

IT IS SO ORDERED.

Dated: 04:36 PM September 22 2008



**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CASE NO. 07-51027
)	
MARLYNN RENEE O'NEAL,)	CHAPTER 13
)	
DEBTOR(S))	
)	
DANIEL M. MCDERMOTT, United States)	ADVERSARY NO. 08-5031
Trustee Region 9,)	
)	JUDGE MARILYN SHEA-STONUM
PLAINTIFF(S),)	
)	
vs.)	
)	
COUNTRYWIDE HOME LOANS, INC.)	OPINION AND ORDER DENYING
)	COUNTRYWIDE HOME LOANS, INC.'S
DEFENDANT(S).)	MOTION TO DISMISS [DOCKET #31]

This matter comes before the Court on defendant, Countrywide Home Loans, Inc.'s ("Countrywide") motion to dismiss [docket # 31] (the "Motion to Dismiss") the complaint of the United States Trustee Region 9 ("UST"), the UST's response to the Motion to Dismiss [docket #36] and Countrywide's reply to the UST's response [docket #37]. At a pre-trial conference in this matter

counsel indicated to the Court that the issue of whether the Complaint should be dismissed could be decided on the pleadings. After all the parties' pleadings were filed, the matter was taken under advisement.

I. BACKGROUND

On April 11, 2007, Marlynn Renee O'Neal filed a chapter 13 bankruptcy petition and plan. On Question 10 of her Statement of Financial Affairs, Ms. O'Neal indicated that in 2005 she had transferred all of her right, title and interest in real property (previously her primary residence) located at 327 Ira Avenue in Akron Ohio (the "Property"). Countrywide is not listed as a creditor on Ms. O'Neal's schedules and not specifically provided for in her chapter 13 plan.

On May 1, 2007, Countrywide filed a proof of claim indicating that it held an \$88,859.06 claim secured by the Property and an objection to Ms. O'Neal's chapter 13 plan. In its objection, Countrywide contends that the plan fails to provide for an appropriate cure of a default under Countrywide's mortgage on the Property. Thereafter, Ms. O'Neal filed an objection to Countrywide's proof of claim and a response to Countrywide's objection to her plan. In both of those pleadings, Ms. O'Neal represented that she no longer had any interest in the Property as of the petition date. Ms. O'Neal further represented that Countrywide had neither a claim nor an interest in the Property because of its prepetition acceptance of a short sale payment. In support of these contentions, Ms. O'Neal attached to both her objection and response a Standard Warranty Deed dated September 14, 2005 related to her prepetition sale of the Property and a September 13, 2005 memorandum which references Countrywide's agreement to a "short payoff" of \$13,000 in full satisfaction of its loan.

On June 6, 2007, Countrywide withdrew its objection to confirmation of Ms. O’Neal’s plan. Countrywide did not file any response to Ms. O’Neal’s objection to its proof of claim and the Court entered an Order sustaining the objection.

On February 28, 2008, the UST initiated this adversary proceeding by filing a complaint against Countrywide. In his complaint, the UST contends that Countrywide filed an inaccurate proof of claim and an unsubstantiated objection to plan confirmation in Ms. O’Neal’s bankruptcy case. The UST further contends that such filings are not an isolated incident in just Ms. O’Neal’s case but that Countrywide has engaged in a similar pattern of conduct throughout the country. The UST is requesting that this Court enter an order pursuant to 11 U.S.C. § 105(a), this Court’s inherent equitable powers and Local Bankruptcy Rule 2090-2(c) which (1) imposes monetary sanctions against Countrywide; and (2) enjoins and restrains Countrywide from engaging in bad faith and abusive practices in connection with its preparation, verification, filing and prosecution of pleadings and proofs of claim in bankruptcy cases.

II. THE MOTION TO DISMISS

In the Motion to Dismiss, Countrywide moves the Court for an order dismissing the UST’s complaint, with prejudice, pursuant to Federal Rule of Civil Procedure (“FRCP”) 12(b)(1)¹ due to this Court’s lack of subject matter jurisdiction and pursuant to FRCP 12(b)(6) due to the UST’s failure to state a claim upon which relief can be granted. As for its subject matter jurisdiction argument, Countrywide contends that (1) the UST fails to allege a live case or controversy; (2) the

¹ FRCP 12(b)(1)-(6) are made applicable to Bankruptcy proceedings pursuant to Federal Rule of Bankruptcy Procedure 7012(b).

UST lacks the statutory authority to commence adversary proceedings aimed at policing alleged past Bankruptcy Code violations; (3) this Court lacks statutory jurisdiction over this proceeding, and (4) this Court lacks jurisdiction to enter the type of relief the UST seeks. As discussed more fully below, each of those contentions is without merit.

Countrywide contends that the UST lacks any standing because he, personally, has suffered no threatened or actual injury. Such an argument ignores a party's right to call upon this Court to exercise its inherent power to sanction another party for improper conduct. *See Mapother & Mapother, P.S.C. v. Cooper (In re Downs)*, 103 F.3d 472, 477 (6th Cir. 1996). *See also United Artists Theatre Co. v. Walton*, 315 F.3d 217, 225 (3rd Cir. 2003) ("A lack of pecuniary interest in the outcome of a bankruptcy proceeding does not deny the U.S. Trustee standing."). Countrywide further contends that the UST's claims are moot because Countrywide ultimately withdrew its objections to plan confirmation and the Court sustained debtor's objection to Countrywide's proof of claim: "[t]here are no outstanding orders or Bankruptcy Code provisions that Countrywide is accused of violating. Thus, the requested injunctive relief is irrelevant and will make no legal difference to any party. Because the debtor is dead, Countrywide's allegedly wrongful conduct could not recur as there is no estate or plan to administer." Mot. to Dismiss at pg. 5 (citations omitted) [docket #31]. Again, this argument ignores this Court's inherent authority to discipline a party for misconduct which in this case is alleged to be the filing of an inaccurate proof of claim and an unsubstantiated objection to plan confirmation. It also ignores the fact that Ms. O'Neal's bankruptcy case is still pending and that the matter of imposition of sanctions stands independently of the main bankruptcy case. *See, e.g., In re Hydratech Utilities, Inc.*, 391 B.R. 473, 476 (Bankr. M.D.Fla. 2008). *Cf. Willy v. Coastal Corp.*, 503 U.S. 131 (U.S. 1992) (holding that a FRCP Rule 11 sanction may be imposed even if the

Court is found to ultimately lack subject matter jurisdiction as Rule 11 is designed to punish a party who has already violated the court's rules and such violation would not disappear upon determination that subject matter jurisdiction was lacking).

Countrywide also argues that the UST lacks any statutory authority to commence adversary proceedings aimed at policing alleged, past Bankruptcy Code violations. Such an argument fails to recognize the broad remedial powers that the U.S. Congress has granted to the UST Program. The UST Program is a component of the U.S. Department of Justice that enforces federal bankruptcy law. *See* 28 U.S.C. § 581(a); H.R. Rep. No 95-595 at 110 (1977); *U.S. Trustee v. Columbia Gas Systems Inc. (In re Columbia Gas Systems Inc.)*, 33 F.3d 294, 295-96 (3rd Cir. 1994); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 499-500 (6th Cir. 1990). The UST's standing derives from its role as the representative of the public interest in bankruptcy cases. *In re Revco D.S., Inc.*, 898 F.2d at 500.

Moreover, the Bankruptcy Code specifically grants the UST a broad, overarching right to “appear and be heard on *any* issue in *any* case or proceeding under this title” 11 U.S.C. § 307 (emphasis added). *See, e.g., Thompson v. Greenwood*, 507 F.3d 416, 420 n.3 (6th Cir. 2007) (recognizing standing of the UST to object to improper venue of a bankruptcy case pursuant to his standing under § 307). This broad statutory provision is not, contrary to Countrywide's argument, somehow limited by 28 U.S.C. § 586 which sets forth a list of the UST's duties. In attempting to quash a motion seeking a Bankruptcy Rule 2004 exam, Countrywide made this same argument in a bankruptcy case pending in the Western District of Pennsylvania. In denying Countrywide's motion to quash, the Pennsylvania Bankruptcy Court set forth a detailed and persuasive analysis of why Countrywide's argument was without merit.

When interpreting a statute, the role of the Court is to give effect to the intent of Congress. It is presumed that Congress expressed its intent through ordinary meaning of its language, so every exercise of statutory interpretation begins with the plain meaning of the statute. . . .

It is a well-established canon of statutory construction that provisions in different statutes should, if possible, be interpreted so as to effectuate both provisions. Thus, while remaining faithful to a “plain reading” of the provisions at issue, the Court must also strive for an interpretation of Sections 307 and 586 that gives effect to both if possible.

There are several other rules of statutory construction that may be relevant in the present case. One is that the test of a statute should not be read in such a way as to make part of the statute superfluous or redundant. Another is that when Congress enacts a new statute courts presume that the legislators considered previous laws and passed the later law in harmony with the policy embodied in the earlier statute, in the absence of any express repudiation or modification.

Applying the above principles leads to the conclusion that the UST does have the authority to seek and obtain a 2004 Examination [of Countrywide] in the proper circumstances. Clearly, Section 307 is written in extremely broad language. Indeed, it is difficult to conceive of how Section 307 could have been written in any broader language. The Court thus has no difficulty concluding that the plain meaning of the power to “raise” and to “appear and be heard” as to any issue in any bankruptcy case or proceeding includes the ability to conduct examinations pursuant to Rule 2004 in the right circumstances. Countrywide, in apparent acknowledgment as to the otherwise far-reaching scope of the Section 307 language, argues that it was only intended to be an enabling statute with the limited purpose of granting standing to the UST to perform the many specific duties set forth in Section 586 and the various provisions of the Bankruptcy Code noted previously.

In that vein, Countrywide suggests that Section 307 was only enacted to address the purported “confusion” that then existed (i.e., in 1986) as to whether the UST has standing to perform the specific duties listed in Section 586 and the other related provisions. Countrywide’s argument in this regard must fail. There is nothing whatsoever in the statutory language of Section 307 that supports Countrywide’s argument. . . . If there truly had been confusion in the courts over whether the UST had standing to perform duties prior to the enactment of Section 307, one would presume that would be reflected in the case law of the period, but none has been cited. Moreover, if the Congressional intent behind Section 307 was merely to confer standing and not to grant additional power, it would have been easy and natural to simply state that in the language of the statute. Thus, the Court believes that the most natural and plain meaning of Section 307 is that of a grant of expanded power to an office that was widely perceived to have proven its merit during the pilot program era.

In re Countrywide Home Loans, Inc., 384 B.R. 373, 382-385 (Bankr. W.D.Pa 2008) (citations omitted). Such analysis also holds for the issue at bar.

Next, Countrywide argues that this Court lacks any statutory jurisdiction over this proceeding. Again, this argument must fail as this Court has jurisdiction over this matter pursuant to both its inherent judicial power (*see* pp 4-5, *supra*) and its core statutory jurisdiction.

A “core” proceeding is one that either invokes a substantive right created by federal bankruptcy law or one which could not exist outside of bankruptcy. *Eglinton v. Loyer (In re G.A.D., Inc.)*, 340 F.3d 331, 336 (6th Cir. 2003), *citing Sanders Confectionery Prods., Inc. v. Heller Fin. Inc.*, 973 F.2d 474, 483 (6th Cir. 1992). Countrywide’s alleged misconduct in this case deals with the filing of an inaccurate proof of claim and an unsubstantiated objection to confirmation of debtor’s chapter 13 plan. Both of these matters invoke procedures unique to a bankruptcy proceeding and neither could exist outside of the bankruptcy context. *See* 11 U.S.C. §§ 501(a); 1324(a); 1325(a)(5) and (6) and Bankruptcy Rules 3001 and 3002. In addition to the fact that the UST’s complaint directly revolves around these core matters, a proceeding involving the discipline of a party for misconduct before the bankruptcy court is also considered to be core. *See, e.g., Dunmore v. United States*, 358 F.3d 1107 (9th Cir. 2004) (debtor’s claim that the IRS violated the discharge injunction depends upon the bankruptcy court’s authority under § 105 to enforce its own orders under the Bankruptcy Code and is, thus, a core proceeding); *Matter of Memorial Estates, Inc.*, 950 F.2d 1364 (7th Cir. 1991) (issue of sanctions under Bankruptcy Rule 9011 was itself a “core” proceeding); *Mountain America*

Credit Union v. Skinner (In re Skinner), 917 F.2d 444 (10th Cir. 1990) (civil contempt proceedings under § 105 arising out of core matters are themselves core matters).²

Finally, Countrywide argues that this Court is without any jurisdiction to consider the relief requested by the UST in his complaint because such relief is in the nature of criminal contempt. Upon review of the UST's complaint, the Court can find nothing to suggest that the UST is requesting that this Court find Countrywide in criminal contempt.³ The UST does not seek to have Countrywide held in contempt of a particular order but instead seeks the imposition of sanctions (and any other relief, if appropriate) to redress Countrywide's allegedly abusive filings in the O'Neal bankruptcy case as well as other bankruptcy cases in which Countrywide has participated. As support for such relief, the UST relies upon § 105 of the Bankruptcy Code which specifically grants this Court the power to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105. If this Court finds in favor of the UST,

² Countrywide filed a motion with the District Court seeking to withdraw the reference of this matter arguing, *inter alia*, that the sanctions being sought by the UST are essentially criminal contempt sanctions that are outside of this Court's jurisdiction. In denying that motion, the District Court noted the following:

While there may be constitutional problems with a bankruptcy court's imposition of criminal contempt, that issue is not raised in the case before this Court. Here, the Trustee moved for sanctions against Countrywide for allegedly merit-less filings. . . .

Regardless of any constitutional jurisdictional problems presented when bankruptcy courts deal with a criminal contempt proceeding, "[t]here can be little doubt that bankruptcy courts have the inherent power to sanction vexatious conduct presented before the court." . . . Bolstering the conclusion that bankruptcy courts have sanction authority, Federal Rules of Bankruptcy Procedure Rule 9011 specifically authorizes such sanctions. . . . This Court finds the authorities on whether bankruptcy courts can impose criminal contempt sanctions inapposite to the Trustee's motion for monetary sanctions. The Trustee's motion for sanctions in the underlying bankruptcy proceeding falls within the jurisdiction of the Bankruptcy Court.

Op. and Order Denying Mot. for Withdrawal of Ref. at pp. 3-4 (citations omitted) [docket #38].

³ *Accord* Op. and Order Denying Mot. for Withdrawal of Ref. at pp. 3-4 [docket #38].

Countrywide will be afforded an opportunity to present argument regarding whether the imposition of sanctions is warranted and, if so, what would constitute an appropriate sanction for its improper conduct. By attempting to make such an argument at this stage of the litigation, Countrywide is, essentially, putting the cart before the horse.

Countrywide also argues that the complaint should be dismissed pursuant to FRCP 12(b)(6) for the UST's failure to state any claim upon which relief can be granted. When considering a motion to dismiss pursuant to FRCP 12(b)(6), a court must accept all well-pleaded factual averments as true, and draw all reasonable inferences therefrom in plaintiff's favor. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). The issue to be decided is not whether plaintiff will ultimately prevail but whether plaintiff is entitled to offer evidence to support the claims stated in his complaint. *Id.* Thus, a motion to dismiss for failure to state a claim will not be granted unless it appears *beyond doubt* that plaintiff can prove no set of facts in support of its claim which would entitle it to relief. *Id.*

The purpose of civil contempt sanctions under § 105 is to (1) provide compensation for losses and expenses incurred because of the contemptuous act, and (2) coerce the contemnor into complying with the law. If the UST is able to prove the factual allegations set forth in its complaint, the imposition of civil contempt sanctions against Countrywide pursuant to § 105 of the Bankruptcy Code may or may not be appropriate. However, the time for Countrywide to argue about whether civil contempt sanctions should be imposed and, if so, what those sanctions should be is after the

UST is given an opportunity to offer evidence to support of his claim that civil contempt is warranted.⁴

III. CONCLUSION

Based upon the foregoing, the Court finds Countrywide's Motion to Dismiss to be without merit. Accordingly, that motion is hereby denied. The agreed upon discovery schedule set forth in this Court's May 12, 2008 pre-trial order remains in full force and effect and the Court will conduct a further pre-trial conference in this matter (as previously scheduled) at 3:30 pm on January 14, 2009.

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 DERRICK V. RIPPY, Counsel for plaintiff
 ROBERT C. FOLLAND, Counsel for Defendant
 THOMAS A. CONNOP, Counsel for Defendant

⁴ Should the UST successfully prove the factual allegations set forth in his Complaint, the issue of proper sanctions would focus not so much on pecuniary compensation but instead on deterrence, *e.g.*, how Countrywide can modify its internal bankruptcy related practices to ensure the accuracy of its filings in future bankruptcy cases. Such a focus is especially relevant in light of the recent widespread downsizing in the home loan lending industry.