

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
JERRY L. DOIDGE and) CASE NO. 05-62587 JPK
PATRICIA A. DOIDGE,) Chapter 13
)
Debtors.)

ORDER FOR HEARING

On June 27, 2005, the debtors, by counsel, filed an objection to claim #12 of Beneficial Mortgage Company filed on June 17, 2005. The objection itself was properly served upon the claimant at the claimant's address, and a form of notice under N.D.Ind.L.B.R. B-2002-2 was also served upon the claimant at that address; no response to the objection or request for hearing with respect thereto was filed.

The notice utilized by the debtors/objectants does not comply with the provisions of N.D.Ind.L.B.R. B-3007-1(c): the notice did not include the statement "a copy of the objection accompanies this notice". Although perhaps debtors' counsel believes it to be intuitively derivable from the record that the objection and the notice were served upon the creditor at the same time, the record as a factual matter does not establish that the notice and the objection were served as an integrated unit upon the creditor.

The Court foresees another problem. The creditor did not respond, and the creditor did presumably receive a copy of the objection itself at the address to which it designated notices to be sent. The objection states that the entire amount of the arrearage stated in the proof of claim should be denied, including "fees of \$2,105.78", because those amounts are not itemized. Clearly, a debtor is entitled to an itemization of the components of an arrearage asserted by a mortgage creditor in a proof of claim. The problem is that if the arrearage itself is disallowed, it still comprises a portion of the secured creditor's debt, and by not paying the arrearage during the term of the plan pursuant to 11 U.S.C. § 1322(b)(5), the debtors will have that much more of an indebtedness to

deal with after the Chapter 13 plan has been completed. In other words, merely denying the amount of the arrearage claim does not affect the total amount of indebtedness owed to the creditor as of the date of the filing of the petition – it only means that the arrearage claim will not be paid during the term of the plan.

The circumstances of this claim objection demonstrate one of the more difficult issues faced by a court with respect to the consumer mortgage credit claims filed in Chapter 13 cases. Many of the claims do not have sufficient information to identify the manner of calculation of an arrearage, or the components of the arrearage asserted by the creditor. It is the Court's experience as well that many secured creditors do not respond to debtor's or debtor's counsel's request for information concerning the components or computation of an arrearage. Additionally, because of the game of musical chairs now played in the consumer residential finance industry with respect to assignment of debts for collection purposes and sale of the debt obligations, it is often very difficult, if not impossible, to obtain information from a party having it as to the manner in which an arrearage was actually calculated and as to its components.

The crux of the problem is that pursuant to 11 U.S.C. § 502(a) and Fed.R.Bankr.P. 3001(f), the proof of claim is "*prima facie* evidence of the validity and amount of the claim". Thus, in the parlance of evidentiary burdens, the proof of claim satisfies the creditor's "burden of production" with respect to the indebtedness stated in it, and it is then up to the objectant to submit evidence sufficient to overcome the claimant's burden of production. However, if and when the objectant does submit sufficient evidence to overcome the "*prima facie* validity" of a proof of claim, the ultimate burden of establishing the claim rests on the creditor/claimant, not on the debtor/objectant.

In cases such as this, it is pointless to require the debtors/objectants to again follow the notice procedure of N.D.Ind.L.B.R. B-3007-1. The Court deems the most appropriate procedure to be to schedule a hearing on the debtors' objection, to allow both the creditor and the debtors to present evidence as to the amount of the arrearage and its components.

IT IS ORDERED that a hearing on the debtors' objection to claim #12 of Beneficial Mortgage Company will be held on **October 17, 2005, at 2:45 P.M.** **THIS IS A FINAL EVIDENTIARY HEARING: THE AMOUNT OF THE ARREARAGE CLAIM AND OF ITS COMPONENT CHARGES WILL BE FINALLY DETERMINED AT THIS HEARING. IN THE EVENT THAT THE DEBTORS SUBMIT EVIDENCE DEEMED BY THE COURT SUFFICIENT TO REBUT THE ASSERTED ARREARAGE CLAIM STATED IN THE CREDITOR'S CLAIM, THE ARREARAGE WILL BE DETERMINED ON THE BASIS OF THE DEBTORS' EVIDENCE AND THE AMOUNT OF THE ARREARAGE CLAIM FOR ALL PURPOSES IN THIS CASE SHALL BE THE AMOUNT AS SO ESTABLISHED, AND UPON COMPLETION OF THE DEBTORS' PLAN, THE BALANCE OF INDEBTEDNESS OWED TO THE CREDITOR SHALL BE ADJUSTED TO REFLECT THE COURT'S DETERMINATION OF THE AMOUNT OF THE CREDITOR'S CLAIM.**

Dated at Hammond, Indiana on September 2, 2005.

/s/ J. Philip Klingeberger
J. Philip Klingeberger
United States Bankruptcy Court

Distribution:

Debtors, Attorney for Debtors

Trustee, US Trustee

Beneficial Mortgage Co., 961 Weigel Drive, P.O. Box 8603 Elmhurst, IL 60126