

Case Problem on the New PoC Forms and Rules

After Hurricane Katrina in 2005, Dr. Gambrell's wife insists that he move his cosmetic surgery practice further north from the Mississippi Gulf Coast. Since he is a fan of Ole Miss and good barbecue, the Gambrells decide to relocate to Memphis.

Things go well for the first few years in building a new practice in Tennessee, but in October, 2008 when the financial crisis hits, people start cutting back their discretionary spending, including eye lifts, lip injections, and tummy tucks. As a result, Dr. Gambrell falls behind on his mortgage payments to Mid-South Servicing (MSS). He eventually catches up on his payments, including all late fees.

Several years later in December, 2011, Dr. Gambrell's wife decides to leave him for a guitar player at the Rum Boogie Café on Beale Street. This trauma causes Dr. Gambrell to miss his January, 2012 payment. Although he resumes making payments in February, he never makes up the January payment and continues to run a month behind on his payments.

To make matters worse, Dr. Gambrell gets sued by several patients that suffer complications from a defective batch of Botox. These lawsuits necessarily affected his practice and he borrowed on his credit cards to be able to make payroll. However, since the lawsuits themselves were disputed and contingent, Dr. Gambrell was eligible to file for Chapter 13 in January, 2018.

After Dr. Gambrell's bankruptcy case is filed, along with the schedules and plan, MSS refers the loan to its bankruptcy counsel, Chaim Witz.

As the new 70-day bar date for filing claims approaches, Chaim doesn't have a copy of the Note or a payment history in the format required by new form 410A. He does have a copy of the escrow analysis, as well as twenty (20) inspection invoices: one from October, 2008, and the rest from January, 2012 through the time the bankruptcy case was filed.

Chaim is scheduled to go on the Kiss Kruiise at the end of March, 2018. He has been on the waiting list for 3 years and doesn't want to miss his chance to hang out with his favorite band. His contact at MSS assures him that the payment history and a copy of the Note will be provided before the bar date. Chaim goes ahead and signs the proof of claim and instructs his assistant Shannon not to file the PoC until she receives both the history and a copy of the Note.

Just a few hours before the 70-day deadline approaches, Chaim's office receives the payment history. However, there is no copy of the Note. Shannon, knowing how important it is not to miss the bar date, decides to go ahead and file the proof of claim. She also remembers something about being able to supplement for documents.

After Chaim returns from the Kiss Cruise, he receives an e-mail from MSS indicating that the Note cannot be found. However, that same e-mail includes an updated history since the original history failed to give Dr. Gambrell credit for two (2) payments made just before the filing of the bankruptcy case.

Questions:

- 1) Can Chaim sign the proof of claim for the first mortgage without the Note or payment history?
- 2) What issues, if any, are created by Shannon filing the proof of claim in Chaim's absence and without a copy of the Note?
- 3) What is the correct starting date for the payment history on Form 410A, assuming MSS does not ever waive interest, fees and costs pursuant to the Note?
- 4) What are Chaim's obligations with respect to the proof of claim upon returning from his cruise?
- 5) Can Chaim supplement or amend the proof of claim upon receiving the updated payment history?
- 6) If Chaim chooses to amend the claim, does an amended 410A form need to be attached to the amended Form 410? When is a revised 410A required for an amended proof of claim?
- 7) Are there any ethical issues presented by anything Chaim or Shannon have done in this case?