

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

IN RE:)
)
BETTY DAILEY,) Case No. 16-01491
)
Debtor.)

ORDER SUSTAINING OBJECTION TO CLAIM

This case came before the court for a hearing on the debtor's amended objection (docs. 37, 40, 47) to claim number 7 of Hoffman Furniture Company, Inc. ("Hoffman"). For the reasons discussed below, the court will sustain the objection and disallow the claim as time-barred.

The debtor filed this chapter 13 case on May 7, 2016. She argues that the court should disallow Hoffman's claim because the claim is barred by a six-year statute of limitations, even though Hoffman's contract supporting its claim purports to be under seal and thus subject to a ten-year statute of limitations. The court need not reach the issue of whether the Hoffman contract was properly executed under seal because the court finds that the contract is a negotiable instrument subject to a six-year statute of limitations in any event.

With certain exceptions not applicable here, Alabama Code § 7-3-104(a) defines "negotiable instrument" as

an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

- (1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
- (2) Is payable on demand or at a definite time; and
- (3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an

undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

The court has reviewed the Hoffman contract and agrees with the debtor that the contract is in essence a promissory note and meets all the criteria for a negotiable instrument under Alabama law. Accordingly, the Hoffman claim is subject to the six-year statute of limitations for negotiable instruments and is time-barred. *See* Ala. Code § 7-3-118; *see also generally Foster v. Hacienda Nirvana, Inc.*, 32 So. 3d 1256 (Ala. 2009).

Specifically, the contract attached to Hoffman's proof of claim (no. 7-1) shows that the debtor was obligated to make 18 monthly payments of \$123.68, beginning on September 3, 2004. Thus, the last payment from debtor was due in 2006, although it appears that the debtor made one or more late payments in 2007 and no payments after that date. Regardless of whether the court measures the limitations period from 2006 (when the last payment was due) or from 2007 (when the debtor made her last payment prior to filing for bankruptcy), the result is the same and the claim was barred by the time of the petition in May 2016.

As a result, the court sustains the debtor's objection to Hoffman's claim number 7, which is disallowed in its entirety.

Dated: October 18, 2017


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE