



IT IS ORDERED as set forth below:

Date: December 21, 2009

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:	:	
	:	
THOMAS G. and CYNTHIA S. WAGES,	:	Case No. 09-73223-pwb
	:	
Debtors.	:	Chapter 13
_____	:	
	:	
THOMAS G. and CYNTHIA S. WAGES,	:	
	:	
Objectors,	:	
vs.	:	Contested Matter – Objection to
	:	Proof of Claim
HSBC NEVADA, N.A.,	:	
	:	
Claimant.	:	
_____	:	

**ORDER ON OBJECTION TO PROOF OF CLAIM
OF HSBC NEVADA, N.A. (CLAIM NO. 3)**

Thomas G. Wages and Cynthia S. Wages (the “Debtors”) contend that HSBC Bank Nevada, N.A. (“HSBC”) did not acquire a purchase money security interest in consumer goods and, therefore, object to allowance of its proof of claim [Claim No. 3] as a secured claim.

[Docket No. 15]. HSBC filed a response in support of the secured claim [Docket Nos. 20 and 27],¹ and the Court conducted a hearing on the dispute on October 14, 2009. At the hearing, counsel for the parties agreed that the Court could determine the issues based on the record before the Court.²

On May 18, 2007, Thomas G. Wages applied for a credit card to purchase merchandise at Best Buy and filled out a “Best Buy Credit Card Application” (the “Application”).³ Section 3 of the Application, states, “You grant us a purchase money security interest in the goods purchased on your Account.”⁴ Section 3 of the Application also states that use of the credit card constitutes agreement to the terms and conditions of a “Cardholder Agreement and Disclosure Statement” (the “Cardholder Agreement”) that would be sent with the credit card.⁵ Paragraph 5 of the “Important Terms” set forth in the Cardholder Agreement states in pertinent part, “[Y]ou grant us a purchase money security interest in the goods purchased with your Card.”⁶

Mr. Wages used the Best Buy Credit Card to purchase items on the day he applied for the card and on six later occasions over the next 22 months. Each time he used the card, he signed a sales slip listing the items that he purchased.

¹ The original response [Docket No. 20] states that it is filed by “Ecast [sic] Settlement Corporation, as Assignee of HSBC Bank Nevada, N.A.” An amendment to the response removes identification of the Respondent as “Ecast Settlement Corporation.” [Docket No. 27].

² This Court has authority to hear and determine this proceeding under 28 U.S.C. § 157(b)(1) as a core proceeding under 28 U.S.C. § 157(b)(2)(B) and (K) within the District Court’s jurisdiction under 28 U.S.C. § 1334(b) that the District Court has referred under 28 U.S.C. § 157(a) and L.R. 83.7, N.D.Ga. The Debtors’ objection to allowance of HSBC’s claim as secured is a proceeding to determine the validity, of a lien for which Fed. R. Bankr. P. 7001(2) requires an adversary proceeding. Because the parties have agreed to determination of the issues based on the Debtors’ objection to HSBC’s proof of claim and HSBC’s response thereto, an adversary proceeding is not required. *See In re Pence*, 905 F.2d 1107 (7th Cir. 1990).

³ The documents referred to in this Order are attached to HSBC’s proof of claim, a copy of which is attached as Exhibit “A” to HSBC’s response at Docket 20.

⁴ HSBC’s Response, Exhibit “A” at 2 [Docket No. 20, at 5].

⁵ The pertinent language in section 3 is:

By a) signing, using or permitting others to use this Card; b) signing or permitting others to sign sales slips; c) making or permitting others to make purchases by telephone, Internet, or any other means, you agree to the terms and conditions of the Cardholder Agreement and Disclosure Statement (which includes an arbitration provision) which shall be sent to you with the credit card.

HSBC’s Response, Exhibit “A” at 2 [Docket No. 20, at 5].

⁶ HSBC’s Response, Exhibit “A” at 13 [Docket No. 20, at 16].

The Debtors filed a Chapter 13 petition on May 22, 2009. HSBC filed a proof of claim in the amount of \$3,094.41, asserting that the value of the collateral securing the claim is \$2,252.95.

The Debtors contend that HSBC does not have an enforceable security interest under O.C.G.A. § 11-9-203. Under § 11-9-203(b)(3)(A), the creation of a valid security interest requires, among other things, the debtor's authentication of "a security agreement that provides a description of the collateral." A description of personal property "is sufficient, whether or not it is specific, if it reasonably identifies what is described," O.C.G.A. § 11-9-108(a), but a description only by type of collateral is an insufficient description of consumer goods in a consumer transaction. O.C.G.A. § 11-9-108(e)(2). The basic requirement is that the description must make possible the identification of the collateral described. *See Personal Thrift Plan of Perry, Inc. v. Georgia Power Co.*, 242 Ga. 388, 249 S.E.2d 72 (1978).

The Debtors assert that none of the documents evidencing HSBC's claim creates an enforceable security interest in the purchased goods under these rules. The Application and the Cardholder Agreement each grant a security interest, but neither document identifies any specific items. The sales slips provide a description of the goods, but they do not contain language that grants a security interest. The Debtors conclude that HSBC does not have a security interest in the purchased goods because none of the documents contains all of the necessary elements.

In support of their position, the Debtors cite *Grier v. Skinner's Furniture Store of Newnan, Inc.*, 180 Ga. App. 607, 349 S.E.2d 826 (1986). In *Grier*, the debtor purchased furniture and appliances and signed sales invoices stating that the sales were subject to a charge agreement. The seller asserted that, by incorporating the terms of the charge agreement, the invoices proved the existence of a security agreement signed by the debtor that described the

collateral. In rejecting this argument because the sales slips were never admitted into evidence, the Court of Appeals noted that, in any event, the sales invoices “do not constitute a security agreement, but merely give notice of the existence of one.” *Id.* at 607, 349 S.E.2d at 827.

Grier stands for the proposition that the sales slips Mr. Wages signed, which do not refer to any security agreement and do not themselves grant a security interest in the purchased items, do not alone constitute a security agreement and, therefore, do not establish a security interest in the purchased goods. *Grier* does not, however, stand for the proposition that the Court cannot make the obvious connection between the sales slips and the previously executed Application and Cardholder Agreement to determine whether they collectively grant HSBC an enforceable security interest in the purchased goods.

Georgia law does not require that a single document contain all of the requisites of a security agreement. *See, e.g., In re Carmichael Enter., Inc.*, 334 F. Supp. 94, 104-05 (N.D. Ga. 1971), *aff'd* 460 F.2d 1405 (5th Cir. 1972); *In re Flager*, 2007 WL 1701812 (Bankr. M.D. Ga. 2007); *Trust Co. Bank v. Walker (In re Walker)*, 35 B.R. 237 (Bankr. N.D. Ga. 1983). Here, both the Application and the Cardholder Agreement that it incorporates, coupled with Mr. Wages’ use of the credit account, establish the existence of a security agreement in which he agreed that HSBC would retain a security interest in goods he might later purchase on that account. When he purchased the goods and thereby acquired rights in them, HSBC retained a security interest in them pursuant to the earlier security agreement. O.C.G.A. § 11-9-203(b)(2). The sales slips that evidenced transactions on the account show the purchased items that serve as collateral, and Mr. Wages has not challenged the adequacy of those descriptions.

The Court therefore concludes that HSBC has a valid and enforceable security interest in the goods Mr. Wages purchased on the account. *See, e.g., In re Ziluck*, 139 B.R. 44 (S.D. Fla.

1992); *Tandy Credit Corp. v. Martinez (In re Martinez)*, 179 B.R. 90 (Bankr. N.D. Ill. 2005); *In re Moody*, 62 B.R. 282 (Bankr. N.D. Miss. 1986); *In re Thibodeau*, 1969 WL 11005 (Bankr. D. Maine 1969); *In re Elia*, 18 B.R. 89 (Bankr. W.D. Pa. 1982).

The Chapter 13 plan proposed by the Debtors in this case contemplates treatment of HSBC's claim as unsecured. As such, it cannot be confirmed. The Debtors shall have 20 days from the date of entry of this Order to file and serve a modification to their plan, or to propose a new plan, that deals with the claim of HSBC as a secured claim.

The parties have not addressed the question of the value of HSBC's collateral for purposes of determining the amount of HSBC's secured claim under 11 U.S.C. § 506(a). Any dispute concerning value of the collateral is a confirmation issue under 11 U.S.C. § 1325(a)(5) and will be addressed at the confirmation hearing.⁷

Based on the foregoing, it is hereby ORDERED and ADJUDGED that the Debtors' objection to the claim of HSBC on the ground that it does not hold a valid and enforceable security interest is OVERRULED, without prejudice to later determination of the amount of HSBC's secured claim pursuant to 11 U.S.C. § 506(a) based on the value of its collateral.

[End of Order]

This Order is not intended for publication.

⁷ If the parties anticipate that an evidentiary hearing on value will be required, parties should contact Chambers staff for a special setting of the hearing.

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