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

In re:	)	
	)	
VALERIE R. SMITH and	)	Case No. 19-12463
REGINALD D. SMITH,	)	
Debtor(s).	)	

ORDER OVERRULING OBJECTION (DOC. 28)

The debtors have filed an objection (doc. 28) to the secured proof of claim of creditor Atlas Acquisitions LLC, Assignee of Kay Jewelers (claim no. 13) and request 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 overrules the objection and allows the claim as filed.

The proof of claim filed by Atlas Acquisitions ("the creditor") states that the claim is a credit card account secured by a purchase-money security interest. Attached to the claim are two itemized receipts for jewelry purchases made on December 15, 2016 and December 23, 2016, as well as sales slips time-stamped the same time as the receipts. The sales slips include the sale price, information about Kay Jewelers' return policy, and a section for "SECURITY AGREEMENT." The security agreement on the December 15, 2016 sales slip states: "I grant a security interest in these purchased goods pursuant to my KAY JEWELERS Retail Installment Charge Agreement, the terms of which are incorporated by reference[,]" and is signed by Mr. Smith. The security agreement on the December 23, 2016 sales slip states: "I grant a security interest in these purchased goods pursuant to my KAY OUTLET Retail Installment Charge Agreement, the terms of which are incorporated by reference[,]" and is also signed by Mr. Smith. Although the sales slips refer to a "Kay Jewelers" and "Kay Outlet" Retail Installment Charge Agreement, the account appears to be the same based on the last four digits shown on the documents attached to the claim. The creditor did not attach a copy of the Retail Installment Charge Agreement ("the charge agreement").

The debtors do not contest that they entered into the charge agreement or that they bought the jewelry shown on the claim attachments. Rather, they challenge (1) the sufficiency of the description of the collateral in the security agreement and (2) the failure of the creditor to attach a copy of the charge agreement. Turning to the first argument, under Alabama's version of the Uniform Commercial Code (UCC), the creditor's alleged security interest in the jewelry purchased by the debtors is not enforceable unless (1) there is a signed a security agreement which contains a description of the collateral; (2) value has been given; and (3) the debtors have rights in the collateral.[1] *See* Ala. Code § 7-9A-203. The debtors contest only the first element. Perfection of a purchase-money security interest in consumer goods such as the jewelry is automatic under Alabama law and is otherwise not an issue here. *See* Ala. Code § 7-9A-309.

Under Alabama Code § 7-9A-108, "a description of personal or real property [in a security agreement] is sufficient, whether or not it is specific, if it reasonably identifies what is described." The Alabama Supreme Court has noted that "a writing or writings, regardless of label, which adequately describe the collateral, carry the signature of the debtor, and establish that in fact a security interest was agreed upon, would satisfy both the formal requirements of the statute and the policies behind it." *See Ex parte People's Cmty. Bank of Ashford*, 775 So. 2d 819, 823 n.4 (Ala. 2000) (citation, quotation marks, and brackets omitted) (emphasis added). The description of "purchased goods" on the sales slips, coupled with itemized receipts issued at the same time, is sufficient. Even without the inclusion of the receipts, the description is likely sufficient. *See, e.g., In re Murphy*, No. 12-20434, 2013 WL 1856337, at *2-3 (Bankr. D. Kan. May 2, 2013) (finding, under

[1] The debtors made the purchases in Mobile, Alabama, and Gulfport, Mississippi. Mississippi law is the same as Alabama law in this respect. The Mississippi purchase was for less than $100.00. To the extent that Alabama or Mississippi law may differ with respect to any other law discussed herein and the debtors wants to argue that Mississippi law should apply to the $100.00 transaction, the debtors are not precluded from filing another objection.

Kansas' identical UCC provision, that "[t]he description 'goods purchased on your Account' adequately identifies the collateral between the Debtor and the holder of the account").

Turning to the debtors' second argument that the creditor did not attach the charge agreement, 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 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).

The nature of the underlying debt in this case – a credit card account secured by personal property – is undisputed. 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. The creditor attached the required Rule 3001(c)(3) information to its claim; no additional documentation was necessary. The claim is therefore entitled to prima facie validity under Rule 3001(f).[2] *See In re Walston*, 606 F. App'x 543, 546 (11th Cir. 2015). The debtors have not argued that they made a Rule 3001(c)(3)(B) request for the charge agreement, but even if they had, the remedy for failure to comply with such a request is sanctions, not disallowance of the claim. *See* 9 *Collier on Bankruptcy* ¶3001.01[3] (Richard Levin & Henry J. Sommer eds., 16th ed.). Because the

[2] "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." Indeed, under Rule 3001(c)(3), the creditor did not have to attach the applicable security agreements at all, even though the court has already found the agreements sufficient under Alabama law.

debtors have not offered any evidence to rebut the prima facie validity of the creditor's claim, the court will allow the claim as filed.

If the purchases here were made in a commercial, rather than consumer, transaction, the creditor's purchase-money security interest would not lose its status as such even if additional purchases were made. *See* Ala. Code § 7-9A-103. While Alabama's UCC leaves open the issue for consumer goods transactions, *see id.*, the court is not ruling on that issue because there is no evidence that the debtors made purchases on the charge account beyond those reflected in the documents attached to the claim. The court is likewise not reaching the issue of what happens to a purchase-money security interest in consumer goods when a debtor refinances or renews an agreement related to such interest.

To the extent the court has not specifically addressed any of the debtors' arguments, it has considered them and determined that they would not alter the result. For the reasons discussed herein, the court overrules the objection (doc. 28) to claim no. 13 and allows the claim as filed.

Dated: December 30, 2019

HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE