



George R. Hodges

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United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

In Re:)	Case No. 03-41470
)	Chapter 13
JOSEPH RICHARD RUPP)	
BARBARA ANNE RUPP,)	
)	
Debtors.)	
_____)	

ORDER SUSTAINING OBJECTIONS TO CLAIMS

This matter is before the court in this and other cases upon objections to proofs of claim filed by debtors against Citibank, USA, N.A. ("Citibank"). After consideration of the objections to proofs of claim, Stipulation of Facts, and briefs of counsel, the court has concluded that it should sustain the debtors' objections to Citibank's proofs of claim. In that regard, the Trustee is directed to pay Citibank based on the amount listed on Schedule F in each of the respective Chapter 13 cases listed in paragraph one below.

FINDINGS OF FACT

1. Debtors in the following cases filed objections to the proof of claim of Citibank: Antonio Wilson, Case No. 03-41195; Dannie J. Whitworth, Case No. 03-41318; Frank and Maybelle C. Simpson, Case No. 03-41330; Bobby L. and Hattie V. White, Case No. 03-41535; John R. and Nancy T. Warning, Case No. 03-41581; Jonathon P. Limerick, Case No. 03-41591; James T. and Linda J. West, Case No. 04-40001; and Richard Joseph and Barbara Anne Rupp, Case No. 03-41470.

2. Counsel for the debtors and Citibank submitted an agreed upon Stipulation of Facts, which is applicable to all of the above-captioned cases and which consolidates the common, relevant facts from all of these cases into one general set of facts. The Stipulation of Facts is summarized below.

3. In each of the cases at issue, Citibank filed proofs of claim as follows: "Citibank USA, N.A. as issuer, service provider or purchaser of the account from Sears, Roebuck and Co. and/or Sears National Bank."

4. On October 30, 2003, Citicorp acquired all rights, title, and interest in Sears' assets used in its credit card and financial products businesses.

5. Prior to Citicorp's purchase of these assets, various Sears' entities and Sherman Originator LLC ("Sherman") entered into a Forward Flow Agreement. Pursuant to the Forward Flow

Agreement, Sears sold and transferred to Sherman certain Sears' accounts upon receipt of notice that a specific cardholder had filed for bankruptcy protection under Chapter 13 of the Bankruptcy Code.

6. As a result of Citicorp's purchase of the Sears' accounts, Citibank USA, an assignee of Citicorp, assumed the Future Flow Agreement with Sherman.

7. The initial purchase by Sherman does not include the transfer of a hard data or paper file for a specific transferred account. Rather, the initial account transfer is limited to a computerized database of names, account numbers, and balances owed. All of the hard data files remain with either Citibank or Sears. Hard data files can be transferred under the Future Flow Agreement, but Sherman must pay a predetermined fee for each document.

8. In the cases at issue, Citibank filed the proofs of claim prior to the sale of the account and prior to physically transferring the claims data to Sherman.

9. All claims in the subject cases were filed in an amount higher than the amount listed on the debtors' Schedule F. For example, in the Rupp case, the debtors listed on Schedule F a debt owed on a Sears credit card in the amount of \$1,506.00 relating to credit card purchases in the name of the female

debtor. Citibank filed a proof of claim against Barbara Rupp in the amount of \$1,632.32.

10. In support of its proofs of claim, Citibank attached one page data sheets that are limited to the Sears account number, the purported balanced owed on the account, and the date the account was opened.

11. Omitted from the one page data sheet is a summary of principal and interest giving rise to the "total debt" amount, a breakdown of any add-on charges such as late fees, or other transactional records and charges.

12. All such charges, interest, and fees are based on written cardholder agreements that can be amended unilaterally by one party. The cardholder agreement is the controlling document that defines the contractual relationship between the cardholder and the creditor.

13. The parties agree that the debtors in the above-referenced cases received one or more account statements for the months preceding the filing of their bankruptcy petitions. However, none of the debtors objected to or complained in writing to the credit card issuer about the statements they had received.

14. The debtors objected to Citibank's proofs of claim on the basis of their deficiencies. Specifically, the debtors allege that the claims fail to conform to the requirements of

Bankruptcy Rule 3001 and Official Form 10 in the following respects: (1) Citibank had no authority to file the claims since it was not a creditor of these estates on the date the petition was filed; (2) they fail to identify the original creditor; (3) they are not dated; (4) they are not signed by an officer, employee, or other authorized agent; (5) they fail to include a written statement of the account with a complete transaction history; (6) they fail to include a separate listing of interest and charges; (7) they fail to state the last date of any new credit advanced on the account; (8) they fail to state the date of the last payment on the account or the date of the last extension of credit; (9) they fail to include appropriate supporting written documents that arise out of and relate to the transaction such as the credit card agreement; (10) they fail to inform the debtors of any matters or things that could give rise to an objection, offset, recoupment, or defense to the claim; and (11) they fail to include any amendments to the original cardholder agreement.

15. The debtors argue that because of these deficiencies, Citibank's claim is not *prima facie* valid. Thus, the burden of proof remains with Citibank to prove the amount of its claim with proper supporting documentation.

16. Because Citibank has not produced this supporting documentation, the debtors seek to have Citibank's claim

stricken or, in the alternative, they argue that Citibank should be required to amend its claim by attaching the proper documentation.

17. Finally, the debtors argue that Citibank's failure to comply with Rule 3001(c) has deprived them of procedural due process.

18. In response to the debtors' objections to its claims, Citibank asserts that because its claim is unsecured, very little supporting information is required for the claim to be *prima facie* valid.

19. In addition, Citibank argues that its relationship with the debtors is based on a contract implied by law rather than an express contract. Thus, because its claim is not based on a written document, it is not required to attach a credit card application, credit card agreement, or other supporting written documentation. Rather, all that is required is a statement of the amount owed.

20. In that regard, Citibank asserts that the "Statement of Amount Owed" attached to the proofs of claim is sufficient because there are safeguards in place to insure the accuracy of the account statement. For example, if the debtor did not object to the last statement they received from Citibank, the statement of amount owed simply acts as a representation of the writing upon which the claim is based and satisfies Rule

3001(c). In its brief, Citibank argues that the statement of amount owed is a "simplified representation of what the debtor has already received" and that "[i]t would be redundant to require the issuer to attach a document that the cardholder already has in his possession."

CONCLUSIONS OF LAW

21. The starting point for determining who has the burden of proof with respect to a proof of claim is 11 U.S.C. § 502(a) which provides that a "claim . . . is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a).

22. Fed. R. Bankr. P. 3001(f) specifies 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." Fed. R. Bankr. P. 3001(f).

23. Rule 3001 determines what information must be contained within a proof of claim in order for it to be entitled to a presumption of validity. A creditor's failure to comply with Rule 3001 does not result in the disallowance of a claim. Rather, the result is that the claim is not entitled to *prima facie* validity. See In re Kemmer, 315 B.R. 706, 713 (Bankr. E.D. Tenn. Sept. 15, 2004) (citing In re Cluff, 313 B.R. 323, 337 (Bankr. D. Utah Aug. 23, 2004)). Thus, in the face of an objection, the creditor must produce supporting documentation sufficient to carry its burden of proving the validity of its

claim. In the absence of an objection, though, the claim is deemed allowed. See 11 U.S.C. § 502(a).

24. The debtors' objections to Citibank's proofs of claim are largely based upon Citibank's failure to attach sufficient supporting documentation. Thus, the court must determine whether the one page data sheet attached to Citibank's proofs of claim is sufficient supporting documentation to satisfy the requirements of Rule 3001 in the above-referenced cases.

25. Rule 3001(a) provides that "[a] proof of claim shall conform substantially to the appropriate Official Form." Official Form B10 includes written instructions for completing the proof of claim form and specifically addresses supporting documentation. For example, paragraph 5 on the front of the form instructs creditors to attach an itemized statement of all interest or additional charges, and paragraph 5 on the back informs creditors that "[i]f interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges." Similarly, paragraph 7 on the front of the Official Form directs creditors to attach copies of supporting documents and paragraph 8 on the back directs creditors to "attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents."

26. Finally, Rule 3001(c) provides that when a claim is based on a writing, "the original or a duplicate shall be filed with the proof of claim."

27. The one page data sheet attached to Citibank's proofs of claim is not sufficient supporting documentation and does not comply with Rule 3001. Therefore, Citibank's claim is not entitled to *prima facie* validity. Because Citibank has not produced other evidence sufficient to carry its burden of proof, the court must sustain the debtors' objection to Citibank's claim.

28. The data sheet attached to Citibank's proofs of claim simply provides the purported balance owed on the account without including any information from which the debtor could determine what elements make up the claim such as interest or additional charges. In two separate places, Official Form 10 plainly requires creditors to attach an itemization of "interest and charges." Thus, in the case of a credit card debt, the court finds that creditors must attach a summary or data sheet providing a breakdown of interest and additional charges in order for parties to have sufficient information from which they could determine the accuracy of a claim.

29. In the claims at issue, it is not necessary for Citibank to produce the credit card agreement as part of the supporting documentation attached to the proof of claim. As the

parties agreed in their Stipulation of Facts, the credit card agreement is the controlling document that defines the contractual relationship between the cardholder and the creditor. However, a claim for a credit card account is based upon the underlying written agreement as well as the transactions that form the basis for the debt under the account.

30. The court recognizes that Rule 3001(c) requires creditors to attach supporting documents when the claim is based on a writing. However, as one court recently explained:

The purpose behind Rule 3001 and Official Form 10's documentary requirements and the shifting burden of going forward is two-fold. First, the attachments required by the rule and form are intended to enable the debtor or trustee to evaluate the claim's amount and validity and to challenge, when necessary, portions of the claim that may be inaccurate. Second, and as significant, the rules governing claims are intended to simplify the claims allowance process and provide a fair and inexpensive process for all parties including creditors.

See In re Burkett, 329 B.R. 820, 827 (Bankr. S.D. Ohio Sept. 15, 2005) (citations omitted). In the cases at issue, attaching the underlying credit card agreement does not assist the debtors or other interested parties in evaluating the claim's amount. Moreover, requiring Citibank to attach the credit card agreement in this instance would be contrary to the spirit of the rules governing claims which is to provide an expeditious and affordable process for determining claims.

31. The court notes that there may be instances in which it is necessary for a credit card creditor to attach a credit card agreement to a proof of claim. However, not in situations such as this where the dispute is over the amount of the claim and not its existence.

32. In sum, the debtors in the above-referenced cases have objected to Citibank's proofs of claim. As shown above, the claims are not entitled to a presumption of validity because they do not attach sufficient supporting documentation. Moreover, in the face of the objections, Citibank has not produced other evidence that would establish the validity of its claims. Consequently, Citibank has failed to carry its burden of proof with respect to its claims, and the court must sustain the debtors' objections. In that regard, the Trustee is instructed to pay Citibank's claims based on the amount listed on Schedule F in each of the respective Chapter 13 cases at issue.

33. The court will enter a separate Order in each case listed in paragraph one sustaining the debtors' objection to Citibank's claim.

34. The court has considered the parties other arguments but finds them without sufficient merit to justify discussion.

35. Finally, the court finds no sanctionable or improper conduct by Citibank, so each party should bear their own costs

and attorneys fees. Debtors' counsel may submit one fee request for his combined efforts, and the court will allow it pro rata in each of the cases involved in the present matter.

It is therefore **ORDERED** that:

1. The debtors' objection to Citibank's proofs of claim is sustained.

2. The Chapter 13 Trustee is directed to pay Citibank's claims per the amount of the claims listed in Schedule F of the debtors' petition.

3. Each side shall bear its own costs and attorneys fees. Counsel for the debtors may submit a fee request, and the court will allow it pro rata in each of the cases referenced in paragraph one.

**This Order has been signed electronically.
The judge's signature and court's seal
appear at the top of the Order.**

United States Bankruptcy Court