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

In re:	)	
	)	
MICHAEL C. THOMPSON,	)	Case No. 19-12356
Debtor(s).	)	

ORDER OVERRULING OBJECTION (DOC. 21)

The debtor filed an objection (doc. 21) to the secured proof of claim of creditor Atlas Acquisitions LLC, Assignee of JB Robinson (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 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 February 12, 2015 and February 17, 2015, as well as sales slips time-stamped the same time as the receipts. The sales slips include the sale price, return policy information, and a section for "SECURITY AGREEMENT." The security agreement on the sales slips states: "I grant a security interest in these purchased goods pursuant to my JB ROBINSON JEWELERS Retail Installment Charge Agreement, the terms of which are incorporated by reference." The creditor did not attach a copy of the Retail Installment Charge Agreement ("the charge agreement").

The debtor does not contest that he entered into the charge agreement or bought the jewelry shown on the claim attachments. Rather, his objection states that the claim "appears to be based on an open-end or revolving credit account" and thus should be reclassified as unsecured.

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 –"[1] 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).

A claim based on a credit card account such as the claim here 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, even though the creditor went a step further and attached the security agreements evidencing its security interest in the jewelry. The claim is therefore entitled to prima facie validity under Rule 3001(f), which 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 In re Walston*, 606 F. App'x 543, 546 (11th Cir. 2015). Based on the plain language of the Bankruptcy Rules, the fact that an account is based on an open-end or revolving consumer credit agreement does not automatically mean that a claim should be treated as unsecured, as the debtor argues. Because the debtor has not offered any

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[1] This is not the case here, as the purchases at issue were of personal property, not real property.

evidence to rebut the prima facie validity of the creditor's claim, the court will allow the claim as filed.[2]

At a hearing held on the objection, the debtor's attorney also contended that the debtor was unable to tell if other purchases were made on this account. 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 the creditor's claim here, as discussed above, is entitled to prima facie validity and the debtor has not offered any evidence to rebut the prima facie validity, such as by submitting an affidavit to state that additional purchases were made 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 debtor's 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. 21) to claim no. 4 and allows the claim as filed.

Dated: December 30, 2019

HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE

[2] The debtor has also not argued that he made a Rule 3001(c)(3)(B) request for the charge agreement, but even if he 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.).