



SO ORDERED.

SIGNED this 16 day of October, 2020.

Joseph N. Callaway

Joseph N. Callaway
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
GREENVILLE DIVISION

IN RE:)	
)	Case No.: 19-05790-5-JNC
APRIL C. TWIDDY,)	
)	
Debtor.)	Chapter 13
)	

**ORDER SUSTAINING THE OBJECTION TO
PROOF OF CLAIM (Claim #10) FILED BY SCOLOPAX, LLC**

THIS CAUSE coming on to be heard before the above-signed and it thus appears that no response has been submitted within the times allowed and that it thus appears that such the debtor's objection to proof of claim #10 filed by Scolopax, LLC, on February 26, 2020, in the amount of \$2,256.06 should be sustained. It is hereby determined as follows:

1. The debtor filed her case on December 18, 2019, seeking relief under Chapter 13 of the United States Bankruptcy Code.
2. On February 26, 2020, Scolopax, LLC filed a proof of claim asserting that it is an assignee of Erios, LLC and that the originator of the alleged obligation is an entity identified only as "ADF."

3. The debtor alleges and this court determines that Scolopax, LLC's alleged predecessor-in-interest "ADF" means Applied Data Finance, LLC doing business as "Personify Financial" and it engages in internet lending across the country making loans to consumers at rates exceeding the rates authorized under North Carolina law for loans made to North Carolina residents or that, in the alternative, ADF uses a "straw lender" to nominally make loans through First Electronic Bank to claim federal preemption of state consumer protection laws but because Applied Data Finance retains the economic benefits of the loans processed through its internet platform, it is, in form and substance, the "true lender" and thus is not entitled to claim federal preemption of North Carolina's consumer protection laws.

4. Because the loans are subject to regulation under the North Carolina Consumer Finance Act (NCCFA) codified at N.C. Gen. Stat. § 53-164 *et seq.* because the loan made to the debtor herein exceeded the rates allowed under the NCCFA, the loan is void *ab initio* pursuant to N.C. Gen. Stat. § 53-166(d) and the claim is unenforceable against the debtor.

5. As such, Scolopax, LLC's status as a subsequent purchaser, assignee, or servicer does not affect the status of the claim as the alleged loan was void from its inception.

6. Because the claim of Scolopax, LLC was void *ad initio*, it is unenforceable against the debtor and is disallowed as provided under 11 U.S.C. § 502(b)(1).

7. As an additional ground for disallowing the claim, a writing was not attached to the proof of claim documenting Scolopax, LLC's ownership of the claim nor any writing by which it can be determined that the debtor is indebted to Scolopax, LLC or any claimed predecessor-in-interest in violation of Rule 3001(c) of the Federal Rules of Bankruptcy Procedure.

8. This Court concludes that proof of claim #10 filed by creditor Scolopax, LLC should be disallowed under 11 U.S.C. § 502(b)(1) as the claim is unenforceable against the debtor pursuant to N.C. Gen. Stat. § 53-166(d) and fails to comply with the requirements of Rule 3001 of the Federal Rules of Bankruptcy Procedure.

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. That the debtor's Objection to Proof of Claim (Claim #10) filed by Scolopax, LLC in the amount of \$2,256.06 is sustained and the claim is hereby disallowed in its entirety as unenforceable against debtor as provided under the North Carolina Consumer Finance Act.

END OF DOCUMENT