

After resigning as CEO of one of the largest mortgage servicers with a severance package valued at more than \$25 million, Tommy FastBuck forms an independent mortgage company to bid on the billions on mortgage servicing rights being sold by some of the larger mortgage servicers. The name of the new venture is Volunteer Mortgage (Volunteer).

### CapRez

One of Tommy's first purchases is group of residential loans where the borrowers are currently in Chapter 13 cases throughout the United States. These loans are purchased from CapRez, which itself filed bankruptcy in Delaware in May, 2012.

Tommy has no experience or background in bankruptcy law, and does not know the status of any of the borrower's bankruptcy cases. He hires Patty Prudent with respect to these newly acquired loans and e-mails her a spreadsheet with a list of loan numbers, borrower names, and cases numbers. Patty checks the docket in each case, and discovers that in approximately one-half of the bankruptcy cases, no proof of claim (PoC) has been filed. In the other cases, a proof of claim was filed, but some without any loan documents or other attachments.

Patty explains to Tommy that where a PoC has been filed, it will be necessary to file a transfer of claim (ToC) so the trustee knows that a new entity is entitled to receive payments. Where no claim has been filed, she can file a claim if the bar date has not passed or the district in question either accepts late claims (with or without a motion to allow late claim). But first, Patty needs to demonstrate in each case that Volunteer has standing to proceed. Patty asks Tommy to provide her with copies of the endorsed notes, security instruments and assignments, including in those cases where a PoC was filed several years ago without any loan documents attached.

When Tommy reveals to Patty that he does not have the loan documents for some of the loans, she suggests providing a copy of the purchase and sale documents from CapRez. Moreover, since the sale occurred after the filing of the CapRez case, Patty wants to ensure the sale was authorized by the bankruptcy court in the CapRez case.

Tommy becomes frustrated in part because what seemed like a good deal is turning into a lot of paperwork and hurdles. Further, he cannot reach his college roommate, Sam Slippery, who went on to law school after college and has since developed a successful criminal law practice. Sam handled the particulars of the transaction with CapRez, so Tommy is unsure of what documents exist.

After spending several hours searching the docket in the CapRez case and its associated cases, Patty discovers an order authorizing the sale of 24 loans from CapRez to Volunteer. Unfortunately, the spreadsheet Tommy previously provided Patty listed 28 loans. Tommy tries to convince Patty that it should be able to proceed since the bankruptcy cases are scattered throughout the United States and nobody will ever know that the sale order does not match up with the list of loans.

Tommy provides Patty with payment histories and screen prints provided by CapRez. Unfortunately, these screens only go back as far as June, 2012, the month of the sale to Volunteer.

Patty doesn't feel comfortable proceeding with filing any PoCs since she can't substantiate the payment due date or when the last payment was received. Tommy suggests she proceed with what they have, and if a debtor objects, simply go along with what the debtor says and then amend the claim.

On one of the loans, where the borrower filed for Chapter 13 in the Eastern District Missouri, no payments have been received since the transfer from CapRez. Tommy wants to file a MFR regardless of the loan's status prior to September, 2012 since there is obviously a post-petition default now. Although Eastern Missouri is not one of those jurisdictions which requires a PoC to be filed before filing an objection to confirmation or a MFR, a payment history is required.

### Bank of the United States

Having learned a little about bankruptcy since his first acquisition, Tommy is successful in purchasing a small pool of residential loans where the borrowers are currently in Chapter 13 cases throughout the United States. These loans are purchased from the Bank of the United States.

This time Tommy makes sure he is provided computer records containing copies of the loan documents (including endorsements), screen prints, and payment histories. However, when Patty begins to prepare and review some of the PoCs, she notices that the interest rate on some of the original notes do not match the interest rates reflected on the records provided. She finds this odd since each of the notes indicates the interest rate is fixed. Unfortunately, she is unsuccessful in obtaining any additional documentation to explain the discrepancy.

In addition, some of the bankruptcy cases were filed some time ago, including some prior to December 1, 2011. However, there are no escrow analyses available with the records and documents provided by Bank of the United States. Tommy convinces Patty to file the PoCs anyhow since he needs to start receiving money in these cases to cover her legal fees.

Six months later, Tommy receives a large box with hard copies of the pertinent escrow analyses and other records. He realizes that the information regarding the post-petition included on the PoCs filed was incorrect. He would rather avoid the time and expense involved with amending the claims, and suggests to Patty that she file a notice of payment change in each case, merely correcting the amount of the post-petition payment going forward.

The other records in the box reveal there are fees and charges that have been assessed against many of the loans after the borrowers filed a bankruptcy case. Although these fees were listed on statements sent to the borrowers more than 180 days ago, no notices were sent to the pertinent trustees or the borrowers' attorneys or otherwise filed on the claims register pursuant to Rule 3002.1. Again Tommy would like to save costs and suggests to Patty that since the fees and charges are more than 180 days old and nobody has objected so far, they should just keep quiet and proceed to collect the fees and charges.

Questions/Discussion:

1. What are Patty's obligations with respect to filing ToCs on behalf of Volunteer where PoCs have previously been filed by CapRez without loan documents attached?
2. How can Patty proceed on behalf of Volunteer where it does not have loan documents for all the loans purchased from CapRez?
3. How can Patty obtain relief from stay in Eastern Missouri or in the very least, an adequate protection order?
4. What are Patty's options with respect to the discrepancy in the interest rates? What kind of documents should she be looking for?
5. What must be done with the box of escrow analyses?
6. What should Patty do regarding the fees and charges more than 180 days old?
7. What other ethical issues are presented?