

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF RHODE ISLAND

**IN RE: Rolando and Daysi De Los Santos
Debtor(s)**

**CHAPTER 13
CASE NO. 24-10003**

OBJECTION TO CLAIM #3

The Debtors, Daysi and Rolando De Los Santos (“the Debtors”), hereby submit this objection (the “Objection”) pursuant to sections 105(a) and 502 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 3007 of the **Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”)**, Claim #3 filed by TransAm Holdings, LLC (“Creditor”) and serviced by AHP Servicing.

JURISDICTION

1. This Court has jurisdiction to consider this Objection pursuant to **28 U.S.C. §§ 157** and **1334**. This is a core proceeding pursuant to **28 U.S.C. § 157(b)**. Venue is proper before this Court pursuant to **28 U.S.C. §§ 1408** and **1409**.

2. The statutory predicates for the relief requested herein are sections 105(a) and 502 of the Bankruptcy Code and Bankruptcy Rule 3007.

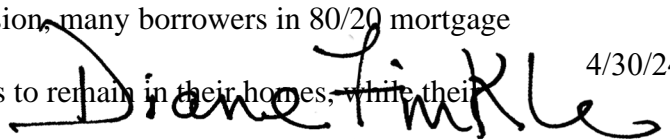
BACKGROUND

Zombie Second Mortgages

1. This case arises from the recent wave of attempts to collect “zombie” second mortgages—largely, subprime second mortgages originated before the 2007–08 mortgage crisis.

2. Prior to the mortgage crisis, second mortgages were often used in “80/20” mortgage schemes, which allowed underqualified borrowers to finance home purchases through two mortgages—without a down payment and without having to pay for mortgage insurance.

3. Consequently, during the Great Recession, many borrowers in 80/20 mortgage schemes were required to modify their first mortgages to remain in their homes, while their

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THE DEBTORS HAVING RAISED SUFFICIENT CHALLENGES TO OVERCOME THE PRESUMPTION OF THE VALIDITY OF THE CLAIM AND THE CLAIMANT HAVING FAILED TO RESPOND/OBJECT, DEBTORS' OBJECTION TO CLAIM #3 IS SUSTAINED AND THE CLAIM IS DISALLOWED IN ITS ENTIRETY.

second mortgages were charged off or significantly reduced or forgiven as part of the HAMP Second Lien Modification Program (“2MP Program”). *See*

<https://www.hud.gov/sites/documents/MAY2014MHAREPORTFINAL.PDF> (“Provides modifications and extinguishments on second liens when there has been an eligible first lien modification on the same property”) (last visited Aug. 17, 2023).

4. Once charged off or extinguished, consumers no longer received statements or heard anything about their second mortgages, sometimes for more than a decade.

5. Because charge-offs or cancellations typically happened around the time that consumers modified their first mortgages, many believed that the modification of their first mortgage also resolved their second mortgage—a belief that was perpetuated by the fact that consumers no longer received statements relating to their second mortgages.

6. Unbeknownst to many consumers, however, their second mortgages did not go away.

7. Instead, they were sold—often several times—to various debt buyers and subprime lenders.

8. Now, with the recent surge in housing prices, consumers have significant equity in their homes that make charged-off second mortgages highly profitable.

9. Debt collectors, like AHP Servicing, are now seeking to collect on defaulted second mortgages and, if consumers cannot pay, foreclosing on homes, selling the property, and taking the (often significant) equity to pay the outstanding loan.

10. This highly profitable enterprise has surged in the past year, as home prices have increased and COVID foreclosure moratoriums have expired.

11. Even worse, debt collectors are not collecting the correct amount due on the mortgages when they are charged off, as the law requires.

12. Under Truth-in-Lending-Act regulations, once a mortgage is charged off, the servicer is no longer required to send monthly statements, but it cannot assess any additional late fees or interest on the account. **12 C.F.R. § 1026.41(e)(6)(i)**.

13. Instead, the servicer may resume charging interest and fees on the account only if it resumes sending monthly statements, but it may not retroactively assess any fees or interest for the time during which statements were not sent. **12 C.F.R. § 1026.41(e)(6)(ii)**.

14. Yet services are retroactively assessing late fees and adding interest to the loans—amounts that were waived by the prior loan servicers—and are seeking to collect vastly inflated amounts from consumers.

15. When debt collectors, like AHP Servicing, can foreclose on properties and collect these improper charges, it not only robs the consumers of their homes, but it also strips them of tens of thousands of dollars in equity—one of the primary ways that low-income and middle-class families can build wealth.

The Debtors' Zombie Second Mortgage

1. On or about May 26, 2005, the Debtors purchased 48 McCabe Avenue, Pawtucket, RI.
2. As was common at the time, The Debtors financed the purchase of the house with two loans. Both loans were with First Franklin, A Division of National City Bank of Indiana: a first mortgage (“First Mortgage”) which covered 80% of the purchase price and a second mortgage (“Second Mortgage”) that covered 20% of the purchase price. Both loans were executed on June 6, 2005. Corresponding mortgages were filed in the Pawtucket land records on June 7, 2005. The Second Mortgage is the subject of this objection.

3. On June 30, 2005, the Second Mortgage was transferred from First Franklin Financial, A Division of National City Bank of Indiana to First Franklin Financial Corporation. A corresponding Assignment of Mortgage or Deed of Trust was filed in the Pawtucket land records on August 12, 2005.
4. On June 30, 2005, the Second Mortgage was allegedly transferred from First Franklin Financial Corporation to TransAm Holdings, LLC. A corresponding Assignment of Mortgage or Deed of Trust was not filed in the Pawtucket land records until February 16, 2023.
5. By information and belief, TransAm Holdings, LLC did not exist as a registered entity on June 30, 2005.
6. The Debtors completed a loan modification of the First Mortgage on or about July 4, 2015.
7. The Debtors have continued to receive statements for the First Mortgage and maintained payments on the First Mortgage.
8. The Debtors made payments on the Second Mortgage for a period of time.
9. The Second Mortgage ceased sending monthly loan statements.
10. Indeed, the Debtors do not recall receiving any contact regarding the Second Mortgage until an April 18, 2023 Default Notice from AHP Servicing's attorney.
11. The Second Mortgage matured on or about July 1, 2020.
12. The April 18, 2023 Default Notice stated that the Debtors owed \$115,030.93 on the Second Mortgage.
13. This statement was false because it included interest that had been assessed to their loan during a time in which they were not receiving monthly statements.

14. After AHP Servicing and its attorney sent the defective notice, it took additional actions to foreclose on the Debtors' home, including advertising the foreclosure sale.
15. The Debtors did not understand how their home had been referred to foreclosure, let alone why the balance was so high.
16. Because the Debtors ceased getting communication from the Creditor or its predecessors regarding the second mortgage, they believed that they no longer owed the debt.

RELIEF REQUESTED

1. Pursuant to sections 105(a) and 502 of the Bankruptcy Code and Bankruptcy Rule 3007, the Debtors seek entry of an order disallowing Claim #3 in its current amount.

BASIS FOR RELIEF

1. Section 502 of the Bankruptcy Code provides, in pertinent part:

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

11 U.S.C. § 502(a).

2. Bankruptcy Rule 3001(f) provides that “[a] proof of claim executed and filed in accordance with [the Bankruptcy Rules] shall constitute prima facie evidence of the validity and amount of the claim.” **Fed. R. Bankr. P. 3001(f).**

3. As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof of claim constitutes *prima facie* evidence of the validity and the amount of the claim under section 502(a) of the Bankruptcy Code. *See In re Vanegas*, **290 B.R. 190, 193** (Bankr. D. Conn. 2003) (citing Bankruptcy Rule 3001(f) and holding that the evidence submitted by the debtor was insufficient to overcome the validity and amount of bank's proof of claim); *In re Rockefeller*

Ctr. Props., 272 B.R. 524, 539 n.13, 553 (Bankr. S.D.N.Y. 2000) (citing Bankruptcy Rule 3001(f) in analysis of debtors' objection to former tenant's proof of claim and granting partial summary judgment with respect to the objection where there were no material facts in dispute).

4. To receive the benefit of prima facie validity, however, "the proof of claim must set forth the facts necessary to support the claim." In re Marino, 90 B.R. 25, 28 (Bankr. D. Conn. 1988) (holding that claimant's proof of claim was not entitled to the presumption of prima facie validity because it did not set forth the necessary facts); see also Fed. R. Bankr. P. 3001(c)(1) (requiring claimant to provide documentation where claim is based on a writing).

5. A party objecting to the proof of claim must only provide evidence sufficient to negate the prima facie validity of the claim by refuting one or more of the facts in the filed claim. See *In re Waterman Steamship Corp.*, 200 B.R. 770, 774–75, 777 (Bankr. S.D.N.Y. 1996) (reopening discovery into asbestos claims due to insufficient information upon which to determine validity of claims). Once this occurs, "the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence." *In re WorldCom, Inc.*, No. 02-13533 (AJG), 2005 WL 3832065, at *4, *9 (Bankr. S.D.N.Y. 2005) (citing Bankruptcy Rule 3001(f) and holding that claimant did not meet its burden to prove validity of anticipatory breach and unjust enrichment claims, but that further evidence was needed to assess the merits of lack of good faith claim) (quoting *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173–74 (3d Cir. 1992)); see also *In re St. Johnsbury Trucking Co.*, 206 B.R. 318, 323, 328 (Bankr. S.D.N.Y. 1997) (citing Bankruptcy Rule 3001(f) and allowing claim where debtor failed to refute any of the material facts in proof of claim).

6. The claimant must prove the claim, not sit back while the objector attempts to disprove it. See *In re Bennett*, 83 B.R. 248, 252 (Bankr. S.D.N.Y. 1988) (holding

that debtor presented sufficient evidence to rebut the *prima facie* validity of claimant's claim and that claimant failed to prove claim by a preponderance of credible evidence).

OBJECTION TO CLAIM #3

1. Some or all of the amounts in the Claim are barred by the Statute of Limitations.
2. FDCPA bars some or all of the amounts claimed. Specifically, the Creditor violates § 1692e(10) of the FDCPA by using false representations to collect or attempt to collect debts from the Debtors by claiming it is owed interest for months that it did not send monthly statements. Furthermore, the Creditor violate **15 U.S.C. § 1692f(1)** by attempting to collect interest during the months that the Debtors did not receive monthly statements.
3. Some or all of the amounts claimed may have been charged off or cancelled. Those amounts should not have been included in the Proof of Claim.
4. The document by which the Creditor purports to be owner of the mortgage was executed at a time that the Creditor did not exist as a registered entity. Thus, the alleged transfer of ownership is both ineffectual and fraudulent.
5. Some or all of the amounts claimed are in violation of Rhode Island's Unfair and Deceptive Acts and Practices statute (R.I.G.L 6-13.1). Specifically, claiming ownership via a transfer made when the Creditor did not exist is unfair and deceptive to the Debtors. Also, failing to provide communication for years before starting the foreclosure process is unfair and deceptive.
6. The fraudulent actions listed above are grounds for equitable subordination under 11 U.S. Code § 510(c).
7. The Claim contains no accounting to prove the alleged amount due.
8. The lender has not provided proof that it is the current holder of the Note.

RESERVATION OF RIGHTS

1. The Debtors reserve the right to amend, modify, or supplement this Objection as to the Claim on any grounds not stated herein. In addition, the Debtors reserve the right to object to all other claims filed in the Debtors' Chapter 13 Case, include any other claims asserted by the Creditor. A separate notice and hearing will be scheduled for any such objection. This Objection does not constitute, and cannot form the basis of, any admission by the Debtors with respect to the validity or amount of the Claim.

2. Nothing herein shall constitute a waiver of any rights that the Debtor may have to (a) bring avoidance actions under the applicable sections of the Bankruptcy Code against the Creditor or (b) exercise their right of setoff against the Creditor related to such avoidance actions.

WHEREFORE, the Debtors asks that this Court disallow Claim #3

Dated: April 12, 2024

Respectfully submitted,

Debtors Rolando and Daysi De Los Santos
By their Attorney

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NOTICE OF TIME TO RESPOND/OBJECT

Within fourteen (14) days if served electronically, as evidenced by the certification, and an additional three (3) days pursuant to **Fed. R. Bankr. P. 9006** if you were served by mail or other excepted means specified, any party against whom this paper has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Bankruptcy Court Clerk's Office, 380 Westminster Street, 6th Floor, Providence, RI 02903, (401) 626-3100. If no objection or other response is timely filed within the time allowed herein, the paper will be deemed unopposed and will be granted unless: (1) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (3) in the opinion of the Court, the interest of justice requires otherwise. If you timely file such a response, you will be given thirty (30) days notice of the hearing date for this objection.