UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

September 18, 2013 at 9:30 a.m.

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1. 13-28609-E-7 BERNARDITA FERRER
CJO-1 Mark A. Wolff

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-4-13 [32]

GREEN TREE SERVICING, LLC VS.

APPEARANCE OF CHRISTINA J. O, ATTORNEY FOR MOVANT REQUIRED FOR SEPTEMBER 18, 2013 HEARING

TELEPHONIC APPEARANCE PERMITTED

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion for Relief from the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The present Motion has been filed by Green Tree Servicing, LLC seeking relief from the automatic stay. The grounds stated with particularity in the Motion (Fed. R. Bankr. P. 9013) state,

A. Green Tree Servicing, LLC seeks an order terminating the automatic stay for its successors and/or assigns" to enforce a security interest in real property. [However, the motion does not seek relief from the automatic stay for a principal or client to exercise its rights pursuant to the security interest.]

B. Green Tree Servicing, LLC seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) asserting that the Property is not necessary to any effective reorganization.

C. Green Tree Servicing, LLC further asserts that Green Tree Servicing, LLC is not adequately protected based on the "total amount owed to Green Tree [Servicing, LLC] is $212,833.96, while the fair market value of the Property is $140,000.00."

Motion, Dckt. 32. Nothing else is stated in the Motion.

Conspicuously absent from the Motion is any allegation as to why or how Green Tree Servicing, LLC is before the court. Possibly, it could be here as a loan servicer and is seeking relief from the automatic stay so that it, as the loan servicer or agent, and its client or principal, as the owner of the note and deed of trust, could exercise its rights. However, no relief has been requested for any client or principal, but only for Green Tree Servicing, LLC itself and any assignee of Green Tree Servicing, LLC's rights and interests.

Alternatively, Green Tree Servicing, LLC may either own the note or have the right to enforce the note, and along with it the security interest. With the creation of securitized loan portfolios and the trafficking of bundled home mortgages, much litigation has arisen over who is entitled to enforce a promissory note and the deed of trust securing the note. While many consumers have blunted their spears on the issue of whether the deed of trust was assigned, it is clear under California law that the issue rests with who owns or has the right to enforce the note. A "person entitled to enforce" an instrument means (a) the holder of the instrument, (b) a non-holder in possession of the instrument who has the rights of a holder, or (c) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to 3309 or 3418(d). Cal. Com. Code § 3301 (2010). *In re Lee*, 408 B.R. 893, *In re Vargas*, 396 B.R. 511 (C.D. California 2008).

It is well-established law in California that a deed of trust does not have an identity separate and apart from the note it secures. "The note and the mortgage are inseparable; the former as essential, the later as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity." *Carpenter v. Longan*, 83 U.S. 271, 274 (1872); *accord Henley v. Hotaling*, 41 Cal. 22, 28 (1871); *Seidell v. Tuxedo Land Co.*, 216 Cal. 165, 170 (1932); Cal. Civ. Code § 2936. Therefore, if on party receives the note an another receives the deed of trust, the holder of the note prevails regardless of the order in which the interests were transferred. *Adler v. Sargent*, 109 Cal. 42, 49-50 (1895). Notwithstanding the Plaintiffs' arguments concerning "robo-signing," the issue is whether Defendant is the owner of the note today.

A holder of a note can enforce that note, even if it is in wrongful possession of the note (i.e., they found or stole the note), when that note has been endorsed in blank or to bearer. FN.1. Also, a person may be a holder of a note (and so have standing to do things like bringing a relief from stay motion) even if that person already sold the loan to someone else. *In re Kang Jin Hwang, 438 B.R. 661* (C.D. Cal. 2010) and Cal. Com. Code § 1201(b)(21).

FN.1.

> "If an indorsement is made by the holder of an instrument and it is not a special indorsement [specifically identifies the person to whom the instrument is payable], it is a 'blank endorsement.' When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially endorsed."

Cal. Com. Code § 3205(b).

> "'Person entitled to enforce' an instrument means (a) the holder of the instrument, (b) a nonholder in possession of the instrument who has the rights of a holder, or (c) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 3309 or subdivision (d) of Section 3418. A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

Cal. Com. Code § 3301.

In 2011 the Ninth Circuit Court of Appeals addressed this note-deed of trust issue in *Cervantes v. Countrywide Home Loans, Inc. et. al.*, 656 F.3d 1034, 9th Cir. 2011). The court addressed the general proposition that notes and deeds of trust remain together as a matter of law, with it being the right of the note owner to exercise the power under the deed of trust.

As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief. The Ninth Circuit Court of Appeals in *Arkison v. Griffin (In re Griffin)*, 719.3d 1126 (9th Cir. 2013) recently confirmed this limited scope of the scope of a motion for relief from stay. However, the movant creditor must show some basis for being before the court. In *Griffin* the movant provided a properly authenticated copy of the promissory note and competent testimony certifying that the Movant had possession of the original note. *Id.* at 1127.

FAILURE OF GREEN TREE SERVICING, LLC TO SHOW BASIS FOR RELIEF FROM STAY

While the showing of standing for a motion for relief from the automatic stay is low, a movant must show some basis for being before the

court. The Motion, which must include the statement of how and why the movant is before the court, is devoid of any such information. Green Tree Servicing, LLC appears from nowhere stating that it want relief from the automatic stay for only itself, its successors, and its assigns. It alludes to being a creditor by stating that the "amount owed to Green Tree Servicing, LLC is $212,833.96."

Testimony

The only Declaration filed in support of the Motion is that of Elizabeth Corby, who identifies herself as a "Bankruptcy Representative at Gree Tree Servicing, LLC." Declaration, Dckt. 34. She further states that as a "Bankruptcy Representative" she has "personal knowledge of the status and history of the Bernardita Espiritu Ferrer ("Debtor") loan account, and if called upon to testify thereto I could and would do so competently and truthfully." *Id.*

Ms. Corby further testifies as a "Bankruptcy Representative" of Green Tree Servicing, LLC she has access to the business records of Green Tree Servicing, LLC. Green Tree Servicing, LLC makes and maintains its records in the ordinary course of business and document the payments, non-payments, and charges relating to the note.

Ms. Corby testifies under penalty of perjury that on or about September 17, 2007, the Debtor made and delivered the note [but does not or cannot identify to whom the note was delivered]. She further testifies that the note is secured by a first priority deed of trust. [Ms. Corby provides no information as to how she has personal knowledge of the conduct of the Debtor in 2007.]

Ms. Corby testifies that true and accurate copies of the note and deed of trust are filed as exhibits 1 and 2. [Ms. Corby provides no testimony as to how she knows they are true and accurate copies or who is in possession of the note and deed of trust.] Ms. Corby further testifies as to defaults under the note. [If Green Tree Servicing, LLC was the loan servicer for the actual creditor, the court could understand how Ms. Corby would have access to the books and records of Green Tree Servicing, LLC and then communicate the information from the books and records to the court (not personal knowledge testimony).]

In wrapping up her testimony, Ms. Corby provides her legal opinion or conclusion that the Debtor is the owner of record of the Property. Nothing indicates how Ms. Corby has personal knowledge of who the "record owner" is or what that means as part of her legal opinion.

Exhibits

The Exhibits which Ms. Corby testifies are true and accurate copies of some note and deed of trust are filed as Exhibits 1 and 2. Dckt. 38. The note names Bank of America, N.A. as the payee. The note appears to have been endorsed in blank by Bank of America, N.A. The court has no idea where this endorsed in blank is, who has possession of it, and who has the right to enforce it. The deed of trust names Bank of America, N.A. as the lender, PRLAP, Inc. as the trustee, and states that Bank of America, N.A. is the beneficiary under the deed of trust. None of these documents, if they were

properly authenticated, make any reference to Green Tree Servicing, LLC having any interest in the note or right to enforce any rights under the note or deed of trust.

Presentation of Evidence Pursuant to the Federal Rules of Evidence

The Federal Rules of Evidence are clear and straight forward with respect to what constitutes proper and competent evidence. These Rules include the following.

Federal Rule of Evidence 602. Need for Personal Knowledge

> A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703. FN.2.

FN.2. WEINSTEIN'S FEDERAL RULES OF EVIDENCE MANUAL 2ND EDITION, MATTHEW BENDER & COMPANY, INC., ARTICLE VI, § 602.02

§ 602.02 Purpose and Applicability of Rule

[1] Personal Knowledge as Most Reliable Evidence

A witness may testify only about matters on which he or she has first-hand knowledge. The witness's testimony must be based on events perceived by the witness through one of the five senses.

The Rule is an extension of the law's usual preference that decisions be based on the best evidence available, although this preference is not an actual rule of evidence. The Rule acknowledges that distortion increases with transfers of testimony, and that the most reliable testimony is obtained from a witness who has actually perceived the event.

Rule 602 permits evidence of the requisite personal knowledge to be provided either through the witness's own testimony or through extrinsic testimony. The Rule authorizes the judge to exercise some, although minimal, control over the jury by empowering the judge to reject inherently incredible testimonial evidence, something that rarely occurs (see § 602.03).

Federal Rule of Evidence 701. Opinion Testimony by Lay Witnesses

> If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:
>
> (a) rationally based on the witness's perception;
>
> (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and

(c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702. FN.3.

FN.3. WEINSTEIN'S FEDERAL RULES OF EVIDENCE MANUAL 2ND EDITION, MATTHEW BENDER & COMPANY, INC., ARTICLE VII, § 701.03, 701.06

§ 701.03 Requirements for Admissibility

[1] Opinion Must Be Based on Personal Perception

To be admissible, lay opinion testimony must be based on the witness's personal perception. This requirement is no more than a restatement of the traditional requirement that most witness testimony be based on first-hand knowledge or observation.

In its purest form, lay opinion testimony is based on the witness's observations of the event or situation in question and amounts to little more than a shorthand rendition of facts that the witness personally perceived. Lay opinion testimony is also admissible when the opinion is a conclusion drawn from a series of personal observations over time. Most courts have also permitted lay witnesses to testify under Rule 701 to their opinions when those opinions are based on a combination of their personal observations of the incident in question and background information they acquired through earlier personal observations....

§ 701.06 Trial Judge Has Broad Discretion to Admit or Exclude Lay Opinion Testimony

Trial courts have broad discretion in determining whether to admit or to exclude lay opinion testimony. This discretion applies both to the general decision to admit or exclude the evidence and to the subsidiary questions included in that determination:

Whether the opinion is based on the witness's personal perception.

Whether the opinion is rationally connected to the witness's personal perceptions.

Whether the opinion will assist the trier of fact in understanding the witness's testimony or in determining a fact in issue. (cont.)

Whether the probative value of the testimony outweighed its potential prejudicial effect.

Federal Rule of Evidence 801. Definitions That Apply to This Article; Exclusions from Hearsay

(a) Statement. "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) Declarant. "Declarant" means the person who made the statement.

(c) Hearsay. "Hearsay" means a statement that:

(1) the declarant does not make while testifying at the current trial or hearing; and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

Federal Rule of Evidence 802. The Rule Against Hearsay

Hearsay is not admissible unless any of the following provides otherwise:

- a federal statute;
- these rules; or
- other rules prescribed by the Supreme Court.

Rule 901. Authenticating or Identifying Evidence

(a) In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

Discussion

The testimony of Elizabeth Corby does not appear to be based upon her personal knowledge. Nothing has been presented by which the court can believe that Ms. Corby has personal knowledge of what happened in 2007 between the Debtor and Bank of America, N.A. Her willingness to testify as to “facts” and “events” in 2007 taints the credibility of the balance of her testimony.

Further impairing Ms. Corby’s testimony is how she carefully avoids stating who is in possession of the note and where the “true and accurate copies” of the note and deed of trust were obtained. These statements are merely created out of hole-cloth.

Ms. Corby’s testimony does not provide a basis for granting relief from the stay. Rather, it appears that Ms. Corby is a “witness for hire” who is engaged to sign prepared statements without regard to her actual knowledge. In her declaration, Ms. Corby offers to testify competently and truthfully before this court. The court accepts her offer and will extend the invitation by order to appear at an Order to Show Cause hearing concerning the motion and her declaration.

As addressed above, while low, there is still some need for a movant to show a reason why it is before the court and that it is entitled to the relief requested. A basic principal of American Jurisprudence is that the law does not condone the "officious intermeddler." One is not allowed to assert claims or rights in which he or she has no interest. In the federal courts, this is the Constitutional requirement of "standing."

> Article III of the Constitution confines federal courts to decisions of "Cases" or "Controversies." Standing to sue or defend is an aspect of the case-or-controversy requirement. (Citations omitted.) To qualify as a party with standing to litigate, a person must show, first and foremost, "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent.' (Citations omitted.)...Standing to defend on appeal in the place of an original defendant, no less than standing to sue, demands that the litigant possess 'a direct state in the outcome.' (Citations omitted.)

Arizonans for Official English v. Arizona, 520 U.S. 43, 64, 117 S.Ct. 1055 (1997).

Here, the court cannot divine why or how Green Tree Servicing, LLC is before the court. If it is providing services as a loan servicer, that could have been simply stated. It chose not to so do. If Green Tree Servicing, LLC now owns the note, it could have simple stated that in the motion and how it asserts that it has acquired the note or right to enforce the note. It chose not to so do.

Green Tree Loan Servicing, LLC is not writing on a clean slate. On two prior occasions this court has brought Green Tree Servicing, LLC in before in to address misrepresentations that it was a creditor in bankruptcy cases. The court now has an unrelated third case, Ernesto and Kathleen Romo, Bankr. E.D. Cal. 09-32288, before it in which Green Tree Servicing, LLC appeared and filed an unsubstantiated notice of transfer of claim, asserting that it was in the owner.

In connection with other cases this court has ordered Green Tree Servicing, LLC to only file proofs of claim or represent itself to be the creditor when it is actually the creditor as defined by 11 U.S.C. § 101(10), and to correctly identify the creditor when it is doing so as the loan servicer for the creditor. *In re Edwin and Cynthia L. Crane*, Bankr. E.D. Cal. 11-27805, Order Dckt. 124. In the bankruptcy case of John and Susan Jones, Bankr. E.D. Cal. 11-21713, Green Tree Loan Servicing, LLC filed a Notice of Transfer of Claim, similar to the present notice, in which it purported to be the creditor. Pursuant to the court's order to show cause in that case, Green Tree Loan Servicing, LLC represented to the court that such transfer document had been filed in error. Green Tree Loan Servicing, LLC stated to the court,

> The filing of the Transfer of Claim ('TOC'), which is the subject of the OSC, was a mistake. Green Tree filed the TOC because it was under the mistaken impression that filing a TOC was the proper procedural mechanism for ensuing that Green Tree would receive service of pleadings filed in the Debtors' Bankruptcy Case. However, Green Tree was mistaken. Green Tree should have filed a Request for Special Notice instead. Green Tree apologizes for its error and submits that the filing of the TOC was not done with the intent to mislead the Court or any other party.
> ...
> A. The Filing of the TOC Was a Mistake.

> The filing of the TOC was a mistake. The TOC should not have been filed, as the claim of the BONY [Bank of New York Mellon] was not transferred to Green Tree. Rather, the servicing obligations for the BONY were transferred from BOA [Bank of America, N.A.] to Green Tree. As such, Green Tree should have filed a Request for Special Notice, to ensure that it would obtain service of all pleadings filed in the Bankruptcy Case so that it could carry out its servicing obligations on behalf of the BONY. The filing of the TOC was not done with the intent to mislead the Court or cause confusion to any party. See Declaration of Herschel Hoyt [Recovery Bankruptcy Supervisory at Green Tree Servicing, LLC].
>
> ...
>
> In the future, Green Tree will not file a TOC unless a claim, as defined by § 101(5), has been transferred to Green Tree. In the circumstance where only servicing obligations on behalf of a c1aimholder are transferred to Green Tree, it will file a Request for Special Notice, to ensure that it receives service of pleadings, such that it is able to carry out its obligations as servicer for the c1aimholder. Based on the foregoing, and the declarations of Nathan F. Smith and Herschel Hoyt, Green Tree respectfully requests that the Court not impose sanctions upon it for the filing of the TOC and enter an order discharging the OSC.

Green Tree Loan Servicing, LLC response to Order to Show Cause, 11-21713, Dckt. 100. Based upon the representations of error, the court discharged the order to show cause in the Jones case.

Now the court has Green Tree Servicing, LLC showing up in new cases presenting itself as the creditor. This is contrary to the prior statements provided by Green Tree Servicing, LLC and testimony under penalty of perjury.

In the present case a Proof of Claim was filed by Green Tree Servicing, LLC, "as the authorized servicer for Fannie Mane, as owner and holder of account/contract originated by Bank of America, N.A." Proof of Claim No. 4. From reviewing the Proof of Claim, this appears to be a claim based on the Note for which Green Tree Servicing, LLC is now before the court.

While the court is pleased that Green Tree Servicing, LLC is comply with the prior order to correctly identify the creditor, it is not a license to file other pleadings in which the creditor is not identified and the basis for Green Tree Servicing, LLC being before the court is hidden. Based on the Proof of Claim, Green Tree Servicing, LLC may well have falsely represented in the Motion that an obligation is owed to Green Tree Servicing, LLC.

In both this case and *In re Romo* the court will issue Orders to Show Cause for Green Tree Servicing, LLC, the apparently creditors, the witnesses providing declarations, and their respective attorneys to appear and address these issues.

If Green Tree Servicing, LLC is operating as a loan servicer, that can clearly and simply be stated. Instead, it appears that Green Tree Servicing, LLC has, at best, its attorneys intentionally preparing misleading pleadings,

and at best is allow its attorney to prepare misleading pleadings to obtain order from the court.

The issue of properly identifying the creditor is not an issue related only to motions for relief from the stay. This court has previously expressed concern that incorrectly identifying the loan servicer as the creditor could well be part of a scheme between the loan servicer, attorneys, and creditor to mislead the debtor, Chapter 13 Trustee, and court into entering ineffective orders – such as valuing a secured claim or confirming a plan. With the orders entered as against the loan servicer, posing as the creditor, the actual creditor could later disavow any part of the orders and assert they are void on Due Process grounds. This led to the court having ordered Green Tree Servicing, LLC to correctly identify the creditor when it is filing claims as a loan servicer.
obtuse pleadings

The Motion is denied.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief From the Automatic Stay filed by Green Tree Servicing, LLC having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion requesting relief from the automatic stay for Green Tree Servicing, LLC is denied.

2. 12-35747-E-7 LILYA RAKHUBA
GR-1 Oxana V. Kozlov

CONTINUED OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 7-11-13 [147]

CONT. FROM 8-29-13

Notice Provided: The Notice of Hearing and Opposition on Trustee's Motion to Dismiss was served on Debtor, Counsel for Debtor, Chapter 7 Trustee and the Office of the U.S. Trustee on July 11, 2013. 49 days notice of the hearing was provided.

PRIOR HEARING

Trustee filed a Motion to Dismiss for Failure to Appear at section 341(a) Meeting of Creditors due to Debtor and Counsel's failure to appear.

Debtor filed opposition to the Motion to Dismiss on the grounds that Debtor never received the 341 meeting notice. Prior to conversion, the Debtor filed a notice of change of address, but the notice went to the old address. The Debtor states she will appear at the continued meeting to be held on September 3, 2013.

CONTINUANCE

The court continued the hearing to allow debtor to appear at the continued meeting.

The Trustee filed a Trustee Report of No Distribution on September 4, 2013, stating that the 341 meeting was concluded. The Debtor having appeared at the continued 341 meeting, the court denies the Motion to Dismiss.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

Local Rule 9014-1(f)(3).

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 16, 2013. By the court's calculation, 2 days' notice was provided.

Tentative Ruling: The Motion Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Incur Debt. Oral argument may be presented by the parties at the schedules hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion seeks permission to purchase a 2008 Honda Accord, which the total purchase price is $15,597.37, with $4,000.00 down and monthly payments of $371.52 a month. Debtor's previous vehicle, after being totaled, netted insurance proceeds. Debtor plans to use the insurance proceeds as the down payment of the used vehicle and seeking leave from this court to finance the remaining amount at 13.99% interest.

Debtor brought a similar motion to incur debt, which was heard and denied on September 10, 2013. The court was concerned with the 15.99% interest rate proposed by the Debtor. Debtor states she has visited a number of different dealerships and a credit union to attempt to secure a deceased interest rate. Debtor states that she was offered a 13.99% interest rate at Auto Nation and returned to Marshall Auto Sales, where they matched the offer.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review

post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Although the court normally does not approve of interest rates above 10%, the court recognizes the substantial amount of time and effort Debtor put forth in order to reduce the interest rate to 13.99%. The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and Kathleen Sindelar, Debtor, is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 39.