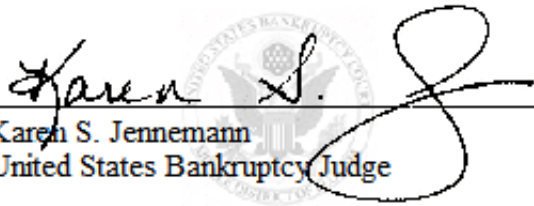


ORDERED.

Dated: October 29, 2020

  
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Karen S. Jennemann  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re	)	
	)	
Marianne Elizabeth Tarantola,	)	Case No. 6:19-bk-05654-KSJ
	)	Chapter 13
Debtor.	)	
_____	)	

**ORDER OVERRULING DEBTOR'S  
OMNIBUS OBJECTION TO CDD'S CLAIMS 3-14**

This case came before the Court on August 24, 2020, to consider Debtor's Omnibus Objection (the "Objection")<sup>1</sup> to Claim Numbers 3 through 14 filed by Concorde Estates Community Development District ("CDD"). The Court overrules the Debtor's Objection.

Debtor owned twelve vacant lots (the "Lots") in the Parkview at Lakeshore subdivision in Osceola County, Florida when she filed this Chapter 13 bankruptcy case on November 5, 2019. She purchased the Lots through a tax deed sale on September 1, 2015.<sup>2</sup>

<sup>1</sup> Doc. No. 111. CDD filed a Response. Doc. No. 158. CDD also filed a Request for Judicial Notice in Support of Proof of Claims. Doc. No. 192. The Court will take judicial notice of the attached exhibits further explaining CDD's lien interest.

<sup>2</sup> See FLA. STAT. § 197.552. "[N]o right, interest, restriction, or other covenant shall survive the issuance of a tax deed, except that a lien of record held by a municipal or county government unit, special district, or community development district."

CDD is a special purpose local government district created by Chapter 190 of Florida Statutes. Its singular purpose is to maintain or improve the infrastructure, systems, facilities, and services within the district's boundary, including the Lots. CDD, under District Resolutions 2011-05 and 2018-12, levied and imposed non-ad valorem special assessments ("Special Assessments") on the Lots.<sup>3</sup> The ability of CDD to impose these Special Assessments was public record as of October 3, 2011, when the CDD recorded the then land owner's consent to the jurisdiction of the CDD.<sup>4</sup>

Debtor did not know these Special Assessments existed when she purchased the Lots. She never asked the CDD for an accounting. However, after buying the Lots, she received an invoice from the CDD, and when she did not pay the amount due, the CDD started collection efforts. The unpaid Special Assessments constitute a lien on the Lots.<sup>5</sup>

Debtor filed this bankruptcy case to stop CDD's collection efforts. CDD filed Claims 3 through 14 because of the unpaid Special Assessments encumbering the twelve Lots. The claims total \$518,470.10. Debtor has sold some (or all) of the Lots during this bankruptcy case<sup>6</sup> and has paid the net sales proceeds (the "Sale Proceeds") to the Chapter 13 Trustee, who was holding about \$191,000 as of August 24, 2020, awaiting further direction.

Debtor then filed her Objection to Claims 3 through 14,<sup>7</sup> arguing the CDD can only collect the Special Assessments through the local county tax collector's normal process, not through other collection methods, such as foreclosing its lien against the Lots. CDD responds that the Florida

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<sup>3</sup> See Doc. No. 192, Exh. 2. Maxcy Development Group Holdings ("Maxcy") originally owned the Lots and consented to the imposition of the Special Assessments. Maxcy acknowledged the Special Assessments run with the land and are binding on all persons who take ownership of the Lots.

<sup>4</sup> *Id.* Maxcy filed a Consent to the Special Assessments filed in the Public Records of Osceola County, Florida at Book 04182, pgs. 1060-1063 on October 3, 2011, years before the Debtor purchased the Lots.

<sup>5</sup> FLA. STAT. § 190.021(9).

<sup>6</sup> Doc Nos. 20, 26, 42, 47, 53, 55, 165, and 189.

<sup>7</sup> Doc. No. 111.

Statutes unambiguously allow it to pursue collection of the Special Assessments in any viable manner, not just through the tax collector's office.<sup>8</sup>

Parties bear shifting burdens of proof in asserting and challenging a bankruptcy claim. Section 502 of the Bankruptcy Code<sup>9</sup> states a proof of claim is presumed valid until an interested party files an objection. 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.<sup>10</sup> 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."<sup>11</sup> Bankruptcy Rule 3001(c) specifies that when a claim is based on a writing, a creditor must attach a copy of the underlying writing and other supporting documentation, such as "invoices, itemized statements of running accounts, contracts."<sup>12</sup> 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.<sup>13</sup> Bankruptcy Rule 3001(c) provides a debtor with "fair notice of the conduct, transaction, and occurrences that form the basis of the claim."<sup>14</sup> Attaching supporting documentation is a mandatory prerequisite to establishing a claim's *prima facie* validity.<sup>15</sup>

CDD's claims meet the test for *prima facie* validity. As a sister court notes, the burden then shifts to the objecting party, the Debtor, to make a good argument why the claim should not be allowed:

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<sup>8</sup> Doc. No. 158.

<sup>9</sup> All references to the Bankruptcy Code refer to 11 U.S.C. §§ 101 *et. seq.*

<sup>10</sup> *In re Eddy*, 572 B.R. 774, 778-79 (Bankr. M.D. Fla. 2017).

<sup>11</sup> *In re Winn-Dixie Stores, Inc.*, 418 B.R. 475, 476 (Bankr. M.D. Fla. 2009) (internal quotation marks omitted).

<sup>12</sup> *In re Taylor*, 363 B.R. 303, 307 (Bankr. M.D. Fla. 2007).

<sup>13</sup> *Id.* at 308.

<sup>14</sup> *In re Sandifer*, 318 B.R. 609, 611 (Bankr. M.D. Fla. 2004).

<sup>15</sup> *Taylor*, 363 B.R. at 308.

[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.<sup>16</sup>

Debtor has failed to refute CDD's claim by presenting any valid legal argument in her Objection.

Debtor does not dispute that the Special Assessments were imposed lawfully and properly recorded with the county of jurisdiction.<sup>17</sup> Debtor instead argues the CDD may only collect the unpaid Special Assessments through the county tax collector who is already provided for in the Chapter 13 Plan and who did not separately file a claim for the Special Assessments.

Debtor provides no legal basis for this assertion and ignores clear Florida law. Section 190.021 of Florida Statutes permits the CDD to choose how it would like to collect and enforce special assessments.<sup>18</sup> CDD is not obligated to collect special assessments through the county tax collector. And in its discretion, the CDD opted to use its own District Manager rather than the county tax collector to collect the Special Assessments. Thus, Debtor's main argument in the Objection fails. The CDD holds valid liens for properly assessed Special Assessments that encumber the Lots.

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<sup>16</sup> *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.").

<sup>17</sup> See FLA. STAT. §§ 190.011(14) and 190.022.

<sup>18</sup> See FLA. STAT. § 190.021(9). "These non-ad valorem assessments may be collected, at the district's discretion, by the tax collector pursuant to the provisions of [Florida Statute] §197.363 or §197.3632, or in accordance with other collection measures provided by law."

During the pendency of this bankruptcy proceeding, Debtor sold most if not all of the Lots to various purchasers free and clear of liens, claims, encumbrances, and interests.<sup>19</sup> The Sales Proceeds were paid to the Chapter 13 Trustee who is holding approximately \$191,000. To the extent the monies were received from the sale of the Lots, CDD has a first priority secured claim to the Sales Proceeds, up to the amount of their particular claim for that particular lot. For example, Claim 3 requests \$46,810.18 and encumbers lot number 20-26-29-3072-0001-1270. If that lot was sold and the Chapter 13 Trustee received net sales proceeds of \$46,810.18, the CDD is entitled to those funds. The same analysis would apply to Claims 4 through 14, to the extent the Chapter 13 Trustee is holding any monies.

If the Debtor intends to retain any of the Lots, the Debtor also must pay the corresponding CDD Claim for the Special Assessments over the life of her Chapter 13 Plan or longer under § 190.022(2) of the Florida Statutes.<sup>20</sup> If the Chapter 13 Trustee, however, received insufficient funds to pay the Special Assessments associated with a particular Lot in full, the Debtor has no *personal* liability to the CDD. The lien was limited to the CDD's *in rem* claim to the real property. No *in personam* liability exists.

Accordingly, it is

**ORDERED:**

1. Debtor's Objection to Claim (Doc. No. 111) is **OVERRULED**.
2. Claim Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of Concorde Estates Community Development District are allowed as secured claims with CDD holding *in rem* liens on the

<sup>19</sup> See Doc. Nos. 26, 53, 55, and 189. The Court is unable to determine if the sale, approved on September 3, 2020, closed and whether the Chapter 13 Trustee received the net proceeds.

<sup>20</sup> See FLA. STAT. § 190.022(2). Special assessments may be paid in up to thirty yearly installments. This structure makes payments more manageable and generally spreads the payments across multiple landowners. It is not equitable to make Debtor pay for the Special Assessments that subsequent owners benefit from.

corresponding Lot which shall encumber any Lot retained by the Debtor or any related Sales Proceeds held by the Chapter 13 Trustee.

3. Debtor has no *in personam* unsecured liability to CDD.

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Attorney Aldo G. Bartolone 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 the Order.