

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

GREGORY ALLEN KNOBLETT

Debtor(s).

In Proceedings
Under Chapter 13

Case No. 02-61136

OPINION

The debtor in this case objects to two claims filed by eCAST Settlement Corp, as assignee of Household Bank ("Bank"). These claims, in the amount of \$6,536.90 and \$4,923.39, respectively, represent account balances on credit cards issued to the debtor by Household Bank. In each instance, the debtor asserts that he is a victim of identity theft and did not incur the debt in question.

The facts are undisputed. The charges to the debtor's Household Bank credit cards were incurred by the debtor's wife, now his ex-wife, who made unauthorized purchases¹ and obtained cash advances without his knowledge. The debtor's wife intercepted the credit card statements from the mail, and the debtor discovered the unauthorized charges shortly before the two were divorced.

The Bank argues that the evidence in this case fails to

¹ The Court is assuming for purposes of this opinion that the purchases were in fact unauthorized, although the evidence is not conclusive on this point.

sustain the debtor's claim of identity theft. The Court agrees. The credit card agreement signed by the debtor provides in pertinent part:

LIABILITY FOR UNAUTHORIZED USE: You should retain copies of all charge slips until you receive your statement, at which time you should verify that the charges are true and the amounts unaltered. You may be liable for the unauthorized use of your credit card. You will not be liable for unauthorized use that occurs after you notify us of the loss, theft, or possible unauthorized use. Notification must be given by writing us immediately upon learning of the loss, theft or possible unauthorized use [U]nauthorized use does not include use by a person to whom you have given the credit card or authority to use the Account, and you will be liable for all use by such a user. To terminate this authority, you must retrieve the credit card from the previously authorized user and return it to us . . . along with a letter explaining why you are doing so.

(Resp. to Obj. to Clm., Doc. No. 55, filed May 21, 2003, pg. 2 of "Cardmember Agreement and Disclosure Statement" (emphasis added)).

The debtor has provided no authority to establish what constitutes "identity theft" and has failed to show that the facts of this case amount to anything other than "unauthorized use" of his credit card. The debtor admittedly opened the accounts in question and is, therefore, bound by the terms of the cardholder agreement. The fact that he was unaware of his wife's use of his card or that he failed to receive credit card statements mailed to his home does not excuse his responsibility

under the cardholder agreement to review such statements and report the unauthorized use to the Bank. On these facts, the Court finds no basis to sustain the debtor's bald assertion that he is a victim of "identity theft."

Bankruptcy Rule 3001(f) provides 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). A party objecting to a properly filed claim bears the burden of rebutting the claim's prima facie effect. See In re VTN, Inc., 69 B.R. 1005 (Bankr. S.D. Fla. 1987). The debtor has failed to sustain this burden of proof. Accordingly, the Court finds that the debtor's objections to the Bank's claims should be overruled and the Bank's claims allowed as filed.

SEE WRITTEN ORDER.

ENTERED: June 16, 2003

/s/ Kenneth J. Meyers
UNITED STATES BANKRUPTCY JUDGE