SO ORDERED.

SIGNED this 3rd day of June, 2014.

BENJAMIN A. KAHN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

IN RE:	)	
	)	
Sue-Anna Shults Smith,	)	Case No. 13-81362
	)	
Debtor.	)	
	)	

ORDER SUSTAINING OBJECTION TO CLAIM

THIS CASE came before the Court for hearing on March 27, 2014, on the Debtor's Objection to Claim of Creditor Dale Smith [Doc. #48] (the "Claim Objection"). In her Claim Objection, Sue-Anna Shults Smith (the "Debtor") objects to Claim No. 5, filed by Kenneth Dale Smith ("Claimant") on December 16, 2013 (the "Smith Claim"). At the hearing, Jeremy Todd Browner appeared on behalf of Claimant, Benjamin D. Busch appeared on behalf of the Debtor, and Richard M. Hutson II appeared as Standing Trustee. After the hearing, the Court took the matter under advisement and allowed the parties until April 10, 2014, to submit any supplemental information or authorities with respect to the Claim Objection and the issues underlying the Claim Objection, including, without limitation, any potential right of subrogation by Claimant. On April 9, 2014, counsel for Claimant filed his Post Hearing Brief in Support of Equitable Subrogation [Doc. # 91] ("Claimant's Brief"), and counsel for the Debtor filed his

Brief in Opposition to Creditor, Dale Smith's, Assertion of Claim by Equitable Subrogation [Doc. # 92] ("Debtor's Brief"). Having considered the Smith Claim and exhibits thereto, Claimant's Brief, Debtor's Brief, the record before the Court, and the arguments of counsel, the Court finds that the Smith Claim should be disallowed.

I. Jurisdiction

This Court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. §§ 151, 157, and 1334 and Local Rule 83.11 entered by the United States District Court for the Middle District of North Carolina. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B), which this Court may constitutionally hear and determine.

II. Facts

The Debtor and Claimant were married on May 6, 1978, separated on May 25, 2007, and divorced on August 20, 2008. During the marriage, the parties owned two properties as tenants by the entireties: a home located at 8419 Doughton Dr., Bahama, North Carolina ("the Home"), and a farm consisting of 36.50 acres located at 9611 Rougemont Rd., Durham, North Carolina ("the Farm"). In addition to the Smith Claim, only four other proofs of claim were filed in this case, asserting claims as follows: (1) JPMorgan Chase Bank, N.A., Loan No. *****3776, in the amount of $146,999.56, secured by a first lien on the Home ("the First Home Mortgage"); (2) SunTrust Bank, Loan No. *****0461, in the amount of $95,923.99, secured by a second-priority lien on the Home ("the First Home Equity Line"); (3) SunTrust Bank, Loan No. *****4464, in the amount of $79,370, secured by a third-priority lien on the Home ("the Second Home Equity Line");[1] and (4) SunTrust Bank, Loan No. *****2187, in the amount of $343,081.63, secured by

[1] On January 2, 2014, Debtor filed Debtor's Motion to Approve 11 U.S.C. 363(b) Sale of Debtor's Principal Residence and Free and Clear of SunTrust's Third Position Lien Under 11 U.S.C 363(f)(4). [Doc. #22] ("the Home Sale Motion"). SunTrust objected to the Home Sale Motion, but, at the hearing on the motion on February 19, 2014, SunTrust and the Debtor agreed that the Second Home Equity Line was subject to a bona fide dispute. Pursuant to a

a first-priority lien on the Farm ("the Farm Equity Line"). The deadline to file proofs of claim in this case for non-governmental entities was February 23, 2014, and for governmental entities was April 28, 2014. No other proofs of claim were filed prior to these deadlines.

The Smith Claim was filed on December 16, 2013, and asserts a general unsecured claim in the amount of $570,380.00,[2] arising out of the parties' equitable distribution. In support of the Smith Claim, the Claimant attached the Claim Narrative and several orders and/or agreements entered by the North Carolina General Court of Justice, District Court Division, Durham County ("the State Court") in connection with the Claimant's and the Debtor's separation and divorce as follows: (1) August 18, 2008 Order Resulting from Memorandum of Judgment/Order ("the First State Court Order"); (2) November 11, 2011 Order Re: Motion to Modify Alimony for Contempt and Attorneys' Fees (the "Second State Court Order"); (3) February 8, 2012 Consent Order Re: Motion for New Trial Motion to Modify Alimony and Motion for Contempt and Attorneys' Fees ("the Third State Court Order"); and (4) September 13, 2013 Order for Contempt ("the Fourth State Court Order") (the First State Court Order, the Second State Court Order, the Third State Court Order, and the Fourth State Court Order shall be collectively referred to herein as "the State Court Orders").

Consent Order Granting Debtor's Motion to Approve Sale of Her Principal Residence entered by the Court [Doc. #66] ("the Residence Sale Order"), the Debtor sold the Home. As a result of the sale, the Home Mortgage and the First Home Equity Line were paid in full. The remaining proceeds were deposited with the Standing Trustee, pending further Order of the Court. Nothing in this Order shall be construed to determine the efficacy of the Second Home Equity Line.

[2] It is unclear from the Smith Claim how this claim amount is reached. In the Proof of Claim Narrative attached to the Smith Claim, the Claimant asserts that the Debtor is responsible for making payments upon the Home Mortgage, the Second Home Equity Line and the Farm Equity Line. The total amount due on these loans as stated in the Claim Narrative is $566,265.23.

According to the Claim Narrative, the State Court Orders require the Debtor to make all payments on the Home Mortgage, Second Home Equity Line, and the Farm Equity Line.[3] (Claim Narrative ¶¶ 10, 15, and 17). The Claim Narrative also states that, while the First State Court Order required the Debtor to indemnify the Claimant for any amounts paid on the Home Mortgage and Farm Equity Line, the Debtor's obligation under the First State Court Order to indemnify the Claimant for these loans was "removed" by the Third State Court Order. (Id. ¶¶ 5, 10, 14, 15, and 17). The Claimant takes the position in the Claim Narrative that "the Orders still require that although the Debtor doesn't have to indemnify Creditor from the Suntrust and the Chase loans, she is required to pay it." (Id. ¶ 17).

The First State Court Order arose out of a mediation between the parties and was entered by consent. It provides in relevant part:

> 3. [Debtor] shall have sole possession and ownership of the farm . . . as well as the house . . . .
>
> 4. [Debtor] will bring the mortgage on the house . . . and the equity line on the farm . . . current. She will thereafter be responsible for the [First Home Mortgage] monthly payment, as well as the payment to Suntrust on the first equity line (a/c# xxx … 3748)[4] and will indemnify Defendant on the same, provided that his alimony is and has been paid in a timely manner . . . .
>
> 5. [Claimant] will, effective immediately and for a twelve (12) month period hereafter, be responsible for the monthly payment [on the Second Home Equity Line] on the house, as well as for the monthly payment [on the Farm Equity Line]; and will indemnify and hold her harmless for the same.
>
> * * *
>
> 9. [Claimant's] obligation on the two (2) mortgages shall end after twelve (12) months, . . . however if the house is sold, his obligation to pay the [Second Home Equity Line] shall end, as that and both other encumbrances will be paid from the proceeds of the sale. Any proceeds

[3] The Claim Narrative does not mention the First Home Equity Line.

[4] This account number does not match any of the account numbers reflected on the claims filed in this case.

above the cost of these three (3) encumbrances shall belong to [Debtor], free of any claims of [Claimant].

10. [Debtor] may, if she chooses, sell portion(s) of the farm, with any and all proceeds being her separate property, and [Claimant's] obligation to pay on that loan . . . shall continue unaffected. If, however, [Debtor] sells the entire farm, the proceeds shall be used to pay off this mortgage, after which [Debtor] receives any and all remaining proceeds.

(First State Court Order ¶¶ 3, 4, 5, 9, and 10).

The Second State Court Order was superseded and vacated by the Third State Court Order. (Third State Court Order ¶ 8). The Third State Court Order was also entered by consent, after a period of reduced alimony payment by the [Claimant], and "released [the Debtor] from her obligation to indemnify the [Claimant] against payment of loans to First Horizon . . . and Suntrust, as per paragraph 4 of the [First State Court Order]." (Id. ¶ 3).[5]

The Fourth State Court Order arose as a result of the Debtor's failure to list for sale the Home which was subject to the Second Home Equity Line and her failure to make the required payments thereon. (Fourth State Court Order, Findings of Fact ¶¶ 5-7). In the Fourth State Court Order, the State Court found that the Debtor could not assert the fact that the Claimant had "signed [Debtor's] name to secure said loan" as a defense to her obligations to make the ongoing payments under the loan, as the Debtor "knew of the same prior to her agreeing to sign the [First State Court Order] entered on August 18, 2008 and all subsequent Consent Orders entered thereafter." (Id. ¶ 9).

[5] It is unclear from the record before the Court whether SunTrust's "first equity line," as referenced in paragraph 4 of the First State Court Order and ending in account number 3748, is or was secured by the Home or the Farm. See supra note 4 and accompanying text. Thus, this release may have ended any obligation by the Debtor to indemnify the Claimant as to the First Home Mortgage and the First Home Equity Line, as asserted by counsel for the Debtor, or an obligation to for the Debtor indemnify the Claimant as to the First Home Mortgage and Farm Equity Line, as asserted by the Claimant. Regardless, ultimate resolution of this issue is irrelevant for purposes of this Order, as discussed infra Part III.

Moreover, the State Court explained that "[t]he property is currently titled solely to the plaintiff and the defendant has no responsibility for expenses associated with said property pursuant to the Orders entered in this case." (Id. ¶ 10). In conclusion, the Court found that the Debtor was in willful civil contempt of the First State Court Order for her failure to make the loan payments and her failure to list the Home for sale. (Id. ¶¶ 1 and 4). As a consequence, the Fourth State Court ordered the Debtor to bring the Second Home Equity Line current, to refinance the loan to remove the Claimant's name from the loan on or before October 29, 2013, and to relist the Home for sale. (Fourth State Court Order, Decretal Portion ¶¶ 2, 3, 4). The order further provided that the Debtor was sentenced to thirty (30) days in the Durham County Jail, which sentence was suspended for so long as the Debtor remained in compliance with these terms. (Id. ¶ 6).

On October 28, 2013, the day prior to the State Court's deadline for the Debtor to refinance the loans secured by the Home, the Debtor filed a voluntary petition under Chapter 13 of the United States Bankruptcy Code, 11 U.S.C. 101 et seq. (the "Code"). The filing of the petition stayed the civil contempt proceedings. After filing the bankruptcy case, the Debtor entered into an agreement to sell the Home, and, on February 24, 2014, this Court approved the sale of the Home for $325,000 [Doc. #66] ("the Residence Sale Order"). The proceeds of the sale of the Home satisfied the First Home Mortgage and the First Home Equity Line in full.[6] Thus, Claimant's contingent claim, as it relates to those debts, is disallowed as moot, and the issue before the court is whether the Smith Claim, as it relates to the Second Home Equity Line and the Farm Equity Line,

[6] Pursuant to the Residence Sale Order, the balance of the proceeds was placed in trust with the Standing Trustee, pending further order of the Court. On May 29, 2014, the Debtor commenced an adversary proceeding against SunTrust, alleging, inter alia, that the Second Home Equity Line was invalid due to the forgery of her signature on the loan documents, Adversary Proceeding No. 14-09039 (the "SunTrust Adversary Proceeding").

should be allowed.[7] For the reasons discussed below, the Court finds that the remainder of the Smith Claim is disallowed as a contingent claim for reimbursement or contribution under Section 502(e)(1)(B).

III. Analysis

The Bankruptcy Code allows co-debtors to file claims against the estate by way of reimbursement, contribution, or subrogation. Section 502 of the Code provides that "an entity that is liable with the debtor on . . . the claim of a creditor" may file a claim on its own behalf for reimbursement or contribution, which will be allowed to the extent that the creditor's claim is allowed but disallowed so long as its status remains contingent. 11 U.S.C. § 502(e)(1). Section 509 provides that a co-debtor who pays a claim against the debtor may, in the alternative to asserting rights of contribution or reimbursement under Section 502, assert a claim by way of subrogation, stepping into the creditor's shoes for purposes of the claims allowance process. See 11 U.S.C. § 509(a).[8]

In addition to Sections 502 and 509, some courts have allowed co-debtors to file claims that invoke an independent, common law right to subrogation under state law. See, e.g., Celotex Corp. v. Allstate Ins. Co. (In re Celotex), 289 B.R. 460, 473 (Bankr. M.D. Fla. 2003) (asserting that Section 509 "establishes a specific nonexclusive test for the allowance of a subrogation claim"). By contrast, other courts hold that the enactment

[7] On April 16, 2014, the Court entered Orders modifying the automatic stay and the co-debtor's stay to permit SunTrust to exercise its rights against the Farm.

[8] A claimant may not proceed under both Sections 502(e) and 509(a) of the Code. 11 U.S.C. § 502(e)(1)(C) (noting that if an entity asserts a right of subrogation under Section 509, "the court shall disallow any claim for reimbursement or contribution"). The Claimant asserted in Claimant's Brief that he was entitled to a right to equitable subrogation. Furthermore, at the March 27, 2014 hearing on the Claim Objection the Claimant conceded that the only argument before the Court was whether the Smith Claim could be allowed as one for equitable subrogation. Nevertheless, for the reasons stated herein, the manner in which Claimant's claim is couched is not determinative.

of Section 509 was intended to preempt common law subrogation, and thus refuse to consider non-statutory requirements for subordination when conducting a subrogation analysis. See, e.g., In re Fiesole Trading Corp., 315 B.R. 198 (Bankr. D. Mass. 2004) (declining to "superimpose state law doctrines to expand or contract the right to subrogation provided for under the Bankruptcy Code[,]" as Section 509 "clearly delineates the requirements for and exceptions to subrogation").

Regardless whether the claim is analyzed under Section 509 or North Carolina state law, however, subrogation is not available to a co-maker. Under Section 509, a right to subrogation will not be allowed, if "as between the debtor and such entity, such entity received the consideration for the claim held by such creditor." 11 U.S.C. § 509(b)(2). Courts interpreting this provision of the Code generally have held that co-makers, or those with whom a debtor is jointly and severally liable on a debt, may not assert a right of subrogation. See Fibreboard Corp. v. Celotex Corp. (In re Celotex Corp.), 472 F.3d 1318 (11th Cir. 2006) (finding that an individual who was jointly and severally liable with the debtor on several asbestos personal injury judgments could not assert a claim by way of subrogation after paying the judgments). In essence, the "debtor must be the party that in the eyes of the law is primarily liable for the indebtedness paid by the co-obligor." 4 Collier on Bankruptcy ¶ 509.02[2] (Alan N. Resnick & Henry J. Somme eds., 16th ed. rev. 2014). Thus, Section 509 "effects subrogation only when nonbankruptcy law distinguishes between primary and secondary liability[;]" it may not serve as the basis for a claim when "the liability of the person seeking subrogation is direct and of equal status with the debtor's . . . ." In re Flamingo 55, Inc., 378 B.R. 893, 920 (Bankr. D. Nev. 2007), aff'd, 646 F.3d 1253 (9th Cir. 2011) (clarifying that the

premise of the lower court's decision was that the would-be subrogee was a joint borrower rather than a surety, guarantor, or accommodation co-maker, and, therefore, the subrogation claim could not be allowed).

North Carolina similarly prohibits subrogation with respect to a co-maker. In Bunker v. Llewellyn, 18 S.E.2d 717, 717, 221 N.C. 1, 1 (1942), there were seven co-makers of a note owed to a bank, each of whom was jointly and severally liable. Two of the co-makers purported to enter into an agreement with the bank whereby they paid the bank the amount owed under the note in exchange for the express agreement by the bank that the payment did not satisfy the note, but that the two co-makers would become the owner of the note and be subrogated to the rights of the bank against the remaining co-makers. Id. at 717-18, 221 N.C. 1-3. The North Carolina Supreme Court held that, "plaintiffs and defendants being co-principals and all equally liable on the note, such payment constitutes extinguishment of the note . . . . In such event their remedy against the defendants, their co-principals, would be in equitable contribution. . . . Subrogation would not lie." Id. (citations omitted).

In this case, if the Claimant ultimately becomes obligated to pay any amounts under the remaining loans, there will be an issue as to whether the State Court Orders altered the nature of the parties' obligations in such a way that the Debtor became principally liable on the obligations for purposes of subrogation, and whether the Claimant waived and/or released any claim for subrogation when he agreed to release his right to indemnification in the Third State Court Order. The State Court Orders recognized that, despite the Debtor's obligation to make the ongoing payments under the loans, the Claimant remains primarily liable on the obligations vis-à-vis the lenders. See,

e.g., Second State Court Order ¶¶ 15 and 16 ("These properties were distributed to Plaintiff in the equitable distribution along with the obligation to pay the debt thereon, although the Defendant is personally liable on each of these loans . . . . ;" and "[t]he Defendant has no debt aside from the debt which is being paid by the Plaintiff on the former marital home and on the farm.") (emphasis added). In addition, the Third State Court Order released the Debtor from her obligation imposed by the prior orders to indemnify the Claimant for any payments that he made on the SunTrust loans. (Third State Court Order, Decretal Portion ¶ 3). Specifically, the Third State Court Order, which was signed and consented to by Claimant, agreed that the Debtor "should be released from her obligation to indemnify the Defendant against payment of loans to First Horizon (now MetLife) [and later JP Morgan] and Suntrust as per paragraph 4 of . . . [the First State Court Order]." (Third State Court Order, Findings of Fact ¶ 20).

Nevertheless, it is unnecessary at this time for this Court to determine whether the Claimant's liability is sufficiently secondary as contemplated by either Section 509 or North Carolina law such that he might be entitled to assert a subrogation claim in this case. An analysis of the facts of this case under Section 502, North Carolina state law, and Section 509 necessitates disallowance of this type of contingent claim.

A. The Bankruptcy Code Does not Provide for the Allowance of Either Contingent Claims of Subrogation or Contingent Claims for Reimbursement or Contribution

The Claimant in this case argues that he should be allowed an equitable right to subrogation for any future debts paid on behalf of the Debtor relating to the Second Home Equity Line and the Farm Equity Line. This argument is unpersuasive.

In Aetna Cas. and Surety Co. v. Georgia Tubing Co., No. 93 Civ. 3659 (LAP), 1995 WL 429018 (S.D.N.Y. July 20, 1995), aff'd, 93 F.3d 56 (2d Cir. 1996), the court

was faced with a similar assertion of a contingent subrogation claim which it disallowed. In Aetna, the claimant was a surety who issued two bonds to the State of Georgia to secure the debtor's obligations under a permit allowing the debtor to temporarily store hazardous wastes on its premises. Id. at *1. The debtor filed a bankruptcy case under Chapter 11, and the claimant filed a proof of claim, asserting a right of subrogation to the claims of the State of Georgia. Id. At the time of the objection to the claim, no claim had been made under the bonds and the claimant therefore had not been required to make any payments on the bonds. Id. The surety asserted its claim as a contingent right of subrogation, rather than a contingent right of contribution, arguing that Section 502(e) does not require disallowance of contingent claims for subrogation, but, by its terms, applies only to reimbursement or contribution. Id. at * 3.

The bankruptcy court sustained the debtor's objection to the claim, and the claimant appealed. Id. at *1. The district court affirmed the bankruptcy court, finding that regardless whether the claim for subrogation was described as "unmatured," "contingent," or "prospective," it was, in substance, a "contingent codebtor claim for reimbursement." Id. at * 3. In so ruling, the district court held that an assertion of a contingent right to subrogation under Section 509 is in fact an assertion of a contingent claim for reimbursement or contribution under Section 502(e), and thus must be disallowed under 11 U.S.C. § 502(e)(1). See id. at *4. Moreover, to any extent that the claim was a contingent claim for subrogation, the court held that it should be disallowed, because Section 509 permits a subrogation claim only to the extent that a claimant actually has paid the claim. Id.

In concluding that a co-debtor who has not yet paid any sums on the debtor's behalf does not have an allowable claim, whether that claim is connoted as a contingent subrogation claim or otherwise, the court relied on the plain meaning of the language of Section 509(a) and precedent interpreting the interplay between Sections 509(a) and 502(e). Section 509(a) provides that "an entity that is liable with the debtor on, or that has secured a claim of a creditor against the debtor, and that pays such claim, is subrogated to the rights of such creditor to the extent of such payment. 11 U.S.C. § 509(a) (emphasis added). Thus, Section 509(a) "establishes that a codebtor's right of subrogation arises only when and to the extent that the codebtor pays the assured creditor." Aetna, 1995 WL at *4. In the event that a co-debtor has not paid the assured creditor, and subrogation under Section 509(a) does not apply, the co-debtor must rely on Section 502 during the claims allowance process. Id. at *3-*4. Under Section 502(e)(1)(B), a claim for reimbursement or contribution must be disallowed to the extent that it is "contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution." 11 U.S.C. § 502(e)(1)(B).[9]

In short, the court in Aetna held that because Section 502(e)(1)(B) is meant to "preclude redundant recoveries on identical claims, or 'double-dipping'"[10] and to "allow for the expeditious resolution of issues so as not to burden the estate by claims which

[9] Contingency, as used in this section of the Code, has been interpreted as relating to both payment and liability. In re Pacor Inc., 110 B.R. 686, 689 (E.D. Pa. 1990). Thus, "a contingent claim is by definition a claim which has not yet accrued and which is dependent upon some future event that may never happen." In re Provincetown–Boston Airlines, Inc., 72 B.R. 307, 309 (Bankr. M.D. Fla. 1987); see In re Chemtura Corp., 443 B.R. 601, 615-20 (Bankr. S.D.N.Y. Jan. 13, 2011) (finding "payments the Claimants have not made yet, and that are only to be made in the future (if at all) . . ." contingent). While the Claimant's liability to the banks is non-contingent in this case, any potential claim by him against the Debtor is contingent.

[10] In re Lull Corp., 162 B.R. 234, 236 (Bankr. D. Minn. 1993).

have not come to fruition,"[11] co-debtors may not subvert these purposes by asserting "contingent" rights to subrogation in light of the unambiguous language of Section 509(a). See id. at *3-*4. In so holding, the court noted that assertions of "contingent or "prospective" subrogation rights have been consistently disallowed by the courts for these reasons. Id. at *3 (referencing In re Early & Daniel Idus., Inc., 104 B.R. 963, 967 (Bankr. S.D. Ind. 1989), wherein the court held after analysis of Sections 502(e) and 509, along with their legislative histories, that it could neither allow a claim as one for subrogation nor reimbursement, as the claimant had not yet made any payments on the debt at issue). See also In re Morgan, No. 01-60889, 2003 WL 1728667, *2 (Bankr. E.D. Ga. Mar. 14, 2003) (citing and following Aetna for the proposition that if "[c]laimants have not paid any money on behalf of the Debtor, then there is no right to subrogation for purposes of § 509"); In re Amatex, 110 B.R. 168, 168 (Bankr. E.D. Pa. 1990) (finding that "the scope of § 502(e)(1)(B), in conjunction with 11 U.S.C. § 509 (a), operates to disallow any contingent co-liability, even if that co-liability has not been judicially established, unless the co-obligor pays the liability and becomes subrogated to the rights of the underlying creditor therefor"); Browning v. Browning (In re Browning), 31 B.R. 995, 999 (S.D. Ohio 1983) (stating that "[a] co-debtor, surety, or guarantor is subrogated to the rights of the creditor only if the co-debtor pays the claim and only to the extent of the payment").

In this case, the disallowance of a contingent claim for subrogation is the same, whether analyzed under precedent interpreting Section 509, as in Aetna, or North Carolina law. Like Section 509, North Carolina law requires the co-debtor to make some

[11] Id.

payment towards the debt in order to maintain a claim for subrogation; the doctrine is available only "when one person has been compelled to pay a debt which ought to have been paid by another . . . ." Trustees of Garden of Prayer Baptist Church v. Geraldco Builders, Inc., 78 N.C. App. 108, 114, 336 S.E.2d 694, 697-98 (1985) (emphasis added). Indeed, subrogation is an "equitable doctrine," meant to compensate one who has paid a debt on behalf of another, and there is no need for equity when one has not paid another's debt. See generally, Pearlman v. Reliance Ins. Co., 371 U.S. 132, 136-37 (1962) (explaining and applying equitable subrogation prior to the enactment of Section 509 within the context of sureties who paid the debts of others). Therefore, under either Section 509 or North Carolina law, the co-debtor who has not yet paid any amount pursuant to which he might be subrogated cannot maintain a claim for subrogation and is limited to a contingent claim for contribution or indemnity, which must be disallowed. See Aetna, 1995 WL at *3-*4.

B. The Claim Here is Contingent, and, Therefore, Must be Disallowed

In this case, the balance of Claimant's claim relates to the Second Home Equity Line and the Farm Equity Line. Even if the Claimant's right to contribution, reimbursement, or subrogation survived his waiver and release of the right to indemnity, the Claimant has not made any payment towards the debt for which he might be entitled to repayment. As a result, Claimant's remaining claim is contingent under either Section 509 or North Carolina law, and it is unnecessary for this court to determine whether, if the Claimant were to make payments on the loans, any right to contribution, reimbursement, or subrogation might be allowed based on the provisions of the

underlying State Court Orders. The Court must, therefore, disallow the remainder of the Smith Claim as contingent under Section 502(e)(1)(B).[12]

IV. Conclusion

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Debtor's Claim Objection is sustained and the Smith Claim is disallowed. With respect to the portion of the Smith Claim related to the First Home Mortgage and the First Equity Line, such portions are disallowed as moot. With respect to the remaining portion of the Smith Claim related to the Second Home Equity Line and the Farm Equity Line, such portions are disallowed for the reasons set forth herein.

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[12] As explained by the court in Aetna, this does not leave the Claimant without a remedy. To the extent that the Claimant actually pays any amounts to SunTrust, the Claimant may seek reconsideration of his claim pursuant to Section 502(j). Aetna, 1995 WL at *4 ("Section 502(j) provides in part that '[a] claim that has been allowed or disallowed may be reconsidered for cause.' 11 U.S.C. § 502(j). Courts have held that claims disallowed pursuant to §502(e)(1)(B) may be reconsidered pursuant to § 502(j).").