

Dated: September 23, 2009
The following is ORDERED:



Jennie D. Latta

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UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
CHARLES EDWARD PRUITT
and AMY JOANN PRUITT,
Debtors.

Case Number 04-39620-L
Chapter 13

MEMORANDUM OPINION REGARDING DEBTORS' OBJECTIONS TO CLAIMS

Before the court are the Debtors' objections to claims asserted by eCast Settlement Corporation ("eCast") in their Chapter 13 case. The Debtors contend that these claims should be disallowed because they are not indebted to eCast and eCast has failed to establish its ownership of the claims. The Debtors do not dispute the validity or amounts of the claims as asserted by the original creditors. It is eCast's position that the Debtors have failed to show a basis for disallowance of the claims under Bankruptcy Code section 502(b). For the reasons that follow, the Debtors' objections will be overruled. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B).

Claim Number 1

The Debtors' petition was filed December 21, 2004. On Schedule F, the Debtors list a credit card obligation of \$6,164.00 due Bank of America with a partial account number of 0222. The obligation is not designated as disputed, unliquidated, or contingent. A proof of claim was filed in

the amount of \$6,121.14 by Bank of America, N.A., on the national bankruptcy proof of claim form on January 3, 2005. Claim No. 1. The claim is designated as “Unsecured Nonpriority” and the basis for the claim is shown as “Credit Card Charges” on an account with terminal digits of 0222. There are no attachments although the form directs the filer to:

Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. **DO NOT SEND ORIGINAL DOCUMENTS.** If the documents are not available, explain. If the documents are voluminous, attach a summary. (Emphasis in original.)

The Debtors’ plan was confirmed on March 18, 2005. The 60-month plan provides for a seventy percent (70%) payment on unsecured claims including Bank of America’s \$6,121.14 claim. On May 4, 2007, eCast filed a “Transfer of Claim Other Than For Security” in the Debtors’ case. Docket No. 80. According to the document, Claim No. 1 filed by Bank of America in the amount of \$6,121.14, incurred pursuant to an account number ending in 6310 or an alternate account number ending in 0222, was transferred “other than for security” to eCast. On May 16, 2007, the Clerk’s Office issued its, “Notice of Filing Evidence Of Transfer Or Assignment of Claim Combined With Related Notice,” announcing that eCast had filed the evidence of transfer or assignment of claim arising out of the original claim of the alleged transferor, Bank of America, N.A, in the amount of \$6,121.14. Docket No. 83. The Bankruptcy Noticing Center mailed a copy of the Clerk’s Notice to the Debtors and their attorney on May 18, 2007. Docket No. 85. On January 14, 2009, the Debtors filed their objection to Claim No. 1 originally filed by Bank of America in the amount of \$6,121.14 and purportedly transferred to eCast. The objection states:

1. On or about January 3, 2005, Bank of America (hereinafter referred to as creditor/assignor) filed a Proof of Claim (Claim # 1) in the amount of \$6,121.14. Said claim was later transferred to eCast Settlement Corporation and is purported to be for an indebtedness now owed to ECAST Settlement Corporation.
2. The debt owed to Bank of America/ECAST Settlement Corporation was listed in the Debtor(s)’s schedules.

3. The creditor's claim is based upon a writing. The documents, if any, attached to the proof of claim do not satisfy the mandatory requirements of Fed. R. Bankr. Proc. 3001(c). Creditor's claim lack [sic] prima facie validity.

4. The claim is not supported by any written evidence of an enforceable agreement or a contract that establishes the debt between the debtor and creditor or between debtor and an alleged predecessor in interest.

5. There is no attachment to the proof of claim and as such does not establish the prima facie validity of the proof of claim. The claim is without any evidentiary value and is unenforceable against the debtor(s) and the debtor(s)'s property under any agreement or applicable law pursuant to 11 U.S.C. § 502(b)(1).

Docket No. 101.

On February 16, 2009, eCast filed an amended proof of claim showing the named creditor as, "eCast Settlement Corporation, successor in interest to FIA Card Services aka Bank of America." Claim 1-2. Attached to the amended claim are: an "Affidavit of Claim and Certification of Claim" executed by purported Bank of America officer, Vicki Kyle; copies of the credit card statements for the account ending in "6310 aka 0222" for the months of September 2004 through December 2004; and a copy of the notice of the transfer of the account filed in the case in May 2007. The beginning balance on the September 2004 statement is \$5,755.63. According to Ms. Kyle's affidavit, she is a bank officer authorized to make the affidavit. She further states:

The original contract in this matter has been destroyed or is no longer available to affiant and the affidavit should be treated as the "original document" for all purposes; the statements made in the affidavit are based on computerized and hard copy records containing entries that were made at or near the time of the transactions recorded and that are kept in the ordinary course of business by Bank of America; the account with the partial number 6310 was opened on April 29, 2002 by an individual having a redacted social security number of 8494, the same as Mr. Pruitt's; as of February 20, 2007, Mr. Pruitt owed \$6,121.14 on the account and at that time, the agreement and account were "sold, transferred and set over unto eCast Settlement Corporation." . . . [A]s a result of the sale, eCast is authorized to collect, settle, adjust, compromise and satisfy the account and Bank of America has no more interest in the account for any purpose. Finally, Ms. Kyle states that to the best of her knowledge there were no uncredited payments to the account, "just counterclaims or offsets against the debt when sold."

Supplement to Amended Claim No. 1-2, p. 5. The court's administrative order allowing the amended claim was entered without objection February 18, 2009. Docket No. 120. The Debtors did not amend or supplement their written objection in response to the amended proof of claim.

In addition to amending Claim No. 1, eCast filed a written response to the Debtors' objection to the claim and after allowing time for discovery, the dispute was set for hearing on June 25, 2009, and July 15, 2009. At the hearings, the Court sustained the Debtors' lack of proper foundation objection to eCast's attempt to submit additional documentation, including a copy of a bill of sale of accounts to eCast and both a "Declaration of Bank of America" and a "Certificate of Bank of America" purportedly executed by an employee of the bank in support of the validity of this claim.

Mrs. Pruitt was present to testify at the June 25 hearing and the Court accepted counsel's proffer that Mrs. Pruitt does not dispute the debts as originally scheduled but contends that she has never heard of eCast and disputes that eCast is the proper party to collect the debt.

Claim Number 10

On Schedule F of their petition, the Debtors list a signature loan obligation of \$3,303.00 due to Household Financial Center, Inc. The obligation is not shown as disputed, unliquidated, or contingent. The Debtors' plan was confirmed on March 18, 2005. The 60-month plan provides for a seventy percent (70 %) payment on unsecured claims including Household Financial's \$3,303.00 claim. On April 5, 2005, a claim was filed on the local "Chapter 13 Proof of Claim Form" in the amount of \$2,860.53 for an account with terminal digits 2383. Claim No. 10. The creditor's name is "Household Financial Corporation by eCast Settlement Corporation, as its agent." The claim is designated as "unsecured non-priority" and the basis for the claim is shown as an installment loan. The proof of claim form directs that an unsecured creditor "should attach a statement of the invoice, note or the like." Paragraph 5. Attached to the claim is the following explanation:

By written agreement between Creditor and eCast Settlement Corporation, eCast Settlement Corporation has been authorized to file this proof of claim as agent for Creditor pending the Creditor's charge-off of the account and the transfer of the title to the account to eCast Settlement Corporation. Creditor has further authorized eCast Settlement Corporation to receive notices and payments with

respect to this claim on Creditor's behalf, to be allocated pursuant to the terms of such agreement.

Also attached is a computer print out summary of the account history. It shows the Debtor, Mr. Pruitt's, name and redacted social security number, the last four digits of the account number, the date the account was funded or opened, the \$4,002.84 amount loaned, the applicable interest and finance charges, and the payment history from August 16, 2003, to July 25, 2004, which resulted in the \$2,860.53 balance due at commencement of the case. The proof of claim form is signed by Thomas A. Lee, III, of Becket and Lee LLP, Attorneys for the Agent for Creditor. The explanation and the account summary are not signed.

On May 15, 2007, eCast filed a "Transfer of Claim Other Than For Security," in the Debtors' case. Docket No. 81. According to the document, Claim No. 10, filed by eCast as agent for Household Financial in the amount of \$2,860.53 and incurred pursuant to account number ending in 2383, was transferred "other than for security" to eCast. On May 16, 2007, the Clerk's Office issued its "Notice of Filing Evidence of Transfer or Assignment of Claim Combined With Related Notice," announcing that eCast had filed the evidence of transfer or assignment of claim arising out of the original claim of the alleged transferor, Household Financial, in the amount of \$2,860.53. Docket No. 82. The Bankruptcy Noticing Center mailed a copy of the Clerk's Notice to the Debtors and their attorney on May 18, 2007. Docket No. 84. On January 14, 2009, the Debtors filed their objection to Claim No. 10. The objection states:

1. On or about April 5, 2005, Household Financial Corporation (hereinafter referred to as assignor) filed a Proof of Claim (Claim #10) in the amount of \$2,860.53. Said claim purported to be for an indebtedness owed to Household Financial Corporation.
2. The debt owed to Household Financial Corporation was listed in the Debtor(s)'s schedules. The account was later assumed by eCast Settlement Corporation on May 15, 2007, and recorded with the court clerk's office.
3. The creditor's claim is based upon a writing. The documents, if any, attached to the proof of claim do not satisfy the mandatory requirements of Fed. R. Bankr. Proc. 3001(c). Creditor's claim lack [sic] prima facie validity.

4. The claim is not supported by any written evidence of an enforceable agreement or a contract that establishes the debt between the debtor and creditor or between debtor and an alleged predecessor in interest.

5. There is no attachment to the proof of claim and as such does not establish the prima facie validity of the proof of claim. The claim is without any evidentiary value and is unenforceable against the debtor(s) and the debtor(s)'s property under any agreement or applicable law pursuant to 11 U.S.C. § 502(b)(1).

Docket No. 97.

On February 16, 2009, eCast filed an amended proof of claim on the local "Chapter 13 Proof of Claim Form" as assignee of Household Finance Corporation. The claim is for a debt of \$2,860.53 due on an account number 2383 in the name of Charles E. Pruitt. The amended proof of claim is signed by Thomas A. Lee, III, attorney. Attached to the amended proof of claim is a copy of a cash advance check endorsed by Mr. Pruitt, a summary of the account history, and a Declaration and Affidavit of HSBC (f/k/a Household Finance Corporation/Beneficial) executed by purported HSBC employee, Michael Leonard. According to Mr. Leonard, he has knowledge of the consumer loans issued by HSBC as well as the record keeping policies and procedures of HSBC as they relate to bankrupt and sold accounts. Based on this knowledge, the affidavit recites that HSBC's records show that Mr. Pruitt opened loan number 2383 on March 4, 2002. As of the petition date, the balance on the loan was \$2,860.53. The loan was sold to eCast on or about May 18, 2005, and HSBC has no further interest in the account. The check, issued by Household Finance in the amount of \$4,002.84, is dated February 19, 2002. In capital letters on the face of the check is written: "THIS IS A SOLICITATION FOR A LOAN-READ THE ENCLOSED DISCLOSURES BEFORE CASHING THIS CHECK." The check was endorsed by Charles Pruitt and cashed on March 4, 2002. The court's administrative order allowing the amended claim was entered without objection February 18, 2009. Docket No. 121. The Debtors did not amend or supplement their written objection in response to the amended proof of claim.

In addition to filing Amended Claim No. 10-2, eCast filed a written response to the Debtors' objection to the claim. After allowing time for discovery, the matter was set for hearings on June 25,

2009, and July 15, 2009. At the hearings, the Court sustained the Debtors' lack of proper foundation objection to eCast's attempt to submit documentation, including a second Declaration and Affidavit and a Certification of HSBC executed by Mr. Leonard, and a document styled Assignment of Accounts that purports to be a copy of the assignment of accounts from Household Finance Corporation to eCast Settlement Corporation in support of its claim.

Mrs. Pruitt was present to testify at the June 25 hearing and the Court accepted counsel's proffer that Mrs. Pruitt does not dispute the debts as originally scheduled, contends that she has never heard of eCast, and disputes that eCast is the proper party to collect the debt.

Claim Number 11

On Schedule F of their petition, the Debtors list a credit card obligation of \$5,420.00 due Chase Bank. The obligation is not shown as disputed, unliquidated, or contingent. The Debtors' plan was confirmed on March 18, 2005. The 60-month plan provides for a seventy percent (70 %) payment on unsecured claims including the \$5,420.00 obligation to Chase. On April 8, 2005, a claim was filed on the local "Chapter 13 Proof of Claim Form" in the amount of \$4,723.12 for an account with terminal digits 5281. The creditor named is "eCast Settlement Corporation, assignee of Chase Manhattan Bank, USA, NA." Claim No. 11. The claim is designated as "unsecured non-priority." The form directs that an unsecured creditor "should attach a statement of the invoice, note or the like." ¶ 5. Attached to the claim are an account history and account balance summary and the following explanation:

Pursuant to paragraph 9 Official Bankruptcy Form 10, Proof of Claim, in lieu of attaching voluminous account documents, a summary of the account, compiled from the information contained in the account databases of Chase Manhattan Bank, USA, NA and their agents, if any, is provided. (See Instructions to Official Form 10). This debt arises from the use of a credit/charge account or other money loaned, the supporting documents for which were provided by Chase Manhattan Bank, USA, NA to the debtor pre-petition. For further information about this claim, call 1-800-962-6030 and ask to speak to the Claims Servicing Supervisor. Some documents may no longer be available.

The account balance summary includes Mr. Pruitt's name, address, redacted social security number, and account number. It also identifies the account as a credit card and the creditor's name as "eCast Settlement Corporation assignee of Chase Manhattan Bank USA NA." It shows the open date as May 1, 2003; the last payment date as November 21, 2004; and the pre-petition balance of \$4,723.12 as of November 30, 2004. The proof of claim form is signed by Thomas A. Lee, III, of Becket and Lee LLP, Attorneys for the Agent for Creditor. The explanation and the account balance summary are not signed.

On January 14, 2009, the Debtors filed their objection to Claim No. 11. The objection states:

1. On or about April 8, 2005, Ecast Settlement Corp, assignee of Chase Manhattan Bank, USA, NA (hereinafter referred to as creditor) filed a Proof of Claim (Claim # 11) in the amount of \$4,723.12. Said claim purported to be for an indebtedness owed to Ecast Settlement Corp, assignee of Chase Manhattan Bank, USA, NA.
2. The debt owed to Chase Manhattan Bank, USA, NA, was listed in the Debtor(s)'s schedules.
3. The creditor's claim is based upon a writing. The documents, if any, attached to the proof of claim do not satisfy the mandatory requirements of Fed. R. Bankr. Proc. 3001(c). Creditor's claim lack [sic] prima facie validity.
4. The claim is not supported by any written evidence of an enforceable agreement or a contract that establishes the debt between the debtor and creditor or between debtor and an alleged predecessor in interest.
5. There is no attachment to the proof of claim and as such does not establish the prima facie validity of the proof of claim. The claim is without any evidentiary value and is unenforceable against the debtor(s) and the debtor(s)'s property under any agreement or applicable law pursuant to 11 U.S.C. § 502(b)(1).

Docket No. 98.

On February 16, 2009, eCast filed an amended proof of claim on the local "Chapter 13 Proof of Claim Form" as assignee of Chase Bank USA, NA. The claim is for a debt of \$4,723.12. due on an account with the partial number 5281 in the name of Charles E. Pruitt. The amended proof of claim is signed by Thomas A. Lee, III, attorney. Attached to the amended proof of claim are copies of the credit card statements for July through December 2004; a copy of a document styled

Assignment of Accounts that appears to be a copy of the assignment of accounts from Chase Manhattan Bank, USA, NA, to eCast Settlement Corporation dated January 31, 2005; and a copy of an affidavit executed by Brian Bonner, purported Vice President of Asset Sales for Chase Bank USA, NA. According to Mr. Bonner, he has knowledge of the record-keeping policies and procedures of Chase as they relate to bankrupt accounts. Based on this knowledge, the affidavit recites that Chase's records show that Mr. Pruitt applied to Chase for a credit card account on or about May 1, 2003. The account was opened and assigned a number with terminal digits of 5281. As of the petition date, the balance on the loan was \$4,723.12. No payments have been received since that date. The account was sold to eCast on or about February 28, 2005; the attachment is a true and correct copy of the assignment of accounts; and Chase has no further interest in the debt for any purpose. The court's administrative order allowing the amended claim was entered without objection February 18, 2009. Docket No. 121. The Debtors did not amend or supplement their written objection in response to the amended proof of claim.

In addition to filing Amended Claim No. 11-2, eCast filed a written response to the Debtors' objection to the claim. After allowing time for discovery, the matter was set for hearings on June 25, 2009, and July 15, 2009. At the hearings, the Court sustained the Debtors' lack of proper foundation objection to eCast's attempt to submit additional documentation in support of its claim including a second affidavit executed by Mr. Bonner, copies of the credit card statements from July 2003 through December 2004, and the Assignment of Accounts document that was also attached to the amended proof of claim.

Mrs. Pruitt was present to testify at the June 25 hearing and the Court accepted counsel's proffer that Mrs. Pruitt does not dispute the debts as originally scheduled, contends that she has never heard of eCast, and disputes that eCast is the proper party to collect the debt.

ANALYSIS

Under the Bankruptcy Code, a "debt" is a liability on a claim and "claim" is a right to payment. 11 U.S.C. §101(12) and (5). Section 501 of the Code provides that only a creditor or an indenture trustee may file a proof of claim in a bankruptcy case. An unsecured creditor in a

Chapter 13 case must file a proof of claim in order to realize any payment on its claim and otherwise participate in the case. Fed. R. Bankr. P. 3002(a). Generally, once a proof of claim is filed, it is deemed allowed unless a party in interest objects to the claim. 11 U.S.C. § 502(a). In that event, the court, after notice and a hearing, shall determine the amount of the claim at the time of the petition and allow it in that amount unless it is subject to one or more of the grounds for disallowance found in sections 502(b), (d) or (e).

The procedure for filing a proof of claim is set out in Rule 3001 of the Federal Rules of Bankruptcy Procedure. A proof of claim that complies with the requirements of Rule 3001 “constitutes prima facie evidence of the validity and amount of the claim.” Fed. R. Bankr. P. 3001(f). “The purpose of the rules regarding claims is to require creditors to provide sufficient information so that a debtor may identify the creditor and match the creditor and the amount of the claim with the claims scheduled by the debtor.” *In re Kemmer*, 315 B.R. 706, 712 (Bankr. E.D. Tenn. 2004) (citing, *In re Hughes*, 313 B.R. 205, 212 (Bankr. E. D. Mich. 2004)). See, R. Adam Swick, *Filing A Proof of Claim: A Simple Procedure Or A Complicated Mess?*, 28 Am. Bankr. Inst. J. 22 (Aug. 2009).

The majority of courts concur that failure to comply with the rules governing the form and content of a proof of claim may deprive the claim of its prima facie validity but is not alone grounds to disallow the claim. See *Perron v. eCast Settlement Corp. (In re Perron)*, 2006 WL 2933827, *4 (B.A.P. 6th Cir. 2006); *B-Real, LLC v. Melillo (In re Melillo)*, 392 B.R. 1, 4 (B.A.P. 1st Cir. 2008); *Heath v. Am. Express Travel Related Serv. Co., Inc. (In re Heath)*, 331 B.R. 424, 433 (B.A.P. 9th Cir. 2005), *Dove-Nation v. eCast Settlement Corp. (In re Dove-Nation)*, 318 B.R. 147, 151 (B.A.P. 8th Cir. 2004). Rather, section 502 exclusively offers substantive exceptions to the allowance of claims; the Rules “do not ‘abridge, enlarge or modify any substantive rights.’ 28 U.S.C. § 2075.” *Perron* at *4. Accordingly, an objection to a claim founded merely upon failure to attach documents is not sustainable. *Id.* See also *In re Cluff*, 313 B.R. 323, 331 (Bankr. D. Utah 2004); *In re Guidry*, 321 B.R. 712, 714 (Bankr. N.D. Ill. 2005) (“Courts have accordingly held that a claim cannot be

disallowed solely on the basis that its proof was not accompanied by a Rule 3001(c) attachment.”). The missing documents may, however, support an evidentiary basis for disallowing the claim. *Id.* The evidentiary requirements are the same for an original claim holder or an assignee. *In re Samson*, 392 B.R. 724, 732 (Bankr. N.D. Ohio 2008). To establish the validity of a claim over a proper objection, the creditor must prove the existence and amount of the claim itself and ownership of the claim. *In re Plourde*, 397 B.R. 207, 218-19 (Bankr. D. N.H. 2008). Thus, when an objection raises a valid basis for disallowance, the creditor whose claim is not filed in compliance with Rule 3001 cannot rest on the proof of claim but has the burden of providing evidence to support its claim by amendment or at a hearing. *Guidry* at 714 (citing *In re Stoecker*, 5 F.3d 1022, 1027-28 (7th Cir. 1993)). At the same time, however, when a claim is supported by some evidence, an objecting debtor is “required to provide the court with at least some evidence to challenge the legal sufficiency of the [claim].” *Kemmer* at 716-17. Thus, the burden of proof shifts between the parties at different times but “[t]he burden of persuasion is always on the claimant.” *Id.* at 713.

Compliance with Rule 3001 entitles a claim to prima facie status. The requirements of the rule pertinent to this proceeding are as follows.

(a) Form and content.

A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

(b) Who may execute.

A proof of claim shall be executed by the creditor or the creditor’s authorized agent except as provided in Rules 3004 and 3005.

(c) Claim based on a writing.

When a claim, or an interest in property of the debtor securing the claim, is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim. . . .

* * * *

(e) Transferred claim.

(1) Transfer of claim other than for security before proof filed.

If a claim has been transferred other than for security before proof of the claim has been filed, the proof of claim may be filed only by the transferee or an indenture trustee.

(2) Transfer of claim other than for security after proof filed. If a claim other than one based on a publicly traded note, bond, or debenture has been transferred other than for security after the proof of claim has been filed, evidence of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 20 days of the mailing of the notice or within any additional time allowed by the court. If the alleged transferor files a timely objection and the court finds, after notice and a hearing, that the claim has been transferred other than for security, it shall enter an order substituting the transferee for the transferor. If a timely objection is not filed by the alleged transferor, the transferee shall be substituted for the transferor.

The rule provides that a proof of claim shall substantially conform to the appropriate Official Form.

The official form for filing a proof of claim, Official Form 10,

requires a creditor to provide the basis for the claim, the amount of the claim, any interest or other charges included, the secured or unsecured nature of the claim, and proof thereof in the form of supporting documentation, if necessary or available. See OFF. FORM 10. Additionally, proofs of claim must be signed by a party authorized to do so, under penalty of criminal prosecution for filing a false claim. See OFF. FORM 10. Pursuant to Federal Rule of Bankruptcy Procedure 9009, Official Form 10 may be altered as appropriate, as long as the necessary information is retained. Fed. R. Bankr. P. 9009. In essence, “[a] properly executed and filed proof of claim consists of (1) a creditor’s name and address, (2) basis for claim, (3) date debt incurred, (4) amount of claim, (5) classification of claim, and (6) supporting documents.”

In re Kemmer, 315 B.R. 706, 712 (Bankr. E.D. Tenn. 2004) (internal citations omitted). If a claim is based on a writing, the original or a copy of the writing should be filed with the proof of claim and if it has been lost or destroyed, a statement of the circumstances of the loss or destruction should be attached to the proof of claim. Fed. R. Bankr. P. 3001(c). A “bright line test” to determine the sufficiency of written documentation provided by a creditor in support of its proof of claim has not been developed. *In re Samson*, 392 B.R. 724, 733 (Bankr. N.D. Ohio 2008) (internal citations omitted). “Courts, instead, determine the sufficiency of the documentation on a case by case basis.”

Id.

A claim based upon a credit card or other commercial credit account falls within the scope of claims based upon a writing. *Kemmer* at 714. *See also In re Cluff*, 313 B.R. 323, 334-36 (Bankr. D. Utah 2004). While not a bright line test, the courts have developed general guidelines for such creditors. In order for their proofs of claim to be entitled to prima facie status, an attachment of a copy of the monthly statement generated for the debtor's account or a computer-generated statement of the debtor's account at the time of the filing that evidences the "debtor's name, account number, account balance as of the date of the bankruptcy filing, previous balance, finance or other charges for that period, and the annual percentage rate charged on the account" should be filed. *Kemmer* at 716. Moreover, if the account statement is in the name of the debtor or debtors and no other entity and the account number and claim amount match the debtors' schedules, such documentation is sufficient to establish the validity and amount of the claim. *Plourde* at 220.

The remaining element necessary to establish the validity of the claim is the ownership of the claim. *Id.* In the event the claimant is the party with whom the debtor initially entered into the credit agreement, the above documentation will establish prima facie evidence of ownership of the claim. In such case, the debtor must come forward with evidence to challenge the legal sufficiency of the claim. *Kemmer* at 716-17. Where the account has been transferred or assigned by the original creditor, the claimant may be required to provide some proof of its legal right to the claim. *Id.* at 221, citing *Melillo*, 392 B.R. at 5. The courts vary on when and what evidence of an assignment is required. *Samson* at 729-32, *Plourde* at 221. If a claim is transferred other than for security *before* a proof of claim is filed, some courts hold, in reliance on Bankruptcy Rule 3001(e)(1), that only the transferee may file the proof of claim and that there is no need for proof of the assignment so long as there are no competing claims. *Samson* at 729, citing *In re Gonzalez*, 356 B.R. 905, 906-07 (Bankr. S.D. Fla. 2006); *In re Relford*, 323 B.R. 669, 680-81 (Bankr. S.D. Ind. 2004). This appears to be the better view. As explained by Judge Richard Speer,

It is a basic facet of modern day credit financing that debts are frequently assigned to succeeding creditors. The law generally encourages this, as without it, the capital needed to fund the large amount of financing for which consumers have come to depend would simply not exist. Bankruptcy Rule 3001 recognizes this

reality, providing a mechanism by which assignees of debts are able to assert their claims in bankruptcy. Where, as here, a claim is transferred other than for security *before* a proof of claim is filed, the Rule provides simply that “the proof of claim may be filed only by the transferee or an indenture trustee.” Fed. R. Bankr. P. 3001(e)(1). (emphasis added).

Samson at 729.

Other “courts hold that [proof of the assignment is required because] Bankruptcy Rule 3001(e) speaks only to the rights between a transferor and a transferee, and not to the requirements for filing a proof of claim against the bankruptcy estate.” *Samson* at 730, citing *In re Parrish*, 326 B.R. 708, 719 (Bankr. N.D. Ohio 2005); *In Rochester*, 2005 WL 3670877 (Bankr. N.D. Tex. 2005); *Hughes* at 210.

In comparison, where a claim is transferred other than for security *after* the proof of claim is filed, the transferee is required to provide “evidence of the transfer.” Fed. R. Bankr. P. 3001(e)(2). Again, there are differing opinions on the nature of the evidence that will satisfy this requirement. Some courts require proof of transfer of the debtor’s specific account or evidence that traces the chain of title to the specific account. *In re Parrish* at 720-21; *In re Sauder*, 396 B.R. 609, 612 (Bankr. M.D. Penn. 2008). Other courts agree that evidence of a blanket assignment rather than documentation that specifically references the debtor’s account is sufficient when the claim can otherwise be identified. *Samson* at 730; *Hughes* at 211. *See also In re Kincaid*, 388 B.R. 610, 615-16 (Bankr. E.D. Penn. 2008). This is particularly true when the debtor fully acknowledges the obligation to the original creditor and assignor. At a minimum such evidence is sufficient to establish an assignment’s prima facie validity. According to these courts, “nothing in Bankruptcy Rule 3001 indicates that documentation showing the specific transfer of the debtor’s individual account is required to establish the validity of an assignment.” *Samson* at 730. Once the claim is entitled to prima facie status, the burden shifts to the debtor to provide evidence that challenges the claim’s legal sufficiency. *Kemmer* at 717.

Claim Number 1

The evidence submitted in support of the claims at issue in this case varies from claim to claim. Claim No. 1 was filed less than a month after the Debtors' petition by the original creditor, Bank of America. The form identifies the Debtor, Mr. Pruitt, and the account number. The claim amount is less than that scheduled by the Debtors for the acknowledged obligation. There are no supporting documents attached to the proof of claim form as originally filed, but a claim in that amount was provided for without objection in the Debtors' confirmed Chapter 13 plan. According to the case file, a notice of assignment of the account to eCast was later filed in the case and served upon the Debtors. *See In re Johnson*, 210 B.R. 134 (Bankr. W.D. Tenn. 1997) (The court can take judicial notice of the case file.).

The Debtors filed their objection to the claim which, as filed, lacked supporting documentation and thus, prima facie validity in the face of their objection. eCast responded by filing an amended claim whereby eCast is designated as the successor in interest to Bank of America with regard to the Debtors' account. Also attached are copies of the account statements sent to the Debtors for the two months preceding the bankruptcy filing, the notice of assignment previously filed in the case, and an affidavit of a Bank of America officer that describes the history of the account and its assignment based on "computerized and hard copy records" kept by the bank in the ordinary course of business. These attachments coupled with the Debtors' acknowledgment of the original obligation to Bank of America serve as evidence of the prima facie validity of the claim and its assignment.

As noted above, a claim is generally considered prima facie valid if a copy of the monthly statement generated for the debtor's account or a computer generated statement of the debtor's account at the time of the filing that evidences the "debtor's name, account number, account balance as of the date of the bankruptcy filing, previous balance, finance or other charges for that period, and the annual percentage rate charged on the account" is filed. *Kemmer* at 716. This determination

calls for the Debtors to come forward with evidence that challenges the prima facie validity established by the attached documentation.

In this regard, the Court has accepted the proffered testimony of Mrs. Pruitt that the Debtors have never heard of eCast and do not believe themselves indebted to eCast although they do not dispute the original obligation. The Court is mindful that it has sustained the Debtors' counsel's objection to admission of a copy of a blanket assignment of Bank of America accounts to eCast that purportedly included this account and additional affidavits prepared by Bank of America employees regarding the assignment of the account to eCast. Even without that evidence, however, the Debtors' bare assertion that they have never heard of eCast and do not believe eCast has established ownership of the claim is not evidence that refutes the copies of the account statements or discredits the affidavit attached to the amended proof of claim. *Perron* at *5 (debtors' objection overruled when they presented no evidence to counter that provided by creditor). As in the factually similar case, *In re Samson*, the Debtors here admit the indebtedness owed to Bank of America. In the absence of an assignment, it is doubtful that eCast would have access to the Bank of America account statements. If eCast is not the actual assignee of the accounts, but is attempting to obtain funds from the Debtors' estate upon a false oath, the persons involved are subject to criminal penalties including up to five years in prison. *Samson*, 392 B.R. at 731-32, citing 18 U.S.C. § 157. *See also Perron* at *4. The Debtors have not rebutted the prima facie validity of the amended claim and supporting documents filed by eCast as successor in interest to Bank of America.

Claim Number 10

Claim No. 10 was filed by eCast as agent for Household Financial Corporation after confirmation of the Debtors' plan in an amount less than that scheduled by the Debtors. Attached to the proof of claim form is a detailed summary of the Household account and an explanation that eCast is Household's designated agent for filing the proof of claim pending transfer of the title of the account to eCast. eCast later filed a Notice of Assignment of the account in the main case file which was provided to the Debtors. After the Debtors filed their objection to Claim No. 10, eCast

filed an amended proof of claim to which it attached another copy of the detailed account history, a copy of the loan check endorsed by Mr. Pruitt and cashed on March 4, 2002, and an affidavit purportedly executed by an employee of Household Finance that recites, based on the employee's knowledge of Household's consumer loans and record keeping policies and procedure, the history of the account and the fact that Household sold the account to eCast and has no further interest therein. As was the case with Claim No. 1, these attachments coupled with the Debtors' acknowledgment of the original obligation to Household Finance serve as evidence of the prima facie validity of the claim and its assignment. This determination calls for the Debtors to come forward with evidence that challenges the prima facie validity established by the attached documentation. The Debtors' contention that they have never heard of eCast and do not believe that eCast has established ownership of the claim is not evidence that refutes the detailed account summary and copy of the check endorsed and cashed by Mr. Pruitt, nor does it discredit the affidavit attached to the amended proof of claim. The Debtors have failed to rebut the prima facie validity of the amended claim and supporting documents filed by eCast as successor in interest to Household.

Claim Number 11

Claim No. 11 was filed by eCast as assignee of Chase Manhattan Bank. As discussed above, it references the Chase credit card account scheduled by the Debtors and includes an attachment that describes the account records as too voluminous to attach, gives instructions on where to get additional information about the claim, and provides a computer-printed account balance summary. After the Debtors filed their objection to the claim, eCast filed an amended proof of claim to which it attached copies of the Chase credit card statements for July through December 2004, and a document styled "Assignment of Accounts" that is a copy of the assignment of accounts from Chase Manhattan Bank, USA, NA, to eCast Settlement Corporation dated January 31, 2005. Also attached to the amended proof of claim is an affidavit executed by an employee of Chase Manhattan Bank that recites, based on the employee's knowledge of Chase's consumer loans and record keeping

policies and procedure, the history of the account and the fact that Chase sold the account to eCast, that the attachment is a true and correct copy of the assignment of accounts, and that Chase has no further interest in this account. The Debtors' acknowledgment of the indebtedness to Chase and the amended proof of claim establish the prima facie validity of the claim, which validity the Debtors have failed to rebut.

CONCLUSION

From the foregoing, the Court concludes that in this case eCast has met the burden of establishing the prima facie validity of its claims in accordance with Federal Rule of Bankruptcy Procedure 3001 while the Debtors have failed to present evidence that rebuts the claims' validity. Accordingly, the Debtors' objections to the proofs of claim filed by eCast and at issue in this proceeding must be overruled.

The Court will enter separate orders consistent with this opinion.

cc: Debtors
Attorney for Debtors
eCast Settlement Corporation
Attorney for eCast Settlement Corporation
Chapter 13 Trustee