Bankruptcy Rule3 3001 and 3002.1

Jeanne Hovenden to Rules_Comments 02/11/2010 02:01 PM

As a consumer debtor attorney, the changes to Rules 3001 and 3002.1 are critical to getting information on the secured debts - especially mortgage debts. For the sake of their on-going profits, the mortgage lenders do not want to provide detailed payment histories on the loans, and they do not want the debtors or the courts to see the amount of added, unnecessary costs being charged for Broker Price Opinions, drive-by "appraisals", property maintenance drive-by's, etc, during Chapter 13 cases.

Many of these "services" are obtained every month and adding $25 to a $200,000 mortgage loan may not seem like a lot, but is $300/year for 3 - 5 years in a Chapter 13, and at the end of the 13, they finally send the homeowner a bill for $1200 - $1500. When multiplied by the number of homes in Chapter 13 nationwide, it becomes a wonderful profit center for the lenders. Forcing them to disclose the fees will at least partly level the playing field so that debtors can challenge the necessity of these costs during the bankruptcy case.

The proposed 180 time for providing this information is too long. The requirement should be shortened to 90 days. The mortgage company can tie the reports to the court , debtor and counsel at the same time they pay the vender for the service - which likely happens within 90 days of the service being done.

Right now, there is no mechanism in the bankruptcy code short of a full blown adversary proceeding to get these disclosed. There is a "remedy" supposedly available under RESPA in the form of a "qualified written request" but most mortgage companies do not comply with these requests in a meaningful way. I have done them and gotten dozens of pages if non-answers from the mortgage lenders and servicers. That leaves the debtor who is required by the Code and the courts to devote all available excess income to their Chapter 13 payment in the position of being unable to afford to pay counsel to bring the adversary proceeding. The debtor then hopes that the court will award attorneys fees to cover the cost of ferreting out information to which the debtor should be receiving as the case unfolds. The mortgage companies have much deeper pockets than bankruptcy debtors, and can afford to drag things out and hire people to help them hide the ball until the debtor gives up the effort.

It is also critical for the court to have a way of determining at the end of a Chapter 13 that the mortgage loan has been brought current in the case. I have personally had to file subsequent Chapter 13 cases because of the fees that were assessed without contemporaneous disclosure to the debtor during the first case. These fees taken individually may be very small, but over 3 - 5 years, they can and do total thousands of dollars. After the first 13 is concluded, the debtor gets a bill asking that all of these stealth fees be paid immediately. When the debtor cannot do that, the property again gets scheduled for foreclosure and the debtor goes back into Chapter 13 to pay the stealth fees from the prior case. Some courts have elected to include in the discharge order a

finding that the mortgage loans are current as of discharge, but most do not. Our courts in the Eastern District of Virginia do not. Motions to deem the mortgage loan current are met with fierce resistance by the mortgage companies because they will have to disclose the stealth fees that are such profit centers for them. They do not want the courts to see what is and has been happening for years to mortgages during Chapter 13's. It would make Chapter 13 loans much less profitable for them.

Regarding the requirements in Rule 3001 for the open end credit agreement, such as credit cards, the creditor should be required to produce the original signed application for the credit line, not just a recent statement on the account. Knowing whether a debt is jointly owed by a husband and wife is sometimes critical in a case, especially in a Chapter 7 where a trustee is prevented from administering a tenants-by-the-entirities property for debts owed only by one spouse. Or if the responsible spouse is deceased and the creditor has simply, conveniently, substituted the surviving spouse in place of the actual debtor, since the dead rarely pay their bills.

It is also important in the liquidation analysis in Chapter 13. Credit reports are often incorrect and I have personal knowledge of situations where the credit report error as to who owes the debt has been a nightmare to correct. If the creditor wants to assert that the debtor(s) are liable, they should be required to prove who agreed to take on the liability at the time the application was made. A computer generated monthly statement is only as accurate as the information that a human being in the creditor's office has put into the computer. Human errors occur and the machines cannot magically correct them. The cost is simply a cost of doing business and the creditors and debt-buyers (who are largely owned by large institutional lender like GMAC, Chase, Ford, etc.) can incorporate it into their models fur purchasing debt pools, just as they factor in many other variables.

The debt buyers such as LVNV Funding, Resurgent, etc., when filing a claim should also be required to send in the original credit applications signed by the debtor and the assignments or purchase documents showing that they now own the debt, and all prior account numbers that were assigned to the account since origination. In the world of securitized debt, including debts that have already been discharged in a bankruptcy, being able to determine who the original creditor was and the chain of title through the land of debt-traders, gives the debt a fighting chance of not paying the same debt multiple times.

I am about to file an AP against a creditor and the creditor's counsel for garnishing a debtor after discharge in a 13 in which the creditor and counsel submitted a claim that was paid in the prior Chapter 13 case. I can do it only because I can trace the debt. When the debt buyers discard the original creditor's account number and add a new one of their own, it is impossible for the debtor to know with any certainty what creditor they initially borrowed from. This is compounded by the debt buyers and collection agency changing the "date opened" in the credit reports from the date the account was opened by the original creditor to the date they bought the account or began reporting its collection status in the credit report.

The creditors have lots of lobbyists who make a lot of money asking Congress to bend the laws in their favor. It appears that many of them have already commented on the proposed changes in

a uniformly negative way. The only pro-debtor remarks have come from the National Assn of Consumer Bankruptcy Attorneys, of which I am a proud member. We represent the millions of individuals who file bankruptcy every year in an attempt to save their homes and futures from the lenders who impose horrendous interest rates and reap record profits, even while getting bailout money from Congress.

It is only fair that debtors know who is claiming to be owed money and where the debt originated. It is fair for the mortgage lenders to tell the debtors when they are suddenly made responsible for new costs that the mortgage company has uni-laterally decided are necessary. If they don't know about the charges and have the opportunity to dispute them or pay them, there is no mortgage loan in any Chapter 13 in the country that will be current upon the Chapter 13 discharge being entered.

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