

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

IN RE:)
)
JENNIFER DELUCIA,) Case No. 17-02871
)
Debtor.)

ORDER OVERRULING OBJECTIONS (DOCS. 65, 67) TO CLAIMS

This case is before the court on the debtor's objection (doc. 65) to ECF claim number 10 and the debtor's objection (doc. 67) to ECF claim number 13. The debtor admits liability on open-end credit to the original creditors, but the assignees which filed the proofs of claim did not include evidence of the assignments. For the reasons discussed herein, the court overrules the objections.

Federal Rule of Bankruptcy Procedure 3001(c)(3)(A) states in pertinent part that "[w]hen a claim is based on an open-end or revolving consumer credit agreement[,]" such as the claims here, the claimant must file with its proof of claim a statement of account with certain information applicable to the account. The Rule expressly anticipates the possibility that the claim was assigned by requiring the creditor to provide "the name of the entity from whom the creditor purchased the account" along with other information specific to the account that allows the debtor to identify the account. The Rule further eliminates the requirement that a claimant file a copy of the writing on which the claim is based as required by Rule 3001(c)(1).

Nonetheless, Rule 3001(c)(3)(B) requires that, upon request by a party in interest, the claimant "shall, within 30 days after the request is sent, provide the requesting party a copy of the writing specified in" Rule 3001(c)(1). The "writing" specified in Rule 3001(c)(1) is the "writing" on which the claim is based – for example, credit card statements. The "writing" described in Rule 3001(c)(1) does not specifically call for subsequent written assignments of the

underlying debt. “If a claimant fails to comply with a Rule 3001(c)(3)(B) request at all, or fails to comply in a timely manner, the remedy is sanctions, not disallowance of the claim.” 9 *Collier on Bankruptcy* ¶3001.01[3] (Richard Levin & Henry J. Sommer eds., 16th ed.).

Rule 3001(e)(2), which applies to claims transferred after the filing of a proof of claim, requires “evidence of the transfer” to be filed. However, Rule 3001(e)(1) applies here because the transfers took place before the claims were filed, and it does not require “evidence of the transfer” to be filed.

Finally, Rule 3001(f) states that “[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.” See also *In re Walston*, 606 F. App’x 543, 546 (11th Cir. 2015); 9 *Collier on Bankruptcy* ¶3001.01[3]. “The burden then shifts to the objecting party to come forward with enough substantiations to overcome the claimant’s prima facie case.” See *In re Walston*, 606 F. App’x at 546 (citation and quotation marks omitted).

In the case at hand, ECF claim number 10 lists as the current creditor “Premier Bankcard, LLC; Jefferson Capital Systems, LLC Assignee” and indicates that notices and payments should be sent to Jefferson Capital Systems. ECF claim number 13 lists as the current creditor “Quantum3 Group LLC as agent for Sadino Funding LLC.” The creditor states that it acquired the claim from “Bluestem and SCUSA” and identifies “Fingerhut Freshstart” as another name the creditor used with the debtor.

The debtor listed a debt owed to Premier Bankcard in her sworn schedules. She also testified before the court that she owes a debt to Premier Bankcard. She argues, however, that there is insufficient evidence of how Jefferson Capital acquired the subject debt. Her attorney represented that he requested such evidence, but none has been provided.

Similarly, the debtor testified before the court that she owes a debt to Fingerhut but again argues that there is insufficient evidence of how the claimant acquired the subject debt. Her attorney also represented that he requested such evidence but states that the information provided “is incomplete and provides no information regarding the relationship between Claimant and the Debtor, and therefore has no evidentiary value.” (*See* doc. 67).

Rule 3001 by its terms does not require the assignee of open-end or revolving consumer debt to file evidence of the transfer¹ unless a proof of claim on the same debt has already been filed, which is not the case here. Both claims 10 and 13 include the information required by Rule 3001(c)(3)(A) and were filed in accordance with Rule 3001(e)(1), and they thus are entitled to *prima facie* validity under Rule 3001(f). The debtor did not overcome that presumption and in fact admitted to the debts at issue. The claimants’ purported failure to respond or to respond adequately to the debtor’s Rule 3001(c)(3)(b) request does not compel disallowance of the claims.² Accordingly, the court overrules the debtor’s objection (doc. 65) to ECF claim number 10 and the debtor’s objection (doc. 67) to ECF claim number 13, and the claims are allowed as filed.

Dated: May 8, 2018


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE

¹ Other than claims transferred for security, which is not involved here.

² This is not to say that debtors should not continue to utilize Rule 3001(c)(3)(B). For example, “if there is an objection to the claim, the claimant may be precluded from presenting evidence in opposition to the objection, and this may result in disallowance of the claim.” *See 9 Collier on Bankruptcy* ¶3001.01[3]. But under the circumstances of this case, where the debtor admitted to the original debts, she did not overcome the *prima facie* validity of the claims.