

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)

LOUIS A. LENGACHER)

MARY LENGACHER)

Debtors)

CASE NO. 12-12512

NOT INTENDED FOR PUBLICATION

DECISION AND ORDER DENYING MOTION TO DISMISS

On December 1, 2015.

The trustee has objected to a claim filed by Springleaf Financial. She argues that the legal description in the mortgage it was given is defective and so its lien is voidable, as to a bona fide purchaser, through the trustee's strong-arm powers under § 544. See, 11 U.S.C. § 544(a). As a result, the claim should be disallowed unless Springleaf releases the lien. See, 11 U.S.C. § 502(d) ("the court shall disallow any claim of any entity . . . that is a transferee of a transfer avoidable under section . . . 544 . . . unless such entity or transferee has . . . turned over any such property."). After receiving two extensions of time, instead of responding to the objection directly Springleaf (perhaps conceding the trustee's contentions concerning the defective description) filed an adversary proceeding to reform the mortgage and correct the error. It then filed the motion presently before the court, asking the court to:

(a) dismiss the trustee's objection because it is time barred and/or should have been filed as an adversary proceeding; or,

(b) stay the objection or consolidate it with the adversary proceeding Springleaf filed earlier that day.

Neither argument has any merit.

As for being time-barred, Springleaf claims the trustee had to bring the objection within the

time specified by § 546(a), and since she did not the objection should be dismissed. Yet, by its terms, § 546(a) does not apply to § 502(d) and Springleaf's brief fails to cite a single published decision which holds that it does. Contrary to that dearth of authority, the cases holding that §546(a) does NOT apply to claim objections based on § 502(d) are many. See e.g., In re McKenzie, 737 F.3d 1034, 1041-42 (6th Cir. 2013); El Paso v. America West Airlines, Inc., 217 F.3d 1161, 1167-68 (9th Cir. 2000); In re Meredosa Harbor & Fleeting Service, Inc., 545 F.2d 583, 590 (7th Cir. 1976) (decided under the Bankruptcy Act's equivalent to § 502(d)); In re Cushman Bakery, 526 F.2d 23, 26 (1st Cir. 1975) (same); In re KF Dairies, Inc., 143 B.R. 734, 736 (9th Cir. BAP 1992); In re McLean Indus., Inc., 196 B.R. 670, 676 (S.D.N.Y.1996); In re American Pie, 361 B.R. 318, 324 (Bankr. D. Mass.2007); In re Metiom, Inc., 301 B.R. 634, 641 (Bankr. S.D. N.Y.2003); In re Octagon Roofing, 156 B.R. 214, 219 (Bankr. N.D. Ill. 1993); In re Stoecker, 143 B.R. 118, 131 (Bankr. N.D. Ill. 1992); In re Chase & Sanborn Corp., 124 B.R. 368, 370 (Bankr. S.D. Fla. 1991); In re Larsen, 80 B.R. 784, 791 (Bankr. E.D. Va.1987); In re Mid Atlantic Fund, Inc., 60 B.R. 604, 610 (Bankr. S.D. N.Y. 1986) ("It had been squarely held under the former Bankruptcy Act that a trustee could raise an otherwise time-barred voidable transfer so as to cause disallowance of a claim under § 57g.") (collecting cases); In re Wofford, 2012 WL 3070625 *7 (Bankr. E.D. Tenn. 2011); In re Midwest Agri Development Corp., 2007 WL 4868309 * 3 (Bankr. D. N.D. 2007). If Congress had intended to establish a limitations period for objections to claims under § 502(d), it would have done so.

As for the argument that the objection had to be filed as an adversary proceeding, that too is based upon something other than the language of the applicable rules. Whether or not an adversary proceeding is required is determined by the relief being sought, not the issues presented or the

theories behind them. Cf., Smith v. City of Chicago, 769 F.2d 408, 411 (7th Cir. 1985) (“litigants and the legal system . . . have a common interest in easily stated, easily applied rules of procedure. Bright-line rules save the time of litigants and courts for the merits of the disputes . . .”); Matter of Lengacher, 485 B.R. 380, 384 (Bankr. N.D. Ind. 2012). Indeed, when it comes to claim objections, Rule 3007(b) says pretty much just that: “A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding.” Fed. R. Bankr. P. Rule 3007(b). The trustee’s objection asks for nothing more than “that [Springleaf’s] claim be disallowed in full.” Objection to Claim, filed June 17, 2015, p.2. An adversary proceeding was not required. See, Stoecker, 143 B.R. at 128; In re America’s Shopping Channel, Inc., 110 B.R. 5, 8 (Bankr. S.D. Cal.1990) (Bankruptcy Rule 7001 does not apply claim objections so long as the trustee does not include a demand for recovery of money or property in the objection).

As for staying these proceedings or consolidating them with the adversary proceeding Springleaf filed against the trustee, that is a matter committed to the court’s discretion. See, Landis v. North American Co., 299 U.S. 248, 254-55, 57 S.Ct. 163 (1936); U.S. v. Knauer, 149 F.2d 519, 520 (7th Cir. 1945) aff’d, 328 U.S. 654, 66 S.Ct. 1304 (1946). Generally, when one considers how to deal with multiple proceedings raising similar issues, the question is usually whether the subsequent proceeding should be stayed pending the conclusion of the first, or consolidated with it, and not whether the original proceeding should be put on hold or consolidated with the later filed one. Here, Springleaf received two extensions of time (albeit, with the trustee’s consent) to respond to the objection; used that time to file the adversary proceeding; and then, less than an hour later, used that adversary as the reason to stay or consolidate proceedings on the trustee’s objection.

Furthermore, there is already an agreed order in place establishing a litigation schedule for the claim objection, see, Order Approving Scheduling Stipulation, dated September 15, 2015, – a stipulated schedule which does not address the possibilities presented by Springleaf’s motion filed only a short time later – while the adversary proceeding is still in the preliminary, pleading stage. Under these circumstances, the court is not inclined to reward dilatory tactics or to disrupt the schedule currently in place in favor of a less developed subsequent proceeding.

Springleaf Financial’s motion to dismiss the trustee’s objection to its claim, or to stay or consolidate proceedings is DENIED.

SO ORDERED.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court