

UNITED STATES BANKRUPTCY COURT  
OF THE WESTERN DISTRICT OF NEW YORK

CHARLENE ALABAUGH

)  
) Case No. : 08-22836(13)  
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)  
) October 7th, 2009  
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TRANSCRIPT OF CLAIM HEARING  
BEFORE THE HONORABLE JOHN C. NINFO,  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Plaintiff,  
United States Trustee:

Office of the United States  
Trustee  
By: GEORGE M. REIBER, ESQ.  
3136 South Winton Road,  
Suite 206  
Rochester, New York 14623

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1 THE CLERK: Charlene Alabaugh.

2 MR. REIBER: Your Honor, this is one of several  
3 motions on today's calendar that deals with whether or not  
4 proofs of claim filed with the Court contained adequate  
5 documentation to establish that the entity filing the claim is  
6 actually the legal holder of the claim. Just to reiterate how  
7 we got here is that there was the Doherty case, which the  
8 Court obviously is familiar with, and we issued a decision  
9 requiring entities that file claims to provide proper proof to  
10 show the chain of title and how they ended up with the claim  
11 when it's not obvious that they are the creditor.

12 And thereafter, there was a second case of Gottler,  
13 which is not a reported decision, but in which the Court  
14 enunciated three basic requirements: One, that the proof of  
15 claim contain some evidence of the transfer, whether it's the  
16 Bill of Sale or copy of the Bill of Sale, copy of the  
17 Assignment or a copy of whatever else. It is evidence they  
18 have the transfer; that there be a statement signed by a  
19 corporate officer to the effect that it is accurate and that  
20 included in the attachment be a copy of the page which  
21 contains the actual claim being filed, identifying it in  
22 sufficient detail that we can make of the schedules. After  
23 the Gottler case, Ms. Schmitt and I were in a lot of e-mail  
24 communications with one of the major entities involved as we  
25 tried to arrive at a resolution.

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1 THE COURT: With the entity or its attorney?

2 MR. REIBER: The attorney for the entity. As we  
3 tried to arrive at a solution of what would work. And after  
4 Gottler, also after consulting with Ms. Schmitt, I sent all of  
5 the major entities a letter. And amongst other things, I said  
6 in that letter what I believe the Court expected. I indicated  
7 that my office would work with them to try to correct the  
8 errors in proof of claims that we perceived to have a problem.  
9 I indicated I would not be concerned about proper  
10 documentation for any claims where the distribution was less  
11 than \$1,000. And I gave them until August 15th to comply, and  
12 I indicated to them that after August 15th, any claims filed  
13 prior to August 15th that had not been complied with, I was  
14 just going to start doing motions, and any claims filed after  
15 August 15th, I'm not going to waste my time trying to get  
16 their compliance.

17 I'm going to start bringing motions. This appears  
18 to be the first batch. I've got a lot of motions waiting to  
19 be filed. There is, I believe, four cases on today's court  
20 calendar. And I think they are all, with one exception,  
21 universal in not having attached any document that ties the  
22 specific claim involved to the transfer, or in some cases,  
23 multiple transfers in one case between three different  
24 entities. So that you can go back and say, okay, this was the  
25 -- not in this case, but in the next case -- this is the claim

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1 that started with AAA --- they have their own credit cards --  
2 and then went -- In that case, it went from AAA to Universal  
3 to Citibank to Sherman to LDN. In the first case, the  
4 Alabaugh case, the only thing we've got is the original bill  
5 of sale and a copy of the transfer document transferring it to  
6 --

7 THE COURT: I can shorten all of this. I'm  
8 absolutely fed up with this to the point that I'm going to  
9 tell you what I'm going to do -- and it may be unethical or  
10 whatever, or you can report me to the Second Circuit or  
11 whatever you want to do. But I now have a folder. What I'm  
12 going to start to record are the law firms or lawyers who  
13 represent these ridiculous clients who can't understand that  
14 they have to put a chain of title together because that is  
15 what the Court requires, and keep it where they are -- like  
16 children, where they just -- We accept the 68 percent  
17 solution, Dad. No, I'm looking for 100 percent. How about we  
18 try 72 percent solution? No, sorry, son; I'm looking for  
19 100 percent.

20 I don't know how much more of a claim -- And I think  
21 that the law firms that are representing these entities in  
22 this Court, which is what happened here, need to send their  
23 lawyers back to law school so they can take a course in chain  
24 of title. I'm really serious. And if this continues, I'm  
25 going to start inviting those law firms not to practice here.

1 I mean, that is how bad I feel about all of this. This is  
2 crazy. All we are looking for is a chain of title. Now, I  
3 understand the businesses dynamics, that they want to do as  
4 little work as possible to satisfy the Court so that they can  
5 keep their profits up and everything from all of this. I  
6 understand all of that, but that is too bad. In Bankruptcy  
7 Court, you have to prove that you are a creditor. And in  
8 these cases, with all of the electronic transfers and all of  
9 the stuff that they are doing, they have to create the  
10 necessary chain of title. I've laid it out. I don't know how  
11 much clearer it has to be. But we are not putting up with  
12 this anymore.

13 I don't know if I'm going to -- I may start  
14 sanctioning these creditors, but I am definitely going to keep  
15 track of the lawyers who seem to think that it is okay to come  
16 into this court, waste our time, and keep making these less  
17 than 100 percent chain of title arguments as if I'm going to  
18 buy something less than the chain of title I'm looking for.  
19 Now, I don't know who to present this to, but I would suggest,  
20 Mr. Reiber, that you get a transcript of this and start giving  
21 it to these creditors along with your -- with this, along with  
22 your motions in the future, if you want to, because then the  
23 lawyers can read it who are going to represent them and come  
24 in here and do it. So I'm going to grant your motion on all  
25 of it.

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I think Rayburn is the next one.

MR. REIBER: That's correct, Your Honor.

THE COURT: I'm going to grant your motion on that.  
I think Rustig is one.

MR. REIBER: That's correct.

THE COURT: I'm going to grant your motion on that.  
Strassner?

MR. REIBER: That's correct.

THE COURT: I'm going to grant your motion on that.  
Are there any others?

MR. REIBER: Not that I'm aware of.

THE COURT: Have a nice day.

(The matter was concluded.)

(The proceedings adjourned at 12:10 p.m.)

\* \* \* \* \*

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

*Colleen Lounsbury - P<sub>r</sub>*  
Colleen L. Lounsbury  
Court Reporter

*10-7-2009*  
October 7th, 2009