



A handwritten signature in blue ink that reads "Neil P. Olack".

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: August 26, 2016

The Order of the Court is set forth below. The docket reflects the date entered.

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

IN RE:

CANDACE V. GRAHAM,

CASE NO. 16-10716-NPO

DEBTOR.

CHAPTER 13

ORDER OVERULING OBJECTIONS TO PROOF OF CLAIM

This matter came before the Court for hearing on August 25, 2016 (the "Hearing"), on the Objection to Proof of Claim (the "First Objection") (Dkt. 33) and the Objection to Proof of Claim (the "Second Objection" or, collectively, the "Objections") (Dkt. 34) filed by Candace V. Graham, the debtor (the "Debtor") in the above-styled chapter 13 bankruptcy case (the "Bankruptcy Case"). Michael W. Boyd ("Boyd") represented the Debtor at the Hearing. The Debtor did not appear at the Hearing. After fully considering the matter and being fully advised in the premises, the Court overruled the Objections from the bench. This Order memorializes and supplements the Court's bench ruling.

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of the Bankruptcy Case pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). Notice of the Objections was proper under the circumstances.

Facts

1. The Debtor filed a voluntary petition for relief pursuant to chapter 13 of the Bankruptcy Code on February 29, 2016 (Dkt. 1).

2. The Debtor filed the Chapter 13 Plan (Dkt. 16) on March 29, 2016, and the Amended Chapter 13 Plan (the “Amended Plan”) (Dkt. 22) on April 12, 2016.

3. Aaron’s, Inc. (“Aaron’s”) filed two proofs of claim on June 2, 2016: (1) the first Proof of Claim (the “First POC”) (Bankr. Cl. No. 7-2), and (2) the second Proof of Claim (the “Second POC”) (Bankr. Cl. No. 8-1). In the First POC, Aaron’s provided that it has a claim against the Debtor for \$173.85 for an “Executory Contract – Lease Purchase” secured by a “15 CU. FT. Topmount Refrigerator White” (the “Refrigerator”). (First POC at 2). According to the Second POC, Aaron’s has a claim for \$487.14 for an “Executory Contract – Lease Purchase” secured by “Leg Table and (4) Side Chairs.” (Second POC at 2).

3. The Debtor filed the Objections on June 15, 2016. According to the First Objection, in which the Debtor objected to the Second POC, “[t]he collateral which is a dining room table and chairs is no longer in the debtor’s possession, therefore, proof of claim shall be treated as a general unsecured claim.” (First Obj. at 1). The First Objection did not explain why the collateral is no longer in the Debtor’s possession. In the Second Objection, the Debtor objected to the First POC, arguing that “[t]he collateral which is a refrigerator became inoperable and is no longer in the debtor’s possession, therefore, proof of claim shall be treated as a general

unsecured claim.” (Second Obj. at 1). The Debtor gave no further explanation regarding the alleged inoperability of the Refrigerator or why it is no longer in the Debtor’s possession. The Debtor did not testify or offer any other evidence to support the Objections.

Discussion

Pursuant to § 502(a),¹ unless a party in interest objects, a claim is “deemed allowed” if it complies with § 501.² 11 U.S.C. § 502(a). When a debtor objects to a proof of claim, he bears the “burden of going forward with evidence concerning the validity and the amount of the claim under Federal Rule of Bankruptcy Procedure 3001(f)³ and Code section 502(a).” 4 COLLIER ON BANKRUPTCY ¶ 502.02[3][f] (16th ed. 2016). Thus, in the Bankruptcy Case, the Debtor bears the burden of proving that Aaron’s is an unsecured creditor as opposed to a secured creditor.

In the analogous confirmation context, property that has “been stolen from the debtor or lost through some casualty must be described in the schedules.” Keith M. Lundin & William H. Brown, CHAPTER 13 BANKRUPTCY, 4th Edition, § 30.5, at ¶ 1, Sec. Rev. Apr. 1, 2009, www.ch13online.com. “Lost or stolen property for which there is no police report or contemporaneous evidence of loss” is a red flag. *Id.* at ¶ 2. The treatise compares unexplained missing collateral to the transfer of assets on the eve of bankruptcy, which “is a lightning rod for intense scrutiny of the debtor’s good faith.” Keith M. Lundin & William H. Brown, CHAPTER 13 BANKRUPTCY, 4th Edition, § 30.5, at ¶ 1, Sec. Rev. Apr. 1, 2009, www.ch13online.com.

¹ All code sections refer to the Bankruptcy Code in title 11 of the U.S. Code unless specified otherwise.

² Section 501 governs the filing of claims or interests.

³ “A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.” Fed. R. Bankr. P. 3002(f).

In determining whether the Debtor should be permitted to treat Aaron's claims as unsecured because the collateral is no longer in her possession, and, in the case of the Refrigerator, because it "became inoperable," the Court is guided by its recent decisions in *In re Ogburn*, Case No. 15-12946-NPO (Dkt. 78), slip op. (Bankr. N.D. Miss. Apr. 15, 2016) and *In re Williams*, Case No. 16-10624 (Dkt. 40), slip op. (Bankr. N.D. Miss. Aug. 5, 2016). In *In re Ogburn*, the debtor, like the Debtor in the Bankruptcy Case, objected to a creditor's secured proof of claim, arguing that the claim should be unsecured because the collateral was no longer in her possession. *Id.*, at *2. Boyd was also the debtor's attorney in *In re Ogburn* and although the debtor did not appear at the hearing, Boyd stated that the car malfunctioned and the debtor abandoned it on the side of the road. *Id.* According to Boyd, when the debtor returned to get the car, it was no longer there. *Id.* Because the car was no longer in the debtor's possession, the debtor argued that she could not surrender it to the creditor and, therefore, the creditor's claim was unsecured. *Id.*

In *In re Ogburn*, this Court found persuasive the bankruptcy court's reasoning in *In re Klauder*, 91-92377-JC, slip op. (Bankr. S.D. Miss. 1993). In *In re Klauder*, the bankruptcy court considered the dischargeability of a debt, which requires a higher burden of proof than objections to claim, but the bankruptcy court's reasoning is illustrative. *Id.* In the debtors' statement of financial affairs, they had provided that the collateral, which was jewelry, had been stolen. *Id.*, at *3. Although the debtors called a friend who was a police officer, they did not file a police report and did not file a claim on their insurance. *Id.*, at *4. The bankruptcy court noted that the debtors relied on their own testimony to prove that the jewelry was stolen and "offered no evidence to corroborate their testimony." *Id.*, at *6-7. Likewise, in *In re Ogburn*, there was no evidence to prove that the car was missing or had been stolen, and the debtor did not attend the

hearing to offer any testimonial evidence as to why the car was no longer in her possession. *In re Ogburn*, slip op. at *4. This Court, therefore, held that the creditor was secured and ordered the debtor to amend her chapter 13 plan accordingly. *Id.*, at *5.

Similarly, in *In re Williams*, the debtor claimed that the collateral, which was a vehicle, became inoperable and was no longer in her possession. *In re Williams*, Case No. 16-10624 (Dkt. 40), slip op., at *2 (Bankr. N.D. Miss. Aug. 5, 2016). This Court overruled the debtor's objection to the creditor's proof of claim because she offered "no corroborating evidence to prove that 'the motor went out' on the [vehicle], that it would not have been economical to fix it, or that it was 'taken to the junkyard'" *Id.*, at *4 (Bankr. N.D. Miss. Aug. 5, 2016). Although the debtor in *In re Williams* testified at the hearing, she provided no evidence to support her claim that it would have been too expensive to fix the vehicle. *Id.* at 2, 4.

Like the debtor in *In re Ogburn*, the Debtor in the Bankruptcy Case did not appear to offer testimony to support her claim in the Objections that the collateral is no longer in her possession. Additionally, the Debtor offered no evidence to corroborate her claim in the Second Objection that the refrigerator became inoperable and was no longer in her possession. Accordingly, the Court finds that the Objections should be overruled and Aaron's should be paid as a secured creditor pursuant to the terms of the First POC and the Second POC.

IT IS, THEREFORE, ORDERED that the First Objection is hereby overruled.

IT IS FURTHER ORDERED that the Second Objection is hereby overruled.

IT IS FURTHER ORDERED that the Debtor has fourteen (14) days from the date of this Order in which to amend the Amended Plan to account for the secured claims of Aaron's.

##END OF ORDER##