

IT IS SO ORDERED.

Dated: 18 September, 2024 10:22 AM



Suzana Krstevski Koch
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:)	Case No. 23-12429
)	
ERROL L. JARRETT,)	Chapter 13
)	
Debtor.)	Judge Suzana Krstevski Koch

**MEMORANDUM AND ORDER
SUSTAINING IN PART AND OVERRULING IN PART OBJECTION TO CLAIM**

This cause is before the Court on Secured Creditor Deborah Nunoo’s (“Nunoo”) Proof of Claim No. 1 (“POC”), Debtor’s Objection to Claim No. 1 (the “Objection”) (ECF No. 35), and Nunoo’s Response (ECF No. 55). The Court held an evidentiary hearing on April 4, 2024.

For the reasons herein, the Court sustains in part and overrules in part the Debtor’s Objection and finds the amount of Deborah Nunoo’s claim is \$2,500.

JURISDICTION AND VENUE

The District Court has jurisdiction over this Chapter 13 case under 28 U.S.C. § 1334. This case has been referred to this Court by the District Court under its General Order of Reference. 28 U.S.C. § 157(a); General Order 2012-7 of the United States District Court for the

Northern District of Ohio. Matters concerning administration of the estate and allowance or disallowance of claims are core proceedings that the Court may hear and determine. 28 U.S.C. §§ 157(a), (b)(2)(A), (B) and 1334. Venue is proper under 28 U.S.C. § 1409(a).

These findings of fact and conclusions of law are made pursuant to Federal Rule of Bankruptcy Procedure 7052, made applicable to this contested matter by Federal Rule of Bankruptcy Procedure 9014. *See e.g., Corzin v. Fordu (In re Fordu)*, 201 F.3d 693, 710 (6th Cir. 1999). Whether or not specifically referred to in this Memorandum of Opinion, the Court has examined all the submitted materials, weighed, and observed the demeanor and credibility of the witnesses, carefully considered all the evidence, and reviewed the entire record of the case in determining the facts pertinent to the case and drawing conclusions therefrom. *See e.g., In re Parrish*, 326 B.R. 708, 711 (Bankr. N.D. Ohio 2005) (“In doing so, the court considered the witnesses’ demeanor, the substance of the testimony, and the context in which the statements were made, . . .”).

PREPETITION HISTORY OF THE PROPERTY

Transactional History of the Property

On January 13, 2006, Debtor Errol L. Jarrett (the “Debtor”) and third party Laureen Johnson gave a first mortgage (the “First Mortgage”) to Mortgage Electronic Registration Systems, Inc. as nominee for BNC Mortgage, Inc., which was later assigned to U.S. Bank National Association, as Trustee for Structured Asset Investment Loan Trust Mortgage Pass-Through Certificates, Series 2006-3 (“U.S. Bank”) in the amount of \$189,000. The Mortgage secured a loan used to purchase the real estate located at 3301 Milverton Road, Shaker Heights, Ohio 44120 (the “Property”) from Nunoo. U.S. Bank Proof of Claim No. 2. Laureen Johnson is listed as a borrower, and the Debtor’s name appears handwritten beside Laureen Johnson’s. *Id.*

Two sets of initials, L.J. (presumably for Laureen Johnson) and E.J. (presumably for Errol Jarrett), appear throughout the First Mortgage. *Id.* The First Mortgage appears to be signed by Laureen Johnson, the Debtor, and a notary. *Id.* The timestamp in the upper right-hand corner indicates that the First Mortgage was recorded on January 18, 2006, at 3:14:48 PM with Cuyahoga County Recorder's Office AFN: 200601180757. *Id.*

There is a second mortgage in favor of Nunoo (the "Nunoo Mortgage"), in the principal amount of \$21,000 with interest accruing at a rate of at five percent per annum. Nunoo Ex. D-201. Laureen Johnson's name is typed throughout the Nunoo Mortgage. The Debtor's name is handwritten both at the top of the Nunoo Mortgage and on the notary page. The promissory note which evidences the Nunoo Mortgage debt lists Laureen Johnson as the only borrower, and only Laureen Johnson's signature appears on the promissory note. Nunoo Ex. D-202. The Nunoo Mortgage was recorded with the Cuyahoga County Recorder's Office on January 18, 2006, at 3:14:48 PM. The timestamp in the upper right-hand corner lists AFN: 200601180758, indicating that the Nunoo Mortgage was recorded immediately after the First Mortgage.

The 2019 Partition Action

On September 28, 2019, Laureen Johnson filed a complaint for partition, which was later amended on January 31, 2020, against the Debtor, Nunoo, and several other parties with interests in the Property, in the Cuyahoga County Court of Common Pleas (the "State Court") case number CV-19-922397 (the "2019 Partition Action").

On February 26, 2021, the 2019 Partition Action was resolved by a handwritten Settlement Agreement¹ signed by Laureen Johnson and her attorney, the Debtor and his attorney,

¹ The Court does not change the grammar and spelling contained in the Settlement Agreement, however, [sic] is included to aid the reader.

and Nunoo in her individual capacity. The Settlement Agreement states, in its entirety, as follows:

- (1) The Parties Agree as follows: That, Plaintiff. [sic] Laureen Johnson, Defendant & Crossclaimant, & Counterclaimant Errol Jarrett and Crossclaimant Defendant & counterclaimant Deborah Nunno [sic] will dismiss, with prejudice, all of their respective claims against each other in the Case Captioned Laureen Johnson vs. Errol Johnson [sic] Cuyahoga County, Case No. CV-19-922397 assigned to the dockets of Judge John J. Russo and Magistrate Stephen M. Bucha [sic] In consideration of the foregoing dismissals the parties further agree that Plaintiff Laureen Johnson will sign a Quit Claim Deed releasing all of her interest in the real estate known as 3301 Milverton Road, Shaker Heights, Ohio 44120, PP No. 735-14-018 when Defendant Errol Jarret [sic] has either assumed the PPH Mortgage Loan No. 705658482 or refinanced said Mortgage Loan so that she has no further Liability for payment of the mortgage or any further responsibilities for payment of taxes on the subject real estate.
- (2) Defendant Counterclaimant Errol Jarrett shall have 120 days to facilitate the assumption of the mortgage or refinancing of subject property. In addition, provided that Jarrett is making progress and acting in good faith he shall have additional 60 Days to complete the assumption and/or refinancing. In the event, Jarret [sic] fails to complete the assumption and/or refinancing by the end of the additional 60 Days, then the real estate shall be sold and the proceeds (or losses if applicable) of the sale divided evenly between Laureen Johnson and Errol Jarrett.
- (3) Errol Jarret [sic] shall pay Deborah Nunno, [sic] a total of \$7,500.00 for the dismissal with prejudice of her (Nunoo's) claim against Laureen and for her complete release and waiver of any legal and/or equitable interest in the real estate known as: 3301 Milverton [sic] Shaker Hts., OH 44120, PPN. 735-14-018. Jarret [sic] shall pay Deborah Nunno [sic] Five Thousand Dollars (\$5,000.00) in certified funds by March 5, 2021. The \$5,000.00 payment will be mailed to Nunno [sic] at 3721 Spokane Avenue, Cleveland, OH 44109. The balance of \$2,500.00 shall be paid to Nunno [sic] at the time Jarrett completes the assumption and/or refinancing. The \$2,500.00 shall be paid in certified funds and will be mailed to the Spokane address above. Upon payment of the total \$7,500.00, this agreement dated 2-26-2021 will automatically release any and all interest Deborah Nunno [sic] has in 3301 Milverton Road, Shaker Heights, Ohio 44120, PPN 735-14-018 and may be filed in the office of the Cuyahoga County Fiscal Officer as a release of her interest.

- (4) Co-Defendant, US Bank NA (as Trustee For Structured Asset Inv. Loan Trus[t] [sic] Mtg Pass-thru certif. series 2006-3) ('US Bank') has submitted stipulations to this Court. All parties Acknowledge, agree + accept U.S. Bank's stipulations + consider them incorporated herein. The payoff Balance owed U.S. Bank, on belief, is \$78,866.78, good thru 2-28-2021. it [sic] is understood this Figure will change with passage of time. Any Re-finance/assumption or other provided by Jarrett as provided herein, will necessitate Full payment + satisfaction of amount due to U.S. Bank. Further, any such assumption or Refinance shall either satisfy +/- include all other lien holders/lien claimants, +/-, Jarrett expressly assumes Full liability For any and all liens, including but not limited to, State of Ohio Department of Taxation, +/- or Fully indemnifies + holds harmless Plaintiff Laureen Johnson as to any + all liens or claimants.

Nunoo Ex. D-211.

The 2021 Foreclosure Action

On September 28, 2021, U.S. Bank filed a complaint for foreclosure in the State Court in case CV-21-953569 (the "2021 Foreclosure Action") against Laureen Johnson, the Debtor, Nunoo, and other parties. Nunoo Ex. D-206. The foreclosure complaint was later amended on January 26, 2022, and again on July 8, 2022.

On September 9, 2022, Nunoo filed an answer to U.S. Bank's second amended complaint and included a crossclaim against only Laureen Johnson to enforce the Nunoo Mortgage and attending promissory note. On November 21, 2022, Nunoo filed a motion for default judgment against only Laureen Johnson, which the State Court granted on January 25, 2023.

On March 1, 2023, the State Court issued its Magistrate's decision (the "Magistrate's Decision") granting a decree of foreclosure in favor of U.S. Bank and awarding U.S. Bank a money judgment in its favor against Laureen Johnson. The Magistrate's Decision expressly made no finding about how much the Debtor owed Nunoo. The State Court Magistrate's Decision found only that Nunoo's interests were inferior to that of U.S. Bank:

No finding is made at this time as to the claim, right, title, interest, lien, or claim of the Defendant, Deborah Nunoo, as set forth in the pleadings filed herein,

except to note that such claim, right, title, interest, lien, or claim of the hereinabove Defendant is hereby ordered transferred to the proceeds derived from the sale of said premises and shall be paid according to its priority as shown on the preliminary judicial report after the payment of the within action, taxes due and payable and the amount herein above found due the Plaintiff, and the same is hereby ordered continued until further order of the Court.

Nunoo Ex. D-217.²

The Magistrate's Decision makes no finding as to the amount of Nunoo's claim. There is only a finding of priority – that Nunoo's claim is junior to the costs, taxes, and amounts due to U.S. Bank. On April 10, 2023, the State Court adopted the Magistrate's Decision in full. Nunoo Ex. D-217.³

Nunoo argues that the Magistrate issued a ruling in her favor, referring to Nunoo Ex. D-207 and Nunoo Ex. D-208. Nunoo Ex. D-207 is an unsigned Magistrate's Decision, and Nunoo Ex. D-208 is an unsigned Order Adopting the Magistrate's Decision.⁴ Neither of these documents is a binding court order.

The March 1, 2023 State Court Magistrate's Decision together with the April 10, 2023 State Court order adopting the Magistrate's Decision, both of which are signed and entered on

² Nunoo Ex. D-217 is Nunoo's Motion for Relief from Stay. ECF No. 19. The Magistrate's Decision is attached to that Motion as an exhibit (*see* ECF No. 19: p. 23 of 40).

³ Nunoo Ex. D-217 is Nunoo's Motion for Relief from Stay. ECF No. 19. The State Court's adoption of the Magistrate's Decision is attached to that Motion as an exhibit (*see* ECF No. 19: p. 16 of 40).

⁴ Due to the disorganized nature in which exhibits were presented by Nunoo in this matter, this Court exercised its right to take judicial notice of the State Court docket. *See In re Lafayette*, 561 B.R. 917 (Bankr. N.D. Ga. 2016). Upon review of the State Court docket, the same unsigned and unentered proposed orders include a cover page with the following caption: "Co-Defendant Notice of filing Proposed Magistrate Decision and Order Adopting Magistrate's Decision." The cover sheet identifying the unsigned and unentered proposed orders as proposed orders was not included in Nunoo's submission to this Court. The Court makes no finding with regard to this discrepancy. The discrepancy, however, is a possible reason for Nunoo's mistaken belief that the State Court made a substantive ruling in her favor.

the State Court docket, are collectively defined as the “State Court Orders.” The unsigned and unentered proposed orders are not State Court Orders.

FINDINGS OF FACT

At the evidentiary hearing held April 4, 2024, Nunoo and the Debtor agreed to the following stipulations, which the Court adopts as findings of fact:

1. Debtor purchased the Property in 2006 from Nunoo. He has resided at the property since.
2. Title to the property was placed in Debtor’s name and the name of Laureen Johnson (“Johnson”). Johnson does not reside at the property.
3. The First Mortgage was placed on the Property at the time that Debtor purchased it, with the proceeds paid to Nunoo.
4. An additional mortgage, the Nunoo Mortgage, appears of record on the Property. Nunoo Ex. D-201; U.S. Bank Proof of Claim, p. 33.
5. The Nunoo Mortgage is signed by Johnson, and Debtor’s name also appears on the Nunoo Mortgage. Debtor did not receive any funds in connection with the Nunoo Mortgage.
6. Disputes arose over the years in connection with title to the Property and any amount owed on the Nunoo Mortgage.
7. All disputes were to have been settled by the Settlement Agreement dated February 26, 2021, between Debtor, Nunoo, and Johnson, in the 2019 Partition Action. Nunoo Ex. D-211.
8. The Settlement Agreement provided that:
 - i. Debtor would refinance the U.S. Bank Mortgage solely in his name;
 - ii. Johnson would quitclaim her interest in the Property to Debtor; and
 - iii. Nunoo would release her lien for a price of \$7,500 to be paid in two installments: \$5,000 to be followed by \$2,500 upon completion of a refinance.

As a result of the Settlement Agreement, the 2019 Partition Action was dismissed.

9. Debtor paid \$5,000 to Nunoo by check.

10. Debtor obtained a second check in the amount of \$2,500, but this check was never transmitted to Nunoo.

Procedural History

On July 19, 2023, the Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code. On “Schedule A/B: Property,” the Debtor listed the Property as a duplex or multi-unit building with a value of \$300,000. ECF No. 1. He described his ownership interest as “1/2 undivided on record – I should own 100%,” and indicated “I believe I am the beneficial owner of 100% of [P]roperty although title indicates another individual as joint owner.” *Id.* In response to “[c]laims against third parties, whether or not you have filed a lawsuit or made a demand for payment,” the Debtor listed claims against Johnson and Nunoo “for fraud in connection with Debtor’s purchase of the Milverton home.” *Id.*

On “Schedule C: The Property You Claim as Exempt,” the Debtor listed the Property again noting, “I believe I am the beneficial owner of 100% of property although title indicates another individual as joint owner.” *Id.* On “Schedule D: Creditors Who Have Claims Secured by Property,” the Debtor listed Nunoo with a claim of \$0 because the “mortgage has been paid,” and the claim as disputed. *Id.* He also listed U.S. Bank NA with two, separate claims of \$58,270.11 and \$8,500 pursuant to a foreclosure decree in the 2021 Foreclosure Action. *Id.* He provides in the property description, “I am beneficial owner of 100% of property although title indicates another individual as a joint owner.” *Id.* On “Schedule E/F: Creditors Who Have Unsecured Claims,” the Debtor listed Johnson with a \$0 claim “for precaution only.” *Id.* On Part 4 of his Statement of Financial Affairs (“SOFA”), the Debtor indicated that he is party to the 2021 Foreclosure Action.

On August 16, 2023, Nunoo filed her POC in the amount of \$44,160.60. In support of her POC, she attached the Nunoo Mortgage, the attending promissory note, and the State Court Orders.

On October 12, 2023, the Debtor filed his Objection to the POC on the grounds that he complied with the Settlement Agreement.

On October 26, 2023, U.S. Bank filed Proof of Claim No. 2 (“U.S. Bank POC”) in the amount of \$97,412.31.

On November 9, 2023, the Court held a hearing on the following three matters:

1. Confirmation hearing on Debtor’s Chapter 13 Plan at ECF No. 2, the Trustee’s Objection to Confirmation at ECF No. 15, Nunoo’s Objection to Confirmation at ECF No. 16, U.S. Bank’s Objection to Confirmation at ECF No. 27, and Debtor’s Response to Nunoo’s Objection at ECF No. 38;
2. Nunoo’s Motion for Relief from Stay at ECF No. 19, Debtor’s Objection thereto at ECF No. 37, and Nunoo’s Response at ECF No. 47; and
3. Debtor’s Motion to Employ Special Counsel at ECF No. 31 and Nunoo’s Objection and Amended Objection thereto at ECF Nos. 48 and 52.

On January 10, 2024, the Court issued an Order denying Nunoo’s Motion for Relief from Stay. ECF No. 63. The remaining pending matters were adjourned to February 27, 2024.

At the hearing on February 27, 2024, the Court granted the Debtor’s Motion to Employ [Lester Potash as] Special Counsel and overruled Nunoo’s Objection to the Motion. ECF No. 84. The Court also issued a scheduling order and set an evidentiary hearing for April 4, 2024 on Debtor’s Objection to the POC. ECF No. 83. The Confirmation hearing remains adjourned until resolution of the POC.

On March 26, 2024, the Court held a hearing on the following two matters:

1. Nunoo’s Motion to Compel and Dismiss the Case/Proposed Plan (“Motion to Compel and Dismiss”) at ECF No. 78, Trustee’s Objection thereto at ECF No. 87,

Debtor's Objection thereto at ECF No. 93, and Nunoo's Reply in support of the Motion to Compel and Dismiss at ECF No. 96; and

2. Nunoo's Motion to Cancel the Evidentiary Hearing set for April 4, 2024 and Dismiss the Case ("Motion to Cancel and Dismiss") at ECF No. 90 and Debtor's Objection thereto at ECF No. 94.

The Court denied Nunoo's Motion to Compel and Dismiss and sustained the Trustee's and the Debtor's Objections. ECF No. 102. The Court also denied Nunoo's Motion to Cancel and Dismiss and sustained the Debtor's Objections. ECF No. 101.

On March 26, 2024, Nunoo filed a Motion to Postpone the Evidentiary Hearing set for April 4, 2024 for Court's failure to include discovery in the hearing/trial process pursuant to Fed.R.Civ.P. 37. ECF No. 100. The Court denied the Motion to Postpone, ruling Nunoo had sufficient time to conduct discovery pursuant to the February 27, 2024 Scheduling Order at ECF No. 83.

Nunoo's Preclusion and Fraud Arguments

In her Trial Brief filed at ECF No. 109, Nunoo argues that the Court lacks jurisdiction to hear this matter because doing so constitutes re-litigation of a settled matter under the principles of issue and claim preclusion, violates the Rooker-Feldman Doctrine, and allowed the Debtor to commit intentional fraud on the Court. Nunoo's first two arguments are substantively similar, and the Court will address them together. The Court will address the third argument separately.

Re-litigation of a Settled Matter and Rooker-Feldman

"The Rooker-Feldman doctrine is jurisdictional in nature; its applicability must be determined before any other affirmative defense, including claim preclusion" [or issue preclusion]. *In re Fischer*, 483 B.R. 877, 882 (Bankr. E.D. Wis. 2012). Therefore, the Court will address Nunoo's Rooker-Feldman argument first.

The Rooker-Feldman doctrine “bars a federal court from obtaining subject matter jurisdiction over an action which seeks to review and reverse a state court judgment.” *In re Leigh*, 2013 WL 1787964, at *3, 2013 Bankr. LEXIS 1730 (Bankr. N.D. Ohio Apr. 26, 2013) (citing *Exxon Mobile Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283–84 (2005)).

[It] bars a lower federal court from conducting a virtual review of a state court judgment for errors in construing federal law or constitutional claims inextricably linked with the state court judgment.... In order to determine whether a claim is inextricably intertwined with a state-court claim, the federal court must analyze whether the relief requested in the federal action would effectively reverse the state court decision or void its ruling. In other words, the federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it.

Singleton v. Fifth Third Bank (In re Singleton), 230 B.R. 536-537 (6th Cir. BAP 1999) (citations and internal quotations omitted).

The only issue presently before the Court is the amount, if any, Nunoo is owed under the Nunoo Mortgage and attending promissory note. The State Court made no determination of the value of Nunoo’s claim against the Debtor. As the State Court made no judgment concerning the amount the Debtor owed Nunoo, there is no State Court judgment that this Court is reviewing. While this Court is bound by the State Court Orders, the State Court did not make any finding as to the amount the Debtor owes Nunoo. This Court cannot reverse or void a state court ruling where no such ruling has been made. Therefore, the POC and the Objection are not inextricably linked to the State Court judgment, and this Court has authority to determine the amount the Debtor owes Nunoo. Nunoo’s Rooker-Feldman argument is not applicable in this instance.

Nunoo also argues that this Court is barred by the principles of claim and issue preclusion from hearing this matter. Under 28 U.S.C. § 1738, the federal full faith and credit statute, a federal court must accord a state court judgment the same preclusive effect the judgment would

have in state court. *Corzin v. Fordu (In re Fordu)*, 201 F.3d 693, 703 (6th Cir. 1999). “When a federal court is asked to give preclusive effect to a state court judgment, the federal court must apply the law of the state in which the prior judgment was rendered in determining whether and to what extent the prior judgment should be given preclusive effect in a federal action.” *Id.*

In this case, the Court must apply Ohio claim and issue preclusion principles.

Claim preclusion has four elements in Ohio: (1) a prior final, valid decision on the merits by a court of competent jurisdiction; (2) a second action involving the same parties, or their privies, as the first; (3) a second action raising claims that were or could have been litigated in the first action; and (4) a second action arising out of the transaction or occurrence that was the subject matter of the previous action... Issue preclusion applies when a fact or issue (1) was actually and directly litigated in the prior action, (2) was passed upon and determined by a court of competent jurisdiction, and (3) when the party against whom [issue preclusion] is asserted was a party in privity with a party to the prior action.

Id. at 703-704 (internal citations omitted).

The party seeking to establish claim and issue preclusion bear the burden of proof. *In re Genesis Health Ventures, Inc.*, 355 B.R. 438, 448-449 (Bankr. D.Del. 2006) (establishing the burden of proof in claim preclusion); *In re Waite*, No. 18-31471, 2019 WL 4747548, at *5 (Bankr. N.D. Ohio Sept. 27, 2019) (establishing the burden of proof in issue preclusion).

Nunoo does not meet the first element of either claim or issue preclusion. While the parties and Property in the State Court proceeding are the same as in the instant case, the Debtor’s Objection to the POC is not a re-litigation of a settled, state court matter because there is no state court judgment that decided either the merits of Nunoo’s claim amount or actually and directly litigated her claim amount.

Intentional Fraud

The only matter before the Court is the Debtor's Objection to Nunoo's POC. Nunoo's allegations that the Debtor committed fraud in this Court are not properly before the Court, however, the Court reviews the allegations for purposes of a complete review of the record.

Fraud on the court "consists of conduct: '1) on the part of an officer of the court; that 2) is directed to the judicial machinery itself; 3) is intentionally false, willfully blind to the truth, or is in reckless disregard of the truth; 4) is a positive averment or a concealment when one is under a duty to disclose; and 5) deceives the court.'" *Johnson v. Bell*, 605 F.3d 333, 339 (6th Cir. 2010) (internal citations omitted). The movant has the burden of proving existence of fraud on the court by clear and convincing evidence. *Id.* Nunoo alleges that the Debtor and his counsel have lied to the Court, but Nunoo has failed to offer any evidence of fraud. Nunoo's intentional fraud argument fails.

Evidentiary Hearing

The Court held an evidentiary hearing on April 4, 2024. The parties agreed to the stipulations as previously outlined. Nunoo called Lester Potash ("Potash"), the attorney appointed as special counsel; Debtor's attorney, Julie Rabin ("Rabin"); and Johnson, as witnesses. Potash appeared at the hearing in compliance with Nunoo's subpoena. ECF No. 114.

Rabin objected to Nunoo's calling Potash to testify as to outstanding amounts owed to Nunoo. The Court sustained the objection, or to the extent the objection was an oral motion to quash, it was granted. Nunoo also subpoenaed Rabin to testify. ECF No. 115. Rabin made an oral motion to quash based on attorney-client privilege, and the Court granted Rabin's motion.

The parties agreed to waive opening statements. Nunoo called Debtor and Johnson as witnesses. The Debtor testified on his own behalf and called Elena Gomer (“Gomer”), a loan officer from Cleveland Lending Group.

The Debtor testified that he believed he was purchasing a 100% interest in the Property in 2006. When presented with a copy of the Nunoo Mortgage (Nunoo Ex. D-201), the Debtor testified that he recognized the document, that the document bears his name and what appears to be his signature, but he denied having signed it. The Debtor claimed that he had not seen the attending promissory note (Nunoo Ex. D-202) prior to the 2019 Partition Action. He testified that he made monthly mortgage payments to U.S. Bank, but he did not make monthly payments to Nunoo at any time. He explained that Nunoo visited the Property on occasion to collect payment from Johnson on a separate debt.

The Debtor further testified that he was familiar with the Settlement Agreement that resolved the 2019 Partition Action. He testified that to fulfill his obligations under the Settlement Agreement, (i) he sent Nunoo a \$5,000 cashier’s check dated March 5, 2021 (Debtor Ex. 103), and (ii) he attempted to refinance the U.S. Bank mortgage (Debtor Ex. 102, U.S. Bank loan estimate dated March 26, 2021 (the “U.S. Bank Loan Estimate”)). U.S. Bank approved him for a new loan, but in order to complete the refinance and comply with their obligations under the Settlement Agreement, Johnson and Nunoo had to release their liens on the property. The Debtor testified that Johnson and Nunoo refused to cooperate or respond to the loan officer. The Debtor attempted to refinance with other lending agencies, but lack of cooperation from Johnson and Nunoo along with their refusal to respond to loan officers undermined his efforts. Debtor Exs. 105 and 106. A copy of the \$5,000 cashier’s check was not entered into evidence.

The Debtor further testified that on December 21, 2021, he gave a second cashier's check for \$2,500 to his attorney to send to Nunoo. Debtor Ex. 104. For whatever reason, the second cashier's check for \$2,500 was not transmitted to Nunoo, and the Debtor later found it in his attorney's file. The Debtor conceded that he still owes Nunoo \$2,500.

Johnson testified that the Debtor signed the Nunoo Mortgage and that he never made payments to Nunoo. She also testified that she was never contacted by loan officers or title agents to release her lien on the Property. On cross-examination, Johnson testified that she did not remember Nunoo's counterclaim against her in the 2019 Partition Action, nor did she recall her answer to the counterclaim, in which she denied any amounts were left due and owing to Nunoo under the Nunoo Mortgage. Johnson's answers to questions posed by counsel were brief, incomplete, and evasive.

Gomer testified that she worked for Cleveland Lending Group and has been a loan officer since 2001. According to Gomer, whom the Court finds to be a credible witness, the Debtor had a good credit rating and was immediately approved for a loan. Debtor Ex. 105, United Wholesale Mortgage loan approval dated July 11, 2023 (the "UWM Loan Approval"). She further testified that the Debtor's loan failed to close only because Harvard Title Agency could not get Johnson to release her judgment lien. Gomer also testified that Harvard Title Agency would have attempted to reach Nunoo and Johnson via multiple methods of communication including telephone and mail. Gomer was factual, dispassionate, disinterested, and her demeanor was professional.

During her closing argument, Nunoo argued that even though the U.S. Bank Loan Estimate and UWM Loan Approval were part of the record, she was unaware that the Debtor received loan approval. She denied being contacted by loan officers or title agents as part of the

Debtor's attempt to refinance, arguing she had phone records to support her denial. Nunoo submitted that she is entitled to recover \$44,750.31, which is based on the principal amount reflected in the Nunoo Mortgage and the attending promissory note plus interest less the \$5,000 she received from the Debtor.

Despite having the burden of proof, Nunoo did not take the witness stand. Nunoo did make statements and arguments all throughout the evidentiary hearing. To provide a *pro se* litigant as much due process as possible, the Court takes all Nunoo's statements as evidence even though the Debtor did not cross-examine Nunoo. The Debtor did not call Nunoo as a witness on cross-examination and so has waived his right to do so.

Nunoo's demeanor was often inflamed and argumentative; she was regularly inconsistent in her statements and arguments. The Court can, and does, ignore the emotion involved in this matter. The Court cannot, however, ignore that Nunoo did not provide evidence that she is owed \$44,750.31.

Post-Trial Briefs

Nunoo filed a Post-Trial Brief on April 16, 2024. ECF No. 111. The Debtor filed a Post-Trial Brief on April 24, 2024. ECF No. 122. On May 3, 2024, Nunoo filed a Reply to Debtor's Post-Trial Brief. ECF No. 123. In the Post-Trial Briefs, both parties acknowledge that the Settlement Agreement constitutes a binding contract. Nunoo argues that in the event the Debtor failed to secure refinancing, all terms in the Settlement Agreement are rendered "null and void" except for the provision requiring the Debtor to sell the property. In other words, Nunoo claims that Debtor's breach re-instates her original mortgage lien of \$21,000, plus accrued interest.

The Debtor argues that assuming he breached the Settlement Agreement, Nunoo is owed only the remaining \$2,500. According to the Debtor, Nunoo fails to provide any legitimate

reason why the original amount due on the Nunoo Mortgage and attending promissory note should be reinstated.

Motion to Reopen

On May 3, 2024, Nunoo filed a Motion to Reopen Evidentiary Hearing Held April 4, 2024 Based Upon Newly Discovered Evidence (the “Motion to Reopen”). ECF No. 124. Debtor’s Objection was filed on May 14, 2024. ECF No. 130. Nunoo’s Reply in support of her Motion to Reopen was filed on May 17, 2024. ECF No. 136.

On July 2, 2024, the Court held a hearing on Nunoo’s Motion to Reopen. The Motion to Reopen was granted in part and denied in part. The Court allowed the admission into evidence of Nunoo’s telephone records over the objection of the Debtor. The Court disallowed the entry of any other additional evidence. Nunoo did not lay a foundation for the admission of the telephone records, however, to give a *pro se* litigant the benefit of the doubt, the Court allowed their admission. The telephone records are identified as Nunoo Ex. D-230 and discussed below.

STANDARD

A proof of claim is deemed allowed unless an objection is filed. 11 U.S.C. § 502(a). If an objection is filed, a bankruptcy court will hold a hearing to determine whether the claim is allowed and if so, in what amount. 11 U.S.C. § 502(b); *In re CSC Industries, Inc.*, 232 F.3d 505, 509 (6th Cir. 2000) (“While the validity of a claim might be a matter for nonbankruptcy law, bankruptcy courts have the statutory authority to determine the allowability and amount of the claim.”). Further, a proof of claim constitutes prima facie evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). In order to rebut a valid proof of claim, an objecting party must “produce evidence to refute at least one of the allegations essential to the claim’s legal sufficiency...” *In re Allegheny Int’l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992). If the objecting

party produces evidence rebutting the validity of the claim, the burden reverts to the claimant to prove its claim by a preponderance of the evidence. *Id.*

Law and Analysis

Debtor's Objection to Nunoo's POC includes sufficient evidence in the form of the Settlement Agreement to rebut the validity of Nunoo's POC. The burden of proof thus reverts to Nunoo to establish the amount due to her by the Debtor.

The State Court Orders in the 2021 Foreclosure Action make no determination as to the claim amount of Nunoo against the Debtor. Without a ruling in favor of Nunoo and against the Debtor, the Court looks to the Settlement Agreement, which resolved the 2019 Partition Action. Under Ohio law, "[i]t is axiomatic that a settlement agreement is a contract designed to terminate a claim by preventing or ending litigation and that such agreements are valid and enforceable by either party. Further, settlement agreements are highly favored in the law." *Continental W. Condominium Unit Owners Assn. v. Howard E. Ferguson, Inc.*, 74 Ohio St.3d 501, 502, 660 N.E.2d 431 (1996) (internal citations omitted). "If a contract is clear and unambiguous, then its interpretation is a matter of law and there is no issue of fact to be determined. *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 246, 374 N.E.2d 146 (1978). Further "[w]hen the language of a written contract is clear, a court may look no further than the writing itself to find the intent of the parties." *Sunoco, Inc. (R&M) v. Toledo Edison Co.*, 129 Ohio St.3d 397, 953 N.E.2d 285, 2011-Ohio-2720, ¶ 37. There is no reason for the Court to look beyond the four corners of the Settlement Agreement in this matter.

The Settlement Agreement redefined the parties' claims and debts to one another. Pursuant to the Settlement Agreement, Debtor had until March 5, 2021 to make the first \$5,000 payment and demonstrate substantial compliance and good faith. The Debtor initially complied

and paid Nunoo the first \$5,000 on March 5, 2021. As evidenced by the U.S. Bank Loan Estimate dated March 26, 2021, he also attempted to refinance with U.S. Bank. Debtor Ex. 102. In exchange for substantial performance, the Debtor had another 60 days, or until August 25, 2021, to make the second payment of \$2,500 and complete the refinance. The Debtor breached the Settlement Agreement when the Nunoo Mortgage was not refinanced, and the second payment of \$2,500 was never remitted to Nunoo.

The Settlement Agreement at paragraph 3 is silent as to what happens in the event that the Debtor does not timely pay the total of \$7,500. Nunoo's argument that the full amount of her POC should be paid assumes that, in the event the Debtor does not pay the total of \$7,500, then the Settlement Agreement becomes void. The Settlement Agreement, as it is written, however, is a binding contract on the parties. There is nothing that voids the Settlement Agreement in the event the Debtor does not pay \$2,500.

The Settlement Agreement at paragraph 2 states that "in the event [Debtor] fails to complete the assumption and/or refinancing by the end of the additional 60 days, then the real estate shall be sold. . . ." Debtor did not refinance, so the remedy is a State Court one for the parties, should they choose to exercise those remedies. The Court notes that Nunoo did not avail herself of her self-negotiated State Court remedies as they are written in the Settlement Agreement, which she could have done in the 2021 Foreclosure Action. The 2021 Foreclosure Action was filed on September 28, 2021, one month after the Debtor's August 25, 2021 deadline to refinance.

This Court is determining the amount the Debtor owes Nunoo. The Settlement Agreement, although perhaps poorly written, is not ambiguous. The parties agreed that the Debtor would refinance and pay Nunoo \$7,500, and then Nunoo would automatically release any

interest she had in the Property. The Debtor paid \$5,000 to Nunoo and obtained financing. However, the refinancing transaction could not close because the title company could not obtain the payoff amount for the Nunoo Mortgage.

The Debtor blames Nunoo for the failure of the refinance and presented oral testimony from Gomer to support his contention. Although it is not necessary for this Court to determine why the refinance did not occur, the Court allowed Nunoo, after the record closed, to present and introduce telephone records as rebuttal evidence, presumably to prove that the title company never called her to obtain a payoff amount. The Court did review the telephone records and considered Nunoo's argument that the failure to refinance is not her fault. Even if her argument is relevant, the telephone records do not definitively prove that Nunoo was not contacted by the title company. Nunoo did not explain to whom the various telephone numbers belonged; nor is it the Court's burden to do so for her.

The Settlement Agreement represents the amount due to Nunoo by the Debtor. Nunoo acknowledges she accepted \$5,000 paid by the Debtor. The remaining \$2,500 is due to her. Interest was not included in the case of default under the Settlement Agreement, so Nunoo is not entitled to interest.

For the reasons above, Debtor's Objection to Nunoo's Proof of Claim No. 1 is sustained in part and overruled in part.

IT IS SO ORDERED.