



SO ORDERED,

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: August 5, 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:

ESSIE M. WILLIAMS,

CASE NO. 16-10624-NPO

DEBTOR.

CHAPTER 13

**ORDER OVERRULING OBJECTION TO
PROOF OF CLAIM OF CRESCENT BANK**

This matter came before the Court for hearing on August 4, 2016 (the “Hearing”), on the Objection to Proof of Claim (the “Objection”) (Dkt. 29) filed by Essie M. Williams, the debtor (the “Debtor”) in the above-styled chapter 13 bankruptcy case (the “Bankruptcy Case”). At the Hearing, Michael W. Boyd appeared on behalf of the Debtor. After fully considering 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 13 of the

Bankruptcy Code on February 24, 2016 (Dkt. 1).

2. The Debtor filed her Chapter 13 Plan (the “Plan”) (Dkt. 6) on February 24, 2016. The Order Confirming the Debtor’s Plan, Awarding a Fee to the Debtor’s Attorney and Related Orders (Dkt. 26) was entered on April 27, 2016. The Plan proposed to pay 0.00% to unsecured creditors. (Plan at 2).

3. On May 20, 2016, Crescent Bank & Trust (“Crescent Bank”) filed a Proof of Claim for \$12,787.30 (the “POC”) (Bankr. Cl. No. 4-1). According to the POC, Crescent Bank’s claim for “money loaned” is secured by a 2001 Chevrolet Impala (the “Impala”). (POC at 2). Crescent Bank is not listed as a secured creditor in the Plan.

4. The Debtor filed the Objection on June 15, 2016, arguing that the Impala “became inoperable and is no longer in the debtor’s possession, therefore, proof of claim shall be treated as a general unsecured claim.” (Obj. at 1).

5. At the Hearing, the Debtor testified that the Impala’s “motor went out” in February of 2015 and it would have been too expensive to repair. (Hr’g at 10:05:28).¹ The Debtor stated that her son “took [the Impala] to the junkyard.” (Hr’g at 10:05:44). According to the Debtor, it would not have been cost effective to have the Impala repaired.

Discussion

Pursuant to § 502(a),² unless a party in interest objects, a claim is “deemed allowed” if it

¹ All citations to the Hearing are made to the timestamp reflected on the audio recording of the Hearing.

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

complies with § 501.³ 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)⁴ 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 Crescent Bank 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, 209, www.ch13online.com.

In determining whether the Debtor should be permitted to treat Crescent Bank’s claim as unsecured because she took its collateral (the Impala) “to the junkyard,” the Court is guided by its recent decision in *In re Ogburn*, Case No. 15-12946-NPO (Dkt. 78), slip op. (Bankr. N.D. Miss. Apr. 15, 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, also a car, was no longer in her possession. *Id.*, at *2. The debtor in *In re Ogburn* stated that the car malfunctioned and she abandoned it on the side of the road but when she went

³ Section 501 governs the filing of claims or interests.

⁴ “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).

back to get it, 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.

Like the debtor in *In re Klauder*, the Debtor in the Bankruptcy Case relied solely on her own testimony that the Impala is no longer in her possession, and offered no corroboration. The Court finds that because the Debtor offered no corroborating evidence to prove that the "motor went out" on the Impala, that it would not have been economical to fix it, or that it was "taken to the junkyard," the Objection should be overruled. Accordingly, Crescent Bank should be treated as a secured creditor pursuant to the POC and the Debtor should amend the Plan to account for the

secured claim.

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

IT IS FURTHER ORDERED that the Debtor hereby has fourteen (14) days in which to amend the Plan to account for the secured claim of Crescent Bank.

##END OF ORDER##