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PAGE: 1 OF 23

LIS PEDENCE NOTICE AND
CERTIFICATE OF PENDENCY OF CIVIL ACTION

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

Vicky De La Cruz a/k/a Vicky M De La Cruz a/k/a Victoria M De La Cruz a/k/a Federal Savings Bank; Unknown Heirs And Legatees of Vicki De La Cruz, if any; Unknown Heirs and Legatees of Julio De La Cruz, if any; Unknown Owner And Non Record Claimants	From Case: 2009CH10692
Plaintiff,	**Federal Ch.13: 13B00754** Honorable: Jacqueline P. Cox Presiding Judge
- versus -	**Property Address:** 1129 N. Harvey Avenue Oak Park, IL 60302
U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE UNDER THE POOLING SERVICE AND SERVICING AGREEMENT, DATED AS OF JUNE 1, 2004 AMONG CITIGROUP MORTGAGE LOANS INC., NATIONAL CITY MORTGAGE CO. AND US BANK NATIONAL ASSOCIATION, ASSIGNS, LEGATEES, UNKNOWN OWNERS; And NON RECORD CLAIMANTS	**Civil Case No: 2023L709382** Honorable: Theresa M. Smith Conyers Presiding Judge
Defendant(s)	

LIS PEDENCE NOTICE AND
CERTIFICATE OF PENDENCY OF CIVIL ACTION

Pursuant to the Illinois Compiled Statutes, Chapter 735, §§15-1503 and 2-1901; the undersigned certifies that the above entitled mortgage foreclosure action was filed on October 14, 2023, and is now pending.

Foreclosure of Mortgage

1. The names of all plaintiffs and the case number are identified above.
2. The court in which said action was brought is identified above.
3. A legal description of the real estate sufficient to identify it with reasonable certainty is:

LOT 4 IN BLOCK 10 IN ROSSEL SUBDIVISION IN THE NORTH WEST QUARTER OF SECTION 5 AND THE NORTH EAST QUARTER OF SECTION 6} TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUT 1, 1023 AS DOCUMENT 8047424, IN COOK COUNTY, ILLINOIS.

4. The common address or description of the location of the real estate is:

   1129 NORTH HARVEY AVENUE, OAK PARK, IL 60302.

5. The permanent real estate tax number is: 16-05-108-016-0000
6. An identification of the mortgage sought to be foreclosed is as follows:

   a) Name of Mortgagor:
   U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE UNDER THE POOLING SERVICE AND SERVICING AGREEMENT, DATED AS OF JUNE 1, 2004 AMONG CITIGROUP MORTGAGE LOANS INC., NATIONAL CITY MORTGAGE CO. AND US BANK NATIONAL ASSOCIATION, ASSIGNS, LEGATEES, UNKNOWN OWNERS AND NON RECORD CLAIMANTS

   Date of Mortgage: May 13, 2019

   Date of Recording: May 13, 2019

   County where recorded: Cook

b) ALONG WITH ANY UNRECORDED MORTGAGES, CONVEYANCES AND LEANS ON SAID PROPERTY

Signature: */s/ Arnim Johnson*, Attorney of Record

DOCUMENT PREPARED BY:

Arnim Johnson Jr. #: 05031
111 West Jackson Blvd., Ste. 1700
Chicago, IL 60604
Email: arnim@ameritech.net
Tel. 312.386.1010

SERVICE NOTIFICATION:

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE UNDER THE POOLING SERVICE AND SERVICING AGREEMENT, DATED AS OF JUNE 1, 2004 AMONG CITIGROUP MORTGAGE LOANS INC., NATIONAL CITY MORTGAGE CO. AND US BANK NATIONAL ASSOCIATION, ASSIGNS, LEGATEES, UNKNOWN OWNERS AND NON RECORD CLAIMANTS	**Service by and through its attorney**: Codilis & Associates, P.C. 15W030 North Frontage Road, Suite 100 Burr Ridge, IL 60527 (630) 794-5300 pleadings@il.cslegal.com Cook #21762

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

IN RE: THE ESTATE OF	)	Chapter 13
	)	
VICTORIA MICHELLE DE LA CRUZ and JULIO DE LA CRUZ,	)	No. 13 B 00754
	)	
Debtors.	)	
	)	
and	)	
	)	
OCWEN LOAN SERVICING, LLC, as servicers of mortgage loan held by. U.S. BANK NATIONAL ASSOCIATION, as Trustee Under the Servicing Agreement, Dated As of June 1, 2004, Among Citigroup Mortgage Loans, Inc., National City Mortgage Co. And U.S. BANK ASSOCIATION, and CODILIS & ASSOCIATES,	)	
	)	
Respondents.	)	Jacqueline P. Cox, Presiding

MOTION TO RE-OPEN CHAPTER 13, FOR RULE TO SHOW CAUSE AND TO ENFORCE JUDGMENT

NOW COMES the Debtor, JULIO DE LA CRUZ, by his attorney, Arnim Johnson, Jr., and moves this honorable court pursuant to11 U.S.C. § 350(b) to reopen the cause at bar and Fed. Bankr., R9020. to enter an order to show cause why creditors, OCWEN LOAN SERVICING, LLC (hereinafter "Ocwen"); U.S. BANK NATIONAL ASSOCIATION (hereinafter "Bank"); and, CODILIS & ASSOCIATES (hereinafter "Codilis") should not be held in contempt for willfully and intentionally violating this court's Order entered, December 3, 2018. In support of this motion the debtor, JULIO DE LA CRUZ (hereinafter "Cruz"), states as follows:

Jurisdiction

Subject matter jurisdiction lies under 28 U.S.C. § 1334. This matter is a core proceeding Court pursuant to 28 U.S.C. § 157(b) (2)A, and the court's inherent power to issue a Rule, supported by both Fed. Bankr. R. 9020 and 11 U.S.C. § 105(a). This matter comes before the court pursuant to 11 U.S.C. § 350(b) and 11 U.S.C. 1327.

Introduction

The case involves proceedings held before the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, through the Debtor's filing of two sequential Petitions for Relief under Chapters 7 and 13 of the United State Bankruptcy Code, 28 USC Sections, 11 U.S.C. Sections 701 et seq., and 11 U.S.C. 1301. et seq., respectively. The impetus for the filing of these two Petitions was the respondent, U. S. BANK NATIONAL ASSOCIATION's, initiation of foreclosure proceeding in the Circuit Court of Cook County, Illinois, Chancery Division, No. 2009 CH 10692, filed on March 9, 2009. Debtor filed his Chapter 7 Petition, 2010 B 53375, on November 30, 2010, discharge received on April 4, 2011; case terminated April 7, 2011. Debtor had invested in several rental properties during the housing bubble, which Debtor surrendered during the Chapter 7. Debtor then filed their Chapter 13 Petition on January 9, 2013, 2013 B 00754, for the sole purpose of saving their residence, located in Oak Park, Illinois. During the course of the Chapter 13 proceeding, Debtor's Plan was confirmed on September 9, 2013 after modifications. There were subsequent modifications over the next couple of years, which changed plan payments and extended the term of the plan. However, the plan was ultimately completed on February 7, 2019, and the bankruptcy Trustee filed

its Final Report on March 6, 2019; case closed on March 7, 2019.

The foreclosure action pending in the Circuit Court of Cook County was effectively stayed during the course of both bankruptcy proceedings. However, a default judgment for foreclosure and sale had been entered on August 24, 2010, prior to the filing of both bankruptcy Petitions by the Debtor. The respondent Bank sought to execute its judgment for foreclosure and sale toward the end of the completion of Debtor's Chapter 13 Plan, by publishing a Notice of Sale on April 22, 2019, scheduled for May 13, 2019, to which Debtor filed a Motion to Quash Service and other relief on that same date. But, the sale went forward. The respondent Bank purchased the property, and on May 30, 2019 Debtor's filed its memorandum in support of its motion to quash. That Motion was briefed, argued, denied, and reconsidered. The reconsidered denial was sustained by the trial court on October 19, 2019. The sale was approved, and the Bank noticed presentation of its motion to approve and confirm the Sheriff's Report and Sale for November 14, 2019. On that date Debtor filed objections, and a briefing schedule was set, and the objections denied. The sale was confirmed on January 24, 2020, and Debtor filed another Motion to Reconsider the confirmation of sale, which was again briefed, argued and denied on March 25, 2021, from which Debtor took an appeal from that final judgment, filing a Notice of Appeal on April 15, 2021, No. 1-21-0425. The judgment of the trial court was affirmed, reconsidered by the court of appeals, reaffirmed in its judgment entered on May 22, 2022. The court issued its mandate on August 22, 2022.

Subsequently, the Bank requested a turnover of funds previously held by the clerk of the appellate court for use and occupation during the appeal process to stay execution of the judgment, scheduled for March 31, 2023, in response to which, Debtor, acting *pro se*, filed an objection on

that date, which the court **summarily** denied. The Bank then filed suit in the First Municipal District of the Circuit Court of Cook County, No. 2023 M1-708382, for possession against the Debtor's adult child, who had reach their majority during the pendency of this litigation, in order to enforce the order for possession of the subject property entered by the trial court on January 24, 2020. The complaint for eviction was filed on June 6, 2023, return date was scheduled for September 25, 2023, at which time Debtor was granted leave to file an appearance and leave to file a responsive pleading. This eviction is presently pending, wherein the Debtor has filed a motion to dismiss, alleging that only this court has jurisdiction to enforce it's order entered on December 3, 2018.

On October 30, 2023 Debtor filed an original action for a supervisory order pursuant to Illinois Supreme Court Rule 383, requesting that the Illinois supreme court vacate the sale, and dismiss the foreclosure action, suggesting that the bankruptcy court order of December 3, 2018 explicitly provided that upon completion of the debtor's Chapter 13 Plan, there would be no arrearage. As a consequence, the Bank could not proceed to sale, because there was no default. The Bank responded on November 11, 2023 that the debtor had waived his right to enforce this court's order for failure to present sufficient evidence in the courts below. The Illinois supreme court denied Debtor's Rule 383 Motion on November 12, 2023 without comment.

The Debtor has always argued that the respondent, Ocwen, who was represented by Codilis, knew that there was no arrearage due the Bank upon the successful completion of the Debtor's Chapter 13 Plan and closure of this case on March 7, 2019. Nevertheless, the Bank successfully noticed a sale of the subject property on April 10, 2019, and proceeded to sale and confirmation of said sale in May. 2019.

Attached hereto as Exhibit A is the Illinois appellate court's affirming the circuit court's judgment of foreclosure, judicial sale, and confirmation thereof. In that opinion the court reviews the pleading history in the trial court, wherein it admits basic facts that establish that there was a loan modification agreement, but was seemingly unaware that the loan modification agreement was incorporated into and affirmed by this court's order of December 3, 2018. Yet, it discussed details of the plan as well as the Trustee's Report that the Debtor had successfully completed of the Chapter 13 Plan. Moreover, the Illinois appellate court is being somewhat disingenuous when it claims that the terms of a Chapter 13 Plan entered affecting property and parties over which it has concurrent jurisdiction are not readily available, nor sources of indisputable accuracy, Ex. A, pg. 15 .

But more importantly, at all relevant times herein the Bank knew, or should have known, that the Plan provided for no arrearage, yet and still, it continues to prosecute the foreclosure action, despite having full knowledge of this court's definitive and explicit declaration over attempts to that there was to be no arrearage at completion of the Chapter 13 Plan. The December 3, 2018 Order was entered when the court specifically declined to modify the parameters of the Plan.

Moreover, CODILIS is presently prosecuting the eviction action pending in the circuit court, as well as having retained counsel to respond to Debtor's Motion for a Supervisory Order filed with the Illinois supreme court. The Bank retained different counsels to prosecute the foreclosure action and Debtor's appeal therefrom, respectively. However, Debtor maintains that the Bank knew that there was no arrearage when it resumed the foreclosure action subsequent to the closure of this case, having refused tender of mortgage payments in April, 2019. Thus, it's

efforts in pursuing the foreclosure was a willful and intentional violation of this court's order, yet it continued to effectuate it's illegal prosecution through the appellate process all the way to the Illinois supreme court, but to no avail. The Debtor has exhausted all his state court remedies.

Respondent, Codilis, which the court will recall represented respondent, Ocwen, loan servicer for respondent, Bank, was the mortgage creditor throughout the entire proceedings of the Debtor's Chapter 13 effort to save his residence. It was Codilis who rejected the Debtor's tender of the 1st mortgage payment post closing of the case and Estate.

Facts

1. The Debtor filed their Chapter 13 Plan on January 9, 2013, and the Debtor/debtor's Modified Chapter 13 Plan was filed on May 20, 2013. The Plan was for a term of 35 months, and monthly payments of $1,528.39 (one thousand, five hundred twenty-eight) dollars were to be made to the Trustee, who would disburse $1,466.29 (one thousand, four hundred sixty-six and 29/100) dollars to PNC Bank, predecessor by assignment, of US BANK through Owen Loan Servicing. This was the amount of the current mortgage payments, payable according to the terms of the mortgage at a rate of 5.750% (five and 75/100) percent. There was no provision in the plan for Mortgage Arrearage. See, Exhibit B, Modified Chapter 13 Plan, 13 B 00754

2. No mortgage arrearage was contemplated under the Chapter 13 Plan because the Bank had offered Debtor a Loan Modification. On August 9, 2019 Debtor filed a Motion to Approve Loan Modification, to which an exhibit was attached summarizing the terms of the Loan Modification. See, Exhibit B, Motion to Approve Loan Modification.

3. The Modification changed the interest bearing principal from $418, 978.09 (four

hundred eighteen thousand, nine hundred seventy-eight and 09/100) dollars to $125,400.00 (one hundred twenty-five thousand, four hundred) dollars; Monthly P&I payment from $1,833.19 (one thousand, eight hundred thirty three and 19/100) dollars to $619.76 (six hundred nineteen and 76/100) dollars; and the interest rate from 5.75% to 2% (two) percent for the duration of the mortgage, the term of which was to end on July 1, 2033. The modification terms were effective as of March, 2013; payments to be paid to the Chapter 13 Trustee. The payments were amortized over a period of 247 months. However, most importantly, **the modification provided for a deferred principal balance of $293,578.09 to be forgiven in equal installments over the next three years on March 2014, March, 2015, and March, 2016.** Orders approving the Loan Modification and confirming the Debtor's Chapter 13 Plan were entered on September 9, 2013. See, Group Exhibit D, Orders 9/9/13.

4. The plan contemplated that upon its completion, the principle balance would be $125,400,00 at 2%. Since the principle balance was to be amortized over 247 (20.58 years) from March 1, 2013, with P&I payments at $616.76 per month, the Plan would not go beyond the term of the mortgage, July 1, 2033. The Plan was filed on January 9, 2013, so including post-motion mortgage payments from the date of filing, the debtor would have fully paid off his mortgage in 20.58 years.

5. Debtor's confirmed Ch. 13 Plan of September 9, 2013 (Exhibits B, C & Gr. Exhibit D) resolved the arrearage by providing for the forgiveness of deferred principal balance in the amount of $293,598.09 over the first three years of the plan. On December 17, 2014 the Trustee moved to Dismiss the thirty-five month Plan, premised on the representation of Ocwen Loan Servicing that it had miscalculated the arrearage extending the plan to 115 months. The court

entered an Order on April 24, 2015 modifying and extending the Plan to the statutory limit of sixty months to complete, as well as increasing Plan payments sufficiently to fall within that new limit from $1,529.29 to $1,728,29 for the remainder of their plan. See, Group Exhibit E, Notice, Motion and Order.

6. On October 25, 2016 the Bank filed a Notice of Mortgage Payment Change, requesting an increase in the Debtor's monthly allocation from their plan to the Bank from $1,466.39 to $1,926.28 (two thousand, nine hundred twenty-six and 28/100) dollars, in derogation of the confirmed plan and loan modification agreement. See, Exhibit F, Notice of Mortgage Payment Change.

7. Debtor filed their Objections to the proposed change in payment, and to Enforce Modification Agreement on January 17, 2017. See, Exhibit G[1].

8. Both pleadings were withdrawn because respondent had failed to file a claim.

9. On October 20, 2017 respondent filed its claim, alleging the claim was secured in the amount of $419,473.91 (four hundred nineteen thousand, four hundred seventy-three and 91/100) dollars; that the default at the time the motion was filed was $151,867.17 (one hundred fifty-one thousand, eight hundred sixty-seven and 17/100) dollars; and, an interest rate was 5.75%. See, Exhibit H.[2]

10. In response to the claim filed belatedly by respondent, Debtor's counsel belatedly filed a Motion to Modify the Chapter 13 Plan on October 23, 2018, which inexplicably and

[1] The complete text of the Loan Modification Offer is attached to the Objection as Exhibit C.

[2] The claim is based on the original P&I principal balance, all of which had been forgiven according to the time table set forth in the Order of Confirmation entered on September 9, 2009, as well as the arrearage, which it had miscalculated.

extraordinarily[3] requested that Debtor be allowed to surrender the subject property in exchange for forgiveness of arrearage, based on the allegations that Debtor missed three trial payments, and that the plan would exceed 60 months, based on the arrearage claim of $151,867.17. The Debtor had been required to pay three trial payments of four thousand, five hundred eighty-five and 17/100) dollars total, in addition to Pre-Chapter 13 escrow deficiency in the amount of (thirty four thousand, five hundred thirty-two and 27/100) dollars, $34,532.27, as a legal pre-requisite in order for the bankruptcy court to confirm the Chapter 13 Plan. The Chapter 13 Plan therefore began with no arrearage of Plan payments and no escrow deficiency, so that if the terms of the Plan were complied with fully by the Debtor, when the Plan completed, there would still be no arrearage.

12. Your honor ruled on Debtor's attorney's Motion by order of December 3, 2018. See, Exhibit "I".

13. This court ablated a portion of the sentence comprising paragraph A of Debtor's attorney's draft order surrendering the property, to wit: **"in satisfaction of the secured claim owed to U.S. Bank"**. This court left paragraph B of the Order intact, to wit: **'That the Debtor's Chapter 13 Plan is further modified to remove any remaining arrears owed U.S. Bank.**"; Paragraph C increased the amount to be paid to unsecured creditors from 0% to 2%; and, this court wrote Paragraph D, to wit:

> "D. **All other Plan terms including the base amount shall remain unchanged; and Trustee shall not be required to perform collections on behalf of creditors to any prior confirmed plan."**[4]

---

[3] Given Plan provided for no arrearage and Debtor was not in default on his Plan payments, why would it make any sense for Debtor to surrender property.

[4] This court recognized the no arrearage provision of the confirmed Plan, as modified from time to time, and corrected the draft order accordingly, refusing to change the principal balance.

The court's ablation of the offending phrase in Paragraph A was the court's recognition that once the Estate surrendered jurisdiction over the subject property, and any further proceedings concerning that property was now a "**state court contract**" [5] issue.

14. On December 20, 2018 the Trustee in bankruptcy filed a Motion Objecting to the Debtor's receiving a discharge for violation of 11 U.S.C. 1328(f)(1), i.e., prematurely filing the Chapter 13 Motion before they were eligible after receiving a discharge under Chapter 7 (a two year bar). This court sustained the Trustee's objection on January 28, 2019. See, Exhibit J, Motion and Order.

15. On February 3, 2019 your honor entered an Order *sua sponte* directing the Debtor, the Chapter 13 Trustee, and Debtor's counsel to appear before the court on March 4, 2019 in order to examine the [Debtor's] transactions with counsel with respect to legal services provided in this case, particularly the circumstances surrounding counsel's disclosure of the Debtor's ineligibility for discharge, given the premature filing of the Chapter 13 motion. The hearing was conducted and concluded on March 4th, the court taking no action. See, Exhibit K.

16. On February 7, 2019 the Chapter 13 Trustee filed his Notice of Completion of Plan. See, Exhibit L.

17. On March 6, 2019 the Chapter 13 Trustee filed his Final Report and Account, which recites the respondent Bank's secured claim allowed to be paid within the Plan was paid in full, and there was no arrearage, per this court's order of December 3, 2018. The balance left on the claim, asserted by respondent Bank as remaining unpaid in the amount of $151,867.16 was

[5] As reported by Debtor, Julio De La Cruz, who attended the hearing in person.

asserted as the balance due on its claim filed on October 20, 2017. That claim was also resolved by the Judge's order declaring: "**All other Plan terms including the base amount shall remain unchanged**", i.e., that would include the principal balance remaining at the completion of the Plan. See, Exhibit M, Trustee's Report, pg. 2. On March 7, 2019 the case terminated. The Debtor had made all payments under the plan, inclusive of pre-motion and pre-confirmation arrearage.

18. The Debtor's counsel advised him that counsel for respondent Bank had informed counsel for Debtor, that the respondent Bank did not recognize the modification, and would accept no mortgage payments made pursuant to said modification, which had been entered by the bankruptcy court as an Order. The modification was imbued with the full force and effect attached to orders entered by any and all courts of competent jurisdiction.

19. On March 14, 2019 respondent Bank's law firm substituted the attorney handling its numerous bankruptcy cases pending in the Bankruptcy Court, including Debtor's. See, Exhibit N.

20. On April 10, 2019 the respondent Bank caused the Judicial Sales Corporation to send Notice of Sale set for May 13, 2019, based on the default judgement amount of Judgment Amount of $350,226.43 (three hundred fifty thousand, two hundred twenty-six and 43/100) dollars. See, Exhibit O. This was thirty four days after the Chapter 13 was closed, four days after the order termination order became final, and any stay automatically lifted. Respondent never moved to lift the stay, though Debtor "voluntarily" surrendered the property.

21. The Notice in form and in substance, and the subsequent litigation prosecuted by respondent Bank up to and including the appellate court, was in complete disregard , derogation, and a clear violation of the Bankruptcy court's rulings, orders, and intent, as specifically evidenced by respondent's bank's calculation that the amount due under the mortgage, including judgment

interest at 9% , penalties, and attorney fees from the entry of the default judgment on August 24, 2010, was $625,762.76 (six hundred twenty-five thousand, seven hundred sixty two and 76/100) dollars, not including the Selling Officer's commission of $350.00. Respondent Bank was the winning bidder at $418,000.00 (four hundred eighteen thousand and 00/100) dollars. See, Exhibit P, Report of Sale and Distribution

22. At no point in the subsequent litigation pursued by respondent Bank to complete and confirm the sale was the Debtor's modified Chapter 13 Plan, nor this court's order of December 3, 2008, brought to the attention of either the trial court, or the appellate court.

23. At all relevant times herein Ocwen Financial Corporation was the mortgage servicer of respondent Bank. See, Exhibit Q, Complete payment history of the loan. Debtor's promise pursuant to court order and contract law was kept. Respondent's failed to give the necessary consideration, i.e., reduction in P&I payment until the end of the term of the mortgage, July 1, 2033.

ARGUMENT

It Was Not Legal for The Bank to Proceed to Sale of the Subject Property in Breach of the Confirmed Chapter 13 Plan, and in Violation of the Bankruptcy's Court's Order That There Was No Arrearage Owed. Bankruptcy Law Preempts Concurrent State Court Jurisdiction When There is a Conflict.

"The bankruptcy court may reopen a closed case "to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b); see also In re UAL Corp., 809 F.3d 361, 364 (7th Cir. 2015). The bankruptcy court may also reopen a case to interpret and enforce the plan and confirmation order as well as other judgments and orders. [*25] See Travelers Indem. Co. v.

Bailey, 557 U.S. 137, 151, 129 S. Ct. 2195, 174 L. Ed. 2d 99 (2009) (stating, where bankruptcy court orders were entered more than two decades earlier, that the "Bankruptcy Court plainly had [subject-matter] jurisdiction to interpret and enforce its own prior orders"); Townsquare Media, Inc. v. Brill, 652 F.3d 767, 771 (7th Cir. 2011) ("a bankruptcy court has jurisdiction over challenges to its orders whatever their basis"); Redmond, 624 F.3d at 798 (noting the bankruptcy court may reopen a case to enforce plan language and discharge)." ***Branham Corp. v. Boone County Utilities, LLC, No. 1:15-cv-00604-RLY-TAB, 2018 U.S. Dist. LEXIS 9535 (S.D. Ind. Jan. 22, 2018)***

"A bankruptcy court's interpretation of its own order is "entitled to substantial deference," A bankruptcy court's interpretation of its own order is "entitled to substantial deference," Travelers Indem. Co., 557 U.S. at 150 n.4, because that court "is in the best position" to give the order its intended meaning and is familiar with the underlying bankruptcy case. Matter of Weber, 25 F.3d 413, 416 (7th Cir. 1994) [*26] ; Goodall v. Chrysler, Inc., No. 3:16-cv-03228, 2017 U.S. Dist. LEXIS 148691, 2017 WL 4076093, at *10 (C.D. Ill. Sept. 14, 2017). , 557 U.S. at 150 n.4, because that court "is in the best position" to give the order its intended meaning and is familiar with the underlying bankruptcy case. Matter of Weber, 25 F.3d 413, 416 (7th Cir. 1994) [*26] ; Goodall v. Chrysler, Inc., No. 3:16-cv-03228, 2017 U.S. Dist. LEXIS 148691, 2017 WL 4076093, at *10 (C.D. Ill. Sept. 14, 2017)." ***Branham Corp. v. Boone County Utilities, LLC, No. 1:15-cv-00604-RLY-TAB, 2018 U.S. Dist. LEXIS 9535 (S.D. Ind. Jan. 22, 2018)***

Branham, Id., 26, further opines that:

> Bankruptcy law is federal law and therefore preempts state law wherever the two conflict. See, e.g., In re Repository Techs., Inc., 601 F.3d 710, 723 (7th Cir. 2010) ("[T]he bankruptcy statutes have significant preemptive force."); Hammes v. Brumley, 659 N.E.2d 1021, 1027 (Ind. 1995) ("Because bankruptcy law is federal

law, enacted pursuant to the constitutional grant of bankruptcy power, it preempts state law ... pursuant to the supremacy clause....")

The Bank was bound by the terms of the Chapter 13 Plan, including this court's order, as well as by state contract law. In *Ananthapadmanabhan v. BSI Fin. Servs., 2015 U.S. Dist. LEXIS 167649 (N.Dist.. IL, E.D. (2015)* facts are analogous to the situation at bar. Plaintiffs defaulted on the mortgage, and on November 20, 2012, Bank of America (hereinafter BoA) filed a Foreclosure Complaint. On January 31, 2013, Plaintiffs filed a Chapter 13 Bankruptcy Petition in the United States Bankruptcy Court in the Northern District of Illinois, and an automatic stay was entered. Plaintiffs filed a modified Chapter 13 plan on June 6, 2013, proposing to surrender the Property to BoA and PNC, [who ultimately sold the note and assigned mortgage to *BSI Fin. Servs*, a bill collection agency] in full satisfaction of their claims. BoA did not object to the modified plan, and on June 7, 2013, it was confirmed by the bankruptcy court. Thereafter, the Bankruptcy Court modified the automatic stay "as to the interest of [BoA], its successors, and/or assigns in [the Property]." The Plan was confirmed; successfully completed the in 2015; and, plaintiffs received a discharge. [Brackets supplied]

Thereafter, plaintiffs sued *BSI Fin., Id.*, to whom BoA had assigned the mortgage during the course of completing the Plan, under Fair Debt Collection Practices Act ("FDCPA") in this federal District Court. BSI Fin filed a 12(b)6 Motion to Dismiss alleging that it was merely a bill collector and not liable under the statute, because the debt was in default when the assignment was executed. After determining the defendant was a creditor under the statute by virtue of the assignment and not a bill collector, the court then determined that the debt was not in default, because when it was assigned, BoA was creditor bound by the terms of the Chapter 13 Plan. The court opined:

> " the bankruptcy proceedings protected them from various collection efforts over a specified period, by way of the automatic stay, but had no effect on the status of the subject debt. Plaintiffs argue that there were "no forbearance agreements or other superseding agreements [to] render [them] current and not in default." But this argument ignores **the modified Chapter 13 plan, which had "the effect of creating a new contract"** between Plaintiffs and BSI. *In re Van Bodegom Smith*, 383 B.R. 441, 450 (Bankr. E.D. Wis. 2008). This new contract could reasonably be construed as an accord and satisfaction, which is "a contractual method of discharging a debt." *Pennsylvania Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552, 560 n.3, 110 S. Ct. 2126, 109 L. Ed. 2d 588 (1990). As such, the modified plan had the effect of discharging the subject debt. A debt that has been discharged certainly cannot be considered to be in default.
>
> Plaintiffs' modified Chapter 13 plan was effective and binding on the date it was confirmed, here, June 7, 2013. *In re Jones, 219 B.R. 506*, 509 (Bankr. N.D. Ill. 1998). **(Emphasis supplied)**

Once a plan is confirmed, both creditors and debtors are bound. 11 U.S.C. § 1327.[6]

This only fact that distinguishes *Ananthapadmanabhan v, supra,* from the cause at bar is that the Debtor herein did not get a discharge. However, the analysis of the court regarding contractual relationship of the parties is the same. As long as the debtor is not in default on the Chapter 13 Plan, there is no default. The issue joined is the legality of respondent, U.S. BANK, commencing to proceed to sale in the trial court when the Debtor was not in default. That fact that the defendants therein received a discharge of the debt, and this Debtor did not receive a discharge is a distinction without a difference. The conduct of the respondent Bank was illegal.

---

6. § 1327. Effect of confirmation
   (a) **The provisions of a confirmed plan bind the debtor and each creditor,** whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.
   (b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.
   (c)**Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.** (Emphasis supplied)

What remains to be determined is whether the illegal conduct of the Ocwen, the Bank and Codilis was in contempt of this court's order of December 4, 2019, and was Debtor damaged as a result. The relationship of the Bank and Ocwen was one of agency, as was that of Ocwen and Codilis during this Chapter 13 proceeding.

The question of agency is governed by state law. Illinois law provides that when two individuals are in a principal/agent relationship, the principal is vicariously liable for damages caused by the agent. An agent is one whose physical conduct in performing services is subject to the principal's control or right to control. *Alms v. Baum, 343 Ill. App. 3d 67, 71, 796 N.E.2d 1123, 277 Ill. Dec. 757 (2003).* "The ability or right to control is a key element to the determination, regardless of whether or not the principal exercises the right to control." *Krickl v. Girl Scouts, 402 Ill. App. 3d 1, 7, 930 N.E.2d 1096, 341 Ill. Dec. 582 (2010).* Under the doctrine of *respondeat superior*, an employer can be held vicariously liable for the tortious acts of its employees (*Pyne v. Witmer, 129 Ill. 2d 351, 359, 135 Ill. Dec. 557, 543 N.E.2d 1304 (1989)*), including negligent, wilful, malicious, or even criminal acts of its employees when such acts are committed in the course of employment and in furtherance of the business of the employer (*Brown v. King, 328 Ill. App. 3d 717, 722, 262 Ill. Dec. 897, 767 N.E.2d 357 (2001)).*

In *United States v. One Parcel of Land*, 965 F.2d 311, 316 (7th Cir. 1992)The Seventh Circuit discussed knowledge between a corporation and its agent, referring to Fletcher on Contracts:

> A corporation and its agents relate to one another like a principal to its agents. A corporation acts through its agents. Similarly, a corporation "knows" through its agents. W. Fletcher, 3 Corporations § 787 (1986). But contrary to the government's contention, a corporate principal's knowledge is less than the collective knowledge of its corporate agents. To distinguish knowledge belonging exclusively to an agent

> from knowledge belonging to the corporate principal, courts rely on certain presumptions. Where a corporate agent obtains knowledge while acting in the scope of his agency, he presumably reports that knowledge to his corporate principal so the court imputes such knowledge to a corporation. However, where an agent obtains knowledge while acting outside the scope of his agency, the standard presumption is unfounded, and the court will not impute the agent's knowledge [**16] to the corporation. Id. at § 790 and § 793.

Applying precepts as set forth in *Fletcher, Id.*: Codilis was the agent to principal, Owen, who in turn was the agent to the principal Bank, and as such the knowledge obtained by Codilis regarding this court's Order of December 4, 2018, including its legal and procedural ramifications, is imputed to Owen, and in turn is imputable to the Bank.

Section 735 ILCS 5/15-1504 of the Illinois foreclosure statute, entitled: Pleading and Service, states in pertinent part:

> (a) Form of Complaint. A foreclosure complaint may be in substantially the following form:
>
> > (3)(J) Statement as to defaults, including, but not necessarily limited to, date of default, **current unpaid principal balance**, per diem interest accruing, and any further information concerning the default: (**emphasis supplied)******
>
> (c) Allegations. The statements contained in a complaint in the form set forth in subsection (a) of Section 15-1504 are deemed and construed to include allegations as follows:****
>
> > **(5) that defaults occurred as indicated;** (emphasis supplied)****
>
> "(e) Request for Foreclosure. The request for foreclosure is deemed and construed to mean that the plaintiff requests that:
>
> > (1) an accounting may be taken under the direction of the court of the amounts due and owing to the plaintiff;
> >
> > (2) the defendants be ordered to pay to the plaintiff before expiration of any redemption period (or, if no redemption period, before a short date fixed by the court) whatever sums may appear to be due upon the taking of such

> account, together with attorneys' fees and costs of the proceedings (to the extent provided in the mortgage or by law);
>
> **(3) in default of such payment in accordance with the judgment, the mortgaged real estate be sold as directed by the court,** to satisfy the amount due to the plaintiff as set forth in the judgment, together with the interest thereon at the statutory judgment rate from the date of the judgment;******(emphasis supplied)

The imputed knowledge of respondent bank that there was no arrearage on the mortgage loan as ordered by this court legally precluded the Bank from proceeding with the foreclosure in April, 2019, as there was no default as required by statute to proceed to sale. To proceed as it did, placed the Bank in contempt of this court's order of December 4, 2018.

Moreover, Codilis was the attorney and agent of the Bank, who agreed to the Confirmation Order entered in the Debtor's Chapter 13 proceeding on entered on September 9, 2013 after several continued hearings, based on the Amended Plan of the Debtor filed on May 20, 2013. Codilis was also the attorney for the Bank when the Order of December 3, 2018; when the Plan was successfully completed on February 7, 2019 and closed on March 7, 2019; and was the agent who refused the Debtor's tender of post-Plan payments as provided by the confirmed Plan. Although respondent Bank retained counsels other than Codilis to pursue the foreclosure action to sale and to defend against the Debtor's appellate proceedings in the state courts, Codilis filed the eviction action that is presently pending in the circuit court. 2023 MI 705384, and by doing is thereby in contempt of this court's Order of December 3, 2018, since the firm has actual knowledge that there was no arrearage when the Bank took title to the subject property pursuant to the judicial sale, and therefore has no right to possession of the residence of the Debtor, and consequently its conduct is a willful and intention violation of the aforesaid Order of December 3, 2018.

Again, *Branham Corp. v. Boone County Utilities, LLC, No. 1:15-cv-00604-RLY-TAB, 2018 U.S. Dist. LE XIS 9535 (S.D. Ind. Jan. 22, 2018)* is instructive when it discussion regarding sanctions against adversarial plaintiff, *Branham*. Unlike in the cause at bar, the court in Branham found that because certain terms of the confirmation order were ambiguous, the court could not find *Branham* in contempt, but it did sanction Branham for fees, citing to the Supreme Court:

> "The Supreme Court recently addressed a federal court's "inherent authority" to sanction a litigant for bad-faith "conduct which abuses the judicial process." Goodyear Tire & Rubber Co. v. Haeger, U.S. , 137 S. Ct. 1178, 1186, 197 L. Ed. 2d 585 (2017) (quoting Chambers v. NASCO, INC., 501 U.S. 32, 44-55, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991)). The court may order a litigant to pay the other side's legal fees and costs. Id. However, "such an order is limited to the fees [*60] the innocent party incurred solely because of the misconduct—or put another way, to the fees the party would not have incurred but for the bad faith." Id. at 1184. This means "a causal link between the misconduct and the fees[.]" Id. at 1186; see also id. at 1186 n.5 (stating that rule-based and statutory sanctions also require a causal connection) , at 9559

However, because the subject of the contempt involves real property, more than a monetary sanction of fees and costs is merited. In order for the *status quo* as determined by the December 3, 2018 Order to be restored, equity requires the remedy of specific performance.

Debtor's Affidavit in support of its Motion for Rule to Show Cause pursuant Fed. Bankr. Rule 9020 is attached hereto and made a part hereof.

PRAYER FOR RELIEF

WHEREFORE, the Debtor prays that in the interest of the fair administration of justice, by virtue of its authorized discretion and equity, this court enter an order:

1. vacating the judgment of foreclosure and sale entered by the trial court and the affirmation of that judgment by the appellate court's ruling and mandate;

2. vacating the sale and confirmation thereof entered by trial court

3. directing respondent Bank to comply with the terms and conditions of the Debtor's confirmed Chapter 13 Plan delineated in this court's Order of December 3, 2018, effective as of March 1, 2013;

4. directing respondent Bank to forgive any interest and principle that accrued in excess of that which would have accrued under the terms and conditions of the confirmed Plan from April 1,2019 to the date of entry any order granting the relief requested herein, as damages for intentionally moving to proceed to sale in the trial court in violation of the this court's Order to the end of the term, continuing up to the end of the term of the mortgage on July 1, 2033;

5. directing respondent Bank to disgorge funds deposited as security bond for Debtor's stay entered in the appellate action, and awarded to respondent for use and occupancy.

6. directing respondent Bank to comply with the terms of the confirmed Plan directing him to pay principle and interest in the amount of $619.76 (six hundred nineteen and 76/100) dollars for the term of the mortgage, to July 1, 2033.[7]

7. staying respondent Bank from prosecuting the eviction proceeding in the circuit court of Cook County.

7. For attorney's fees and costs of this litigation, and for any further relief this Honorable court deems just and equitable.

Respectfully Submitted,
JULIO DE LA CRUZ

By: _____

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[7] See, Summarization Chart attached to Exhibit C, Motion to Approve Loan Modification the Chapter 13Plan