



SO ORDERED,

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

**Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: September 19, 2017**

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

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

IN RE:

**CHAD MICHAEL PAPOI AND
TORI MICHELLE PAPOI,**

CASE NO. 16-03826-NPO

DEBTORS.

CHAPTER 13

**ORDER OVERRULING
TRUSTEE'S OBJECTION TO PROOF OF CLAIM**

This matter came before the Court for hearing on August 14, 2017 (the "Hearing"), on the Objection to Confirmation (Dkt. 49) filed by Adoco, LLC (the "Creditor"), the Objection to Proof of Claim (the "Objection") (Dkt. 53) filed by the debtors, Chad and Tori Papoi (the "Debtors"), and the Response to Objection to Proof of Claim (the "Response") (Dkt. 67) filed by the Creditor (collectively, the "Pleadings") in the above-styled bankruptcy case (the "Bankruptcy Case"). At the Hearing, Samuel J. Duncan appeared on behalf of J.C. Bell, the chapter 13 trustee (the "Trustee"), and William S. Kellum, III appeared on behalf of the Creditor. While the Debtors and the Creditor (the "Parties") have reached an agreement with respect to the Pleadings, the Trustee objected at the Hearing to the Parties' treatment of the Creditor's claim on the Debtors' mobile home as a secured claim (the "Trustee's Objection"). The Court instructed the Creditor to respond to the Trustee's Objection and submit any relevant authority supporting its argument by September

4, 2017. The Trustee then had fourteen (14) days after the Creditor's filing to submit a response. After fully considering the matter, the Court finds as follows:

Jurisdiction

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

Facts

1. The Debtors filed a voluntary, joint petition for relief pursuant to chapter 13 of the U.S. Bankruptcy Code (Dkt. 1) and filed their chapter 13 plan (Dkt. 8) and schedules (Dkt. 9) on December 7, 2016. On March 4, 2017, the Debtors filed a modified chapter 13 plan (Dkt. 41). On Schedule A/B: Property ("Schedule A/B") (Dkt. 9 at 3-8), the Debtors listed their address as 1896 Rex Robinson Road in Meridian, Mississippi, and indicated that it is a mobile home (the "Mobile Home") (Schedule A/B at 1). According to Schedule A/B, the Mobile Home has a value of \$10,000.00.

2. The Creditor filed the Proof of Claim (Bankr. Cl. 15-1) on March 13, 2017, indicating that it had a claim in the amount of \$5,359.00, secured by the Mobile Home. Three days later, the Creditor filed an amended Proof of Claim (Bankr. Cl. 15-2) in the amount of \$6,859.00 to account for past due insurance and tax payments on the Mobile Home. On April 13, 2017, the Creditor filed another amended Proof of Claim (the "POC") (Bankr. Cl. 15-3) to which it attached the relevant promissory note (the "Promissory Note") (Bankr. Cl. 15-3, Ex. 1) detailing the payment provisions for the Mobile Home and Certificate of Title (the "Certificate of Title") (Bankr. Cl. 15-3, Ex. 2).

3. On April 6, 2017, the Debtors filed the Objection, asserting that while the POC reflects both the \$6,859.00 owed on the Mobile Home and the existence of a Promissory Note, the POC does not contain “any other evidence evidencing a perfected security interest in the [M]obile [H]ome.” (*Id.* at 1-2). As a result, the Debtors concluded that “the [POC] should be disallowed as a secured claim and treated as a wholly unsecured claim . . . [because] the [M]obile [H]ome is not encumbered by a perfected lien.” (*Id.* at 2).

4. In the Response, the Creditor generally denied the allegations raised by the Debtors in the Objection. Additionally, the Creditor asserted in the Response that: (1) the Creditor obtained its security interest through use of the Promissory Note describing the Mobile Home and “to which the [Debtors] ha[ve] rights and for which value has been given and was authenticated by the Debtors”; (2) “[t]he [Debtors] applied for and received a Certificate of Title containing the name and address of the Creditor as first lien holder”; and (3) the security interest was perfected once the above requirements were met pursuant to Miss. Code Ann. § 63-21-43(2)(a). (Dkt. 67 at 1). As a result, the Creditor concluded that its POC “should be allowed as a secured claim and treated wholly as a secured claim which encumbers the [Mobile Home] as a perfected lien.” (*Id.*).

5. At the Hearing, the Parties announced that they had reached an agreement with respect to the Pleadings. The Trustee, however, objected to the Parties’ treatment of the Creditor’s claim on the Debtors’ mobile home as a secured claim. With respect to the Trustee’s Objection, the Trustee argued that the Promissory Note was not a security agreement and, therefore, did not create a security interest. The Court gave the Creditor until September 4, 2017 to submit authority supporting its argument on the Trustee’s Objection and the Trustee fourteen (14) days thereafter to respond to the Creditor’s filing.

6. The Creditor timely submitted its Response to Trustee’s Objection to Proof of Claim (Dkt. 79) and made largely the same assertions contained in its earlier filed Response. Additionally, the Creditor took it upon itself to narrow the issue of whether the Promissory Note was sufficient to create a security interest to one addressing only whether the description of the collateral in the Promissory Note was sufficient. (*Id.* at 1). Because the Promissory Note “identifies the collateral as a Mobile Home (RIBI) Year 2002 Model 700 . . . with VIN number RBAL01510,” the Creditor argued that the description reasonably identified the collateral pursuant to UCC § 9-108, and the POC should be allowed as a secured claim. (*Id.* at 1-2).

7. In response, the Trustee submitted the Trustee’s Brief on Objection to Claim (the “Trustee’s Brief”) (Dkt. 80). In his Trustee’s Brief, the Trustee pointed out that the issue is not whether the description of the collateral is adequate but, rather, whether the “homemade” Promissory Note “fails to ‘create’ a security interest in the . . . [M]obile [H]ome.” (*Id.* at 1). The Trustee asserted that “[t]he language employed by most lenders in . . . security agreements to ‘create’ a security interest in personal property is something to the effect of: ‘[y]ou are giving a security interest in the vehicle being purchased’ or ‘I am giving a security interest in a Bass Tracker boat/motor.’” (*Id.*). Because the Promissory Note at issue provides that “[t]his Note is given to secure payment of the purchase price of the following vehicle . . .”, the Trustee argued that the language “fall[s] just short of the Debtors clearly giving or granting a ‘security interest’ in the subject [M]obile [H]ome to [the Creditor].” (*Id.* at 2).

Discussion

The primary issue raised by the Trustee at the Hearing is whether the Promissory Note, alone, is sufficient to create a security interest in the Mobile Home. Pursuant to Mississippi’s version of the Uniform Commercial Code, a “[s]ecured party” includes “[a] person in whose favor

a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding.” MISS. CODE ANN. § 75-9-102(73)(A). A “[s]ecurity agreement” is “an agreement that creates or provides for a security interest.” *Id.* § 75-9-102(74). Under UCC § 9-203(a),¹ “[a] security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral. . . .” *Id.* § 75-9-203(a). Attachment arises when: “(1) [v]alue has been given; (2) [t]he debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and (3) . . . [t]he debtor has authenticated a security agreement that provides a description of the collateral. . . .” *Id.* § 75-9-203(b)(1)-(3)(A). The Trustee does not contest that the Creditor has given value and the Debtors have rights in the Mobile Home with the power to transfer those rights to the Creditor. Thus, the Court need only examine the third prong of attachment—whether the Debtors authenticated a security agreement that provides a description of the collateral.

A. Authentication

Pursuant to § 9-102(7), “authenticate” means (1) “[t]o sign; or” (2) “with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol or process.” *Id.* § 75-9-102(7). The Debtors signed the Promissory Note on January 12, 2014. (Bankr. Cl. 15-3, Ex. 1). Thus, the Court finds that under § 9-203, the authentication requirement is satisfied. *See id.* § 75-9-203(b)(1)-(3)(A); *Ultimore, Inc. v. Bucala (In re Bucala)*, 464 B.R. 626, 630 (Bankr. S.D.N.Y. 2012).

¹ Hereinafter, all code sections refer to title 75 of the Mississippi Code unless indicated otherwise.

B. Description of Collateral

According to § 9-108(a), “a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.” MISS. CODE ANN. § 75-9-108(a). A description “reasonably identifies the collateral if it identifies the collateral by . . . [s]pecific listing [or] . . . [c]ategory.” *Id.* § 75-9-108(b)(1)-(2). A description does not have to be exact, detailed, or include a serial number. *See id.* § 75-9-108(a) cmt. 2. Here, the Promissory Note describes the Mobile Home as “Make: Mobil Home (RIBI); Model: 700; Year: 2002; VIN: RBAL015150.” (Bankr. Cl. 15-3, Ex. 1). This description identifies the Mobile Home by specific listing and category. Additionally, the description exceeds the requirements of the statute by providing the vehicle identification number. Thus, the Court finds that the description of the Mobile Home is sufficient.²

C. Security Agreement

A security agreement does not have a standard form; it must only create a security interest. MISS. CODE ANN. § 75-9-102(74); *see Looney v. Nuss (In re Miller)*, 545 F.2d 916, 918 (5th Cir. 1977) (“No formal wording is required; we are to examine the substance of the documents, in light of the circumstances of the case.”). In fact, the principal test for determining whether a security interest exists is: “[I]s the transaction intended to have effect as security?” (*Id.*) (quoting UCC § 9-102 cmt. 1). If the Parties intended to create a security interest, then the Uniform Commercial Code governs “regardless of the form of the transaction or the name by which the parties may have christened it.” MISS. CODE ANN. § 75-9-102 cmt. 1; *see In re Bucala*, 464 B.R. at 631 (“For there

² In the Trustee’s Brief, the Trustee agreed that “the description of the collateral is adequate.” (Dkt. 80 at 1).

to be a valid and enforceable security agreement, a formal and separately signed document labeled ‘security agreement’ is not necessary.”).

After reviewing the Promissory Note, the Court finds that the Parties created a security interest in the Mobile Home. The language in the Promissory Note that evidences the Parties’ intent to create a security interest in the Mobile Home is as follows:

6. This Note is given to secure the payment of the purchase price of the following vehicle (the ‘Security’):
Make: Mobil Home (RIBI) Model: 700 Year: 2002 VIN: RBAL015150
(payments 60 @ 183.33).

7. Title to the Security will be retained by the Lender until all payments due under this Note are paid in full.

8. If the Borrower defaults in payment as required under this Note or after demand for ten (10) days, the Security will be immediately provided to the Lender and the Lender is granted all rights of possession as the owner.

(Bankr. Cl. 15-3, Ex. 1). When paragraph 6 is read in conjunction with paragraphs 7 and 8, the intent to create a security interest becomes clear. In paragraph 6, the Mobile Home is defined as “Security,” and this term is used again in paragraph 7 to show that the Creditor will retain title to the Mobile Home until the Debtors repay the debt owed. Further, and perhaps most importantly, paragraph 8 states that the Creditor will immediately take possession of the Mobile Home with “all rights of possession as the owner” upon default by the Debtors. (*Id.*). Since only a secured party may repossess collateral, paragraph 8 clearly evidences the Parties’ intent to create a security agreement that provides the Mobile Home as collateral for the Creditor’s loan. *See* MISS. CODE ANN. § 75-9-609.

D. Perfection

Since the Promissory Note sufficiently created a security agreement, the Court must now determine whether the Creditor properly perfected its security interest in the Mobile Home. Under

Mississippi law, “a security interest in a . . . mobile home of a type which a certificate of title is required is not valid against creditors of the owner . . . unless perfected.” *Id.* § 63-21-43(1). Perfection arises when: (1) “the owner signs a security agreement describing the . . . mobile home”; (2) “the secured party gives value”; (3) “the owner has rights in the . . . mobile home”; and (4) “an application for certificate of title signed by the owner is presented to a designated agent.” *Id.* § 63-21-43(2)(a). Because the Court, *supra*, has found that the Debtors signed a security agreement describing the Mobile Home, the Creditor provided the Debtors with \$11,000.00 in exchange for its security interest, and the Debtors owned the Mobile Home and had rights in it, the Court need only examine the fourth requirement of perfection—whether the Debtors applied for and received a certificate of title containing the name and address of the Creditor as lienholder.

In the Bankruptcy Case, the Mobile Home’s Certificate of Title lists the Creditor as first lienholder since January 8, 2014, and the Mississippi Department of Revenue issued the Certificate of Title on February 12, 2014. (Bankr. Cl. 15-3, Ex. 2; Dkt. 79 at 6). Thus, the Court finds that the Creditor successfully recorded its lien and perfected its security interest in the Mobile Home.

Conclusion

Since the Promissory Note evidences the Parties’ intent to create a security interest in the Mobile Home, and the Parties properly perfected that security interest, the Court concludes that the Promissory Note constitutes a security agreement. *See Maddox v. Fed. Deposit Ins. Corp. (In re Maddox)*, 92 B.R. 707, 711 (Bankr. W.D. Tex. 1988) (“After all, why would a debtor and lender go to the trouble to perfect a security interest that had not been created?”). Accordingly, the Court finds that the Trustee’s Objection should be overruled and the POC allowed as a wholly secured claim.

IT IS, THEREFORE, ORDERED that the Trustee’s Objection is hereby overruled.

IT IS FURTHER ORDERED that the Parties shall submit their agreed order on the Pleadings within fourteen (14) days of the date of this Order.

##END OF ORDER##