

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION-BAY CITY

In re:

Case No. 10-23963-DOb

**DAVID S. BELZAK,
LYNDA J. BELZAK,**

Chapter 13

Debtors.

HON. DANIEL S. OPPERMAN

MOTION TO MODIFY DISCOVERY STAY

Daniel M. McDermott, the United States Trustee for Region 9 (“United States Trustee”), by and through undersigned counsel, hereby moves for entry of an order modifying the Order Staying All UST-Related Proceedings (the “Discovery Stay”; Docket no. 101) to allow the United States Trustee to proceed with Court Ordered Discovery of events that postdate the National Mortgage Settlement (the “NMS”).

SUMMARY

The United States Trustee filed an Ex Parte Motion for a 2004 Examination (“2004 Motion”), and the Court granted the 2004 Motion and authorized discovery. JPMorgan Chase Bank, National Association (“Chase”) thereafter filed a Motion for Protective Order to limit the scope of that discovery. The Court held a hearing and found good cause existed to allow the United States Trustee to conduct discovery but limited the original discovery request. Before an Order was entered memorializing the Court’s ruling, the parties agreed to stay discovery in an attempt to negotiate a settlement and, at the parties’ request, the Court entered the Discovery Stay.

The United States Trustee and Chase have been unable to reach a settlement after six months of negotiations. Chase has acknowledged filing a payment change notice in this case

purportedly signed under penalty of perjury by a person who did not complete or review the document because she no longer worked at Chase at the time. It has also become clear that Chase filed hundreds of documents in this Court purportedly under this former employee's signature, many of which were filed under penalty of perjury. Further delay in this case is unwarranted, and the authorized discovery should proceed to investigate the issues identified in the 2004 Motion concerning events that postdate the NMS.

PROCEDURAL POSTURE

1. The Debtors filed for Chapter 13 bankruptcy relief on October 26, 2010.
2. The Debtors filed schedules listing the Debtors' interest in property located at 4444 Raymond Road, Beaverton, MI 48612 (the "Property"), and Schedule D listed Chase as a secured creditor (Docket no. 1).
3. The proposed plan provided for the Debtors to pay Chase directly in the amount of \$485.00 per month (Docket no. 8).
4. An Order Confirming Plan was entered on December 17, 2010 (Docket no. 20).
5. Chase filed a secured proof of claim for the Property on January 19, 2011, and attached a mortgage and a Home Equity Line of Credit ("HELOC") Agreement (Claim 15-1).
6. Chase filed numerous payment change notices, including a Notice of Mortgage Payment Change on February 28, 2012 (the "February Payment Change"), listing the payment amount of \$495.28 (Docket no. 40).
7. The February Payment Change was filed by Chase, was purportedly signed by Lori Harp, and included contact information for Ms. Harp at Chase's Records Center.

8. On July 30, 2013, Chase filed a Notice of Mortgage Payment Change (the “July Payment Change”), which more than tripled the monthly mortgage payment from \$495.28 to \$1,694.73 (Docket no. 57).

9. The July Payment Change was filed by Chase, was purportedly completed and signed by Lori Harp under penalty of perjury, and included contact information for Ms. Harp at Chase’s Records Center.

10. On August 7, 2013, the Debtors objected to the July Payment Change (Docket no. 59). The Debtors asserted in their Objection, among other things, that Chase: filed a false payment change notification, failed to comply with Fed. R. Bankr. P. 3002.1, and violated the automatic stay.

11. According to the Objection, two different Chase representatives stated that Lori Harp “did not exist” in the Chase phone book.

12. Chase did not file a response to the Objection.

13. A hearing on the Objection was held on August 29, 2013. The United States Trustee attended the hearing. Chase did not.

14. At the hearing, Debtors’ counsel reiterated the facts in the Objection and detailed her efforts to address Chase’s errors prior to filing the Objection.

15. The United States Trustee expressed his concern for the violations of Fed. R. Bankr. P. 3002.1 and the Bankruptcy Code.

16. On September 4, 2013, the Court entered an Order (Docket no. 63) granting the Debtors’ Objection. It precluded Chase from presenting evidence regarding the July Payment Change at any future hearing and awarded attorney fees. The Order established that the monthly mortgage payment was \$495.25.

17. The Order also contained the following language:

IT IS FURTHER ORDERED that the United States may conduct a 2004 Exam at a time and place convenient to the United States Trustee and that said 2004 Exam shall be allowed upon Ex Parte without the necessity of seeking concurrence from Creditor, JP Morgan Chase Bank.

18. On November 8, 2013, the United States Trustee filed an Ex Parte Motion for 2004 Examination of Chase and Lori Harp. The Court entered an Order (“2004 Order”) granting the 2004 Motion the same day. Among other things, the 2004 Order required Chase to provide the United States Trustee the work address of Ms. Harp within 10 days.

19. On November 22, 2013, Chase filed a Motion for Protective Order to Limit Scope and/or for Clarification of Ex Parte 2004 Exam Order (the “Protective Order Motion”). A corrected Protective Order Motion was filed on November 25, 2013 (Docket no. 82).

20. Chase failed to comply with the 2004 Order and did not provide Lori Harp’s address.

21. On November 25, 2013, the United States Trustee filed a Motion to Compel Chase to Appear and Address its Failure to Comply with the November 8, 2013 Court Order (“Motion to Compel”) (Docket no. 76) and an Ex Parte Motion to Expedite Hearing on the Motion to Compel (Docket no. 77).

22. The Court held a hearing on the Motion to Compel on November 27, 2013. The hearing was adjourned to December 16, 2013, to be heard with the Protective Order Motion. The Court also granted the United States Trustee leave to file Requests for Admissions, Interrogatories, and Production of Documents (Docket no. 90).

23. On December 16, 2013, the Court held a hearing on the Protective Order Motion and the Motion to Compel. Prior to the hearing, Chase’s counsel advised the United States

Trustee's counsel that Lori Harp was no longer employed by Chase as of March 10, 2012, approximately 18 months before Chase filed the July Payment Change.

24. At the hearing on December 16, 2013, the Court ordered Chase to produce by January 16, 2014, certain documents and to respond to some of the Requests for Admissions and Interrogatories related to events that postdate the NMS. A written Order memorializing the Court's ruling was never entered.

25. The Court also set a briefing schedule to allow the parties to brief whether the NMS prohibits certain document production, admissions and interrogatories requested by the United States Trustee (Docket no. 96).

26. On January 10, 2014, the United States Trustee and Chase advised the Court that they were engaged in settlement negotiations and, at the parties' request, the Court entered an Order granting the Discovery Stay (Docket no. 101)

27. The parties tried for six months to settle this case but were unsuccessful.

DISCOVERY SHOULD NO LONGER BE DELAYED

28. Discovery should proceed now. Settlement negotiations have reached an impasse. The reason for the delay no longer exists.

29. In addition, additional facts have come to light that amplify the need for discovery in this case. They include:

- a. Lori Harp did not complete, review and sign the July Payment Change because she did not work at Chase at the time it electronically "signed" and filed the document for her. That document was signed under penalty of perjury and filed using her ECF credentials when she was no longer working at Chase and could not have signed and reviewed the document. Every

document allegedly reviewed and signed by a Chase employee is called into question.

- b. A docket activity report run by the Clerk's Office of the U.S. Bankruptcy Court, Eastern District of Michigan, shows that Chase filed in this Court 504 documents purportedly "signed" by Lori Harp's and using her ECF credentials after she stopped working at Chase. Like the July Payment Change in this case, many of these documents were purportedly signed under penalty of perjury.
- c. Chase knew that it was submitting robo-signed documents to the Court under the penalty of perjury. Another former employee, Melba Arredondo, filed an action against Chase on February 21, 2013, alleging that in January 2012 she notified both her immediate supervisor and Chase's legal department when she learned her electronic signature was being used on legal documents without her full knowledge or consent. Ms. Arredondo's complaint contended that instead of conducting a reasonable investigation or addressing her concerns, Chase retaliated and terminated her in June, 2012.
- d. The United States Trustee has found other cases, in this district and across the country, that demonstrate that Chase has significant problems with its payment change notifications, including its escrow account analyses.

30. The Discovery Stay no longer serves any purpose for discovery that the Court previously authorized for the time period after entry of the NMS. Therefore, this narrowly tailored request to modify the Discovery Stay is reasonable and appropriate.

31. On June 9, 2014, as required by the Discovery Stay, the United States Trustee notified Chase's counsel of his intent to proceed with discovery. More than fourteen days have passed, and no response has been received from Chase.

32. It is imperative that the United States Trustee proceed with discovery in this case and fulfill his duties under the Bankruptcy Code.

WHEREFORE, the United States Trustee respectfully requests that this Court modify the stay on all UST-related proceedings, allow him to continue with discovery, and grant the United States Trustee such further relief as is just and proper.

DANIEL M. McDERMOTT

UNITED STATES TRUSTEE
Region 9

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(313) 226-6773

Dated: July 17, 2014

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
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ORDER MODIFYING DISCOVERY STAY

THIS MATTER having come before the Court on the following: the United States Trustee's ("UST") Ex-Parte Motion for Order Authorizing Examination of JPMorgan Chase Bank, N.A. and Lori Harp, and Requiring Production of Documents Pursuant to Fed. R. Bankr. Pro. 2004 ("Ex-Parte Motion"; Docket No. 71); entry of the Order Granting Ex-Parte Motion for Bankruptcy Rule 2004 Exam and Requiring Production of Documents ("Ex-Parte 2004 Exam Order"; Docket No. 72); JPMorgan Chase Bank, N.A.'s ("Chase") Motion for Protective Order to Limit Scope and/or Clarification of Ex-Parte 2004 Exam Order ("Motion for Protective Order"; Docket No. 82); the UST's Motion to Compel JPMorgan Chase Bank, N.A. to Appear and Address its Failure to Comply with the November 8, 2013 Court Order ("Motion to Compel"; Docket No. 76); the UST's filing of First Request for Admissions, Interrogatories and Requests for Production of Documents ("Written Discovery Requests"; Docket No. 90); and the Court's hearings and rulings on the Motion to Compel on November 27, 2013 and the Motion for Protective Order on December 16, 2013; the proceedings having been stayed at the parties request ("Order Staying All UST-Related Proceedings", Docket No. 101); and the Court being otherwise fully advised in the premises:

NOW, THEREFORE,

IT IS ORDERED that Order Staying all UST-Related Proceedings is hereby modified and the stay on all UST-Related Proceedings is lifted except as specifically set forth in this Order. The United States Trustee may proceed with discovery, including but not limited to the 2004 examinations, discovery, witness testimony, document production, and any deadline or obligation relating thereto. The discovery will be in accordance with this Court's December 16, 2013 ruling regarding the production of documents, 2004 examinations, witness testimony, and response to request for admissions and interrogatories. The stay shall remain in effect for that part of the Order Establishing Deadlines (Docket No. 96) concerning the briefing to address the National Mortgage Settlement as it relates to the United States Trustee's request for documents responsive to categories Nos. 1 and 2 of the 2004 Order for the period prior to the effective date of the National Mortgage Settlement. The stay shall also remain in effect for the deadline for the UST to file a motion for reconsideration of the Order Establishing Deadlines.

IT IS FURTHER ORDERED that Chase is required to produce the following documents no later than 30 days from entry of this Order:

1. Complete copies of any and all communication to the Debtors, including the filed payment change notifications, from the period February 9, 2012 to the present.
2. Complete copies of all documents constituting Chase's records of the Belzak Account, from the period February 9, 2012 to the present. Such documents shall include but not be limited to any documents that concern the Belzak Case, including any bankruptcy ledger, promissory note, mortgage, and assignment; any correspondence concerning the Belzak Account (including internal communications and external communications); master payment/loan history; servicing notes; escrow documents; documents concerning fees and costs imposed on the Belzak account; a loan history.
3. Complete copies of Chase's notice of payment change policies and procedures for preparing, reviewing, signing and filing the February 28, 2012 Notice of Mortgage Payment Change (Docket No. 40) and July 30, 2013 Notice of Mortgage Payment Change (Docket No. 57).

4. All documents that Chase relied upon in preparing, reviewing, signing and filing the February 28, 2012 Notice of Mortgage Payment Change (Docket No. 40) and the July 30, 2013 Notice of Mortgage Payment Change in this case (Docket No. 57).

IT IS FURTHER ORDERED that based on the Court's ruling in this case and its intentions as expressed in open court, a Confidentiality/Protective Order similar to the Order entered in *In re Forfar* (Case No. 09-32343; Docket No. 98) shall be submitted by the parties for entry in this case.

IT IS FURTHER ORDERED that Chase is required to respond to the following requests in the Written Discovery Requests (Docket No. 90): Request for Admission Nos. 1-5, Interrogatory Nos. 1-7, and 12-13. Chase shall respond to the Written Discovery Requests no later than 30 days from entry of this Order.

IT IS FURTHER ORDERED that the exam topics for the 2004 Examination of Chase are limited to those topics relating to the permitted document categories described above in this Order.

IT IS FURTHER ORDERED nothing in this Order prevents the UST from seeking authority to obtain additional discovery.

IT IS FURTHER ORDERED that the 2004 Examination of Chase will take place in Detroit and be re-scheduled to a mutually convenient date for all parties.

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NOTICE OF MOTION TO MODIFY DISCOVERY STAY

The United States Trustee has filed papers with the court for an Order lifting stay of all UST-related proceedings.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.).

If you do not want the court to enter an order granting the requested relief, or if you want the court to consider your views on the motion, **within 14 days**, you or your attorney must:

1. File with the court a written response or an answer, explaining your position at:¹

U.S. Bankruptcy Court
111 First Street
Bay City, MI 48708

If you mail your response to the court for filing, you must mail it early enough so the court will receive it on or before the date stated above.

You must also mail a copy to: Kelley Callard, Esq.
Office of the United States Trustee
211 West Fort Street, Suite 700
Detroit, MI 48226

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

DANIEL M. McDERMOTT
UNITED STATES TRUSTEE
Region 9
By /s/ Kelley Callard (P68537)
Kelley.Callard@usdoj.gov
Trial Attorney
Office of the U.S. Trustee
211 West Fort St - Suite 700
Detroit, Michigan 48226
(313) 226-7773

Dated: July 17, 2014

¹ Response or answer must comply with F.R.Civ.P. 8(b), (c) and (e).

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CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2014, I served copies as follows:

1. Documents Served: *Motion to Stay All UST-Related Proceedings, Brief in Support, and Certificate of Service.*
2. Served Upon: David S Belzak
Lynda J. Belzak
4444 Raymond Rd
Beaverton, MI 48612

Brian Moore, Esq.
Dykema Gossett PLLC
39577 Woodward Ave, Suite 300
Bloomfield Hills, MI 48304
3. Method of Service: First Class Mail

**DANIEL M. McDERMOTT
UNITED STATES TRUSTEE
Region 9**

By: /s/ Barbara Heilig
Barbara.Heilig@usdoj.gov
Paralegal Specialist
Office of the U.S. Trustee
211 West Fort Street - Suite 700
Detroit, Michigan 48226
313.226.4543

Dated: July 17, 2014