hobbs-Hilley a fair amount as originally contemplated under the Divorce Judgment. For example, the Georgia Court ordered the parties to sell all four parcels of real property.²¹ Ms. Hobbs-Hilley was to sell the Georgia Home.²² She did not sell the Georgia Home. The Georgia Court directed the Debtor, who now lives in Florida, to sell the three Florida rental properties.²³ He also failed to timely list or sell the Florida rental properties because, meanwhile, the Hobbs Family recorded an invalid lien on the Florida rental properties asserting their unpaid mortgage on the Georgia Home.²⁴

¹⁹ Debtor's Exh. 6. The closing agent disbursed \$264,171.10 from the sale of the Milsap Property as follows: (1) \$105,000 to the Hobbs Family for the mortgage on the Georgia Home, (2) \$6,700 to Volusia County for real estate taxes on the Georgia Home, (3) \$105,000 to pay Ocwen in full on the mortgage encumbering the Milsap Property, (4) \$15,000 to Annette Hobbs, Ms. Hilley-Hobbs' aunt, who lent the parties \$15,000 as a down payment to buy the Florida Condos, (5) \$6,257.61 to Carter Federal Credit Union on a joint marital debt, (6) \$7,825.13 to Discover on a joint marital debt, (6) \$16,588.36 to Daytona Beach Club to pay their outstanding assessments and related charges relating to the Florida Condos, paying Claims 5 and 6 in full, and (7) \$1,800 to Capital One on a joint marital debt. (Doc. No. 104). So, the proceeds from the Milsap Property sale paid all unsecured joint marital debt in full as well as satisfied the claims of the Daytona Beach Club's condo assessments, paid the principal amount of the mortgage held by the Hobbs Family encumbering the Georgia Home, and paid Annette Hobbs, who gave the parties the monies to buy the Florida Condos. The only remaining debt are the two mortgages encumbering the Florida Condos, which Ms. Hobbs-Hilley solely owns. Debtor is surrendering his interests in these two condominiums and will have no remaining in personal obligation to the mortgage holder or Ms. Hobbs-Hilley on these properties. Upon completion of his Chapter 13 Plan payments, he will discharge all obligation related to the Florida Condos.

²⁰ Doc. No. 129.

²¹ Debtor's Exh. 1, p. 5.

²² *Id.*

²³ *Id.* at 6.

²⁴ n. 16, *supra*.

Ms. Hobbs-Hilley also failed to properly account for the rental monies generated from the Florida rental properties.²⁵ She was directed in the Divorce Judgment to continue managing the rentals of the three Florida rental properties, to deposit collected rental money into an escrow account, and to pay *only* “the mortgages, taxes, fees, and similar expenses for the [Florida] rental properties.”²⁶ She failed to do this. She opened no escrow accounts.

So, it is impossible to track or determine rental income. She admittedly gave the Debtor partial “accountings”²⁷ but failed to supply sufficient information to him (or to this Court) to assess income or expenses associated with the rental of the Florida properties. For example, Creditor’s Exhibit Number 22 is the “accounting” for December 2016. It contains a list of bills, allegedly totaling \$17,152.94, attaches various statements, and summarily states she collected rent of \$2,076.25. No documentation supports this estimate of rental income. She also stopped using the rental income, whatever it was, to pay the mortgage on the Milsap Property starting on August 1, 2017, contrary to the Divorce Judgment.²⁸

The parties violated the Divorce Judgment for many reasons and excuses. They each blame the other. They both like to pick certain sections of the Divorce Judgment to enforce and to conveniently ignore. I find them both at fault. The bottom-line today is that Ms. Hobbs-Hilley now has title to three of the four properties, and the fourth property (the Milsap Property) was sold (and she is entitled to \$6,270.90, which represents her 50% share of the capital gains tax).

Three other aspects of the Divorce Judgment merit discussion before I analyze the individual tranches of Claim 11-2. First, the Georgia Court ordered Ms. Hobbs-Hilley to sell the

²⁵ Debtor’s Exh. 1, pp. 5-6.

²⁶ *Id.* at 6.

²⁷ Creditor’s Exhs. 21-45 and 106.

²⁸ Debtor’s Exh. 10.

parties' unencumbered 2003 Harley Davidson.²⁹ Debtor delivered this motorcycle to her in the summer of 2016.³⁰ Ms. Hobbs-Hilley did not try to sell the motorcycle, even though it was worth approximately \$7,000.³¹ The sale would have helped the parties pay their joint marital debts earlier, and Ms. Hobbs-Hilley had ample time to sell it before the Debtor filed this bankruptcy case on April 12, 2017.³² Instead, she parked the motorcycle in an unprotected outdoor carport. She claims it was stolen in November 2017.³³ Ms. Hobbs-Hilley failed to act diligently to sell the motorcycle and failed to properly protect it from theft. She could have complied with the Divorce Judgment and promptly sold the motorcycle to pay her marital debts faster, but she did not.

Second, on the division of the parties' marital debts, the Georgia Court contemplated the parties would use the proceeds from the sale of the real estate to pay these debts.³⁴ If the sale proceeds were insufficient, the parties were directed to each pay "50% of the deficit."³⁵ Meanwhile, and for what was contemplated to be a short time, the Georgia Court directed the Debtor to pay the "minimum owed every month" on the parties' credit card debt.³⁶ If the Debtor failed to make these interim minimum payments, he had to indemnify Ms. Hobbs-Hilley for "any adverse actions or financial injury resulting from said failure."³⁷ Debtor made these minimum monthly payments up to the time he filed this bankruptcy case in April 2017. Ms. Hobbs-Hilley then made these minimum monthly credit payments. She is entitled to reimbursement for these payments the Debtor was ordered to pay.

²⁹ Debtor's Exh. 1, p. 7.

³⁰ Testimony of Harold Hilley.

³¹ *Id.*

³² *See id.* Debtor originally filed this case as a Chapter 7 liquidating bankruptcy; he converted the case to a Chapter 13 case on April 13, 2018. Doc. No. 46.

³³ Debtor's Exh. 7; Testimony of Harold Hilley.

³⁴ Debtor's Exh. 1, p. 6.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

Third, there are no outstanding domestic support obligations unpaid under the Divorce Judgment that would justify priority payment.³⁸ Debtor had to pay Ms. Hobbs-Hilley \$500 for 24 months for spousal support starting on June 1, 2016.³⁹ Debtor has made all these payments. No domestic support obligations remain unpaid.

Significantly, the Georgia Court did not award Ms. Hobbs-Hilley any attorney fees derived from any domestic support obligations.⁴⁰ Debtor was ordered to pay \$3,500 for attorney's fees associated with removing personal property from one of the rental properties and for locking her out of the rental websites, but not for any support-related representation.⁴¹ No priority claim for support or attorney's fees was granted under the Divorce Judgment because the fees were not incurred in connection with a domestic support obligation. Instead, these fees were solely awarded to punish the Debtor.⁴² Any allowed claim is an *unsecured* claim subject to discharge when the Debtor completes his Chapter 13 plan payments.⁴³

Turning now to the details of Claim 11-2, Ms. Hobbs-Hilley asks for these amounts from her former husband:

- \$1,000.00 – Unpaid alimony for September and October 2018 (Creditor agrees these payments were made; **no alimony is due**);

³⁸ Domestic support obligations are defined in §101(14A) of the Bankruptcy Code and include alimony and support duties but exclude division of marital property or debts, such as is involved in this case.

³⁹ Debtor's Exh. 1, p. 8.

⁴⁰ *Id.*

⁴¹ *Id.*; See also Creditor's Exh. No. 52, p. 4 (awarding the attorney for Ms. Hilley-Hobbs an additional \$500 for another contempt motion).

⁴² *In re Edinger*, 518 B.R. 859, 864 (Bankr. E.D.N.C. 2014); see also *In re Waller*, 525 B.R. 473, 484 (Bankr. D. Kan. 2014) (Court finding that the award of attorney's fees was not DSO because the award was not intended for former wife's support, but to punish former husband for his lack of candor); *In re Matter of Romano*, 27 B.R. 36, 37 (Bankr. M.D. Fla. 1983) ("What constitutes alimony, maintenance and support within the meaning of § 523(a)(5) is to be determined under bankruptcy law and not state law").

⁴³ *In re Marshall*, 489 B.R. 630, 633 (Bankr. S.D. Ga. 2013) ("If, on the other hand, the Court determines that such award is not actually a DSO, the Debtor, in theory, would be required to pay the claim amount under § 523(a)(15) as a nonpriority claim because it does not fall within the parameters of § 507(a)(1).").

- \$6,270.90 – 50% of capital gains tax due from the sale of the Milsap Property **(Debtor agrees this amount is due)**;
- \$6,027.00 – Credit Card Payments made by Ms. Hobbs-Hilley that the Debtor was ordered to pay **(\$5,955.00 is allowed below)**;
- \$51,555.17 – Rental Property Expenses: \$33,367.22 for 50% of rental expense “shortfalls” and \$18,187.95⁴⁴ for late fees, penalties and interest **(\$2,522.00 is allowed below)**; and
- \$21,184.50 – Attorneys’ fees, travel costs, and court fees **(Disallowed in full below)**.

Debtor continues to object to the contested amount of \$78,766.67. I will discuss each segment in order.

Ms. Hobbs-Hilley seeks \$6,027 for payments she made that the Debtor should have paid under the Divorce Judgment. Debtor was ordered to continue making monthly minimum payments to the Discover credit card and to Carter Federal Credit Union.⁴⁵ He made these monthly payments but stopped after he filed bankruptcy in April 2017.⁴⁶ Ms. Hobbs-Hilley then paid \$1,630 to Discover⁴⁷ and \$3,825 to Carter Federal Credit Union.⁴⁸ Debtor also failed to make the last \$500

⁴⁴ Amended Claim 11-2 initially sought \$16,904.90 for “late fees, penalties, and interest” but Ms. Hobbs-Hilley increased the request to \$18,187.95 at trial.

⁴⁵ Debtor’s Exh. 1, p. 6.

⁴⁶ Testimony of Harold Hilley.

⁴⁷ Creditor’s Exh. 3. Ms. Hobbs-Hilley introduced a statement summary reflecting a total paid of \$1,630, slightly less than her request of \$1,666. The \$36 difference is attributable to a return check charge on either February 21 or March 8, 2018, when Ms. Hobbs-Hilley was paying these debts herself. Creditor’s Exh. 5. Debtor is not responsible for a “bad check” Ms. Hobbs-Hilley wrote when she had insufficient monies in her own account.

⁴⁸ Creditor’s Exh. 4. Ms. Hobbs-Hilley introduced 17 checks for \$225 each reflecting a total paid of \$3,825, slightly less than her request of \$3,861. The \$36 difference is attributable to a return check charge on either February 21 or March 8, 2018, when Ms. Hobbs-Hilley was paying these debts herself. Creditor’s Exh. 5. Debtor is not responsible for a “bad check” Ms. Hobbs-Hilley wrote when she had insufficient monies in her own account.

payment to Ms. Hobbs-Hilley's lawyer as ordered by the Georgia Court.⁴⁹ Ms. Hobbs-Hilley is entitled to payment of \$5,955.

The biggest area of dispute is the \$51,555.17 Ms. Hobbs-Hilley seeks for "shortfalls" (totaling \$33,367.22)⁵⁰ and late fees, penalties and interest (totaling \$18,187.95)⁵¹ both relating to the Florida rental properties. Debtor vehemently objects contending he never received timely or complete financial accountings for the rental income or expenses and that the evidence introduced is inadequate.

By objecting to Ms. Hobbs-Hilley's Claim 11-2, the Debtor must refute the legal sufficiency of the claim. As a sister court notes, the burden shifts to the objecting party to make a good argument why the claim should not be allowed as filed:

[T]he objecting party [must]...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 a preponderance of the evidence.⁵²

Here, the Debtor argues that he is not responsible for these shortfalls and charges because Ms. Hobbs-Hilley failed to keep adequate financial records to substantiate the amount sought, primarily to document rental income received, or to show why she did not timely pay the bills associated with the rental properties. Even a summary review of the evidence demonstrates that Ms. Hobbs-

⁴⁹ Creditor's Exh. 52.

⁵⁰ Creditor's Exh. 19.

⁵¹ Creditor's Exh. 6 – 17.

⁵² *In re Armstrong*, 320 B.R. 97, 103 (Bankr. N.D. Tex. 2005) (internal quotation marks omitted) (citations omitted); *See also In re Winn-Dixie Stores, Inc.*, 418 B.R. at 476 ("If the objecting party rebuts the prima facie validity of the proof of claim, the claimant bears the burden of persuasion to substantiate the validity and the amount of the claim by a preponderance of the evidence.").

Hilley failed to account for rental monies she received and bills she paid. Therefore, the burden shifts to her to prove her own claim. She largely has failed to meet her burden of proof, with a few minor exceptions.

To understand why Ms. Hobbs-Hilley has failed to meet her burden of proof one first must understand her obligations under Paragraph A (page 6) of the Divorce Judgment stating:

Regarding the rental properties, Milsap Property and [the Florida] Condos, the properties shall continue to be rented....Any rental money collected from the date of this Order until sold shall be placed into escrow to pay the mortgage, taxes, fees, and similar expenses for the rental properties. Costs for maintenance of the rental properties shall be shared equally. However, the properties are to be sold as is. Wife shall continue to rent the properties, continue to make monthly accountings of the properties to Husband, and keep documentation supporting the accounting.

So, from the day the Divorce Judgment was entered, May 26, 2016, the way Ms. Hobbs-Hilley handled the rental process needed to change. She now was directed to put all rental income into an escrow account and to limit expenses to payment of the mortgage, taxes, fees, and other essential expenses. If the rental monies could not pay these expenses, the parties were to equally share the expenses. And, most important, she had to supply monthly accountings to the Debtor and keep supporting documentation.

Ms. Hobbs-Hilley *never* met these requirements. The monthly “accountings”⁵³ vary significantly in the information listed and mostly include a list of expenses but no explanations and little proof of payment. So, information on the *expense* side of the ledger is difficult if not impossible to understand.

⁵³ Creditor’s Exhs. 21-45.

And, information on the *income* side is largely absent with some very minor exceptions. The accounting from November 2016,⁵⁴ for example, reflects rental income of \$3,200. Yet, the summary of the accountings⁵⁵ shows rental income of \$3,695. There is absolutely no supporting documentation to substantiate income received in *any* amount. Starting in July 2017,⁵⁶ the accountings included bank statements from Regions Bank apparently used by Ms. Hobbs-Hilley to administer the rentals. But these statements rarely correlated with the rental income on the first page of each monthly “accounting.”

Ms. Hobbs-Hilley never opened an escrow account for the deposit of the monthly rental income, which would have allowed all parties to track rental income and expenses. She has never supplied a single accounting that accurately lists the monies she received or documents the income or the related expenses. After spending considerable time trying to parse the accountings, I find they are internally inconsistent and support no shortfall. I cannot discern the income received, whether the monies were used to pay bills associated with the rental properties or used for other purposes by Ms. Hobbs-Hilley. I expressly find she has failed to meet her burden of proof, with one exception for \$2,000 discussed below, to show any shortfalls associated with the management of the rental properties payable by the Debtor.

The one exception arose from a hearing held by the Georgia Court. On March 1, 2017, the Honorable C. Latain Kell, with the challenge of handling these parties’ divorce action, held a hearing on the motion filed by Ms. Hobbs-Hilley to hold the Debtor in contempt of court for failing to pay shortfalls arising from the Florida rental properties.⁵⁷ The majority of the hearing revolved

⁵⁴ Creditor’s Exh. 21.

⁵⁵ Creditor’s Exhs. 19 and 106. The expenses also vary between the accounting that lists “total bills” of \$16,971.91 (Creditor’s Exh. 21) and the summary that lists expenses for November 2016 at \$6,820.38, a difference of over \$10,000 (Creditor’s Exh. 19).

⁵⁶ Creditor’s Exh. 29.

⁵⁷ The transcript is located at Creditor’s Exh. 48.

around the Debtor's obligation to pay a special assessment to the Daytona Beach Club associated with the Florida Condos, none of which relates to this decision because all amounts due to Daytona Beach Club (\$16,588.36) were paid in full when the Milsap Property was sold.⁵⁸ However, during this hearing, Judge Kell also found that the Debtor owed \$2,000 in shortfalls on the rental properties, which remains unpaid and the Court now will assess against the Debtor.

Judge Kell also was concerned about Ms. Hobbs-Hilley's questionable financial record keeping. After expressing his displeasure and frustration that *neither* party was complying with the Divorce Judgment and ruing his failure to appoint a receiver,⁵⁹ he told Ms. Hobbs-Hilley she was not properly escrowing the rental income:

THE COURT: In addition, I said you would split the – whatever the differences were regarding the Florida [C]ondos.

To know what those differences are in a way that isn't totally reliant, Ms. Hilley, on your facts and figures, what I said was any of the money that's taken in on those properties is to go into an escrow account.

Now, I know you're not an escrow agent. I didn't anticipate that you would become an escrow agent because you can't hold your own money in escrow. But there are banks and lawyers and many entities that all day, every day, hold money for people.

What I anticipated was you would find one. If your lawyer would not hold it in her escrow account, then you could go find a lawyer who would or a bank that would or a trustee that would hold that money in escrow and you would deposit what came in and you would send Mr. Hilley an accounting of what came in.⁶⁰

So, before this bankruptcy was filed, Ms. Hobbs-Hilley, who was represented by a lawyer, knew she was not properly escrowing the rental monies and was not properly accounting for their use.⁶¹

Yet, she did nothing to improve her financial reporting. Her current request for over \$33,000 from

⁵⁸ Creditor's Exh. 48, p. 73.

⁵⁹ *Id.* at pp. 64-65.

⁶⁰ *Id.* at p. 68, line 17 through p. 69, line 9.

⁶¹ The Final Order on Citation for Contempt Against Defendant refused to hold the Debtor in contempt and, in paragraph 4, stated "Plaintiff [Ms. Hobbs-Hilley] has failed to put the rental proceeds from the properties into escrow and has not provided accountings for the rental properties in certain months as ordered in the Final Judgment and Decree." Creditor's Exh. 52, p. 2.

the Debtor for unsubstantiated shortfalls, shall I say, falls far short of legal sufficiency. She has submitted thousands of pages of unhelpful exhibits but has failed to meet her burden of proving entitlement to any amount above the \$2,000 allowed by Judge Kell. I will allow the \$2,000 in shortfalls found by Judge Kell and disallow the balance.

On Ms. Hobbs-Hilley's request for late fees, penalties and interest totaling \$18,187.95,⁶² the Divorce Judgment includes no broad indemnification provision justifying payment of this amount. Rather, in Paragraph B on page 6, the Divorce Judgment provides: "In the event Husband [Debtor] fails to timely maintain the P-16 debt [paying the minimum monthly payments on the parties' credit cards and unsecured debt], he shall indemnify Wife [Ms. Hobbs-Hilley] for any adverse action or financial injury resulting from said failure."⁶³ Debtor stopped making these payments in April 2017, after he filed bankruptcy. Ms. Hobbs-Hilley immediately resumed the minimum monthly payments, although Judge Kell suggested that she not make these payments, and in May 2017, Judge Kell confirmed one late charge of \$64 due to the Discover credit card.⁶⁴

All the other charges requested by Ms. Hobbs-Hilley as late fees, interest, penalties, and legal fees relate to expenses associated with the Florida rental properties and would constitute a rental expense. It is encompassed within the "shortfall" analysis above, not as a separate category of recovery. For the same reason the Court denied the other shortfall amounts, the Court would find Ms. Hobbs-Hilley has failed to meet her burden of proof on these additional, similar charges, again with one exception discussed below. The indemnification provision in the Divorce Judgment was not intended to shift payment of 100% of the late fees, interest, penalties, or interest associated with normal rental expenses onto the Debtor.

⁶² Creditor's Exhs. 6-17.

⁶³ Creditor's Exh. 52, p. 6.

⁶⁴ *Id.* at p. 3.

Claim 11-2, however, also seeks \$458 for bankruptcy charges associated with the Debtor's bankruptcy filing vis-à-vis the Florida Condos.⁶⁵ I would find these charges directly associated with this bankruptcy case properly should be borne by the Debtor and not imposed as a cost to the rental properties. The indemnification provision in the Divorce Judgment is sufficiently expansive for this inclusion. I will allow the bankruptcy charges for \$458 included in Claim 11-2.

Ms. Hobbs-Hilley lastly seeks \$21,184.50 for her attorneys' fees, travel costs, and court fees related to this bankruptcy case.⁶⁶ Parties in bankruptcy cases generally bear their own travel and litigation costs, including payment of attorneys' fees, unless a statute or contract provision provides otherwise.⁶⁷ Here, there is no contract or statute that would shift the payment of Ms. Hobbs-Hilley's attorneys' fees and travel costs to the Debtor. And, because Mr. Hilley has paid all of his support and alimony duties, no domestic support obligation exists that would justify requiring him to pay these costs. Ms. Hobbs-Hilley is like any other creditor in a bankruptcy case—she is responsible for her own travel costs and attorney fees. This amount is disallowed in full.

In summary, I will partially sustain the Debtor's Objection and allow Claim 11-2 for \$14,747.90 comprised of these components: (1) \$6,270.90 for capital gains tax liability on the Milsap Property, (2) \$5,955 to reimburse Ms. Hobbs-Hilley for payments she made to Discover and Carter Federal Credit Union that the Debtor was ordered to pay under the Divorce Judgment, (3) \$2,000 in rental shortfalls found by Judge Kell, (4) \$64 for a late fee on the Discover credit

⁶⁵ Ms. Hobbs-Hilley listed a \$711 bankruptcy charge due to Ocwen in connection with the Milsap Property. Given Ocwen was paid in full upon the sale of the Milsap Property, this amount is not due.

⁶⁶ Creditor's Exh. 18. The attorneys' fees and costs appear to total \$17,671.50. For comparison, the Debtor's attorney is receiving only \$5,000 for his work in this case. Doc. No. 129.

⁶⁷ *Cadle Co. v. Martinez (In re Martinez)*, 416 F.3d 1286, 1288 (11th Cir. 2005) ("Generally, in federal litigation, including bankruptcy litigation, a prevailing litigant may not collect an attorneys' fees from his opponent unless authorized by either a federal statute or an enforceable contract between the parties."); *See also ACES Risk Mgmt. Corp. v. TMG Portfolio Advisors, LLC*, No. 17-CV-61210, 2018 WL 4194077, at *2 (S.D. Fla. May 22, 2018), report and recommendation adopted, No. 17-CV-61210, 2018 WL 4193235 (S.D. Fla. June 8, 2018) (citing *In re Martinez*, 416 F.3d at 1288); *Branch Banking & Tr. Co. v. Maclay Constr., Inc.*, No. CV 15-00398-KD-N, 2016 WL 1118455, at *6 (S.D. Ala. Mar. 22, 2016) (quoting *In re Martinez*, 416 F.3d at 1288).

card, and (4) \$458 in bankruptcy charges relating to the Florida Condos. All other amounts requested in Claim 11-2 are disallowed with prejudice. Upon completing his Chapter 13 Plan payments, the Debtor will discharge any liability to Ms. Hobbs-Hilley, and he has no other financial obligations to her of any type. All property and debt remaining after their divorce now is paid or transferred to Ms. Hobbs-Hilley to administer.

Accordingly, it is

ORDERED:

1. Debtor's Objection to Claim (Doc. No. 129) is **PARTIALLY SUSTAINED**.
2. Claim 11-2 is allowed as an unsecured claim of \$14,747.90.

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Robert Zipperer is directed to serve a copy of this Order on interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of the Order.