

SO ORDERED.

SIGNED this 12th day of October, 2018.



  
LENA MANSORI JAMES  
UNITED STATES BANKRUPTCY JUDGE

---

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
WINSTON-SALEM DIVISION

In re	)	
	)	
Cynthia Lorraine Adams Byrom	)	Case No. 18-50647
	)	
Debtor.	)	
_____	)	

**Order Overruling Objection to Claim Number 4 of SunTrust Bank**

This case came before the court on September 12, 2018 for hearing, after due and proper notice, on the Debtor's Objection to Claim Number 4 of SunTrust Bank. Wendell "Wes" Schollander, III, counsel for the Debtor, Robert E. Price, Jr., Assistant Bankruptcy Administrator, and Kathryn L. Bringle, Chapter 13 trustee, appeared at the hearing. After considering the Objection, supplemental briefs, and other matters of record, the court finds and concludes as follows:

**Background**

The relevant facts are not in dispute. The Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code on June 21, 2018. On schedule A/B, the Debtor indicated that she owned her residence at 4825 Barkas Drive in Winston-Salem, North Carolina with a value of \$191,600.00. On schedule D, the Debtor indicated that her residence was encumbered by two deeds of trust: a first in favor of Ocwen Loan Servicing in

the amount of \$140,000.00, and a second in favor of SunTrust, in the amount of \$43,700.00. In her notice to creditors and proposed Chapter 13 plan, the Debtor proposed to cure an account default with SunTrust, which she estimated at \$5,600.00, and maintain ongoing payments of \$180.00 per month.

On July 6, 2018, SunTrust filed claim number 4, showing a secured claim in the amount of \$52,962.31 with the balance due in full at an annual interest rate of 8%. In support of its claim, SunTrust attached a judgment dated March 7, 2017 in the amount of \$42,021.27, with interest at 8%, plus an award of costs and attorney fees. The itemization attached to the claim shows a principal balance due of \$41,641.27 after credit for a payment received in March 2018, costs and attorney fees of \$6,568.19, and accrued interest in the amount of \$4,752.85. SunTrust also attached a copy of a note in the form of an equity line account agreement dated August 22, 2006 and a deed of trust recorded in Forsyth County on September 20, 2006 at Book 2694, Page 4107.

In response the Debtor filed an objection to SunTrust's claim, initially arguing that the face of SunTrust's note showed that the Debtor had 20 years from the date of execution to repay the debt, and so the entire balance was not in fact due in full. The Debtor requested that SunTrust's claim either be completely disallowed, or that SunTrust be paid regular monthly payments of \$180.00 through the Chapter 13 plan. Following the hearing on this matter, both the Debtor and the Bankruptcy Administrator filed supplemental briefs. The Debtor now asserts in her supplemental brief that application of the doctrine of merger allows SunTrust a claim for \$52,962.31 based solely on the judgment, as the note has merged into the judgment. But to the extent that the judgment impairs her homestead exemption, the Debtor asserts that SunTrust should be allowed a secured claim of only \$15,153.48. In contrast, the Bankruptcy Administrator contends that the doctrine of merger does not apply, such that SunTrust retains the benefit of its deed of trust.

## Analysis

The doctrine of merger arises out of the broad principal of *res judicata*, which precludes relitigation of the same cause of action between the same parties after a final judgment on the merits. *Behr v. Behr*, 266 S.E.2d 393, 395 (N.C. Ct. App. 1980). “When a plaintiff recovers a valid and final judgment, his or her original claim is extinguished and the rights granted pursuant to the judgment are substituted for it, and plaintiff’s original claim is thus said to have ‘merged’ with the judgment.” *Edwards v. Edwards*, 456 S.E.2d 126, 129 (N.C. Ct. App. 1995) (citing Restatement (Second) of Judgments § 18, Comment a (1982)). As a result, the judgment becomes the only evidence of the debt that can be used in court. *Saieed v. Abeyounis*, 9 S.E. 2d 399, 401 (N.C. 1940). And any contract upon which the judgment is based “loses all its validity—and ceases to be obligatory upon the parties.” *Sanders v. Boykin*, 134 S.E. 643, 645 (N.C. 1926) (finding that a promissory note, as evidence of indebtedness, was extinguished by entry of a judgment); *see also NCNB Nat. Bank of N. Carolina v. Robinson*, 341 S.E.2d 364, 366 (N.C. Ct. App. 1986) (holding that the interest rate provided for in a promissory note was no longer in effect due to merger into a judgment, therefore the trial court correctly applied the legal rate of interest to the judgment).

Applying North Carolina law to the present case, and as the Debtor correctly points out in her brief, it is clear that SunTrust’s note has merged into its judgment, and that judgment is now the only evidence of the debt. Accordingly, on the petition date SunTrust held a claim against the Debtor in the amount of \$52,962.31, and as reflected in the proof of claim, this amount is due in full with interest accruing at the legal rate of 8%. The analysis does not end here though, as the issue of SunTrust’s deed of trust remains, separate and distinct from the note and judgment.

Under North Carolina law, a mortgage creditor may pursue collection through a money judgment, judicial foreclosure, or foreclosure by power of sale, or may pursue all three options until the indebtedness has been satisfied. *In re Foreclosure of a Deed of Tr. Executed by Herndon*, 781 S.E.2d 524, 527 (N.C. Ct. App. 2016); *Lifestore Bank v. Mingo Tribal Pres. Trust*, 763 S.E.2d 6, 7 (N.C. Ct. App. 2014). As noted by the court in *Lifestore Bank*, foreclosure by power of sale is a special proceeding, and cannot be brought in the same action as a claim for a money judgment. 763 S.E.2d at 9. In addition, a creditor may be unsuccessful in foreclosure by power of sale, and yet still pursue a judicial foreclosure. *In re Foreclosure of Real Prop. under Deed of Tr. from Young*, 744 S.E.2d 476, 480 (N.C. Ct. App. 2013). In this case, upon entry of the judgment SunTrust's contractual note was replaced by the judgment, but the debt remains secured by SunTrust's recorded deed of trust on the Debtor's residence. If not stayed by the Debtor's bankruptcy filing, under North Carolina law SunTrust could still pursue foreclosure by power of sale in an effort to satisfy the debt.

Therefore, within the context of the Debtor's bankruptcy case, SunTrust remains protected by its deed of trust, which continues to secure the debt as evidenced by the judgment. Bankruptcy courts are in agreement that a mortgage creditor is in no worse position under the Bankruptcy Code by virtue of having obtained a prepetition money judgment. *In re Carr*, 318 B.R. 517, 519 (Bankr. W.D. Wis. 2004) (rejecting the argument that creditor loses the protection of 11 U.S.C. § 1322(b)(2) when it obtains a money judgment); *In re Bache-Wiig*, 299 B.R. 245, 251 (Bankr. D. Me. 2003) (holding that judgment, accruing interest at the statutory rate, is fully secured by the mortgage); *In re Chu*, 258 B.R. 206, 209 (Bankr. N.D. Ca. 2001) (holding that when a secured claim is reduced to a judgment, the claim merges into the judgment but the security interest remains intact and cannot be avoided under 11 U.S.C. § 522(f)).

Based on the foregoing, the court finds Debtor's objection to SunTrust's claim must be and therefore is overruled.

END OF DOCUMENT

PARTIES TO BE SERVED

Cynthia Lorraine Adams Byrom  
18-50647C-13

Cynthia Byrom  
4825 Barkas Drive  
Winston-Salem, NC 27106

Wendell Wes Schollander, III  
2000 W. First Street, Suite 308  
Winston-Salem, NC 27104

Kathryn L. Bringle  
Chapter 13 Trustee  
P.O. Box 2115  
Winston-Salem, NC 27102

SunTrust Bank  
Attn: Officer of the Institution  
303 Peachtree Street, Northeast  
Atlanta, GA 30308

SunTrust Bank  
Attn: Support Services  
P.O. Box 85092  
Richmond, VA 23286

Bernhardt and Strawser, PA  
Re SunTrust Bank  
5821 Fairview Rd. Ste 100  
Charlotte, NC 28209