

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

September 24, 2015 at 1:30 p.m.

1.	<u>09-27153</u> -E-13	GIL/JOANNE RAPOSO	ORDER TO APPEAR RE: ATTORNEY
	<u>15-2095</u>	RHS-1	REPRESENTATION
	RAPOSO ET AL V. OCWEN LOAN		9-4-15 [<u>29</u>]
	SERVICING, LLC ET AL		

Final Ruling: No appearance at the September 24, 2015 hearing is required.

The Order to Appear was served by the Clerk of the Court on Gil and Joanne Raposo ("Plaintiff-Debtor"), Plaintiff-Debtor's attorney, Nichole Glowin, Peter Cianchetta, Creditor, Trustee, and the Office of the U.S. Trustee on September 10, 2015. The court computes that 14 days' notice has been provided.

<p>The court's decision is to continue the hearing on the the Order to Appear to 1:30 p.m. on November 19, 2015.</p>

On September 4, 2015, the court issued an Order to Appear Re Attorney Representation. Dckt. 29. Specifically, the court ordered the following:

In light of the inconsistent statements made by Ocwen Loan Servicing, LLC in the Plaintiff-Debtor's bankruptcy case, the inconsistent statements in other bankruptcy cases and failure to respond to Rule 2004 subpoenas (which issues are being addressed through a separate order to show cause being issued by the court), the purported counsel for OneWest Bank, FSB and Ocwen Loan Servicing, LLC failing to appear at the August 27, 2015 hearing that they sought to have continued, and good cause appearing;

IT IS ORDERED that the court shall conduct a hearing regarding attorney representation at **1:30 p.m. on September 24, 2015**, in Department E of the United States Bankruptcy Court, 501 I Street, Sixth Floor, Sacramento, California.

IT IS FURTHER ORDERED that Nichole L .Glowin, Esq., of Wright, Finlay & Zak, LLP, as the attorney who filed the Stipulation to Continue purportedly for OneWest Bank, FSB and Ocwen Loan Servicing, LLC, and Peter Cianchetta, attorney for Plaintiff-Debtor, shall each appear at the September 24, 2015 hearing. No telephonic appearances are permitted for any attorneys attending the hearing, including any other attorneys

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from the Wright, Finlay & Zak, LLP who may choose to appear with Ms. Glowin or "monitor" the hearing.

IT IS FURTHER ORDERED that Nichole L Glowin and Wright Finlay & Zak, LLP shall file on or before **September 17, 2015**, a written Response, supported by credible, admissible evidence, identifying the representatives of Ocwen Loan Servicing, LLC and the representatives of OneWest Bank, LLC with which they communicated with about serving as attorneys for those respective parties and who the persons were that agreed to engage the services of Wright, Finlay & Zak, LLP to represent Ocwen Loan Servicing, LLC and to represent OneWest Bank, FSB.

IT IS FURTHER ORDERED that Wright Finlay & Zak, LLP shall include with its Response a copy of the fully executed engagement letter with Ocwen Loan Servicing, LLC and the fully executed engagement letter with OneWest Bank, FSB (each redacted as appropriate) for the legal services to be provided to each of the two named defendants in connection with this Adversary Proceeding. If such engagement was based on a power of attorney being asserted by either Ocwen Loan Servicing, LLC or OneWest Bank, FSB, a copy of that power of attorney shall be included with the Response (redacted as appropriate).

BACKGROUND

In this Adversary Proceeding, Gil Mariano and Joanne Raposo ("Plaintiff-Debtor") sued both OneWest Bank, FSB and Ocwen Loan Servicing, LLC for the failure to reconvey a deed of trust following the completion of the Chapter 13 plan and payment in full of the allowed secured claim for which the deed of trust was collateral. Neither Ocwen Loan Servicing, LLC nor OneWest Bank, FSB responded to the complaint or filed any opposition to entry of the default judgments against each of them.

In *Raposo v. Ocwen, et al.*, the court perceives that the need to sue both Ocwen Loan Servicing, LLC and OneWest Bank, FSB was caused by the documents filed in the *Raposo* bankruptcy case. Bankr. E.D. Cal., Case No. 09-27153. In the *Raposo* bankruptcy case, Proof of Claim No. 7 was filed on May 27, 2009, by OneWest Bank, FSB. On September 4, 2015, a Notice of Transfer of Claim was filed stating that the claim of OneWest Bank, FSB had been transferred to Owen Loan Servicing, LLC. Case No. 09-27153, Dckt. 96. No copies of any transfer documents were attached to the Notice and no amended Proof of Claim No. 7 setting forth Owen Loan Servicing, LLC standing as a creditor had been filed. The Certificate of Service for the Notice of Transfer of Claim did not provide notice to OneWest Bank, FSB that Owen Loan Servicing, LLC asserted that OneWest Bank, FSB was no longer the creditor and that Owen Loan Servicing, LLC has obtained all of the rights held by OneWest Bank, FSB for the debt upon which Proof of Claim No. 7 was based. The Notice of Transfer in the *Raposo* bankruptcy case was signed by attorney Audrey J. Dixon (Fla. Bar No. 39288), of the Robertson, Anschutz & Schneid, PL law firm, as the attorney for Ocwen Loan Servicing, LLC.

The Plaintiff-Debtor set for hearing two motions for entry of defaults judgments; one against Ocwen Loan Servicing, LLC and the other against OneWest

Bank, FSB. The hearings for the two motions were scheduled for August 27, 2015. Having provided at least twenty-eight days notice of the hearing, written oppositions were required to be filed at least fourteen days prior to August 27, 2015. Local Bankruptcy Rule ("LBR") 9014-1(f)(1).

On August 25, 2015, at 4:00 p.m., a Stipulation to Continue Hearing was filed. Dckt. 21. The Stipulation is purported to have been executed between Plaintiff-Debtor, Ocwen Loan Servicing, LLC, and OneWest Bank, FSB. The Stipulation is executed for Ocwen Loan Servicing, LLC and OneWest Bank, FSB by Nichole L. Glowin, Esq., of the Wright, Finlay & Zak, LLP law firm. This would be the first appearance in the Adversary Proceeding by Ms. Glowin or any attorney for the Wright, Finlay & Zak, LLP law firm for either Ocwen Loan Servicing, LLC or OneWest Bank, FSB.

On the morning of August 27, 2015, when the court became aware of the Stipulation, the courtroom deputy for Department E called both Peter Cianchetta, attorney for Plaintiff-Debtor, and Nichole Glowin. The message was left for both that the matter had not been continued by the court, as there were some issues for the attorneys to address. Telephonic appearances were available for both attorneys and the court pre-notified CourtCall (the telephonic appearance service) that the court authorized day-of-the-hearing addition of either attorney (or other attorney from their respective firms).

When the court called the two motions on the 1:30 p.m. calendar, Mr. Cianchetta appeared in court. No appearance was made by Ms. Glowin or anyone from her firm to address the request to continue the hearing and the questions of the court. Mr. Cianchetta stated that he had spoken with Ms. Glowin about the court not having continued the hearing based on the Stipulation.

The court's concerns are stated on the record and available for Ms. Glowin, the purported counsel for both OneWest Bank, FSB and Ocwen Loan Servicing, LLC. The basic issue the court was seeking to address was whether the Wright, Finlay & Zak, LLP law firm had been engaged by officers of both OneWest Bank, FSB and Ocwen Loan Servicing, LLC, or whether Ocwen Loan Servicing, LLC had engaged the law firm's services, representing that it had a power or other authorization that allowed it to act for OneWest Bank, FSB.

The court's concerns relate to conduct of Ocwen Loan Servicing, LLC in other cases in which it has misidentified itself as the "creditor," has failed to identify the actual creditor when requested by consumer counsel, and has refused to comply with Bankruptcy Rule 2004 subpoenas.

The fact that counsel purporting to represent Ocwen Loan Servicing, LLC and OneWest Bank, FSB failed to appear at the August 27, 2015 hearing when such counsel had been advised that the court was conducting the hearing raises additional concerns. Such counsel was seeking to have the hearings continued but was unwilling to attend the hearing to address any questions the court has concerning such a continuance.

The court honored Plaintiff-Debtor counsel's word that Plaintiff-Debtor agreed to continue the hearings. The hearings have been continued by separate order of the court.

NICHOLE GLOWIN'S RESPONSE

Nichole Glowin ("Glowin"), associate with the Law Offices of Wright, Finlay & Zak, LLP, ("WFZ") filed a response to the instant Order to Appear on September 17, 2015. Dckt. 35.

Glowin declares that WFZ has been retained as counsel of record for Defendants Ocwen Loan Servicing, LLC ("Ocwen") and OneWest Bank, FSB ("OneWest") on all litigation involving Debtor's primary residence, located at 9090 Locust Street, Elk Grove CA ("Property"); this representation includes Adversary Proceeding No. 15-02095. Dckt. 35 ¶ 1, 9; Dckt. 36, Exhibit 4. Glowin has been the associate at WFZ responsible for oversight of Adversary Proceeding No. 15-02095 since August 5, 2015. Dckt. 35 ¶ 2; Dckt. 36, Exhibit 4.

Glowin's Declaration asserts that around October 2, 2006, Gil Mariano Raposo and Joanne Carol Raposo ("Debtors") executed a Home Equity Line of Credit ("HELOC") with IndyMac Bank, FSB. Dckt. 35 ¶ 3; Dckt. 36, Exhibit 1. The HELOC was secured by a second credit priority position Deed of Trust recorded against the Property. Dckt. 35 ¶ 3; Dckt. 36, Exhibit 2. Further, Glowin asserts that around April 16, 2009, (the time Plaintiff-Debtor filed the Chapter 13 petition) Deutsche Bank National Trust Company, as Indenture Trustee for IndyMac Home Equity Mortgage Loan Asset-Back Trust, Series 2006-H4 ("Investor") owned and held the HELOC and Deed of Trust; OneWest acted as servicer of the HELOC and Deed of Trust on behalf of Investor. Dckt. 35 ¶ 4, 5. Glowin asserts OneWest transferred its servicing rights to Ocwen; Ocwen sent Debtors a letter dated November 15, 2013 of this transfer. Dckt. 35 ¶ 6; Dckt. 36, Exhibit 3.

Glowin declares that on May 14, 2015, Plaintiff-Debtor filed the Adversary Proceeding No. 15-02095 to compel Defendants, Ocwen and OneWest, to record a release of the Deed of Trust on the Property because the HELOC and Deed of Trust were allegedly avoided in the bankruptcy case. Dckt. 35 ¶ 7. This court scheduled a hearing on August 27, 2015, to address the Default Judgment filed by Debtors against Defendants on this issue. Case No. 15-02095, Dckt. 25. Between August 5, 2015, and August 25, 2015, Glowin asserts she spoke with counsel for Plaintiff-Debtor, the Law Offices of Peter Cianchetta, and agreed to continue the hearing to allow Ocwen time to record a release of the Deed of Trust and to allow Ocwen to pay the damages in the Default Motion. Dckt. 35 ¶ 10; Dckt. 36, Exhibits 5, 6.

On August 27, 2015, Glowin asserts she received the voicemail message from this court informing Glowin the court would not enter the order to continue the Default Motion hearing. Dckt. 35 ¶ 11. Glowin alleges she was not informed that her presence at the August 27, 2015 hearing was mandatory, nor was she aware that the court had questions on Glowin's role in this action; instead, she requested Cianchetta to appear for all parties to request a continuance due to a pending settlement. Dckt. 35 ¶ 11.

Glowin states that on September 2, 2015, Ocwen executed a Full Reconveyance regarding the Deed of Trust. Dckt. 36, Exhibit 5 and 6. Glowin asserts that the parties are in the process of completing a full settlement of the Adversary Proceeding No. 15-02095 by addressing the remaining issue of the damages set forth in the Default Motion.

Additionally, Glowin alleges that this Declaration is only an initial response to the Order to Appear, and that she will file a supplemental

declaration with supporting documents as soon as the proof is received. Dckt. 35 ¶ 13. Glowin asserts she is drafting a stipulation to file to continue the hearing on the Order to Appear by Cianchetta's request.

DISCUSSION

As requested by the parties, the court has continued the hearing to 1:30 p.m. on November 19, 2015. The court has also ordered Ms. Glowin and the Wright, Finlay & Zak, LLP law firm to provide additional information and legal authorities for the continued hearing.

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 Order to Appear having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, the court having previously continued the hearing to 1:30 p.m. on November 19, 2015 (Dckt. 40); and good cause appearing;

IT IS ORDERED that the continued hearing will be conducted at 1:30 p.m. on November 10, 2015, with no telephonic appearances permitted for any attorneys attending the hearing, including any other attorneys from the Wright, Finlay & Zak, LLP who may choose to appear with Ms. Glowin or "monitor" the hearing.