

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In re:)
)
ROBERT A. BURNS and) Case No. 19-13773
KIMBERLY D. BURNS,)
Debtor(s).)

ORDER SUSTAINING OBJECTION (DOC. 27) IN PART AND
CONTINUING HEARING ON OBJECTION FOR ADDITIONAL INFORMATION

The court held a hearing on the debtors’ objection (doc. 27) to claim no. 16 of Wells Fargo Bank, N.A. Wells Fargo filed claim no. 16 as secured by a gas heating and air conditioning system (“the air conditioner”). The debtors asked the court to reclassify the claim as unsecured. Wells Fargo filed a response to the objection and the debtors filed a reply brief. Having reviewed the objection, the briefs, and the applicable law, and for the reasons stated on the record and discussed in more detail below, the court sustains the objection in part and resets the hearing on the objection to March 18, 2020.

The credit application signed by the debtor Kimberly Burns contains language creating a purchase-money security interest in the air conditioner. Because there is no dispute that the air conditioner qualifies as a “consumer good,” Alabama Code § 7-9A-309 provides that the security interest was automatically perfected.¹ The debtors argue that once the air conditioner was installed, though, it became a fixture that had to be perfected by filing a financing statement under Alabama Code § 7-9A-334(d). The court need not decide whether the air conditioner qualifies as a fixture because, even if it does, § 7-9A-334(d) only governs priority of the secured claim (for example, in relation to a real estate mortgage). It does not provide that a purchase-

¹ The parties do not dispute that Alabama law applies.

money security interest in consumer goods loses that status when it becomes a fixture. *See generally, e.g., In re Story*, No. 16-40102, 2016 WL 5210572 (W.D. N.C. Sept. 21, 2016) (discussing similar laws in North Carolina).

However, the court agrees with the debtors that the claim should be reclassified as unsecured at least in part. Specifically, invoices attached to the proof of claim show charges for both the air conditioner purchase itself and for installation and maintenance of the air conditioner. The proof of claim does not contain sufficient information for the court to determine how much money is still owed on the collateral (which would be a secured amount) and how much money is owed on the labor costs (which counsel for Wells Fargo admitted would be an unsecured amount).

The court therefore sustains the objection in part but continues the hearing on the objection March 18, 2020, 8:30 a.m., Courtroom 2, 201 St. Louis Street, Mobile, AL 36602. Wells Fargo should amend its claim by March 11, 2020 to include a copy of the underlying credit agreement and, if available, a breakdown of the charges discussed above. If the parties agree on the secured amount of the claim prior to the hearing, they should notify the court immediately.

Dated: February 5, 2020


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE