UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

JENNIE SUE THOMAS WHITE, Case No. 01-11075-MAM-13
Debtor.

ORDER OVERRULING DEBTOR'S OBJECTION TO CLAIM

John Lockett, Attorney for Debtor
James Greer, Attorney for Max Recovery, Inc.

This matter is before the Court on the debtor's objection to Trustee's claim number 10 filed by Max Recovery, Inc. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2) and the Court has authority to enter a final order. For the reasons indicated below, the Court is overruling the debtor's objection to the claim.

FACTS

The debtor, Jennie Sue Thomas White, filed a Chapter 13 bankruptcy on March 6, 2001. In her bankruptcy schedules, the debtor listed an unsecured debt owed to Sears in the amount of $1,700.00. Sears timely filed a general unsecured claim in the amount of $1832.37 for unpaid pre-petition charges incurred on debtor's account number. Sears's claim is designated as Claim Number 10 on the Trustee's claims register. Thereafter, Sears sold debtor's account to Max Recovery Inc., and a notice of transfer/assignment of claim was filed on September 3, 2002. On December 14, 2004, the debtor filed an objection to Claim 10 alleging that the claim was not properly supported by documentation. Max filed a response to the objection arguing that the debtor's listing of the debt owed to Sears in her schedules constituted a judicial admission of the debt. Max asserts that it does not know what, if anything, was attached to the claim when it was originally filed by Sears. Max

also states that it has been searching for additional documentation to support its claim, but it has been unable to locate any additional documentation thus far.

LAW

Section 502(a) of the Bankruptcy Code governs the allowance of claims. 11 U.S.C. § 502(a). It states that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest...objects." *Id.* If a proof of claim is executed and filed in accordance with the Federal Rules of Bankruptcy Procedure, it constitutes prima facie evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). But if the claim "is based on a writing, the original or a duplicate shall be filed with the proof of claim." Fed. R. Bankr. P. 3001(c). "If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim." *Id.*

In the present case, Max's claim is based on a writing, but neither the original, a duplicate, nor a statement explaining the loss or destruction of the writing was filed with the proof of claim. Therefore, the claim was not executed and filed in accordance with the Rules, and so the proof of claim is not by itself prima facie evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(c) & (f). But, the debtor, in her bankruptcy schedules, listed Sears as an unsecured creditor in the amount of $1,700.00. When a debtor, as part of her bankruptcy petition, lists a creditor as an unsecured creditor of her estate, the entry in the debtor's schedules constitutes a judicial admission that she does in fact owe a debt to the creditor. *Morgan v. Musgrove (Matter of Musgrove),* 187 B.R. 808, 812 (Bankr. N.D. Ga. 1995); *see also Joyner AutoWorld v. George (Matter of George),* 315 B.R. 624 (Bankr. S.D. Ga. 2004) (when a debtor swears under penalty of perjury what the value of something is, that statement constitutes a judicial admission); *Larson v. Groos Bank, N.A.,* 204 B.R. 500, 502 (W.D. Tex. 1996) ("[S]tatements in bankruptcy schedules are executed under penalty

of perjury and when offered against a debtor are eligible for treatment as judicial admissions."). Because the debtor judicially admitted that she owed the debt to Sears (now transferred to Max), it would be inequitable to allow her to now "take back" that admission without any evidence to the contrary.

Max's claim lacks the proper documentation to give the claim, by itself, prima facie validity. However, the Court finds that the claim, when considered together with the debtor's admission of liability on her bankruptcy schedules, establishes at least a prima facie case of the debtor's liability on the claim. *See In re Jorczak*, 314 B.R. 474 (Bankr. D. Conn. 2004) (holding that although the creditor's proof of claim lacked the proper supporting documentation to give the claim prima facie affect, the claim along with the debtor's admission of liability on the bankruptcy schedules established a prima facie case of debtor's liability). Because Max has satisfied its burden of alleging facts sufficient to support its claim, the burden shifts to the debtor to produce evidence at least equal in probative force to that offered by Max and which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency. *See id.* at 481; *see also Lundell v. Anchor Const. Specialists, Inc. (In re Lundell)*, 223 F.3d 1035, 1041 (9th Cir. 2000); *Sherman v. Novak (In re Reilly)*, 245 B.R. 768, 773 (2d Cir. BAP 2000).

The party objecting to a proof of claim can satisfy its burden of production by presenting specific and detailed allegations that place the claim in dispute, by presenting legal arguments based on contents of the claim, or by presenting pretrial pleadings such as a motion for summary judgment, in which evidence is presented to bring the validity of the claim into question. *In re Rally Partners, L.P.*, 306 B.R. 165, 168-69 (Bankr. E.D. Tex. 2003) (citations omitted). The only evidence offered by the debtor is that the claim had "[n]o itemization or payment history." That statement by the

debtor is not a specific and detailed allegation that places the claim in dispute, nor does it refute the legal sufficiency of Max's claim. Therefore the Court finds that Max's claim is allowed.

That leaves only the amount of the allowed claim to be determined. The debtor listed the debt owed to Sears in the amount of $1,700.00, while Sears filed its proof of claim for $1,832.37. Because the debtor judicially admitted owing $1,700.00 and the creditor failed to prove anything more, the Court finds that the claim of Max is allowed in the amount of $1,700.00.

Therefore, IT IS ORDERED that the debtor's objection to Trustee's Claim Number 10 is OVERRULED. It is further ORDERED that the claim of Max Recovery Inc. is allowed in the amount of $1,700.00.

Dated: January 25, 2005

Margaret A. Mahoney

MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE