

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

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In re:

CAL VERN SISCHO and KATHY SUE  
SISCHO,

Case No. DG 10-08600  
Chapter 13  
Hon. Scott W. Dales

Debtors.

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ORDER

PRESENT: HONORABLE SCOTT W. DALES  
Chief United States Bankruptcy Judge

Chapter 13 debtors Cal Vern Sischo, Sr., and Kathy Sue Sischo (the “Debtors”) filed an Objection to the Allowance of Proof of Claim No. 10-1 filed by BAC Home Loan Servicing LP (the “Objection,” DN 74), and despite proper service, no interested party opposed the Objection. The court held a telephonic hearing on July 28, 2014 to consider the Objection, and heard argument from Debtors’ counsel and counsel for chapter 13 trustee Brett N. Rodgers (the “Trustee”). The court has reviewed the Objection and the Debtors’ proposed order sustaining the Objection, and has considered the oral arguments of counsel. For the following reasons, the court will overrule the Objection.

From the uncontested Objection, it appears that BAC Home Loan Servicing LP (“BAC”) timely filed its proof of claim (“Claim No. 10-1”), asserting a junior lien against the Debtors’ residence. The Debtors’ confirmed plan strips off BAC’s lien, as is the custom in our district in cases involving wholly-unsecured junior liens. *See In re Fuller*, 255 B.R. 300 (Bankr. W.D. Mich. 2000); *In re Phillips*, 224 B.R. 871 (Bankr. W.D. Mich. 1998). Accordingly, the plan directs the Trustee to pay BAC as an unsecured creditor.

After the Trustee sent a March 2014 dividend check to BAC, BAC returned the check to the Trustee with a cover letter indicating that “[t]his loan has been service released to: Ocwen Loan Servicing, LLC . . . .” *See* Objection at ¶ 5 and Exh. B. It is not clear from BAC’s letter, or from the Objection, whether BAC transferred its claim to Ocwen, or simply the servicing of the claim. In the Objection, and again during the telephone hearing, Debtors’ counsel recited his efforts to get BAC or Ocwen Loan Servicing, LLC (“Ocwen”) to amend the claim or file notice of transfer. He further explained that he undertook this action, and filed the Objection, at the Trustee’s request even though the Debtors are in fact indifferent to whether BAC or Ocwen or either of them accepts the payments.

In frustration, the Debtors ask the court to order that “Claim No.10-1 is disallowed as to the name of BAC Home Loans Servicing, LP, effective March 1, 2014” and that “Claim No. 10-1 is amended to revise the name of the servicing party, Ocwen Loan Servicing, LLC, effective March 1, 2014.” *See* Proposed Order (DN 74-2).

Fairly read, the Objection does not seek disallowance of Claim No. 10-1 as much as it seeks a remedy for noncompliance with the rules governing claims transfers. *See* Fed. R. Bankr. P. 3002(e)(2) (transfer of claim other than for security after proof filed). For several reasons, the court cannot grant the relief in the form the Debtors request.

First, the court’s ruling will not affect the Debtors’ pecuniary interests in any way. As long as the Debtors make all payments under their plan, and otherwise satisfy the requirements for discharge under § 1328, their discharge will absolve them of any continuing personal obligation on account of Claim No. 10-1 regardless of who holds the claim. And, under the plan, the underlying lien will be “stripped off” and therefore discharged when they complete their payments. Moreover, the court perceives no possible effect of this contested matter on their

exemption rights. In short, the court is not persuaded that the Debtors have standing to file the Objection under the circumstances, as their counsel conceded during oral argument.

Second, because the whole point of the Objection is to ensure that the Trustee pays Claim 10-1, the remedy of “disallowance” does not fit. *See* 11 U.S.C. § 502 (Allowance of claims or interests). Moreover, there is nothing objectionable about Claim 10-1 as far as the Objection reports, and certainly neither the Debtors nor the Trustee has identified any of the grounds for disallowance enumerated in § 502(b). Rather, the outcome of the Objection, if successful, is more akin to filing a protective claim on BAC’s behalf, to make sure the Trustee pays the claim, rather than having it disallowed which would preclude the Trustee from paying it. Because BAC filed its own claim, however, the Debtors may not file a protective claim on the creditor’s behalf, even if such a protective claim were timely. *See* Fed. R. Bankr. P. 3004.

Third, as noted above, the nature of Ocwen’s interest is not clear. Ocwen may own the claim as “transferee,” or may only be the agent for purposes of servicing the loan. If Ocwen is the transferee, it must file “evidence of the transfer.” Fed. R. Bankr. P. 3001(e)(2). It has not done so. And until it does, the parties should treat BAC as the holder of the claim.

If, however, Ocwen is merely the servicer, it should take steps to amend the claim, as BAC’s agent, to update the address for purposes of receiving payment and notices. *See* Official Form B10 (Instructions) (citing Fed. R. Bankr. P. 2002(g) and stating that “[t]he creditor has a continuing obligation to keep the court informed of its current address.”). It has not done this either. Because the court cannot determine the nature of BAC’s or Ocwen’s interest at this point, it is unwilling to disallow the claim or deem it amended, as the Debtors’ proposed order suggests.

Instead, as far as the claims register and the docket shows, the situation at present involves unclaimed funds, a problem trustees routinely confront with checks that are returned uncashed, usually by the U.S. Postal Service, marked as undeliverable, and without any explanation. The difference here is that BAC has provided some explanation of its reason for not cashing the check. Regardless, it plainly appears that the entity the Trustee is required to pay pursuant to the confirmed plan and proof of claim has returned the dividend check uncashed or “unclaimed,” and the Bankruptcy Code and Rules provide for this situation. *See* 11 U.S.C. § 347(a) (unclaimed property shall be “disposed of under chapter 129 or title 28”); Fed. R. Bankr. P. 3011. Until BAC or Ocwen or someone else with a colorable right to amend or perfect the transfer of Claim No. 10-1 files an appropriate notice or amendment or other document with the court, the Trustee shall treat the checks he tenders to BAC (and that are returned) as unclaimed funds, segregating them and disposing of them in accordance with § 347(a).

Finally, because the Debtors, the Trustee, and the holder of Claim No. 10-1 are bound by the confirmed plan and its provision for paying the claim, the court does not regard the claims allowance process as an appropriate avenue for post-confirmation relief. *See* 11 U.S.C. § 1327(a); *cf. In re Hudson*, 260 B.R. 421 (Bankr. W.D. Mich. 2001).

For all of these reasons, the court will overrule the Objection.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Objection (DN 74) is OVERRULED.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Cal Vern Sischo and Kathy Sue Sischo, BAC

Home Loans Servicing, LP, Ocwen Loan Servicing, LLC, Brett N. Rodgers, Esq., chapter 13  
Trustee, Jeremy J. Nastoff, Esq., Martin L. Rogalski, Esq., and the United States Trustee.

END OF ORDER

**IT IS SO ORDERED.**

Dated July 30, 2014



A handwritten signature in black ink, appearing to read "S. Dales", written over a horizontal line.

Scott W. Dales  
United States Bankruptcy Judge