

### **Billy Ray and Sneaky Pete's Drive Thru Bankruptcy Service**

Even though some of Billy Ray's clothing is in the Country Music Hall of Fame, he really only had one hit, and that was decades ago. By January, 2018, he spends his nights singing on Music Row in Nashville. When he gets home at night and finishes watching TMZ to see the latest scandal involving his daughter, he doesn't have much time for paying bills. Consider also that much of what he makes on Music Row is from tips.

Eventually things catch up with Billy Ray and he faces foreclosure by his mortgage servicer, Middle Tennessee Servicing (MTS). Worried that is going to lose his home, Billy Ray calls one of the attorneys running commercials during TMZ, Sneaky Pete's Drive Thru Bankruptcy Service.

Because Billy Ray is less than organized, he shows up to his appointment without any paperwork. It doesn't help matters that he actually has three (3) mortgages with MTS: two on his personal residence, and one with his ex-wife on the former marital home.

When he tells Sneaky Pete that he is not sure how far behind he is with MTS on the senior mortgage against his personal residence, Sneaky Pete tells him not to worry because the Trustee pays the amount listed in the plan. Using Billy Ray's best guess, Sneaky Pete decides to put \$10,000 in the plan for arrears even though they are both sure the number is higher.

Billy Ray is also worried that he cannot afford to pay the second mortgage to maturity. It also aches and breaks his heart that he has to pay this mortgage since the value of his property probably isn't much more than the balance on the senior mortgage to MTS.

With respect to the mortgage he is still liable on with his ex-wife (i.e., for the former marital property), Billy Ray doesn't care about the house itself. He simply doesn't want to be liable on the mortgage any longer. Sneaky Pete assures Billy Ray that he can surrender his interest in the property, but makes it clear to Billy Ray that he does not represent his ex-wife in the bankruptcy case.

After signing blank schedules, plan and petition, Billy Ray pulls away from the drive-thru in his pickup truck. Sneaky Pete finishes up the plan and schedules after Billy Ray leaves. He signs the plan himself in Section 10 of the Official Form 113 (which has been adopted in the district as the form plan).

With respect to the second mortgage, Sneaky Pete doesn't want to pay for an appraisal, but the tax assessor's office confirms that the value of the property exceeds the balance on the first mortgage. Sneaky Pete wants to zealously represent his client, so he puts a value on the schedules that is slightly below the balance on the first mortgage, even though he has no factual basis for this number. To improve his chance of stripping off the mortgage, he doesn't check off the box in Section 1 of Official Form 113 to alert interested parties to the presence of a lien strip.

Finally, Sneaky Pete provides for surrender of Billy Ray's interest in the former marital home. Unfortunately, since Billy Ray's appointment was so brief, he neglected to get the name of Billy Ray's ex-wife. Therefore, he can't list Billy Ray's ex-wife on Schedule H.

After Billy Ray's bankruptcy case is filed, along with the schedules and plan, MTS refers three files (one for each mortgage) to its bankruptcy counsel, Owen Wilson. Unfortunately, Owen is a big fan of both country music and one hit wonders. So he also spends his evenings on Music Row, and often finds it difficult to meet deadlines.

With respect to the senior mortgage on Billy Ray's home, as the new 70-day bar date for filing claims approaches, Owen doesn't have a copy of the Note or the post-petition escrow analysis. Owen is worried about filing the claim without the Note because of the declaration in Part 3 of Form 410. He is further concerned about proceeding without the escrow analysis, although he recognizes Rule 3002(c) gives him an additional 60 days to supplement the proof of claim with additional documentation.

Owen remembers that in the past if he neglected to file a proof of claim for a secured creditor, his client might not receive distributions from the trustee, but since liens pass through bankruptcy unaffected, the arrears were still recoverable post-discharge.

Regardless, Owen feels he needs to file an objection to confirmation since the arrears on the first mortgage are more than \$15,000. He manages to get the objection filed about 4 days before the confirmation hearing.

With regard to the second mortgage, Owen has a Broker Price Opinion (BPO) confirming the value of the property exceeds the balance on the first mortgage. Moreover, he confirms that Sneaky Peak did not serve any additional copies of the Plan. In other words, the plan was only sent to the P.O. Box for payments that Sneaky Peak listed for MTS. Again, Owen manages to file an objection to confirmation about 4 days before the confirmation hearing.

Finally, MTS has no objection to Billy Ray surrendering his interest in the former marital home. Owen wonders, however, if there is anything extra he needs to do since there is a co-debtor.

Questions:

- 1) Can Owen sign the proof of claim for the first mortgage without the Note or escrow analysis? What are MTS' options if the proof of claim is not filed by the initial 60-day bar date?
- 2) What issues are presented by the objection to confirmation on the senior mortgage? Did Owen need to file this objection?
- 3) What issues are presented by the objection to confirmation on the second mortgage? Did Owen need to file this objection?
- 4) What issues are presented by the co-debtor stay? Should the court be concerned?
- 5) Are there any ethical issues presented by anything Sneaky Pete has done on behalf of his client?