

**U.S. BANKRUPTCY COURT  
District of South Carolina**

Case Number: **24-02868-eg**

**Order Overruling Opposition to Claim**

The relief set forth on the following pages, for a total of 8 pages including this page, is hereby ORDERED.

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**FILED BY THE COURT  
11/21/2024**



Entered: 11/21/2024

A handwritten signature in cursive script, appearing to read "Elisabetta G. M. Gasparini".

Elisabetta G. M. Gasparini  
US Bankruptcy Judge  
District of South Carolina

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

IN RE:

Barbara Albyline Gibbs,

Debtor(s).

C/A No. 24-02868-EG

Chapter 13

**ORDER OVERRULING OPPOSITION  
TO SELECT PORTFOLIO  
SERVICING’S PROOF OF CLAIM**

**THIS MATTER** is before the Court on the Opposition to Select Portfolio Servicing’s Proof of Claim (the “Objection”) filed by M. Eugene Gibbs (“Gibbs”), *pro se*.<sup>1</sup> Select Portfolio Servicing, Inc. (“SPS”) and Barbara Albyline Gibbs (“Debtor”)<sup>2</sup> both filed responses to the Objection, denying Gibbs’ allegations and challenging his standing to object to SPS’s claim.<sup>3</sup> The Court issued an order scheduling a hearing on the Objection to take place on November 19, 2024.<sup>4</sup> The Order and Notice of Hearing stated that “[w]hile it appears that Mr. Gibbs is Debtor’s spouse, it is not clear what interest Mr. Gibbs has in any of the assets, whether he claims to be a creditor, and what standing he has to object to SPS’s claim pursuant to 11 U.S.C. § 502.” Gibbs filed a Prehearing Brief in support of the Objection, in which he proffered further allegations about SPS but failed to provide any factual evidence to substantiate his claims or establish his legal standing to raise the Objection.<sup>5</sup>

At the hearing on November 19, 2024, Debtor’s counsel, SPS’s counsel, and the Chapter 13 Trustee (“Trustee”) appeared. Despite being properly served with notice of the hearing,<sup>6</sup> Gibbs

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<sup>1</sup> ECF No. 34, filed Oct. 23, 2024.

<sup>2</sup> Debtor is Gibbs’ wife and is represented in this case by counsel.

<sup>3</sup> ECF Nos. 47 and 49.

<sup>4</sup> ECF No. 36.

<sup>5</sup> ECF No. 48.

<sup>6</sup> See ECF No. 39 (Certificate of Notice confirming that Gibbs was sent the Order and Notice of Hearing by first class mail to his residence in Florence, South Carolina on October 26, 2024). On November 14, 2024, Gibbs filed a notice of appeal of the Order and Notice of Hearing, among several other of this Court’s Orders, which indicates he received notice of the scheduled hearing. The appeal, however, made it unclear whether Gibbs intended for this Court to

did not appear, and the Court noted for the record that he had not filed any request for a continuance or to appear at the hearing by remote means. The parties in attendance offered several exhibits that were admitted into the record without objection.<sup>7</sup> The Court also took judicial notice of the record from Debtor's prior bankruptcy case filed in the Northern District of Georgia ("Georgia Bankruptcy Court"), C/A No. 19-54809, in which an order (the "Georgia Order") was entered overruling Debtor's objection to the mortgage claim filed by Nationstar Mortgage LLC d/b/a Mr. Cooper ("Nationstar") and later assigned to SPS.<sup>8</sup> Debtor's claim objection in that case asserted similar claims against the mortgagor and servicer as the Objection before this Court. The Georgia Order concluded that SPS held a valid claim against Debtor in the amount of the personal and foreclosure judgment awarded to Nationstar by the Court of Common Pleas in Florence County, South Carolina, plus interest and fees. The Georgia Order further indicated that Debtor had not stated a basis to disallow the SPS claim under 11 U.S.C. § 502. In another order on Gibbs' motion for reconsideration of the order denying Debtor and Gibbs' request to refinance their homes (the "Order Denying Reconsideration"), the Georgia Bankruptcy Court denied reconsideration, determining that Gibbs "does not have an ownership interest in the South Carolina property, which is at the center of his various grievances against Nationstar, and therefore does not have a basis to request relief as to the property."<sup>9</sup>

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consider the Objection filed prior to the appeal. *See* ECF No. 52 (Notice of Appeal to District Court). Moreover, Gibbs' pending Motion for TRO/Injunction and Stay addressed to the U.S. District Court for the District of South Carolina (the "District Court") is at times undecipherable and nonsensical and is overall unclear as to what actions or proceedings Gibbs is seeking to stay pending his appeal. *See* ECF No. 54. Because Gibbs did not request a continuance and the appeal does not concern a final order on the merits of the Objection, the Court proceeded with holding the hearing and hereby adjudicating the Objection's merits.

<sup>7</sup> Debtor's Ex. A-H; SPS's Ex. 1.

<sup>8</sup> *In re Gibbs*, C/A No. 19-54809, ECF No. 160 (Bankr. N.D. Ga. Sept. 15, 2023). The Georgia Order indicates that Nationstar filed a Notice of Transfer of Claim on August 21, 2023, transferring its claim to SPS. *Id.* at 4; *see also* POC 3-1, p. 40 (providing a copy of the Assignment of Claim). Gibbs then filed a motion objecting to the transfer. The Georgia Bankruptcy Court denied Gibbs' motion and substituted SPS for Nationstar as the claimant.

<sup>9</sup> *In re Gibbs*, C/A No. 19-54809, ECF No. 137, slip op. at 4 (Bankr. N.D. Ga. April 13, 2023).

From the outset, the Court notes that, to date, Gibbs has filed six pleadings in this case, raising unfounded allegations against Nationstar, SPS, and the Court itself. The motions and briefs on file raise nonsensical claims, leaving it to the Court to unravel the procedural conundrums they present. While all pleadings that Gibbs has filed to date are an attack against various parties, especially SPS, it was not clear whether the appeals and motions filed with the District Court raise issues that overlap entirely with those raised in the Objection, thus divesting the Court of jurisdiction to hear it. *See Levin v. Alms & Assocs., Inc.*, 634 F.3d 260, 263 (4th Cir. 2011) (quoting *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)) (“As a general rule, the filing of an appeal ‘confers jurisdiction on the [appellate court] and divests the [lower] court of its control over those aspects of the case involved in the appeal.’”). Out of an abundance of caution, the Court held the hearing and addressed the relief sought in the Objection, which the District Court may then treat as proposed findings of fact and conclusions of law to the extent necessary if it so chooses. For the reasons set forth below, the Court overrules the Objection to SPS’s claim.

First, Gibbs does not appear to have standing to challenge SPS’s claim, based on a mortgage to which he is not a party. The documents attached to SPS’s proof of claim show that Debtor is the only obligor on the note and mortgage securing SPS’s interest in the residence. Moreover, the Georgia Bankruptcy Court determined that Gibbs does not have an ownership interest in Debtor’s South Carolina property, and he has failed to produce any evidence to rebut that conclusion. As the Georgia Bankruptcy Court previously held, “Mr. Gibbs is not (and was not) either a debtor or a creditor.”<sup>10</sup>

Under 11 U.S.C. § 502, only a “party in interest” can object to the allowance of a creditor’s proof of claim, and Gibbs has not established how he is a party in interest when he does not appear

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<sup>10</sup> *In re Gibbs*, C/A No. 19-54809, ECF No. 137.

to be liable for the mortgage debt or have an ownership interest in Debtor's South Carolina residence. *See In re Hutchinson*, 5 F.3d 750, 756 (4th Cir. 1993) (citations omitted) (stating that the term "party in interest" as used in the Bankruptcy Code "is generally understood to include all persons whose pecuniary interests are directly affected by the bankruptcy proceeding"). The Supreme Court has recently held that the phrase "party in in interest" is meant to be interpreted broadly and should include any party who is "potentially concerned with, or affected by, a proceeding." *Truck Ins. Exch. v. Kaiser Gypsum Co.*, 602 U.S. 268, 269 (2024); *see also In re Team Sys. Int'l, LLC*, No. 22-10066-CTG, 2024 WL 4647489, at \*2 (Bankr. D. Del. Oct. 21, 2024) ("In light of *Truck Insurance*, § 502(a) must be read to permit not only the chapter 7 trustee, but all parties with a direct financial stake in the outcome of a claims allowance dispute, to object to the allowance of claims."). Here, aside from being Debtor's spouse and residing in the residence which serves as SPS's collateral, Gibbs has failed to show how he has any financial stake in the outcome of this bankruptcy case or would be affected by the Court's allowance of SPS's claim in the amount sought. This is compounded by the fact that Debtor—the sole obligor on the note and only one named in the mortgage—does not dispute SPS's claim and has agreed to pay it through her confirmed Chapter 13 plan.

Second, Gibbs' Objection raises the same issues concerning the validity of the mortgage claim that were previously addressed in the Georgia Order. The Court notes that there is no pending appeal of the Georgia Order reflected on the record, and the parties in attendance at the hearing confirmed that, to the best of their knowledge, all appeals of orders in the Georgia bankruptcy case have been exhausted. Accordingly, the doctrine of *res judicata* (claim preclusion) and/or collateral estoppel (issue preclusion) applies to bar Gibbs from relitigating issues previously decided on the merits by the Georgia bankruptcy court. *See Durant v. Big Rig Lending, LLC*, No.

3:18-cv-01700-CMC, 2018 WL 5961088, at \*2 (D.S.C. Nov. 14, 2018) (quoting *Turshen v. Chapman*, 823 F.2d 836, 839 (4th Cir. 1987)) (“The normal rules of res judicata and collateral estoppel apply to the decisions of bankruptcy courts.”); *Covert v. LVNV Funding, LLC*, 779 F.3d 242, 245 (4th Cir. 2015) (citations omitted) (“Federal law governs the res judicata effect of earlier bankruptcy proceedings.”); *In re Varat Enterprises, Inc.*, 81 F.3d 1310, 1315 (4th Cir. 1996) (“Generally, claim preclusion occurs when three conditions are satisfied: (1) the prior judgment was final and on the merits, and rendered by a court of competent jurisdiction in accordance with the requirements of due process; (2) the parties are identical, or in privity, in the two actions; and, (3) the claims in the second matter are based upon the same cause of action involved in the earlier proceeding.”); *In re Swilley*, 295 B.R. 839, 846 (Bankr. D.S.C. 2003) (“For federal collateral estoppel to apply, the proponent must establish the following elements: (1) the issue sought to be precluded is identical to one previously litigated; (2) the issue must have been actually determined in the prior proceeding; (3) determination of the issue must have been a critical and necessary part of the decision in the prior proceeding; (4) the prior judgment must be final and valid; and (5) the party against whom estoppel is asserted must have had a full and fair opportunity to litigate the issue in the previous forum.”).

Though Debtor was the only one in the Georgia case who raised the objection to SPS’s claim, Gibbs was actively involved in that case asserting claims on Debtor’s behalf, meaning he was in privity with Debtor and had a full and fair opportunity to litigate issues in that case.<sup>11</sup>

*Universal Furniture Intern., Inc. v. Frankel*, 538 Fed. Appx. 267, 270 (4th Cir. 2013) (citations

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<sup>11</sup> Notably, Debtor was initially represented by counsel in the Georgia bankruptcy case, but seven months into the case, Debtor’s Georgia counsel filed a motion to withdraw from representing Debtor because, among other reasons, “Debtor’s non-filing spouse has sued Debtor in [an] adversary proceeding and continues to contact Counsel for Debtor despite being in an adversarial position in a contested matter creating a conflict of interest.” *In re Gibbs*, C/A No. 19-54809, ECF No. 45. Following counsel’s withdrawal, the pleadings filed on Debtor’s behalf in that case appeared to be drafted by Gibbs and asserted many of the same allegations raised in the pleadings filed with this Court.

omitted) (explaining that collateral estoppel requires privity, not “an exact identity of parties,” and that two parties are considered in privity when “the interests of one party are so identified with the interests of another that representation by one party is representation of the other's legal right”).

Third, even if the Objection is not barred by *res judicata* and/or collateral estoppel, the Objection should be overruled for lack of prosecution and due to Gibbs’ failure to satisfy his evidentiary burden. Gibbs received notice of the hearing on his contested Objection yet failed to appear and establish grounds for the Court to grant his requested relief. Under the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, if a creditor’s proof of claim is properly filed and contains the information as set forth in Bankruptcy Rule 3001, it constitutes *prima facie* evidence of the validity and amount of the claim. 11 U.S.C. § 502(a); Fed. R. Bankr. P. 3001(f); *In re Simmons*, 643 B.R. 565, 572 (Bankr. D.S.C. 2022). The burden to introduce evidence rebutting the claim’s presumptive validity then shifts to the party objecting to the claim—here Gibbs, to the extent he even has standing. *In re Harford Sands Inc.*, 372 F.3d 637, 640 (4th Cir. 2004) (citing Fed. R. Bankr. P. 9017; Fed. R. Evid. 301; 4 COLLIER ON BANKRUPTCY ¶ 501.02[3][d] (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev. 2004)). SPS’s claim (POC 3-1) meets the requirements of Bankruptcy Rule 3001.<sup>12</sup> As stated on the record at the Objection hearing, SPS’s proof of claim constitutes *prima facie* evidence of the validity of SPS’s claim.

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<sup>12</sup> The proof of claim must conform substantially to Official Form 410. *See* Fed. R. Bankr. P. 3001(a). The proof of claim must also contain certain supporting information set forth in Rule 3001: (1) a claim based on a writing must attach a copy of that writing; (2) if the claim includes pre-petition interest, fees, expenses, or other charges, an itemized statement of those charges must be filed; (3) if a security interest is claimed in the Debtor's property, a statement of the amount necessary to cure any default must be filed; (4) if the security interest claimed is a lien on the debtor's principal residence, Official Form 410A must also be filed, which provides a record of payments and calculations of the total debt and arrearage as of the date of the petition, and if an escrow account has been established, an escrow account statement should also be filed; and (5) if a security interest is claimed, evidence that the security interest has been perfected. *See* Fed. R. Bankr. P. 3001(c) and (d); *see also In re Sherman*, 639 B.R. 618, 622 (Bankr. D.N.M. 2022) (summarizing the requirements of Fed. R. Bankr. P. 3001 for a proof of claim to be valid and constitute *prima facie* evidence of the validity and amount).

Gibbs was not present to prosecute his Objection and has not provided any evidence to rebut the presumed validity of SPS's claim.

For the foregoing reasons, the Court finds that Gibbs has not carried his burden and the Objection should be overruled. The Court further observes that the vexatious pleadings that Gibbs has filed with the Court, coupled with his behavior and filings in other proceedings in several different forums, are expending unnecessary judicial resources. In addition, the frivolous documents have increased the amount of SPS's claim as the mortgagor's attorney's fees for responding to and defending against the allegations continue to accrue. As indicated at the hearing, this conduct has been ongoing, occurring both in the Georgia bankruptcy case and in the state foreclosure action—leading to an order prohibiting Gibbs from filing pleadings without leave of court in the state court case.<sup>13</sup> To the extent Gibbs continues to file unfounded and frivolous pleadings that give the Court cause for concern under Bankruptcy Rule 9011, the undersigned will consider entering a rule to show cause as to why a similar gatekeeping order should not be entered utilizing the factors set forth in *Thomas v. Fulton*, 260 Fed. Appx. 594, 596 (4th Cir. 2008).<sup>14</sup>

**IT IS, THEREFORE, ORDERED** that the Objection to SPS's claim is overruled.

**IT IS FURTHER ORDERED** that the Clerk's Office is directed to serve a copy of this Order by U.S. mail on Debtor, Gibbs (separately from the copy sent to Debtor), and SPS (via mail), and by electronic CM/ECF notification on Debtor's counsel, SPS's counsel, the Chapter 13 Trustee, and the United States Trustee.

**AND IT IS SO ORDERED.**

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<sup>13</sup> SPS Ex. 1.

<sup>14</sup> The factors considered in deciding whether to issue a pre-filing injunction are as follows:

(1) the party's history of litigation, in particular whether he has filed vexatious, harassing, or duplicative lawsuits; (2) whether the party had a good faith basis for pursuing the litigation, or simply intended to harass; (3) the extent of the burden on the courts and other parties resulting from the party's filings; and (4) the adequacy of alternative sanctions.