



**Dated: December 16, 2025**  
**The following is ORDERED:**

*Jennie D. Latta*

**Jennie D. Latta**  
**UNITED STATES BANKRUPTCY JUDGE**

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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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In re ROBERT EARL STEVENS,  
Debtor.

Case No. 25-20978-L  
Chapter 13

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Robert Earl Stevens,  
Plaintiff,  
v.  
NP 162, LLC and  
West Coast 2021-4, LLC,  
Defendants.

Adv. Proc. No. 25-00089  
Jury Demanded

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**MEMORANDUM OPINION  
ON MOTION TO DISMISS**

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BEFORE THE COURT is West Coast 2021-4, LLC (“West Coast”)’s motion to dismiss the Complaint. Related to this is the Debtor’s objection to Claim No. 14 and West Coast’s response to the objection. The Complaint and Objection to Claim arise out of a deed of trust encumbering real

property known as 1830 Saxony Cove, Cordova, Tennessee. The Debtor/Plaintiff alleges that West Coast falsely represents itself as the owner of a note made by him on May 10, 2002, payable to the order of NLC, Inc. The Defendants ask that the Complaint be dismissed for failure to state a claim for which relief may be granted.

### **JURISDICTION, VENUE, AND AUTHORITY**

Jurisdiction over adversary proceedings arising under the Bankruptcy Code and the claims allowance process lie with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). Determination of the allowance of a claim arises under the Bankruptcy Code and thus is a core proceeding. The Complaint is in essence a counterclaim against the Defendants arising from the same facts and circumstances that underly the objection to claim. Thus, the adversary proceeding, too, is a core proceeding notwithstanding the Plaintiff's demand for a jury trial. *See* 11 U.S.C. § 502, and 28 U.S.C. § 157(b)(2)(B) and (C). Venue of this adversary proceeding is proper to the Western District of Tennessee because this proceeding arises in a bankruptcy case pending in this district. *See* 28 U.S.C. § 1409(a).

### **STANDARD FOR CONSIDERING MOTIONS TO DISMISS**

Defendant West Coast moves to dismiss the adversary complaint pursuant to Rule 12(b)(6) of the *Federal Rule of Civil Procedure* made applicable to this proceeding by Rule 7012(b) of the *Federal Rules of Bankruptcy Procedure*. Rule 12(b)(6) permits a party to raise the defense of failure to state a claim upon which relief may be granted by motion before an answer is filed.

Rule 8 of the *Federal Rules of Civil Procedure* contains guidelines of pleading:

(a) Claims for Relief. A pleading that states a claim for relief must contain:

- (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
- (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

West Coast essentially argues that the Plaintiff has failed to state his claims with sufficient particularity to provide a basis for relief. The court agrees that the Complaint could have been made with greater particularity but believes it adequately states the Debtor/Plaintiff's position that (a) West Coast has failed to show that it is entitled to enforce the note that is the subject of the proof of claim filed by NP 162 LLC; (b) the statute of limitations for enforcement of the note has expired; and (c) he has been damaged by the unlawful attempts of NP 162 LLC and West Coast and their agents to enforce the note.

### **BACKGROUND FACTS**

The Debtor/Plaintiff filed a voluntary petition under Chapter 13 of the Bankruptcy Code on February 26, 2025. Bankruptcy Case, ECF No. 1.

Among his assets, the Debtor listed real property located at 1830 Saxony Cove, Cordova, Tennessee. Schedule A/B.

The Debtor identified Defendant NP 162, LLC as a creditor holding a debt secured by the real property on Saxony Cove. Schedule D.

The Debtor estimated the amount of the secured claim at \$30,000 and the value of the real property at \$240,600. *Id.*

NP162, LLC filed claim number 14 in the amount of \$95,385.63 on May 5, 2025. Claims Register. Attached to the proof of claim is a spread sheet that commences on December 10, 2007, showing three payments of \$293.73 and one additional payment of \$1,085 on December 30, 2016. Neither the source of the spreadsheet nor the source of the payments is identified. Also attached to the proof of claim is a Lost Instrument Affidavit signed by Robin P. Arkley, II, as president of SN Servicing Corporation, attorney in fact for NP 162, LLC. It claims that a copy of the original note is attached, but in fact only a copy of a copy of the original note is attached together with an Allonge showing endorsement of the note without recourse from Greenco Sub II LLC to NP162, LLC. Claims Register, Proof of Claim 14-1.

On June 9, 2025, West Coast gave notice of the transfer of claim number 14 to itself. Claims Register and Bankruptcy ECF No. 25.

On August 25, 2025, the Debtor objected to the proof of claim. The Debtor asserts that the claim is in an incorrect amount. The Debtor acknowledges that he signed a promissory note date May 10, 2002, in the original principal amount of \$33,400 secured by a second mortgage (actually a deed of trust) that was to be repaid over 15 years. Debtor further acknowledges that he filed a Chapter 7 petition on January 2, 2009, and that he intended to reaffirm his secured debt, but the creditor did not file a proof of claim or respond to his inquiries. The Debtor further alleges that he attempted to make payments to the original creditor but that these were returned or refused. The Debtor alleges that NP162 has failed to show that it is the owner of his note. *Objection to Claim*, Claims Register and Bankruptcy ECF No. 28.

On September 18, 2025, West Coast filed its response to the objection to claim and on September 22, 2025, filed an amended response which is supported by the Affidavit of Heidi

Gonsalves, Loan Servicing Home Retention Specialist for West Coast Servicing, Inc. Bankruptcy ECF. No. 33, Exhibit A.

Identified by Ms. Gonsalves and attached to her affidavit are copies of the note, deed of trust, and transfer of claim. *Id.*

The copy of the note attached to the affidavit is a copy of a copy of the original note retained by the closing attorney. *Id.*, Exhibit A.1.

The note is made payable to “NLC, Inc.” and directs the borrower, Robert Stevens, to make monthly payments of \$321.24 to 700 W. Hillsboro Blvd., B -1 #204, Deerfield Beach, FL 33441. The maturity date stated in the note is May 10, 2017. *Id.* at Exhibit A-1.

Ms. Gonsalves avers that West Coast is the owner of the note and the assignee of the Deed of Trust. *Id.* at ¶ 7.

In support of this allegation, Ms. Gonsalves relies upon the Transfer of Claim Other Than for Security. *Id.* at Exhibit A.3. This document indicates a transfer from “NP162” to “West Coast 2021-4, LLC.” *Id.* It directs that payments continue to be paid to West Coast Servicing, Inc. *Id.* It references West Coast account number xxx3610 and NP162 account number xxx9373.

On September 24, 2025, the Debtor/Plaintiff filed his *Complaint for Damages* initiating the related adversary proceeding.

The Plaintiff alleges that the note was purchased from NLC, Inc. by Wilshire Mortgage Corporation. Adv. Proc. ECF No. 1, ¶ 10. In support of this allegation, the *Complaint* includes an “Important Notice” from Wilshire Credit Corporation demanding that payment of \$348.60 be made on Loan No. xxx657 to it. The demand is addressed to the Debtor/Plaintiff at the Saxony Cove address, but there is no other indication that this is the loan memorialized in the note made payable to NLC, Inc. Adv. Proc. ECF No. 1, Exhibit 1.

The Plaintiff further alleges that it was contacted by SN Servicing Corporation in the year 2016 or 2017 with regard to the note, but that he was unable to verify whether SN Servicing Corporation was acting with authority from the note holder. Adv. Proc. ECF No. 1, ¶¶ 12-17.

The Plaintiff further alleges that at some point Defendant NP 162, LLC asserted that it was the owner of the note. Adv. Proc. ECF No. 1, ¶ 17. The Plaintiff alleges that NP 162, LLC also refused to provide proof of its ownership of the note. Adv. Proc. No. 1, ¶¶ 18-21.

The Plaintiff ultimately sued SN Servicing Corporation and NP 162, LLC in the Chancery Court of the Thirtieth Judicial District of Tennessee. This suit was resolved by consent order providing for the rescission of a Substitute Trustee's Deed recorded by one or both of the defendants, and reaffirmation of the original deed of trust. Adv. Proc. ECF No. 1, Exhibit 3.

The Plaintiff further alleges that West Coast "is now representing that it is the creditor, and owner of the second mortgage note." Adv. Proc. ECF No. 1, ¶ 24.

The Plaintiff alleges that West Coast has refused to provide a chain of custody or payment history with respect to the note. Adv. Proc. ECF No. 1, ¶ 25-26.

The Plaintiff further alleges that the note matured on May 10, 2017, and that the statute of limitations has run. Adv. Proc. ECF No. 1, ¶ 29-30.

The Plaintiff further alleges that the note and deed of trust require that any notices sent to him be sent by certified mail and that the Defendants have failed to fulfill this requirement. Adv. Proc. ECF No. 1, ¶ 31-32.

The Debtor/Plaintiff seeks damages for tortious interference with contract, breach of contract, fraud, conversion, negligence, and violation of the Fair Debt Collection Practices Act. More importantly, however, the Debtor/Plaintiff asks that West Coast's claim be disallowed

because it has failed to show that it is the owner of the note or that it represents the owner of the note.

### **DISCUSSION**

Pursuant to section 502(a) of the Bankruptcy Code, “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest ... objects.” 11 U.S.C.A. § 502. A properly filed proof of claim is “prima facie evidence of the claim's validity and amount.” Fed. R. Bankr. P. 3001(f). Once an objection is filed, however, “[t]he burden then shifts to the claimant if the objector produces evidence equal in force to the prima facie case which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency.” *Creamer v. Motors Liquidation Co. Guc Trust (In re Motors Liquidation Co.)*, No. 12 Civ. 6074 (RJS), 2013 WL 5549643, at \*3 (S.D.N.Y. Sept. 26, 2013) (internal quotation marks omitted). Once the burden shifts back to the claimant, “it must then prove by a preponderance of the evidence that under applicable law the claim should be allowed.” *In re Oneida Ltd.*, 400 B.R. 384, 389 (Bankr. S.D.N.Y. 2009), *aff'd sub nom Peter J. Solomon Co., L.P. v. Oneida Ltd.*, 2010 WL 234827 (S.D.N.Y. Jan. 22, 2010).

#### **Missing Endorsement**

NP 162 LLC filed proof of claim number 14 on May 5, 2025. Attached to the proof of claim is a Lost Instrument Affidavit signed by Robin P. Arkley, II, as President of SN Servicing Corporation, attorney in fact for NP 162 LLC. The affidavit recites that after diligent search, the original note cannot be found among the records of NP 162 LLC. The affidavit claims that NP 162 LLC was in possession of the note and was entitled to enforce it when the note was lost, but the affidavit gives no explanation for how NP 162 LLC came into possession of the note. The affidavit claims that “a true and correct signed copy of the original Note is attached as an Exhibit,” but the

attached exhibit clearly is a copy of a copy of the original note. The copy attached to the affidavit includes an Allonge with an endorsement from Greenco Sub II, LLC to NP162, LLC. The affidavit provides no information concerning the identity of Greenco Sub II, LLC or explanation of how the note came into the possession of it. The Debtor/Plaintiff is correct when he asserts that there is a break in the chain of endorsements. Moreover, the copy of a copy of the original note does not satisfy the requirement that NP 162 LLC actually came into possession of the original note.

The Debtor/Plaintiff is well within his rights to demand that the original note be produced or, at a minimum, that he be provided with some explanation of the transfer of the note by its original holder that ultimately resulted in transfer of the note to NP162 LLC and then to West Coast.

Under the Uniform Commercial Code, a person not in possession of a negotiable instrument may enforce it only if that person proves its right to enforce it. Tenn. Code Ann. § 47-3-309(b). With some exceptions, the person entitled to enforce a negotiable instrument is the holder of that instrument. Tenn. Code Ann. § 47-3-301. The “holder” is “the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession.” Tenn. Code Ann. § 47-1-201(22). Where there is a missing endorsement, “[u]nless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of endorsement by the transferor, the transferee has a specifically enforceable right to the unqualified endorsement of the transferor, but negotiation of the instrument does not occur until the endorsement is made.” Tenn. Code Ann. § 47-3-203(c).

The Complaint when read together with the Objection to Claim gives adequate notice to the Defendants that the Debtor/Plaintiff contends that West Coast has failed to prove or cannot prove that it is entitled to enforce the note.



### **Statute of Limitations**

The Complaint also raises the question of the running of the statute of limitations. The Tennessee Commercial Code provides a six-year limitation on commencement of actions to enforce a note payable at a definite time: “an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six (6) years after the due date or dates stated in the note or, if a due date is accelerated, within six (6) years after the accelerated due date.” Tenn. Code Ann. § 47-3-118(a).

The note matured May 10, 2017. Six years after that date was May 10, 2023. Although there is a reference to a non-judicial foreclosure in the consent order entered in the Chancery Court on August 24, 2024, the effect of the consent order was to rescind that sale. The court cannot determine whether any action was timely commenced to enforce the note.

The Complaint when read together with the Objection to Claim gives adequate notice to the Defendants that the Debtor/Plaintiff contends that the statute of limitations expired before NP 162 LLC and/or West Coast brought an action to enforce the note.

### **Claim for Damages**

The Complaint asks for compensatory and punitive damages and other relief allowed under law but does not specify how the Plaintiff was damaged and in what amounts. The Complaint certainly could have been more specific about the Plaintiff’s claims but gives adequate notice to the Defendants that the Debtor/Plaintiff asserts that he has been damaged by their unlawful conduct in attempting to coerce payment of the note.

### **CONCLUSION**

For the foregoing reasons, the Motion to Dismiss will be DENIED. The Defendants shall have thirty days from entry of this Opinion and corresponding order to answer the Complaint

following which the court will set a pretrial conference to determine when and where a trial on the merits of the Debtor's Objection to Claim and Complaint shall be heard.

cc: Debtor/Plaintiff  
Attorney for Debtor/Plaintiff  
Creditor/Defendants  
Attorneys for Creditor/Defendants  
Chapter 13 Trustee