



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

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: April 15, 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:

KIMBERLY OGBURN,

DEBTOR.

CASE NO. 15-12946-NPO

CHAPTER 13

ORDER DENYING OBJECTION TO PROOF OF CLAIM

This matter came before the Court for hearing on April 14, 2016 (the "Hearing"), on the Objection to Proof of Claim (the "Objection") (Dkt. 32) filed by the debtor, Kimberly Ogburn (the "Debtor"), in the above-style chapter 13 bankruptcy case (the "Bankruptcy Case"). Michael W. Boyd ("Boyd") appeared at the Hearing on behalf of the Debtor and Adam Sanford ("Sanford") appeared on behalf of Locke D. Barkley, the chapter 13 panel trustee. The Debtor did not attend the Hearing. Having fully considered the matter, the Court finds as follows:

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 Objection was proper under the circumstances.

Facts

1. The Debtor filed a voluntary petition for relief pursuant to chapter 7 of the Bankruptcy Code on August 21, 2015 (Dkt. 1).¹

2. The Debtor filed her Chapter 13 Plan (the “Plan”) (Dkt. 20) on September 22, 2015. The only secured claimants listed on the Plan were Exeter Finance (“Exeter”) and Tower Loan of Ruleville (“Tower Loan”). (Plan at 2).

3. Cleveland Loans filed a proof of claim (the “POC”) (Claim No. 6-1) as a secured creditor on October 19, 2015. The POC indicates that the Debtor owes \$650.07 for “Money on Motor Vehicle.” (POC at 1). The POC further indicates that the collateral is a 2002 Buick CCU (the “Buick”). (POC at 3-4).

4. The Debtor filed the Objection on November 10, 2015, arguing that the POC should be treated as “a general unsecured claim” because the “2002 Buick is no longer in the debtor’s possession” (Obj. at 1).

5. The Debtor filed an Amended Chapter 13 Plan (the “Amended Plan”) (Dkt. 63) on March 4, 2016. The only secured creditors listed on the Amended Plan were Exeter and Tower Loan, and the Amended Plan did not account for the POC. (Am. Plan at 2).

6. At the Hearing, Boyd stated that the Buick malfunctioned in 2014 and the Debtor abandoned it on the side of the road. Boyd did not indicate how long the Buick was abandoned on the side of the road, but he said that when the Debtor returned, the Buick was no longer there. According to Boyd, the debtor has been unable to locate the Buick. Boyd admitted that the Debtor did not call the police or otherwise report the Buick as stolen after she discovered that it

¹ The Court entered the Order Granting Motion to Convert a Case under Chapter 7 to a Case under Chapter 13 [Dkt.8] on September 21, 2015.

was missing. Boyd argued that because the Debtor cannot locate the Buick, she cannot surrender it to Cleveland Loans; therefore, the only option is to treat Cleveland Loans as unsecured.

7. Sanford stated at the Hearing that because the debt was scheduled as unsecured, he did not know that the Debtor was unable to locate the Buick. According to Sanford, the best option may be to treat Cleveland Loans as unsecured because the Debtor is unable to surrender the Buick.

Discussion

Pursuant to § 502(a),² a claim is deemed allowed if it complies with § 501. When a debtor objects to a proof of claim, however, 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) and Code section 502(a).” 4 COLLIER ON BANKRUPTCY ¶ 502.02[3][f] (16th ed. 2015). Thus, in the Bankruptcy Case, the Debtor bears the burden of proving that Cleveland Loans is an unsecured creditor and that the amount of the POC should be reduced. Because the Debtor’s Objection hinges on the allegation that the Buick was stolen, the Debtor must prove that it actually was stolen in order for the amount of the POC to be invalidated or reduced.

In the analogous confirmation context, property that has “been stolen from the debtor or lost through some casualty must be described and explained 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. “If the debtor’s only explanation of missing collateral is ‘it was stolen,’ confirmation could be a problem.” *Id.* The treatise compares unexplained missing collateral to the transfer of assets on the eve of bankruptcy, which

² All code sections refer to the Bankruptcy Code in title 11 of the U.S. Code unless indicated otherwise.

“is a lightning rod for intense scrutiny of the debtor’s good faith.” Keith M. Lundin & William H. Brown, CHAPTER 13 BANKRUPTCY, 4th Edition, § 181.1, at ¶ 1, Sec. Rev. Apr. 1, 2009, www.ch13online.com.

The Bankruptcy Court considered the dischargeability of a debt, which requires a higher burden of proof than objections to claims, in *In re Klauder*, 91-02377-JC, slip op. (Bankr. S.D. Miss. 1993). In their statement of financial affairs, the debtors provided that the collateral, 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 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. According to the Court, even though the jewelry was worth over \$15,000, the debtors stated that they “were unwilling to file a police report for fear of offending their guests . . . [and] they did not file a claim on their insurance since the policy limits would not satisfy the debt.” *Id.* The Court found that even though the debtors did offer an explanation for the loss of the jewelry, it did “not believe that they have ‘satisfactorily’ explained in the loss.” *Id.*

In the Bankruptcy Case, the Debtor has provided no evidence that the Buick was stolen or is missing. Unlike the debtors in *In re Klauder*, the Debtor did not even attend the Hearing to offer testimony to attempt to prove that the Buick was stolen and is no longer in her possession. Boyd stated that the Debtor did not file a police report or otherwise report the Buick as stolen. Therefore, there is no evidence to support Boyd’s argument that the Buick was stolen and is no longer in the Debtor’s possession. Accordingly, the Court finds that Cleveland Loans should be treated as a secured creditor pursuant to the POC.

IT IS, THEREFORE, ORDERED that the Objection is hereby denied.

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 claim of Cleveland Loans.

##END OF ORDER##