

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

In re: )  
)  
GREGORY SCOTT WARD, ) Case No. 19-13537  
)  
Debtor(s). )

ORDER SUSTAINING OBJECTION AND RECLASSIFYING CLAIM AS UNSECURED

The debtor filed an objection (doc. 27) to the secured claim of creditor Wells Fargo Bank, N.A. (claim no. 4) requesting that the claim be allowed in full but reclassified as unsecured. The court held a hearing on the objection and has reviewed the relevant law. Having done so, the court sustains the objection and reclassifies claim no. 4 as a general unsecured claim.

The proof of claim filed by Wells Fargo (“the creditor”) states that the basis of the claim is “Open-End Revolving Credit” and that the claim is a “Secured Card Collateral Account” and is secured by a “Pledge of Secured Card Collateral Account.” Attached to the proof of claim is a single page titled “Proof of Claim Account Summary.”

Federal Rule of Bankruptcy Procedure 3001(c)(1) states in pertinent part: “Except for a claim governed by paragraph (3) of this subdivision, when a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim.” Under Rule 3001(c)(3), “[w]hen a claim is based on an open-end or revolving consumer credit agreement – except one for which a security interest is claimed in the debtor’s real property –” the claimant must file with its claim a statement of account with certain information applicable to the account. Rule 3001(c)(3) eliminates the requirement that a claimant file a copy of the writing on which the claim is based (i.e., the underlying credit card agreement) as required by Rule 3001(c)(1). Instead, Rule 3001(c)(3)(B) requires that, on request

of a party in interest, the claimant must “within 30 days after the request is sent, provide the requesting party a copy of the writing specified in” Rule 3001(c)(1).

A claim based on a credit card is the quintessential claim based on an open-end or revolving consumer credit agreement. Thus, Rule 3001(c)(3) – not Rule 3001(c)(1) – applies. Here, the creditor’s “Proof of Claim Account Summary” included the required Rule 3001(c)(3) information. However, Rule 3001(d) states that if the creditor is claiming “a security interest in property of the debtor . . . , the proof of claim shall be accompanied by evidence that the security interest has been perfected.” Rule 3001(c), while eliminating the requirement to attach the underlying credit card agreement, does not eliminate the requirements of Rule 3001(d) if the creditor is claiming a security interest in property of the debtor. For example, the creditor could have attached copies of receipts showing a purchase-money security interest in goods but did not do so. The court thus finds that the debtor’s objection is well-taken, sustains the objection, and reclassifies the claim as unsecured.

To the extent that any of the court’s previous rulings suggest or find that no evidence of a perfected security interest is required for a purported secured claim based on open-end or revolving credit, this order overrules those orders to that extent only.

Dated: April 2, 2020

  
HENRY A. CALLAWAY  
CHIEF U.S. BANKRUPTCY JUDGE