

RONALD RYAN

From: RONALD RYAN [ronryanlaw@cox.net]
Sent: Monday, September 14, 2009 7:55 PM
To: 'Brian A. Paino'
Subject: RE: BK No. 4:09-bk-05175-EWH No. 000001-027385 (Weisband, Barry)

Yes, I will extend the deadline.

RONALD RYAN
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From: Brian A. Paino [mailto:bpaino@piteduncan.com]
Sent: Monday, September 14, 2009 5:36 PM
To: RONALD RYAN
Subject: RE: BK No. 4:09-bk-05175-EWH No. 000001-027385 (Weisband, Barry)

Ron,

Thanks for your response. In light of the below, please advise whether you are amenable to extending the discovery response deadline to **Monday, September 21, 2009** to allow our office time to provide you with the Pooling and Servicing Agreement and you time to evaluate the information prior to either party taking any further action.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Brian A. Paino, Esq.
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4375 Jutland Drive, Suite 200
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bpaino@piteduncan.com

From: RONALD RYAN [mailto:ronryanlaw@cox.net]
Sent: Sunday, September 13, 2009 8:07 AM
To: Brian A. Paino
Cc: Barry Weisband; NEIL GARFIELD; FDG Donna Keiser
Subject: RE: BK No. 4:09-bk-05175-EWH No. 000001-027385 (Weisband, Barry)

Please provide me what you have and what you are willing to disclose, but this is not even close from over. To the extent I have to do extra work to obtain compliance, **I will ask for attorney fees.** The rules specifically provide that discovery applies to contested matters and to objections to proofs of claim. My response clearly delineates why the matters

requested are relevant. As I have tried to hint at by citing certain cases and otherwise, if you don't disclose everything you know, you could be getting yourself into very hot water. The fraud that has been going on is extremely serious. It is not worth putting law licenses at risk.

Debtors have a fundamental right to avoid collection actions, including foreclosure, during the pendency of bankruptcy:

The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

Dawson v. Wash. Mutual Bank, F.A. (In re Dawson), 390 F.3d 1139, 1147 (9th Cir. 2004) (quoting H.R. Rep. No. 95-595, at 340 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6296-97). Although the foreclosure stay can be lifted when a homeowner is unable to make mortgage payments, it is critical that borrowers not be deprived of such a fundamental protection of bankruptcy without solid evidence that the creditor is entitled to proceed. As a New Jersey bankruptcy court held in reviewing problematic certifications filed as part of lift stay motions, “notwithstanding the volume, pace and electronic systemizing of stay relief motions and applications, this court must remain mindful of the serious stakes—most often it is the family homestead that is in jeopardy. . . . [B]oth the data supplied and the verification processes employed by those who would foreclose on residences must be above reproach.” In re Rivera, 342 B.R. 435, 440 (Bankr. D.N.J. 2006) (emphasis omitted). This Court should apply the same standard.

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From: Brian A. Paino [mailto:bpaino@piteduncan.com]
Sent: Friday, September 11, 2009 11:54 AM
To: ronryanlaw@cox.net
Cc: David McAllister
Subject: BK No. 4:09-bk-05175-EWH No. 000001-027385 (Weisband, Barry)

Ron,

Please be advised that our office is in receipt of Barry Weisband's ("Debtor") Requests for Admission, Interrogatories and Requests for Production ("Discovery Requests") served on GMAC Mortgage, LLC ("GMACM") in regard to the above-referenced matter.

As you know, on May 29, 2009, our office filed a Motion for Relief from the Automatic Stay ("Motion") on GMACM's behalf. Subsequently, Debtor filed a Response to the Motion wherein the Debtor challenges GMACM's standing to prosecute the Motion and its ability to enforce the terms of the applicable note and deed of trust. Thereafter, on September 1, 2009, the Debtor filed an Amended Response, again raising issues regarding

GMACM's standing to prosecute the Motion and to enforce the terms of the applicable note and deed of trust.

Pursuant to Ninth Circuit precedent, the hearing on a motion for relief from stay is intended to be a summary proceeding and most courts hold that the hearings should not involve an analysis or resolution of the merits of claims, defenses or counterclaims, but rather simply determine whether the creditor has a colorable claim to the property of the estate. See e.g., In re Johnson, 756 F. 2d 738, 740 (9th Cir. 1985).

Admittedly, it is GMACM's burden to prove that it has standing to prosecute the Motion. However, the information and/or documents requested in the Discovery Requests goes far beyond the scope of a hearing on a Motion. In fact, much of the information requested in the Discovery Requests is intended to establish affirmative claims against GMACM, which, as previously noted, are not relevant in the context of a motion for relief hearing.

In connection with filing the Motion, GMACM provided the Debtor with a true and correct copy of the applicable promissory note, which included a special indorsement to GMACM. Moreover, on September 1, 2009, GMACM filed a Declaration in Support of the Motion wherein GMACM declared under penalty of perjury that special indorsement to GMACM is the only indorsement on the Note. Our firm is prepared to provide you with the SEC filings for any applicable Pooling and Servicing Agreement ("PSA") and the accompanying Mortgage Loan Schedule evidencing that the subject loan is part of the respective PSA. However, to the extent that the Debtor seeks additional information beyond the scope of the hearing on the Motion, our office respectfully objects to disclosing such information on the grounds of relevance.

Although we hope to resolve this matter without the need for court intervention, to the extent that we are unable to agree upon the information to be exchanged, our office will be forced to proceed with a Motion for a Protective Order pursuant to Fed. R. Civ. P. 26(c), as incorporated by Fed. R. Bankr. P. 7026.

After you have reviewed this correspondence, please advise whether the Debtor will accept as responses to the Discovery Requests the information and/or documents referenced above.

If you have any questions, or would like to discuss this matter in greater detail, please do not hesitate to contact me.

Sincerely,

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