

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

IN RE: )  
 )  
PAUL E. DORTCH, ) Case No. 18-02920  
 )  
Debtors. )

ORDER SUSTAINING IN PART OBJECTION TO CLAIM NO. 1

This case is before the court on the debtor's objection (doc. 18) to claim no. 1 of OneMain Financial Services, Inc. in the amount of \$11,245.55 for a motor vehicle deficiency balance. For the reasons discussed below, the court sustains the objection in part and reduces the amount of OneMain's claim.

The debtor's objection states that the debtor surrendered the vehicle to OneMain and that the deficiency balance should be \$0.00. At a hearing held on the objection on January 10, 2019, however, the debtor challenged the commercial reasonableness of OneMain's postpetition disposition of the vehicle. *See* Ala. Code §§ 7-9A-610, 7-9A-627. OneMain's proof of claim no. 1 lists a credit of \$20,200 for "accepted high bid for collateral" without any other information regarding the circumstances of the sale. The debtor testified about the condition of the vehicle when OneMain repossessed it and that he believed a minimum value for the vehicle would have been \$26,000.

Because the debtor's objection did not adequately put OneMain on notice that the debtor was challenging the commercial reasonableness of the sale, the court gave OneMain an opportunity to address the debtor's contention that its sale was not commercially reasonable by February 15, 2019, which OneMain did (*see* doc. 37). OneMain attached the affidavit of OneMain employee Stephanie Ray to its response.

Under Federal Rule of Bankruptcy Procedure 3001(f), a proof of claim is “prima facie evidence of the validity and amount of the claim.” “The burden then shifts to the objecting party to come forward with enough substantiations to overcome the claimant’s prima facie case.” *In re Walston*, 606 F. App’x 543, 546 (11th Cir. 2015) (citation and quotation marks omitted). The debtor did so in this case, thus shifting the burden back to OneMain. *See In re Taylor*, 280 B.R. 711, 713-14 (Bankr. S.D. Ala. 2001); *see also In re James*, 308 B.R. 569, 570-71 (Bankr. S.D. Ala. 2002). It was thus ultimately OneMain’s burden to prove the commercial reasonableness of the sale. *See* Ala. Code § 7-9A-626 (“If the secured party’s compliance is placed in issue, the secured party has the burden of establishing that the . . . disposition . . . was conducted in accordance with this part.”).

OneMain relies on Alabama law that “[t]he fact that a greater amount could have been obtained by a . . . disposition . . . at a different time or in a different method from that selected by the [creditor] is not of itself sufficient to preclude the [creditor] from establishing that the . . . disposition . . . was made in a commercially reasonable manner.” *See* Ala. Code § 7-9A-627(a). The problem is that Ray’s affidavit does not provide any information about the circumstances of the disposition. Her affidavit states that the vehicle “was sold for \$20,200.00 at the ADESA Auto Auction located in Birmingham, Alabama” and that the Black Book wholesale value was \$21,475. However, the affidavit does not state that vehicle was sold through the auction process. It does not state that the vehicle was listed for sale or marketed in any way. The affidavit mentions an “accepted high bid” but contains no information as to whether or how bids from potential buyers were solicited. The affidavit contains no useful information about the commercial reasonableness of the disposition except that the sale price was not much less than the Black Book wholesale value.

In the absence of such evidence, the court finds that OneMain has not met its burden of proving that the terms of the disposition were commercially reasonable. Accordingly, the court sustains the objection (doc. 18) in part and reduces OneMain's claim by \$5,800, the difference between \$26,000 and the sale price of \$20,200. OneMain's claim no. 1 is allowed as unsecured in the amount of \$5,445.55.

Dated: February 20, 2019

  
HENRY A. CALLAWAY  
CHIEF U.S. BANKRUPTCY JUDGE