

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

IN RE:

**MICHAEL R. STARKS AND
JUANITA M. STARKS,**

CASE NO. 03-14360-NPO

DEBTORS.

CHAPTER 7

**MEMORANDUM OPINION OVERRULING
DEBTORS' OBJECTION TO THE CLAIM**

On February 25, 2010, this Court conducted a hearing (the "Hearing") on the Objection to the Claim of eCAST Settlement Corporation, Claim #3 (the "Objection") (Dkt. No. 69), filed by Michael R. Starks and Juanita M. Starks (the "Debtors"), and the Trustee's Response to Objection to the Claim of eCast Settlement Corporation, Claim #3 (the "Response") (Dkt. No. 81), filed by Jeffrey A. Levingston, in the above styled chapter 7 bankruptcy case (the "Case"). ECAST Settlement Corporation ("ECAST") did not file a response to the Objection nor did it appear at the Hearing. At the Hearing, Jeffrey A. Levingston represented himself as the chapter 7 trustee (the "Trustee"), and Susan C. Smith represented the Debtors. For the reasons that follow, the Objection should be overruled.¹

Jurisdiction

This Court has jurisdiction of the subject matter and the parties to this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28. U.S.C. §§ 157(a)(2)(A) and (B).

¹The following constitutes the findings of facts and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052.

Factual and Procedural Background

ECAST, as assignee of HSBC Bank Nevada and its Assigns, timely filed its claim (“ECAST’s Claim”) in the amount of \$416.01.² ECAST’s Claim identified the debtor as Michael R. Starks, as well as the final four digits of a credit card account number (7490). In support of the unsecured claim, ECAST attached a two-page addendum to the proof of claim showing that ECAST had been assigned the claim. On Schedule F (Dkt. No. 4), the Debtors listed a debt with Orchard Bank in the amount of \$299.32 and containing the same last four digits (7490) as ECAST’s Claim.

The Debtors object only to the amount of ECAST’s Claim, not its validity. The Debtors asserted that, as a matter of law, ECAST is only entitled to the amount for which ECAST purchased the claim. The Debtors also argued that ECAST’s Claim should be disallowed because ECAST failed to include the transfer/purchase price with its proof of claim. The Debtors offered no authority for this position either in the Objection or at the Hearing.

In the Response, the Trustee replied that the Objection should be denied because the Claim was timely filed and because the Objection failed to set forth sufficient grounds for relief. He argued, generally, that the value listed on the proof of claim is the correct value because merely transferring or assigning a claim from an original creditor to an assignee does not nullify or modify a claim’s validity or amount. In other words, the Trustee argued that ECAST’s Claim is prima facie evidence of the claim’s validity and amount unless the Debtor proves otherwise with sufficient evidence, not mere arguments. Furthermore, the Trustee asserted that because the Debtors failed

²Although the Debtors were discharged in 2003, the Case was reopened in 2009 when the Trustee filed the Trustee’s Notice of Change of Status (Dkt. No. 48) in which he changed the status of the case from a no asset case to an asset case because of a settlement distribution in unrelated litigation. Due to the status change, a new deadline for filing proofs of claim was set. Therefore, ECAST’s Claim is timely.

to rebut the prima facie validity and amount of ECAST's Claim, the Objection should be overruled, and ECAST's Claim should be allowed.

Discussion

The general burdens of proof in proof of claim litigation are well established:

An unsecured creditor must file a proof of claim or interest for the claim to be allowed. Fed. R. Bankr. P. 3002(a). A properly filed proof of claim constitutes prima facie evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). A party objecting to a properly filed proof of claim "must then produce evidence rebutting the claimant or else the claimant will prevail." California State Bd. of Equalization v. Official Unsecured Creditors' Comm. (In re Fidelity Holding Co.), 837 F.2d 696, 698 (5th Cir. 1988). If, however, evidence rebutting the claim is brought forth, then the claimant must produce additional evidence to "prove the validity of the claim by a preponderance of the evidence." In re Fidelity Holding Co., 837 F.2d. at 698. "The ultimate burden of proof always rests upon the claimant." Id.

In re Pursue Energy Corp., 379 B.R. 100, 105 (Bankr. S.D. Miss. 2006); *See also* 11 U.S.C. § 501.

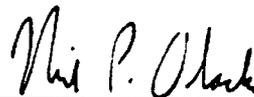
Thus, the first inquiry is whether ECAST's Claim was filed in accordance with Rule 3001 and Official Form 10 to constitute prima facie evidence of the validity and amount of its claim. In re Armstrong, 320 B.R. 97, 103-04 (N.D. Tex. 2005). "Bankruptcy Rule 3001 requires that a proof of claim: (1) be in writing; (2) make demand on the debtor's estate; (3) express the intent to hold the debtor liable for the debt; (4) be properly filed; and (5) be based upon facts which would allow, as a matter of equity, to have the document accepted as a proof of claim." Id. "When a claim is based on a writing, a copy of the writing shall be filed with the proof of claim, and if the documents are not available, the creditor must attach a statement that explains their unavailability." Id.; *See* Bankruptcy Rule 3001(c). "A 'properly filed' proof of claim, as prescribed by the Judicial Conference in Official Form 10, consists of (1) a creditor's name and address, (2) basis for claim, (3) date debt incurred, (4) amount of claim, (5) classification of claim, and (6) supporting documents" if needed." Id.

Here, the Debtors do not dispute the validity of ECAST's Claim, nor do they argue that ECAST's Claim fails to meet the requirements of Rule 3001. Instead, the Debtors merely argue that ECAST is entitled only to the amount it paid for the claim, and thus ECAST should have filed its proof of claim for that amount only. This Court finds that ECAST's Claim is in writing; it sets forth the creditor's claim as an unsecured debt against Michael R. Stark, one of the Debtors; it was executed by the creditor; and had the proper supporting documentation attached to the claim. Therefore, based on the record, this Court finds that ECAST's Claim meets the requirements of Rule 3001 and is prima facie evidence of a valid claim.

Since Rule 3001 is satisfied and ECAST's Claim is prima facie evidence of the Claim's validity and amount, the burden shifts to the Debtors to prove that the amount of ECAST's Claim is incorrect. In re Pursue Energy Corp., 379 B.R. at 105. Here, the Debtors provided no authority to support their legal position and produced no evidence to rebut the amount ECAST set forth on its proof of claim. See In re Fidelity Holding Co., 837 F.2d at 698 (stating that Debtor must "produce evidence rebutting the claimant or else the claimant will prevail").

Conclusion

For the foregoing reasons, this Court hereby finds that the Debtors failed to meet their burden to rebut the prima facie validity and amount of ECAST's Claim. Accordingly, the Objection should be overruled. A separate order consistent with this Memorandum Opinion will be entered by the Court in accordance with Fed. R. Bankr. P. 7054 and 9021.



Neil P. Olack
United States Bankruptcy Judge
Dated: April 16, 2010