

ORDERED.

Dated: March 30, 2022

  
Grace E. Robson  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
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In re	)	
	)	
Sandra Jean Ramseth,	)	Case No. 6:21-bk-03513-GER
	)	Chapter 13
Debtor.	)	
_____	)	

**ORDER SUSTAINING DEBTOR'S OBJECTION TO CLAIM NO. 5**

This matter came on for consideration of Debtor's Objection to Claim No. 5<sup>1</sup> (the "Objection") filed by Sandra Jean Ramseth ("Debtor") and the Response thereto<sup>2</sup> filed by Robert A. Coscia ("Claimant"). Debtor requests that the Court disallow Claim No. 5 filed by Claimant, arguing that the claim is barred by the statute of limitations. The Court, after consideration of the Objection, the Response, and the memoranda filed in support of the Objection and the Response,

**FINDS, ORDERS, AND ADJUDGES as follows:**

<sup>1</sup> *Second Amended Objection to Claim (#5) Filed by Robert A. Coscia* (the "Objection") (Doc. No. 35) (amending Doc. Nos. 22 and 25). Debtor also filed a *Memorandum in Support of Amended Objection to Claim (#5) Filed by Robert A. Coscia* (the "Objection Memorandum") (Doc. No. 44).

<sup>2</sup> *Claimant's Response to Amended Objection to Claim (#5) Filed by Robert A. Coscia* (the "Response") (Doc. No. 33). Claimant also filed *Claimant, Robert A. Coscia's, Response to Debtor, Sandra Jean Ramseth's, Memorandum in Support of Debtor's Objection to Claim (#5) Filed by Robert A. Coscia* (the "Response Memorandum") (Doc. No. 46).

### **Background**

A. Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on July 30, 2021 (the “Petition Date”).<sup>3</sup>

B. Prior to the Petition Date, on June 1, 2020, Claimant sued Debtor in the Circuit Court of the Twentieth Judicial Circuit, in and for Lee County, Florida (the “State Court Action”).<sup>4</sup> On October 8, 2021, Claimant filed Claim No. 5, asserting several claims based upon breach of alleged oral agreements between Claimant and Debtor from 2007 to 2013 that formed the basis for the State Court Action.<sup>5</sup>

C. The Proof of Claim attached Claimant’s Statement of Facts that was previously filed in the State Court Action. In the Statement of Facts, Claimant states: “In 2013, [Claimant] made multiple verbal demands to [Debtor] for repayment of the funds but [Debtor] refused to make any payments except one \$900.00 payment for legal services provided by the Law Office of Steven Carta, Esq.” Claimant also states that his “last written demand for repayment was in the form of a letter dated June 8, 2016 that was sent by [Claimant’s] then-counsel,” and “[Debtor] responded to the letter from [Claimant’s] counsel and did not dispute the debt owed to [Claimant].”

D. Debtor filed the Objection, arguing, in part, that Claim No. 5 should be disallowed as time-barred under Florida’s statute of limitations.<sup>6</sup>

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<sup>3</sup> Doc. No. 1.

<sup>4</sup> *Coscia v. Ramseth*, No. 2020-CA-003471 (Fla. 20th Cir. Ct. filed June 1, 2020).

<sup>5</sup> While the Third Amended Complaint attached to the Response Memorandum (Doc. No. 46-6) appears to reference monies lent after 2013, Claimant in his Response Memorandum specifically states that Claim No. 5 “is based on multiple loans made by Claimant to Debtor between 2007 and 2013.” Doc. No. 46 at 1.

<sup>6</sup> Doc. Nos. 35 and 44. Debtor also argues that Claim No. 5 violates the statute of frauds and “is nothing but allegations, conjecture and unsupported wishes of [Claimant].” Doc. No. 44 at 4-5. Because the Court finds that the statute of limitations issue is determinative, it will not address the other arguments raised by Debtor.

**Objection to Claim No. 5**

“A claim or interest, proof of which is filed . . . is deemed allowed, unless a party in interest . . . objects.”<sup>7</sup>

[I]f such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim . . . and shall allow such claim in such amount, except to the extent that—such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured.<sup>8</sup>

Debtor urges disallowance of Claim No. 5 under section 502(b)(1) of the Bankruptcy Code<sup>9</sup> because the Claim is “unenforceable against the debtor . . . under . . . applicable law.”<sup>10</sup> Both parties agree that the applicable law is Florida’s four-year statute of limitations for an action based on a contract, obligation, or liability not founded on a written instrument pursuant to section 95.11(3)(k) of the Florida Statutes.<sup>11</sup> Computation of the four-year statute of limitations is governed by section 95.031(1) of the Florida Statutes, which provides that a cause of action accrues when the last element constituting the cause of action occurs.<sup>12</sup>

In *Mosher v. Anderson*,<sup>13</sup> the Florida Supreme Court held that “in Florida, the limitations period for bringing an action on an oral loan payable upon demand begins to run only after there has been a breach by the debtor, i.e., the debtor has refused to repay the loan at the time the creditor demands repayment.”<sup>14</sup>

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<sup>7</sup> 11 U.S.C. § 502(a).

<sup>8</sup> 11 U.S.C. § 502(b)(1).

<sup>9</sup> Unless otherwise stated, all references to the Bankruptcy Code refer to Title 11 of the United States Code.

<sup>10</sup> Objection Memorandum (Doc. No. 44) at 4 (citing 11 U.S.C. § 502(b)(1)).

<sup>11</sup> Fla. Stat. § 95.11(3)(k) (“A legal or equitable action on a contract, obligation, or liability not founded on a written instrument, including an action for the sale and delivery of goods, wares, and merchandise, and on store accounts.”).

<sup>12</sup> Fla. Stat. § 95.031(1).

<sup>13</sup> *Mosher v. Anderson*, 817 So. 2d 812 (Fla. 2002).

<sup>14</sup> *Id.* at 814.

Here, Claimant admits in his proof of claim that: “[i]n 2013, [Claimant] made multiple verbal demands to [Debtor] for repayment of the funds but [Debtor] refused to make any payments except one \$900.00 payment . . . .” So, through his own admission, Claimant made demands for repayment starting in 2013 and Debtor refused to pay. Claimant also acknowledges that he discussed repayment with Debtor by phone on February 10, 2015, by email on February 11, 2015, and by email again on March 28, 2016.<sup>15</sup> Debtor did not repay the amounts demanded on those dates, so Claimant sent another demand, this time through his attorney, on June 8, 2016.

Claimant argues that the statute of limitations should be based on the “last written demand for repayment”—the June 8, 2016, letter to Debtor—and Debtor’s written refusal to repay dated June 27, 2016. However, the Florida Supreme Court in *Mosher* did not find that a demand needed to be in writing, nor did it conclude that the statute of limitations begins to run after the last demand. Therefore, the Court concludes that pursuant to sections 95.11(3)(k) and 95.031(1) of the Florida Statutes and the Florida Supreme Court’s holding in *Mosher*, the four-year statute of limitations began to run when Claimant demanded repayment and Debtor refused to pay. Based on Claimant’s own Statement of Facts attached to Claim No. 5, such breach occurred in 2013, when Claimant made demand for payment and Debtor refused to repay the loan.<sup>16</sup>

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<sup>15</sup> See Doc. No. 46-6.

<sup>16</sup> While Debtor appears to have made a \$900.00 payment for legal services in June 2014 that included a handwritten note stating she would try to make a payment “every other week,” the statute of limitations was not tolled as a result. See Fla. Stat. § 95.051; *Cadle Co. v. McCartha*, 920 So. 2d 144, 145 (Fla. 5th DCA 2006) (“Prior to the 1974 enactment of section 95.051, Florida Statutes, Florida law had long recognized that the statute of limitations on a pre-existing debt would be tolled through the date of any new promise to pay the debt, even if the promise was oral, as long as the promise was made prior to the expiration of the limitations period. . . . This exception was apparently eliminated in 1974, when the legislature enacted section 95.051, which provided that the running of time under any statute of limitations was tolled by certain listed circumstances and further provided in subsection (2) that ‘[n]o disability or other reason shall toll the running of any statute of limitations except those specified in this section, s. 95.091, the Florida Probate Code, or the Florida Guardianship Law.’”).

Under these circumstances, the four-year statute of limitations for Claimant's claims based on an oral agreement expired prior to the filing of the cause of action in Florida State Court on June 1, 2020.

For the foregoing reasons, it is

**ORDERED:**

1. The Objection (Doc. No. 35) is **SUSTAINED**.
2. Claim No. 5 of Robert A. Coscia is **DISALLOWED**.

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Attorney Brett A Hyde is directed to serve a copy of this Order on interested parties who do not receive service by CM/ECF and to file a proof of service within 3 days of entry of this Order.