



SOTTILE & BARILE
ATTORNEYS AT LAW

AN ARGUMENT IN FAVOR OF THE MID-CASE AUDIT: B.R. 3002.1 PROPOSED CHANGES

If you put your ear to the ground you may hear the rumblings regarding a change to Bankruptcy Rule 3002.1 requiring the institution of a mid-case bankruptcy audit.

This mid-case audit would be like the Notice of Final Cure but would be performed by a trustee's office in the middle of a pending Chapter 13, rather than at the end, and would still require a response be filed by secured lender.

In my opinion everyone involved would benefit from this proposed change.

As a former Debtors' Counsel, I can tell you that the very last thing I wanted to say to a Debtor at the completion of their payment plan was "Whelp, That mortgage still isn't current. We can get a discharge but they will start foreclosure shortly after!" Personally, I never said this to a Debtor. As a Debtor's counsel, I practiced in a strict conduit jurisdiction with attentive Trustees that would never have allowed that to happen.

Now, as Creditors' counsel, I am seeing various situations where my clients' response to the Notice of Final Cure is disagreed and a post-discharge foreclosure is exactly what is happening to these Debtors.

The system as is, is flawed. Particularly if the Debtor is responsible for making the post-petition payments. Most often the Trustees will not pay on Post-Petition Fee Notices if they aren't paying on the claim. Also, the loans can change hands several times during the bankruptcy case, putting the Debtor suddenly in a situation where they are several thousand dollars in default at the same time as they finish their plan.

The solution? The Mid-Case Audit, of course!

If, in the middle of the case, there is a substantial default by the Debtor (which for some reason the Trustee and/or Secured Parties have yet to realize), the Debtor has 30 more months to "fix" the situation. The Plan can be amended to have the arrears added to the distributions by the Trustee. The Plan can be modified to direct the trustee to pay the post-petition fee notices. There are options! And more importantly, there is TIME to repair the situation. Even in a non-conduit jurisdiction, the Trustee can at least issue the mid-case audit to say, "All good here so far?" This would provide the Secured lender an opportunity to complete an internal audit of their system and ensure that their figures are lining up with the Trustee's and Debtor's expectations.

Although this additional requirement will be burdensome on Trustees and Creditors alike, I still think this requirement would be of value to all parties involved, not the least of which is the

Debtor. The whole purpose of Bankruptcy Law is to provide the Debtors with a fresh start and too often they are deprived of a true fresh start due to these late-in-case issues that arise. The Trustees will benefit in knowing that they won't end up entangled in complicated end-of-case disputes about disbursements from four years prior. And creditors will benefit from not having to waive old, defaulted amounts from prior note holders and servicers.

Everybody wins!

Author: Molly Simons, Esq.
Senior Bankruptcy Counsel

Written for the NACTT Academy, ConsiderChapter13.com
Published 8/28/2022