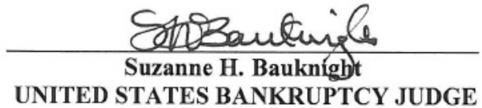
SO ORDERED.
SIGNED this 14th day of November, 2019

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.



Suzanne H. Bauknight
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE

In re

MARY SUE WEAVER
dba KNOX HARDWOOD FLOORING CO.

Debtor

Case No. 3:18-bk-33381-SHB
Chapter 13

JEFFREY MELLENCAMP
dba MILLWOOD SPECIALTY FLOORING

Plaintiff

v.

Adv. No. 3:19-ap-03011-SHB

MARY SUE WEAVER

Defendant

MEMORANDUM AND ORDER
DENYING MOTION FOR SUMMARY JUDGMENT

On February 7, 2019, Plaintiff filed the Complaint Objecting to Dischargeability of Debt and Discharge of Debtor ("Complaint") [Doc. 1], commencing this adversary proceeding, seeking a judgment against Defendant and a determination that the judgment is nondischargeable

under 11 U.S.C. § 523(a)(2)(A), (a)(2)(B), (a)(4), and/or (a)(6). Defendant filed her Answer on May 6, 2019 [Doc. 12], denying that Plaintiff is entitled to a nondischargeable judgment against her.

Presently before the Court is the Motion for Summary Judgment ("Motion") filed by Defendant on July 19, 2019 [Doc. 25], which is supported by a brief and a statement of undisputed facts as required by E.D. Tenn. LBR 7056-1(a) [Docs. 28, 29.] Plaintiff responded to the Motion and statement of undisputed facts [Docs. 32, 34] and filed a statement of additional facts as authorized by E.D. Tenn. LBR 7056-1(c) [Doc. 35]. Because Defendant did not respond to the statement of additional facts by the August 23, 2019 deadline, those additional facts are deemed admitted. *See* E.D. Tenn. LBR 7056-1(b), (c). The Court has also considered all documents of record in Defendant's underlying bankruptcy case that have been referenced by either party in either statement of undisputed material facts.[1]

I. UNDISPUTED FACTS

For the purposes of summary judgment, the following facts are of record or are not disputed by the parties. When Defendant filed the Voluntary Petition commencing her Chapter 13 bankruptcy case on November 1, 2018, she and Plaintiff were involved in *Mellencamp v. Weaver*, No. 2-6-18, pending in Knox County Circuit Court ("State Court Litigation"). [Docs. 29, 34 at ¶¶ 1, 3.] Because the State Court Litigation had not been tried or adjudicated, Defendant listed Plaintiff as an unsecured creditor in her statements and schedules, noting that the debt was contingent, unliquidated, and disputed. [*Id.* at ¶¶ 2, 4.; *Weaver* Doc. 38.]

Defendant filed her Chapter 13 Plan on November 29, 2018 [Docs. 29, 34 at ¶ 5; *Weaver* Doc. 35], and objections to confirmation were filed by the Chapter 13 Trustee, Fifth Third Bank,

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[1] All references to documents of record in Defendant's bankruptcy case are designated as "*Weaver* Doc."

and Plaintiff.[2] [*Weaver* Docs. 57-58, 60.] Following resolution of the objections, Defendant's Chapter 13 Plan was confirmed on June 25, 2019, providing, *inter alia*, unsecured creditors will receive pro rata distribution of funds available after payment of all other separately classified claims. [Docs. 29, 34 at ¶ 7; *Weaver* Doc. 113.]

On December 7, 2018, Plaintiff timely filed an unsecured proof of claim in the amount of $90,458.08 ("Claim No. 8") [Docs. 29, 34 at ¶ 8]. Two months later, Plaintiff timely filed the Complaint initiating this adversary proceeding. [Doc. 1; Doc. 35 at ¶ 2.] Defendant filed and amended an objection to Claim No. 8 on April 15, 2019 (collectively, "Claim Objection"). [Docs. 29, 34 at ¶¶ 13; *Weaver* Docs. 108, 110.] Defendant's Claim Objection asserted that Plaintiff's claim was undisputed, unliquidated, and not ripe for payment, relying on the pendency of this adversary proceeding as proof.[3] [Doc. 35 at ¶ 5; *Weaver* Docs. 108, 110.] Several weeks later, on May 6, 2019, Defendant filed her Answer, expressly acknowledging that she owes Plaintiff a debt but disputing the amount. [Doc. 12 at ¶¶ 13, 24; Docs. 29, 34 at ¶ 10; Doc. 35 at ¶ 4.] When Plaintiff did not file any opposition to the Claim Objection, on May 21, 2019, the Court entered an Order striking Claim No. 8 ("May 21 Order"). [*Weaver* Doc. 111.][4]

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[2] The Statement of Undisputed Facts and Plaintiff's response thereto state that Plaintiff did not file an objection to confirmation. [Docs. 29, 34 at ¶ 6.] However, as reflected in the record of Defendant's underlying bankruptcy case, Plaintiff timely lodged an objection to confirmation based on good faith, best interests, and feasibility on December 10, 2018. [*Weaver* Doc. 57.] Plaintiff's objection to confirmation was subsequently overruled after the hearing on December 19, 2018, at which Plaintiff failed to appear and prosecute his objection. [*Weaver* Doc. 70.]

[3] The Amended Objection to Claim of Jeff Mellencamp expressly states the basis for objection as follows:

> As noted in Schedule F [*sic*], this claim is undisputed and is not liquidated. As further proof, the Debtors [*sic*] would point to the Adversary proceeding styled Mellencamp v. Weaver in which the Plaintiff, Jeff Mellencamp, has asked the court to determine the amount of damages, if any, owed to her [*sic*] by Debtor Mary Weaver. This claim is not liquidated and therefore is not ripe for payment by the Chapter 7 [*sic*] Trustee.

[Doc. 110.]

[4] The Claim Objection and May 21 Order both incorrectly designate Defendant's underlying bankruptcy case as a Chapter 7 case, notwithstanding that it was filed under and remains an ongoing Chapter 13 case.

Defendant does not address the merits of Plaintiff's 11 U.S.C. § 523(a)(2)(A) nondischargeability action. Instead, she argues that entry of the May 21 Order is determinative as to the issues in controversy because Plaintiff's claim was "deemed disallowable and invalid in a prior proceeding," [Doc. 28 at 5] so that (a) Plaintiff is collaterally estopped from litigating this adversary proceeding and (b) Defendant is entitled to dismissal of this adversary proceeding as a matter of law. [Doc. 28.] Because the Court holds that the May 21 Order was not determinative of Defendant's liability to Plaintiff, collateral estoppel does not preclude Plaintiff's litigation of this adversary proceeding against Defendant, and summary judgment will be denied.

II. ANALYSIS

A. Rule 56 – Standard for Summary Judgment

Federal Rule of Civil Procedure 56, which is applicable to adversary proceedings by virtue of Rule 7056 of the Federal Rules of Bankruptcy Procedure, provides that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law[,]" utilizing the procedures defined in subsections (c)(1) through (c)(4). When deciding a summary judgment motion, the Court does not weigh the evidence to determine the truth of the matter asserted but simply determines whether a genuine issue for trial exists, and "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

As movant, Defendant bears the burden of proving that the record presented to the Court establishes the lack of a genuine dispute of material fact such that she is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986); *Owens Corning v. Nat'l Union Fire Ins. Co.*, 257 F.3d 484, 491 (6th Cir. 2001). "A genuine dispute of material fact exists

when 'there is sufficient evidence favoring the nonmoving party for a [fact-finder] to return a verdict for that party.'" *Laster v. City of Kalamazoo*, 746 F.3d 714, 726 (6th Cir. 2014) (quoting *Anderson*, 477 U.S. at 249). "[The] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion[,]" *Celotex Corp.*, 477 U.S. at 323, and "[a]s the party moving for summary judgment, Defendant[] bear[s] the burden of showing the absence of a genuine issue of material fact as to at least one essential element of Plaintiff's claim[s]." *Laster*, 746 F.3d at 726.

Once the initial burden of proof is met, the burden shifts to the nonmoving party to prove that there are genuine disputes of material fact for trial, but reliance solely on allegations or denials contained in the pleadings is insufficient because a "mere scintilla of evidence in support of the nonmoving party will not be sufficient." *Nye v. CSX Transp., Inc.*, 437 F.3d 556, 563 (6th Cir. 2006); *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). "A party asserting that a fact cannot be or is genuinely disputed must support the assertion by . . . citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials[.]" Fed. R. Civ. P. 56(c)(1)(A). The Court must view the facts and all resulting inferences in a light most favorable to Plaintiff (as the respondent) and decide whether "the evidence presents a sufficient disagreement to require submission to a [fact-finder] or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 243. Summary judgment is appropriate only if the fact-finder could not find for the non-moving party based on the "the record taken as a whole." *Matsushita*, 475 U.S. at 587.

B. Collateral Estoppel

Defendant asserts that because the May 21 Order struck Claim No. 8, all matters in controversy were determined so that Plaintiff is now precluded from prosecuting this adversary proceeding by application of collateral estoppel.

> Issue preclusion, or collateral estoppel, bars subsequent relitigation of a fact or issue where that fact or issue was necessarily adjudicated in a prior cause of action and the same fact or issue is presented in a subsequent suit. *See* Restatement (Second) of Judgments § 13 (1982) ("[F]or purposes of issue preclusion . . ., 'final judgment' includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect."); Restatement (Second) of Judgments § 27 (1982) ("When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim."). Four specific requirements must be met before collateral estoppel may be applied to bar litigation of an issue: (1) the precise issue must have been raised and actually litigated in the prior proceedings; (2) the determination of the issue must have been necessary to the outcome of the prior proceedings; (3) the prior proceedings *must have resulted in a final judgment on the merits*; and (4) the party against whom estoppel is sought must have had a full and fair opportunity to litigate the issue in the prior proceeding. *N.A.A.C.P. v. Detroit Police Officers Ass'n*, 821 F.2d 328, 330 (6th Cir. 1987). In determining whether the defensive use of collateral estoppel is appropriate, the court must also consider whether the party against whom the judgment is pled had a full and fair opportunity to litigate the issue, and whether it would be otherwise unfair under the circumstances to permit the use of collateral estoppel. Restatement (Second) [of] Judgments § 29 (1982).

Cobbins v. Tenn. Dep't of Transp., 566 F.3d 582, 589-90 (6th Cir. 2009) (emphasis in original).

The Court finds that the undisputed facts do not establish that the validity and amount of Claim No. 8 were decided on the merits so that the May 21 Order is not a final adjudication of the validity and amount of Claim No. 8. Plaintiff has not had a full and fair opportunity to litigate the issue, and it would be unfair to permit the use of collateral estoppel against Plaintiff in this adversary proceeding.

The basic law concerning allowance of claims is forthright and has been succinctly stated by this Court as follows.

> A proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence as to the claim's validity and amount and is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a) (2006); Fed. R. Bankr. P. 3001(f). A claim's validity first stems from the status as a creditor of the debtor, which is defined by the Bankruptcy Code as "[an] entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor[,]" 11 U.S.C. § 101(10)(A) (2006), whereas "claim" is defined as:
>
> > (A) [the] right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
> >
> > (B) [the] right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.
>
> 11 U.S.C. § 101(5) (2006). In the event of an objection, the objecting party must present evidence rebutting the proof of claim by refuting at least one allegation that is essential to the legal sufficiency of the claim, after which the burden of proof shifts to the claimant to prove the claim's validity by a preponderance of the evidence. *In re Cleveland,* 349 B.R. 522, 527 (Bankr. E.D. Tenn. 2006) (citation omitted).

In re Saroff, 509 B.R. 166, 171–72 (Bankr. E.D. Tenn. 2014).

Some of the principles argued by Defendant are correct. The Sixth Circuit recently held that "an uncontested proof of claim that is allowed pursuant to 11 U.S.C. § 502(a) is a final judgment on the merits for the purposes of res judicata [which incorporates therein collateral estoppel], with or without a separate court order specifically allowing the claim." *Trs. of Operating Eng'rs Local 324 Pension Fund v. Bourdow Contracting, Inc.*, 919 F.3d 368, 383 (6th Cir. 2019). Under Supreme Court authority, "a creditor who offers a proof of claim and demands its allowance is bound by what is judicially determined, and if his claim is rejected, its validity may not be relitigated in another proceeding on the claim." *Katchen v. Landy*, 382 U.S. 323, 334 (1966) (citations omitted). In this case, the inquiry does not end there.

> A claim that is allowed or disallowed based on a party's inaction is not, in fact, litigated or decided upon the merits. *See Colley v. Nat'l Bank of Texas (In re Colley)*,

> 814 F.2d 1008, 1010 (5th Cir. 1987) (discussing the standards for reconsideration of a claim). Thus, a default order sustaining a debtor's claim objection generally is not entitled to preclusive effect. *See, e.g., Cruz v. Educ. Credit Mgmt. Corp. (In re Cruz)*, 277 B.R. 793, 796 (Bankr. M.D. Ga. 2000) (holding that an order sustaining an objection to a creditor's claim based on the creditor's lack of response did not have preclusive effect in a subsequent adversary proceeding). Moreover, if an issue must be raised through an adversary proceeding, courts have generally held that it is not part of the contested matter, and, unless it is actually litigated in the contested matter, an order entered in the contested matter will not have preclusive effect.

Litton Loan Servicing, LLP v. Eads (In re Eads), 417 B.R. 728, 741-42 (Bankr. E.D. Tex. 2009); *cf. In re Owsley*, 494 B.R. 321, 328 (Bankr. E.D. Tenn. 2013) ("'[D]isallowance of a claim and nondischargeability are separate issues.'" (quoting *Zich v. Wheeler Wolf Attorneys (In re Zich)*, 291 B.R. 883, 886 (Bankr. M.D. Ga. 2003))).

Defendant argues with respect to the first collateral-estoppel requirement that bankruptcy courts have the jurisdiction to determine the validity and amount of claims, as well as dischargeability, and that "a claim which has been stricken nullifies its validity and is actually litigated on its merits." [Doc. 28 at 3.] Defendant also asserts that "[t]he previous proceeding at issue exclusively concerned the Court's determination of the validity of the Plaintiff's claim." [*Id*. at 4.] As to the third element of collateral estoppel, Defendant argues that under "established law," an order that allows or disallows a claim is a final order that is entitled to preclusive effect – that is, "[t]he invalidity of the Plaintiff's claim has been adjudicated and ordered; therefore, proof of the claim is disallowed in the current proceeding, as evidenced by the Court's order striking the claim," and "that disallowance of [a] claim negates its validity and existence, and dischargeability becomes moot." [*Id.*] Finally, with respect to the last element – the opposing party's full and fair opportunity to litigate the issue in the prior proceeding – Defendant acknowledges that "[t]his case is complicated by the fact that the Plaintiff filed the adversary proceeding against Ms. Weaver" but asserts that "the Court's determination that the claim is

disallowed based on the Plaintiff's failure to appear proves indisputably that the Plaintiff had the ***opportunity*** to litigate the issue as required by law." [*Id.* (emphasis in original).]

The Court disagrees and finds that in this case, collateral estoppel does not apply. Instead, the Court follows the guidance of the *Eads* court. Defendant objected to Claim No. 8 utilizing the passive notice procedure authorized under the Local Rules of the Bankruptcy Court for the Eastern District of Tennessee, which allows the Court to consider the underlying matter without further notice or hearing unless a party-in-interest (here, Plaintiff) objects within thirty days. *See* E.D. Tenn. LBR 9013-1(h)(2), -(3)(i).[5] Because Plaintiff did not file a response to the Claim Objection, which was expressly and solely based on the fact that Claim No. 8 was "not liquidated, " as evidenced by "the Adversary proceeding styled Mellencamp v. Weaver in which the Plaintiff . . . has asked the court to determine the amount of damages, if any, owed" [*Weaver* Doc. 110], the Court entered the May 21 Order without further notice or hearing. The amount and validity of Claim No. 8, however, were never adjudicated. Given Defendant's reliance on the existence of this adversary proceeding as the basis for disallowing the claim, Defendant's argument is entirely circular. Further, Defendant's Claim Objection could well be read to defer to the Court's ultimate ruling in this adversary proceeding for a determination of the amount of liability owed by Defendant to Plaintiff. Thus, it seems entirely disingenuous for Defendant to assert that disallowance of Claim No. 8 precludes Plaintiff from prosecuting this adversary proceeding.[6]

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[5] Although not addressed before entry of the May 21 Order, the record reveals that the Claim Objection did not include the correct passive notice legend required by the Local Rules in that it neglected to include the following language added by the December 2017 amendments for objections to claims: "**Your claim may be reduced, modified, or eliminated**. **You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one**." E.D. Tenn. LBR 9013-1(h)(2).

[6] The Court also notes that 11 U.S.C. § 502(j) allows a court to reconsider allowance or disallowance of a claim "for cause." Based on the facts of this case, especially in light of the basis of Defendant's objection to Claim No. 8, Plaintiff could request reconsideration under § 502(j) and likely present sufficient cause to convince the Court that

III. SUMMARY

In summary and for the foregoing reasons, on consideration of the Motion for Summary Judgment and the record as a whole, Defendant has not shown that she is entitled to judgment as a matter of law. The Court, therefore, directs that the Motion for Summary Judgment filed by Defendant on July 19, 2019 [Doc. 25] is DENIED.

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Claim No. 8 is valid and should be allowed to the extent that the claim may be estimated as authorized by 11 U.S.C. § 502(c)(1) until such time as this adversary proceeding is adjudicated.