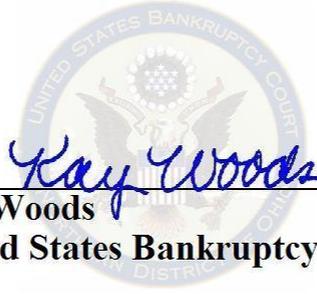


IT IS SO ORDERED.



**Dated: March 04, 2011
02:27:03 PM**

**Kay Woods
United States Bankruptcy Judge**

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

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|--------------------------|---|-----------------------------|
| IN RE: | * | |
| | * | |
| | * | CASE NUMBER 10-42690 |
| | * | |
| CHARLA L. THOMAS, | * | CHAPTER 13 |
| | * | |
| Debtor. | * | HONORABLE KAY WOODS |
| | * | |

**MEMORANDUM OPINION REGARDING MOTION FOR A PROTECTIVE ORDER AND/OR
MOTION TO QUASH OR MODIFY SUBPOENA**

This cause is before the Court on Motion by Chase Home Finance LLC for a Protective Order and/or Motion to Quash or Modify Subpoena Pursuant to Federal Rules of Bankruptcy Procedure 9016 and 2004 ("Motion to Quash") (Doc. # 28) filed by Chase Home Finance LLC ("Chase") on January 13, 2011. The Motion to Quash asks the Court to vacate Order Granting Motion for Oral Examination and Issuance of Subpoena *Duces Tecum* Compelling Production of Documents ("Rule

2004 Exam Order")¹ (Doc. # 25), which was entered on December 26, 2010, and quash the subpoena, or, in the alternative, grant Chase a protective order "modifying the subpoena and limiting any required document production or testimony." (Mot. to Quash at 12.) On February 14, 2011, the United States Trustee ("UST") filed Response of the United States Trustee and Supporting Memorandum of Law in Opposition to the Motion by Chase Home Finance, LLC, for a Protective Order and/or Motion to Quash or Modify Subpoena (Doc. # 36). On February 21, 2011, Chase filed Reply Brief in Support of Motion by Chase Home Finance LLC for a Protective Order and/or Motion to Quash or Modify Subpoena Pursuant to Federal Rules of Bankruptcy Procedure 9016 and 2004 (Doc. # 37).

The Court held a hearing on the Motion to Quash on February 24, 2011 ("Hearing"), at which appeared (i) Michael V. Maggio, Esq. on behalf of the UST, and (ii) Kenneth C. Johnson, Esq. on behalf of Chase. At the Hearing, the Court denied the Motion to Quash, in part, and granted the Motion to Quash, in part. The Court enters this Opinion and Order to formalize that ruling.

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the general order of reference (General Order No. 84) entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court

¹ The Rule 2004 Exam Order granted Motion for Examination of Chase Home Loans Servicing, LP, FKA Countrywide Home Loans, LP, and Order Authorizing Issuance of Subpoena *Duces Tecum* Compelling Production of Documents ("Rule 2004 Exam Motion") (Doc. # 18) filed by the UST on December 17, 2010. Chase filed Amended Memorandum in Opposition of Chase Home Finance, LLC to Motion for Examination and Order Authorizing Issuance of Subpoena *Duces Tecum* Compelling Production of Documents (Doc. # 24) on December 23, 2010.

is proper pursuant to 28 U.S.C. §§ 1391(b), 1408, and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The following constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

I. FACTUAL AND PROCEDURAL BACKGROUND

Debtor Charla L. Thomas filed a voluntary petition pursuant to chapter 13 of the Bankruptcy Code on July 19, 2010. On November 9, 2010, Chase filed Claim No. 8-1 ("Proof of Claim"), which asserted a secured claim in the Debtor's residence located at 107 Russell Avenue, Niles, Ohio 44446 in the amount of \$79,635.63. The Proof of Claim contained "arrearage and other charges as of time case filed" in the amount of \$1,287.99. (Proof of Claim at 1.) No party has objected to the Proof of Claim.

II. MOTION TO QUASH

The Subpoena sets forth the following documents to be produced:

REQUEST NO. 1: Produce complete copies of any and all communication - including, without limitation, all billing statements, all default or delinquency notices, all communications regarding HAMP or loan modification, and all escrow account disclosure statements - that You issued to the Debtor in the period from July 1, 2010 to December 7, 2010.

REQUEST NO. 2: Produce complete copies of the two most recent escrow account disclosure statements You issued to the Debtor.

REQUEST NO. 3: Produce complete copies of Chase's policies and procedures applicable to the Thomas case, for advancing funds held in escrow for accounts in default, including (if applicable) issuance of forced-place insurance and front payment of property taxes, including but not limited to policy memoranda, training materials, manuals, and handbooks.

REQUEST NO. 4: Produce complete copies of all aspects of any agreements between Chase and a default servicer (e.g. LPS) associated with the Thomas case, if any, including without limitation the written terms of compensation.

REQUEST NO. 5: Produce complete copies of the following documents constituting Chase's records of the Thomas Account in the period from July 1, 2010 through December 7, 2010: any Communication concerning the Thomas Account (including internal and external communications); the master payment/loan history; servicing notes; escrow documents; documents concerning fees or costs imposed on the Thomas Case.

REQUEST NO. 6: Produce complete copies of the documents that Chase relied on in preparing the proof of claim filed in the Thomas Case, including without limitation any bankruptcy ledger, the promissory note, the mortgage, and any assignment or other documents constituting the chain of title of the note and mortgage.

(Subpoena, Ex. A, at 3-4.)

Chase makes four generalized objections to the Subpoena, as follows: (i) the UST failed to demonstrate good cause for its requests (Mot. to Quash at 6-8); (ii) in any event, the UST's requests relating to Chase's policies and procedures and contracts with third parties exceed the permissible scope of Rule 2004 (*id.* at 8-9); (iii) the requests in the Rule 2004 Exam Motion impose an extreme and unreasonable burden on Chase (*id.* at 9-10); and (iv) Chase is entitled to a protective order limiting discovery to the factual matters concerning the Debtor and the Proof of Claim (*id.* at 10-11). If the Court finds that the UST has demonstrated good cause, Chase requests the Court to limit the discovery or testimony "to the non-privileged documents related to the Proof of Claim filed in this Case." (*Id.* at 11.) Chase requests "that this Court vacate

its December 26, 2010 Order and quash the UST's subpoena. In the alternative, Chase requests a protective order modifying the subpoena and limiting any required document production or testimony." (*Id.* at 11-12.)

III. LEGAL ANALYSIS

Chase does not dispute that the UST has standing to conduct an examination pursuant to Federal Rule of Bankruptcy Procedure 2004. Instead, Chase argues that the Rule 2004 Exam Order and the Subpoena exceed the scope of Rule 2004 and, accordingly, Chase is entitled to protection from the breadth of the Order and the Subpoena. Indeed, at the Hearing, counsel for Chase conceded that the UST had a right to inspect and inquire about the Note and Mortgage, which underlie the Proof of Claim. He objected, however, to the UST's requests for (i) complete copies of Chase's policies and procedures, and (ii) agreements with third parties.

Rule 2004 provides, as follows:

(a) **EXAMINATION ON MOTION.** On motion of any party in interest, the court may order the examination of any entity.

(b) **SCOPE OF EXAMINATION.** The examination of an entity under this rule . . . may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. . . .

(c) **COMPELLING ATTENDANCE AND PRODUCTION OF DOCUMENTS.** The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or

trial. . . .

FED. R. BANKR. P. 2004 (West 2010).

The UST's standing and authorization to conduct Rule 2004 examinations and compel the production of documents were squarely addressed in *In re Countrywide Home Loans, Inc.*, 384 B.R. 373 (Bankr. W.D. Pa. 2008), wherein Judge Thomas Agresti held, "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." *Id.* at 384. Similar to the UST's role in the *Countrywide* case, this Court finds that the UST in the instant case is a party in interest because he is exercising his role as a "watchdog" responsible for protecting the rights of the public. "The United States trustee, an officer of the Executive branch, represents such a public interest. . . . As Congress has stated, the U.S. trustees are responsible for 'protecting the public interest and ensuring that bankruptcy cases are conducted according to law.'" *Morgenstern v. Revco, D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 499-500 (6th Cir. 1990) (quoting H.Rep. No. 595, 95th Cong. 109, 2d Sess. 404, reprinted in 1978 U.S.Code Cong. & Admin.News 5963, 6070).

In the present case, the UST - in his watchdog role - seeks to examine records and documentation relating to components of Chase's Proof of Claim in the Debtor's case, including late fees, interest charges, escrow amounts and attorneys' fees. This is an appropriate

role for the UST to undertake. Documents regarding the Proof of Claim fall squarely within the scope of Rule 2004. As a consequence, the Court will deny the Motion to Quash to the extent it objects to or seeks a protective order regarding Request Nos. 1, 2, 5 and 6 because these Requests deal with "acts, conduct, or property or . . . the liabilities and financial condition of the debtor" or "may affect the administration of the debtor's estate." FED. R. BANKR. P. 2004 (West 2010).

Chase objects to the Subpoena to the extent it seeks Chase's policies and procedures and third party contracts on the grounds that such requests exceed the permissible scope of Rule 2004(b). Requests Nos. 3 and 4 seek broad categories of documents concerning Chase's policies and procedures, as well as its agreements with any third party default servicer. Although these requests arguably fall within the scope of Rule 2004 because they request policies and procedures applicable to the Debtor's case, they are, as a practical matter, very broad and encompassing. As a consequence, the UST has a higher burden to establish good cause for the production of the documents encompassed in Request Nos. 3 and 4.

Inquiries that seek far-reaching information on policies and procedures of general application in the creditor's operation will require a correspondingly higher showing of good cause because they are inherently more intrusive and present a greater potential for abuse. This initial burden on the UST to justify its Rule 2004 examination and the concomitant scope of the exam are necessarily interrelated concepts.

In re Countrywide, 384 B.R. at 393; see also *In re Fearn*, 96 B.R. 135, 138 (Bankr. S.D. Ohio 1989) (citations omitted) ("While the

scope of a Rule 2004 examination is very broad, it is not limitless. The examination should not be so broad as to be more disruptive and costly to the party sought to be examined than beneficial to the party seeking discovery.”).

As set forth above, in the present case, the UST is appropriately acting in his watchdog capacity in requesting the documents set forth in the Subpoena. However, even recognizing (i) the legitimate watchdog role of the UST; and (ii) that the requested documents fall within the scope of Rule 2004, should the Motion to Quash be granted with respect to Request Nos. 3 and 4? In other words, has the UST sufficiently demonstrated good cause for the production of Chase’s general policies and procedures?

In the *Countrywide* case, the bankruptcy court recognized that good cause must be determined by looking at the totality of the circumstances rather than applying a mechanical test. Toward that end, that court applied a “sliding scale” or balancing test to determine whether good cause existed for the Rule 2004 examination, finding that such sliding scale “will vary depending on the potential intrusiveness involved.” *In re Countrywide*, 384 B.R. at 393. Because the document requests that covered Countrywide’s policies and procedures “represent the highest potential for intrusion into the private business affairs of Countrywide, . . . a higher level of ‘good cause’ must be shown before disclosure will be required.” *Id.* at 396. Although the *Countrywide* test is useful, that court did not have to determine if the UST had met the higher

good cause showing because the UST had either already received or would receive the more intrusive documents pursuant to requests made by the debtor and the chapter 13 trustee in a related case.

At the Hearing, counsel for Chase represented that Chase has no policies and procedure that are unique to the Debtor's mortgage account and/or the calculation and/or itemization of the components set forth in the Proof of Claim. To the extent Request Nos. 3 and 4 seek production of "complete copies" of all policies and procedures that are applicable to the Debtor's account, this Court finds that the requests encompass the generally applicable policies and procedures of Chase and intrude into Chase's business operations. The UST states that he "intends to investigate the policies and the conduct of Chase, its agents, representatives, predecessors, successors, affiliates, subsidiaries or divisions thereof with the Debtor regarding" Chase's accounting and calculations of the amounts set forth in the Proof of Claim. (Rule 2004 Mot. at 2.) Without further elaboration, the UST states that "these issues directly relate to the liabilities of the Debtor and the administration of this bankruptcy estate." (*Id.* at 3.)

As set forth above, the Court agrees that documentation relating to and/or in support of the Proof of Claim falls within the scope of Rule 2004. The UST, however, fails to address how Chase's policies and procedures, and third party contracts, are relevant to investigating the Proof of Claim. In the instant case, the UST acknowledges, "'Good cause is established if the one seeking the

Rule 2004 examination has shown that such an examination is reasonably necessary for the protection of its legitimate interest.'" (*Id.* at 5, quoting *In re Hammond*, 140 B.R. 197, 201 (S.D. Ohio 1992).) Despite this acknowledgment, the UST offers no justification for the far reaching scope of Request Nos. 3 and 4. The Court does not find that the UST has stated sufficient cause for Chase to produce complete copies of its generally applicable policies and procedures or the third party contracts requested in Request Nos. 3 and 4 because the Subpoena was issued in support of the Rule 2004 examination relating only to the Debtor. As a consequence, the Court will grant Chase's Motion to Quash regarding the scope of the Subpoena relating to Request Nos. 3 and 4.

Although the Court finds the UST's requests for Chase's general policies and procedures are unreasonably broad, at the Hearing, Mr. Johnson stated that Chase would produce a copy of its servicing agreement(s). Therefore, to the extent Chase agreed to produce this documentation, the Court finds this portion of the Motion to Quash to be moot.

The Court will deny Chase's Motion to Quash to the extent it is based on the Subpoena being unreasonably burdensome. A Rule 2004 examination is broader than other discovery, having been described as a fishing expedition. "The scope of inquiry permitted under a Rule 2004 examination is generally very broad and can 'legitimately be in the nature of a "fishing expedition."'" *Northmount Assocs. v. W & S Invs., Inc. (In re W & S Invs., Inc.)*, 1993 U.S. App. LEXIS

2231, *6 (9th Cir. 1992) (quoting *In re Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985)). Request Nos. 1, 2, 5 and 6 are limited to (i) less than a six month period of time - *i.e.*, July 1, 2010, through December 7, 2010; and (ii) the Debtor's mortgage account and communications with the Debtor and/or about the Debtor's account. Moreover, Chase makes no attempt to explain how these limited requests for documents are vague, overly broad, unduly burdensome or how they impose undue expense on Chase. Accordingly, the Court will deny the Motion to Quash to the extent it is based on the Subpoena being an extreme and unreasonable burden on Chase.

Chase further requests an additional thirty (30) days to comply with the Subpoena. On December 26, 2010, the Court granted Chase's first request for an additional thirty (30) days "to produce the requested documents." (Rule 2004 Exam Order at 1.) As a result of filing the Motion to Quash, Chase put off complying with the Rule 2004 Exam Order for approximately one additional month. Despite the extensive time Chase has already received to comply with this Court's Rule 2004 Exam Order and Subpoena, Chase requests yet another thirty (30) day period to comply with the production request. The Court will grant Chase's second request for additional time to comply with the Subpoena, but notes that Chase will have effectively received more than ninety (90) extra days for compliance.

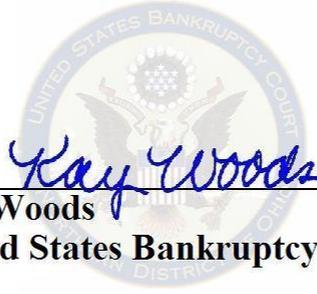
IV. CONCLUSION

For the reasons set forth above, the Court will (i) deny the

Motion to Quash as to Request Nos. 1, 2, 5 and 6; and (ii) grant the Motion to Quash as to Request Nos. 3 and 4. An appropriate order will follow.

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IT IS SO ORDERED.



**Dated: March 04, 2011
02:54:59 PM**

**Kay Woods
United States Bankruptcy Judge**

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

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| IN RE: | * | |
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| | * | CASE NUMBER 10-42690 |
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| CHARLA L. THOMAS, | * | CHAPTER 13 |
| | * | |
| Debtor. | * | HONORABLE KAY WOODS |
| | * | |

**AMENDED ORDER GRANTING, IN PART, AND DENYING, IN PART,
MOTION TO QUASH**

This cause is before the Court on Motion by Chase Home Finance LLC for a Protective Order and/or Motion to Quash or Modify Subpoena Pursuant to Federal Rules of Bankruptcy Procedure 9016 and 2004 ("Motion to Quash") (Doc. # 28) filed by Chase Home Finance LLC ("Chase") on January 13, 2011. The Motion to Quash asks the Court to vacate Order Granting Motion for Oral Examination and Issuance of Subpoena *Duces Tecum* Compelling Production of Documents ("Rule

2004 Exam Order")¹ (Doc. # 25), which was entered on December 26, 2010, and quash the subpoena, or, in the alternative, grant Chase a protective order "modifying the subpoena and limiting any required document production or testimony." (Mot. to Quash at 12.) On February 14, 2011, the United States Trustee ("UST") filed Response of the United States Trustee and Supporting Memorandum of Law in Opposition to the Motion by Chase Home Finance, LLC, for a Protective Order and/or Motion to Quash or Modify Subpoena (Doc. # 36). On February 21, 2011, Chase filed Reply Brief in Support of Motion by Chase Home Finance LLC for a Protective Order and/or Motion to Quash or Modify Subpoena Pursuant to Federal Rules of Bankruptcy Procedure 9016 and 2004 (Doc. # 37).

The Court held a hearing on the Motion to Quash on February 24, 2011 ("Hearing"), at which appeared (i) Michael V. Maggio, Esq. on behalf of the UST, and (ii) Kenneth C. Johnson, Esq. on behalf of Chase.

For the reasons set forth in this Court's Memorandum Opinion Regarding Motion for a Protective Order and/or Motion to Quash or Modify Subpoena, entered on this date, the Court hereby: (i) denies the Motion to Quash as to Request Nos. 1, 2, 5 and 6; (ii) grants the Motion to Quash as to Request Nos. 3 and 4; (iii) Orders Chase

¹ The Rule 2004 Exam Order granted Motion for Examination of Chase Home Loans Servicing, LP, FKA Countrywide Home Loans, LP, and Order Authorizing Issuance of Subpoena *Duces Tecum* Compelling Production of Documents ("Rule 2004 Exam Motion") (Doc. # 18) filed by the UST on December 17, 2010. Chase filed Amended Memorandum in Opposition of Chase Home Finance, LLC to Motion for Examination and Order Authorizing Issuance of Subpoena *Duces Tecum* Compelling Production of Documents (Doc. # 24) on December 23, 2010.

to produce the documents requested in Request Nos. 1, 2, 5 and 6 within thirty (30) days after entry of this Order; and (iv) Orders Chase to produce an officer or representative for examination at a place to be agreed to by the UST and Chase within thirty (60) days after entry of this Order.

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