

IT IS SO ORDERED.

Dated: November 4, 2016
04:02:44 PM


Kay Woods

Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

BENNY SPEARS THOMPSON,

Debtor.

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CASE NUMBER 12-40172

CHAPTER 13

HONORABLE KAY WOODS

ORDER (i) FINDING NATIONSTAR MORTGAGE, LLC IN CONTEMPT;
(ii) CONCLUDING ORDER TO APPEAR AND SHOW CAUSE (DOC. 62) WITHOUT
A FINDING OF CONTEMPT AS TO 4S TECHNOLOGIES, LLC; AND
(iii) SETTING FURTHER HEARING ON ORDER TO APPEAR AND
SHOW CAUSE FOR JANUARY 5, 2017

On October 14, 2016, the Court issued Order for (i) Nationstar Mortgage, LLC and (ii) 4s Technologies, LLC to Appear and Show Cause Why They Should Not Be Held in Contempt and Sanctioned ("Show Cause Order") (Doc. 62), which required representatives of Nationstar Mortgage, LLC ("Nationstar") and 4s Technologies, LLC ("4s") to appear before the Court on November 3, 2016 ("Hearing") and show cause why they should not be held in contempt and

sanctioned for wrongfully filing Transfer of Claim Other Than for Security ("Claim Transfer") (Doc. 35).

The Show Cause Order was entered in response to Motion for Order to Appear and Show Cause ("Motion for OSC") (Doc. 60), which had been filed on October 12, 2016 by Debtor Benny Spears Thompson, by and through counsel Philip D. Zuzolo, Esq. and Robert A. Ciotola, Esq.

Appearing at the Hearing on behalf of Nationstar were David J. Demers, Esq. and Jim McDermott, Senior Vice President for Nationstar. Bill Taylor, owner and Chief Operating Officer for 4s, appeared on behalf of 4s. Also in attendance at the Hearing were (i) Mr. Zuzolo on behalf of the Debtor; (ii) Joseph C. Lucci, Esq. on behalf of Michael A. Gallo, Standing Chapter 13 Trustee ("Trustee"); and (iii) Scott R. Belhorn, Esq. on behalf of Daniel R. McDermott, United States Trustee for Region 9.

For the reasons set forth herein, the Court finds that (i) 4s took no independent action regarding the Claim Transfer to violate the automatic stay in 11 U.S.C. § 362(a)(3); and (ii) Nationstar is in contempt for willfully violating the automatic stay in 11 U.S.C. § 362(a)(3).

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and General Order No. 2012-7 entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court 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. CHRONOLOGY OF EVENTS

The following facts are based on the docket and the claims register in this case, as well as the testimony and representations at the Hearing.

On January 31, 2012, the Debtor filed the instant voluntary chapter 13 case. On May 22, 2012, Springleaf Financial Services ("Springleaf") filed a proof of claim denominated Claim No. 5-1. Claim No. 5-1 was filed in a secured amount of \$2,500.00 and an unsecured amount of \$3,300.00. The security listed for Claim No. 5-1 is "Motor Vehicle" perfected by "notation of lien on certificate of title." (Claim No. 5-1 at 1.)

Nationstar filed the Claim Transfer on January 12, 2015. The Claim Transfer purports to set forth the transfer of Claim No. 5-1 from Springleaf to Nationstar. However, Springleaf did not, in fact, transfer Claim No. 5-1 to Nationstar.

At the Hearing, Mr. Lucci stated that the Trustee made monthly distributions on Claim No. 5-1 to Nationstar from January through November 2015 and January through September 2016.¹ Mr. Lucci further stated that, on October 6, 2016, the Trustee received a

¹ Mr. Lucci gave no explanation why a distribution on Claim No. 5-1 was not made in December 2015.

check from Springleaf in the amount of \$92.21, which represented a return of distribution on Claim No. 3-1.² A clerk in the Trustee's office called Springleaf on October 7, 2016 to inquire why the distribution had been returned. In that telephone call, Springleaf instructed the Trustee's office to contact Nationstar concerning the Claim Transfer.³ Mr. Lucci stated that he informed Mr. Ciotola on October 11, 2016 that the Trustee had "incorrectly" paid Nationstar \$1,513.67 on the secured portion of Claim No. 5-1 and \$18.91 on the unsecured portion of Claim No. 5-1. That same day, the Trustee spoke to Jeremy M. Campana, Esq.⁴ on the telephone and sent him a letter stating that Nationstar had been paid \$1,513.67 and \$18.91, respectively, on the secured and unsecured portions of Claim No. 5-1. Mr. Lucci did not address whether or not the Trustee's office contacted Nationstar directly about the Claim Transfer.

² On February 29, 2012, Springleaf filed a proof of claim denominated Claim No. 3-1 in the secured amount of \$57,132.80 and listed the security as the Debtor's residence at 914 Tait Road, Warren, Ohio.

³ It is not clear why Springleaf instructed the Trustee's office to contact Nationstar. Springleaf returned a distribution that had been made by the Trustee on Claim No. 3-1, which was secured by the Debtor's residence. The Claim Transfer dealt with Claim No. 5-1, which was partially secured by the Debtor's vehicle.

⁴ It is not clear why the Trustee contacted Mr. Campana. Mr. Campana had been counsel for Nationstar in another case before this court - *i.e.*, the chapter 13 case of Joseph J. Mocella and Kimberly A. Mocella, Case No. 10-42287. Although Mr. Campana represented Nationstar in another case, on July 1, 2015, Edward H. Cahill, Esq. had entered Notice of Appearance and Request for Notices (Doc. 38) as counsel for Nationstar in the instant case.

Also on October 11, 2016, the Debtor filed Objection to Transfer of Claim for Claim No. 5 ("Objection") (Doc. 56), which alleged that Nationstar and 4s had improperly filed the Claim Transfer. On October 12, 2016, the Clerk's Office entered a corrective entry that the Objection was procedurally incorrect and would not be addressed by the Court. The Objection was withdrawn (Doc. 57) on October 12, 2016. On that same date, Nationstar filed Notice of Withdrawal of Transfer of Claim 5, Docket 35 ("Notice of Withdrawal") (Doc. 59), in which Nationstar withdrew the Claim Transfer "as it was filed in error." (Not. of Withdrawal at 1.)

Further on October 12, 2016, someone identified by Mr. Lucci as "Hazel" from Nationstar contacted the Trustee's office and stated that Nationstar had improperly filed the Claim Transfer and would return \$1,513.67 to the Trustee. On October 24, 2016, the Trustee received a check from Nationstar in the amount of \$1,513.67, which Mr. Lucci stated is equal to the full distributions on the secured portion of Claim No. 5-1. Mr. Lucci stated that the Trustee had not yet received funds in the amount of \$18.91, which represents distributions on the unsecured portion of Claim No. 5-1. Mr. Demers stated that Nationstar had mailed a check in the amount of \$18.91 to the Trustee.

II. INVOLVEMENT OF 4S IN THE CLAIM TRANSFER

At the Hearing, Mr. Taylor was sworn in and testified concerning the following facts. 4s began working for Nationstar

in 2012 and performed services in connection with transferring claims on behalf of Nationstar for three and one-half to four years. He stated that 4s continues to have a relationship with Nationstar, but that it ceased performing claim transfer activities for Nationstar in approximately April 2016.

Mr. Taylor generally described the claim transfer process, as follows:

1. Nationstar submits information to 4s regarding a specific bankruptcy case and a claim to be transferred.
2. 4s reviews the court record and verifies the case and claim information provided by Nationstar.
3. If there is not an exact match in the claims register with the information provided by Nationstar, the claim goes into what Mr. Taylor described as an "online claim review queue," which is available to Nationstar.
4. Nationstar reviews the queue and chooses the correct claim in the claims register to be transferred.
5. Nationstar is responsible for matching the correct proof of claim with the information concerning the claim to be transferred.
6. 4s puts the information regarding the claim selected by Nationstar into its system and creates the transfer of claim form.
7. 4s sends the transfer of claim form to Nationstar for filing.

8. Nationstar reviews and approves the transfer of claim form before it is filed.

Mr. Taylor testified specifically regarding the Claim Transfer in the instant case, as follows:

1. The claim transfer order was created by Nationstar in electronic format on October 21, 2014. 4s was not able to verify the claim in the Debtor's case to be transferred, so it was put into the queue.
2. On January 9, 2015 at 11:45 a.m., Nationstar (by someone identified only with the last name of "Ruggles") selected Claim No. 5-1 from the claims register for the Debtor's case as the claim to be transferred.
3. The order was sent through the 4s system and the Claim Transfer was created by 4s.
4. The Claim Transfer was sent to Nationstar and reviewed by Megan Koza on January 12, 2015.
5. Nationstar approved the Claim Transfer on January 12, 2015 at 3:52 p.m.
6. The Claim Transfer was filed with the Court on January 12, 2015 at 3:53 p.m.

Based upon the testimony of Mr. Taylor, this Court finds that 4s performed ministerial duties regarding the Claim Transfer and did not select Claim No. 5-1 or exercise independent judgment

regarding the selection of Claim No. 5-1 as the claim purportedly transferred by Springleaf to Nationstar.

III. NATIONSTAR'S CONDUCT

Mr. Demers acknowledged that the present situation is similar to one before the Court in the chapter 13 case of Joseph J. Mocella and Kimberly A. Mocella, Case No. 10-42287.⁵ Mr. Demers stated that, in or about April 2016, Nationstar (i) terminated its relationship with 4s regarding claim transferring services; and (ii) began to conduct an audit of its claim transfers in bankruptcy cases. This internal audit showed that Nationstar has 2,400 active bankruptcies nationwide in which claim transfers have been filed, including three other cases in Ohio. Mr. Demers also acknowledged that termination of services by 4s and the audit process had begun prior to the April 28, 2016 evidentiary hearing this Court conducted in the Mocella case ("Mocella Hearing"). He had no explanation why the testimony of Edward Hyne, Nationstar's representative at the Mocella Hearing, failed to acknowledge that Nationstar was aware of a problem with its claim transfer process,

⁵ In the Mocella case, Nationstar also wrongfully filed a transfer of claim. In that case, the claim that was purportedly transferred was also a proof of claim secured by a motor vehicle. Nationstar filed a notice of withdrawal regarding the wrongful claim transfer, but did not return any distributions to the Trustee for a period of more than five months and then only after being contacted by the Trustee. The Court found Nationstar in contempt for willful violation of the automatic stay in 11 U.S.C. § 362 and, after an evidentiary hearing on April 28, 2016, awarded damages. See *In re Mocella*, 552 B.R. 706 (Bankr. N.D. Ohio 2016).

but instead repeatedly testified that all of Nationstar's actions regarding the Mocella claim transfer had been reasonable.⁶

Mr. Demers acknowledged and stipulated on the record that Nationstar had willfully violated the automatic stay by filing the Claim Transfer because Claim No. 5-1 had not been transferred by Springleaf and Nationstar had no interest in Claim No. 5-1.

IV. FINDINGS AND CONCLUSIONS

For the reasons set forth above, this Court finds:

- A. 4s made no independent judgment regarding the selection of Claim No. 5-1 for the Claim Transfer.
- B. Nationstar is in contempt for willfully violating the automatic stay in 11 U.S.C. § 362(a)(3) by (i) filing the Claim Transfer; and (ii) retaining the Trustee's distributions on Claim No. 5-1 in the amounts of \$1,513.67 and \$18.91.
- C. The Court received no testimony at the Hearing regarding damages. Mr. Zuzolo stated that the parties are discussing

⁶ Mr. Hyne's testimony at the Mocella Hearing was in direct contradiction to Mr. Taylor's testimony at the Hearing. Mr. Hyne testified that 4s was responsible for reviewing all claim transfers and that Nationstar did not conduct any such review. He further testified that Nationstar did not review the claims register before a claim transfer was filed, but relied on the review made by 4s. Despite Nationstar's knowledge at the time of the Mocella Hearing that there were problems with its claim transfer process, Mr. Hyne repeatedly testified that Nationstar's conduct regarding the claim transfer in the Mocella case was reasonable.

a settlement regarding damages, but that discovery might be necessary.

As a consequence, the Court hereby orders:

1. The Show Cause Order regarding 4s is concluded without a finding of contempt.
2. Nationstar is in contempt for its willful violation of the automatic stay in 11 U.S.C. § 362(a)(3).
3. Nationstar is liable to the Debtor for damages relating to its willful violation of the automatic stay in an amount to be resolved by agreement of the parties or by the Court after an evidentiary hearing.
4. The Court retains jurisdiction to determine damages relating to Nationstar's willful violation of the automatic stay.
5. The Court sets the Show Cause Order for further hearing on January 5, 2017, at 10:30 a.m., at which time the Court will consider setting an evidentiary hearing on the issue of damages.

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