


ORDERED.

Dated: October 01, 2019



 Karen S. Jennemann
 United States Bankruptcy Judge

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

In re:)	
)	
Joshua Stephen Hall,)	Case No. 6:19-bk-00687-KSJ
)	Chapter 13
Debtor.)	
_____)	

**ORDER SUSTAINING
 DEBTOR’S AMENDED OBJECTION TO CLAIM 4-2**

Erin Daley (“Daley”), a former girlfriend of the Debtor, Joshua Hall, filed Claim No. 4-2 as a general unsecured claim totaling \$14,763.33. After a loan Ms. Daley and the Debtor co-signed defaulted, Ms. Daley paid the loan in full and now seeks indemnification from the Debtor arguing they had a separate repayment contract between them. Debtor disputes any agreement exists and objects to Ms. Daley’s claim.¹ The Court will sustain the Debtor’s objection to Claim No. 4-2.

Parties bear shifting burdens of proof in asserting and challenging a bankruptcy claim. Section 502 of the Bankruptcy Code² states a proof of claim is presumed valid until an interested

¹ Doc. No. 40. Ms. Daley had filed a Response (Doc. No. 35) to an earlier Objection (Doc. No. 33) relating to Ms. Daley’s initial Claim 4-1. A trial was held on September 4, 2019. Both the Debtor and Ms. Daley testified.

² 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.³ 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.”⁴ Bankruptcy Rule 3001(c) specifies that when a claim is based on a writing, like an email in this case,⁵ 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.”⁶

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.⁷ Bankruptcy Rule 3001(c) provides a debtor with “fair notice of the conduct, transaction, and occurrences that form the basis of the claim.”⁸ Attaching supporting documentation is a mandatory prerequisite to establishing a claim’s *prima facie* validity.⁹ The Court finds Claim 4-2 claim meets the test for *prima facie* validity because Daley attached sufficient supporting documentation to her claim.

Debtor objects to this *prima facially* valid claim. Debtor contends he is not indebted to Daley for \$14,763.33, because there is no repayment agreement between him and Ms. Daley. By making his objection to Daley’s claim, 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 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

³ *In re Eddy*, 572 B.R. 774, 778-79 (Bankr. M.D. Fla. 2017).

⁴ *In re Winn-Dixie Stores, Inc.*, 418 B.R. 475, 476 (Bankr. M.D. Fla. 2009) (internal quotation marks omitted).

⁵ Daley’s Exh. No. 1.

⁶ *In re Taylor*, 363 B.R. 303, 307 (Bankr. M.D. Fla. 2007).

⁷ *Id.* at 308.

⁸ *In re Sandifer*, 318 B.R. 609, 611 (Bankr. M.D. Fla. 2004).

⁹ *Taylor*, 363 B.R. at 308.

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.¹⁰

Debtor has amply refuted Daley's claim, shifting the burden back to Ms. Daley to prove any indemnification right. She has failed to establish a written or verbal contract indemnifying Daley for her payments to Space Coast Credit Union for \$14,763.33.

Debtor and Ms. Daley co-signed a loan with Space Coast Credit Union allowing the Debtor to buy a Harley Davidson motorcycle in March 2017. Ms. Daley's agreed to co-sign the loan because she had a higher credit score and, at that time, her relationship with the Debtor was positive. Debtor always intended to use the motorcycle. And, he hoped to pay for it; however, the parties had no agreement what would happen if their relationship soured or the loan defaulted.

Debtor stopped making payments on the loan in October 2018. He voluntarily delivered the motorcycle to Ms. Daley, who sold it and used the monies to partially pay the loan. She also started making loan payment in October 2018. Ms. Daley paid off the loan on May 6, 2018. The total amount Ms. Daley paid to Space Coast Credit Union was \$14,763.33, the amount she seeks to recover in Claim 4-2.

Ms. Daley argues Debtor agreed to reimburse/ indemnify her \$14,763.33, in two emails arguably creating an enforceable contract. Daley first emailed Debtor on October 4, 2018, reminding him he was equally responsible for the loan.¹¹ Daley also inquired how much Debtor

¹⁰ *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.").

¹¹ Creditor's Exh. 3.

could contribute per month towards the loan after defaulting. Debtor responded he could pay \$200 a month.

Daley emailed the Debtor a second time requesting help making the loan payments in December 2018. In response, Debtor agreed to be responsible for negative equity on the loan and that he would try to make payments. Daley contends these emails, particularly the second one, created an enforceable contract between the parties.

Determining whether parties have entered a binding agreement is governed by the general principles of contract law.¹² An agreement may be reached through an email exchange, but there must be an offer, acceptance, and consideration, and a meeting of the minds on all essential terms.¹³ Essential terms vary according to the nature and complexity of each transaction.¹⁴ A contract containing ambiguous terms is unenforceable because the parties never reach a meeting of the minds regarding the essential terms.¹⁵ The contract principles that govern written contracts also apply to oral contracts.¹⁶

The email exchange between Debtor and Ms. Daley does not include essential terms to create a proper contract. The electronic communications omit any reference to the claim amount of \$14,763.33, or other potential terms such as a payment schedule, interest, and remedies if a breach occurs. The Debtor did make fleeting references to potential contract terms in the emails stating he would try to pay \$200 a month and would pay the “negative equity” but no other terms were stated.¹⁷

¹² *In re Rolsafe Intern, LLC*, 477 B.R. 884, 902 (M.D. Fla. 2012).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *In re Ellsworth*, 326 B.R. 867, 870 (M.D. Fla. 2005).

¹⁷ Creditor’s Exh. 3.

Debtor's statements are too ambiguous to find a contract for reimbursement or indemnification was formed between the parties. Debtor stated he would *try* to make payments. Debtor did not definitively accept whatever proposition Daley suggested. And, the testimony was clear the parties never reached a consistent understanding or a meeting of the minds on the meaning of *negative equity* on the motorcycle. The evidence is clear that the Debtor never agreed to pay Ms. Daley \$14,763.33, and Court cannot find the parties had a meeting of the minds on the essential terms of any purported contract. Ms. Daley has failed to meet her ultimate burden of persuasion in establishing the validity and amount of her claim. Debtor's Objection to Claim 4-2 is sustained.

The Court is very sympathetic to Ms. Daley's plight. She agreed to co-sign a motorcycle loan for her then boyfriend. When their relationship failed, she was stuck with the loan and rightfully wants him to pay her for the motorcycle he wanted and used, but for which he did not pay. Without question, the Debtor should have paid for his motorcycle just as he should have paid every other debt he had when he filed this Chapter 13 bankruptcy case. But, when Ms. Daley agreed to co-sign the loan, she assumed the full legal obligation to pay it. It is a common risk that co-signors must pay co-signed loans when the other party files bankruptcy. But nothing establishes that the Debtor has any *legal* obligation to repay Ms. Daley.

Accordingly, it is

ORDERED:

1. Debtor's Objection to Claim No. 4 (Doc. No. 40) is **SUSTAINED**.
2. Claim No. 4 is not allowed as an unsecured claim of \$14,763.33.

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