Articles + Publications | April 25, 2023

Locke Lord QuickStudy: Orlansky v. Quicken Loans, LLC & ?Violations of the Automatic Stay

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Notices of filing bankruptcy from debtors to its creditors are intended to halt all collection efforts of prepetition debts. But where lenders are required by law to provide information to mortgagors[1] who are debtors in bankruptcy, the line of what communications are and are not prohibited is not so easily determined. While communication with a debtor on its own is not a violation, courts look at different circumstances to determine whether communications relating to prepetition debt constitute violations of the automatic stay. For example, some courts look to each individual communication and others look to the totality of the circumstances.

The 9th Circuit Bankruptcy Appellate Panel (the "BAP") recently opined on this issue in *Orlansky v. Quicken Loans, LLC* as it relates to mortgage statements. At the lower level, the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court") reviewed language on Rocket Mortgage, LLC's ("Rocket") billing statements provided to chapter 13 debtors, David and Sharon Lynn Orlansky (the "Debtors"). The statements were divided into two sections: prepetition arrears owed through the filing of the Debtors' petition, and ongoing obligations on the Debtors' mortgage. Though the statements were noted to be "for informational purposes," the ongoing payment requirements included a charge of $950 on account of attorneys' fees incurred in the Debtors' bankruptcy case. The Debtors filed a motion for contempt, seeking damages pursuant to § 362(k) and contending that Rocket willfully violated the automatic stay by including the attorneys' fees on the monthly billing statements. Rocket argued that it did not violate the stay, as the attorneys' fees accrued after the filing of the bankruptcy petition, and therefore could not be an attempt to collect on account of prepetition debt.

The Bankruptcy Court issued a written opinion, stating that Rocket could not have violated the automatic stay, because the Debtors had an interest in receiving information about the status of their mortgage in order to formulate their chapter 13 plan. The billing statements were not a willful violation of the stay. The BAP highlighted that mortgage information is crucial to chapter 13 debtor plans, and that communications from lenders are not *per se* a violation of the stay. However, "when evidence of harassment or coercion is present, a disclaimer that the billing statement is for informational purposes only is ineffective." Here, the BAP said, that by including the attorneys' fees in the ongoing payment section of the statement rather than the prepetition arrears, Rocket sought immediate payment of the fees.

Though courts will likely still review automatic stay issues on a case-by-case basis, it is important to highlight that

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providing mortgage statements to debtors may, in some instances, still violate the automatic stay. Mortgagees should be cautious in any communications with debtors in bankruptcy. When lenders receive notices of bankruptcy filings, it is important to take into consideration circumstances of all communications with the debtor. The language used within a statement—even if identified as for information purposes only—could be viewed as an attempt to collect on pre-petition debts in violation of the automatic stay.

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[1] The Code ?of Federal Regulations requires that a servicer of mortgage loans shall provide consumers with an informational statement each billing period. *See* 12 CFR § 1026.41(a). The requirement to provide a consumer mortgagor with monthly statements pursuant to the Code ?of Federal Regulations is not applicable to certain consumer debtors in bankruptcy. *Id.* at § 1026.41(e)(5) ??(lenders are exempt from requirements when consumer on the loan is a debtor in bankruptcy). ?The requirement is also not applicable to any consumer debtor whose plan of reorganization provides that the mortgaged premises will be surrendered. *Id.*

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