

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	
)	
JOHN WAYNE ATCHLEY and)	CASE NO. 05-79232-MHM
ROBIN APRIL ATCHLEY,)	
)	CHAPTER 13
Debtors.)	
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)	
)	
DONALD F. WALTON,)	
United States Trustee for Region 21,)	
)	
Plaintiff.)	
)	
v.)	Adv. Proc. No. _____
)	
COUNTRYWIDE HOME LOANS, INC.,)	
)	
Defendant.)	
)	
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COMPLAINT FOR INJUNCTIVE RELIEF AND SANCTIONS

Plaintiff, Donald F. Walton, United States Trustee for Region 21 (the “United States Trustee”), by and through his duly authorized counsel, seeks injunctive relief and sanctions, pursuant to 11 U.S.C. § 105(a) and this Court’s inherent equitable powers, against Countrywide Home Loans, Inc. (“Countrywide”) for engaging in bad faith conduct that abused the judicial process.

PARTIES

1. Donald F. Walton is the United States Trustee for Region 21. 28 U.S.C. §§ 581(a)(21) and 585(a).

2. Countrywide is a corporation incorporated under the laws of the State of New York. It maintains its principal place of business in the State of California. Countrywide's agent for service of process is the Prentice-Hall Corporation System, Inc., 2730 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833.

JURISDICTION

3. The Court has jurisdiction over this lawsuit because it involves a core matter pursuant to 28 U.S.C. § 1334 and 28 U.S.C. §§ 157(a), (b)(2)(A), (b)(2)(B), (b)(2)(G).

4. This adversary proceeding relates to *In re John Wayne Atchley and Robin April Atchley*, a chapter 13 case pending before the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division, docketed as case number 05-79232-MHM.

5. Countrywide submitted itself to the jurisdiction of this Court when it filed a proof of claim in this case on or about January 5, 2006, which is docketed as claim number 6-1 (the "Proof of Claim"). A true copy of the Proof of Claim is attached as Exhibit 1.

6. Venue for this matter is proper pursuant to 28 U.S.C. § 1409.

7. The United States Trustee asks this Court to order injunctive relief and sanctions under 11 U.S.C. § 105(a) and under the inherent equitable authority of the Court.

FACTS

A. Background

8. On October 3, 2005, John Wayne Atchley and Robin April Atchley (collectively, the "Atchleys" or the "debtors") filed a voluntary chapter 13 petition. On that same date, the Atchleys filed a chapter 13 plan.

9. The Atchleys filed an amended chapter 13 plan on December 9, 2005.

10. On December 15, 2005, the Court entered an order confirming the Atchleys' amended chapter 13 plan. Pursuant to the confirmation order, the Atchleys' property, including property located at 942 Cable Road, Waleska, GA 30183 (the "Residence"), remained property of the estate. A true copy of the confirmation order is attached as Exhibit 2.

11. On January 5, 2006, Countrywide filed the Proof of Claim with this Court based on a secured claim against the Atchleys' Residence. *See* Exhibit 1. The Proof of Claim recites that the Atchleys' "current monthly payment amount is \$1,594.72."

12. Countrywide's Proof of Claim and subsequent pleadings contain incomplete and inconsistent information concerning Countrywide's interest in the debt secured by the Atchleys' Residence. The note attached to the Proof of Claim evidences a debt owed to American Freedom Mortgage, Inc., and no copy of any assignment transferring an interest in the mortgage to Countrywide or any other entity has been filed. *See* Exhibit 1.

B. Countrywide files, then withdraws, two factually inaccurate motions for relief from the automatic stay

13. On February 21, 2006, Countrywide filed a motion for relief from stay seeking permission to foreclose on the Residence (the "First Motion"). A true copy of the First Motion is attached as Exhibit 3.

14. In its First Motion, Countrywide represented to the Court that the "[d]ebtors have defaulted in making payments which have come due since this case was filed. Through the month of February 2006, two (2) payments have been missed." *See* First Motion at ¶ 3. Countrywide also alleged that the Atchleys demonstrated a "clear inability to make all required payments." *See* First Motion at ¶ 5.

15. The Atchleys disputed Countrywide's contention that they were two months delinquent on their postpetition payment obligations. On February 23, 2006, the Atchleys' attorney transmitted documents to Countrywide's local counsel by facsimile that purported to demonstrate that they were not two months delinquent. A true copy of the Atchleys' attorney's February 23, 2006 correspondence is attached as Exhibit 4.

16. These documents purported to demonstrate that when Countrywide filed the First Motion, the Atchleys allegedly had made postpetition payments to Countrywide totaling \$6,295. These documents included Western Union Quick Collect receipts and U.S. postal money orders dated November 21, 2005, January 18, 2006, and February 20, 2006, all before the filing of the First Motion.

17. Based on the figures set forth in the Proof of Claim, the total amount of postpetition payments that had become due to Countrywide as of its filing of the First Motion was \$6,380.

18. The documents transmitted to Countrywide's attorney on February 23, 2006 also included a payment history prepared by Countrywide. This payment history is dated February 22, 2006, which is the day after Countrywide filed the First Motion. The payment history demonstrates that on the day after Countrywide filed the First Motion, it was holding an "unapplied" balance of \$1,581.66 with respect to the Atchleys' account.

19. On February 28, 2006, Countrywide filed a withdrawal without prejudice of its First Motion. A true copy of this withdrawal is attached as Exhibit 5.

20. On May 24, 2006, Countrywide filed a second motion for relief from stay seeking permission to foreclose on the Residence (the "Second Motion"). A true copy of the Second Motion is attached as Exhibit 6.

21. In its Second Motion, Countrywide alleged that the “Debtors have defaulted in making payments which have come due since this case was filed. Through the month of May 2006, two (2) payments have been missed.” *See* Second Motion at ¶ 3. Countrywide also alleged that the debtors had a “clear inability to make all required payments.” *See* Second Motion at ¶ 5.

22. The Atchleys again contested Countrywide’s allegations that they were two months delinquent on their postpetition payment obligations. On June 6, 2006, the Atchleys’ attorney transmitted additional documents to Countrywide’s counsel. A true copy of this correspondence is attached as Exhibit 7.

23. These documents included a Western Union Quick Collect receipt dated May 20, 2006 in the amount of \$1,600. This receipt demonstrates that, four days before Countrywide filed the Second Motion, the Atchleys were one month delinquent, rather than two months delinquent, as represented in the Second Motion.

24. These documents also included a Western Union Quick Collect receipt dated June 2, 2006, less than two weeks after the previous payment, in the amount of \$1,748.92.

25. On June 7, 2006, Countrywide’s counsel sent the Atchleys’ attorney an e-mail message “to confirm [their] conversation that the mfr (sic) is being withdrawn.” A true copy of this e-mail is attached as Exhibit 8.

26. On June 20, 2006, Countrywide filed a withdrawal of the Second Motion without prejudice. A true copy of this withdrawal is attached as Exhibit 9.

C. Countrywide assesses and collects escrow charges and other fees from the Atchleys without disclosing adequate information as to when or how such fees arose

27. On March 6, 2007, the Atchleys filed a motion seeking permission to sell their

Residence pursuant to a purchase and sale agreement dated February 18, 2007 (the "Sale Motion"). The service list attached to the Sale Motion represents that it was served on Countrywide. A true copy of the Sale Motion is attached as Exhibit 10.

28. Pursuant to an order dated March 30, 2007, objections to the Sale Motion were due on April 24, 2007. A true copy of the Court's March 30, 2007 order is attached as Exhibit 11. Neither Countrywide nor any other party in interest objected to the Sale Motion.

29. On May 9, 2007, Countrywide sent a letter to debtor Robyn Atchley, a true copy of which is attached as Exhibit 12. In its letter, Countrywide advised the Atchleys that the escrow requirement on the account had changed, resulting in a decrease in the monthly payment from \$1,971.10 to \$1,884.16 effective 05/01/07. Countrywide also stated that it had "credited the escrow amount for the amount included in the Chapter13 Bankruptcy Proof of Claim."

30. The Proof of Claim does not reflect any escrow or escrow payment. *See* Exhibit 1.

31. On May 11, 2007, Countrywide issued a "Payoff Demand Statement" that purported to reflect the total amount due on the debtors' loan. The Payoff Demand Statement provided that the debtor Robin A. Atchley owed the total amount of \$199,004.80 (the "Payoff"). A true copy of the Payoff Demand Statement is attached as Exhibit 13.

32. Included in the Payoff was a charge for \$2,793 for "Fees Due." The Payoff Demand Statement did not itemize what these fees were for, nor did it indicate whether such fees arose prepetition or postpetition, or before or after confirmation of the Atchleys' amended chapter 13 plan. The Payoff Demand Statement also did not identify whether any of the "Fees Due" were attributable to Countrywide's two withdrawn motions for relief from the stay.

33. The Atchleys sold the Residence on or about May 16, 2007, and Countrywide was

paid \$199,004.80 via a cashier's check from the sales proceeds. This amount included \$2,793 for fees that Countrywide claimed were due. A true copy of the cashier's check dated May 17, 2007 and payable to Countrywide is attached as Exhibit 14.

34. The amount of fees that were included in the Payoff and paid by the Atchleys to Countrywide upon the sale of the Residence in satisfaction of Countrywide's claim was \$2,793, which differs from the amount of fees identified in Countrywide's Proof of Claim of \$242.50. The fees claimed in the Proof of Claim in the amount of \$242.50 consisted of inspection fees of \$12.50, insufficient funds fees of \$30, and a postpetition, preconfirmation fee of \$200. *See* Exhibit 1.

35. At no time did Countrywide file an amended proof of claim or a motion to approve fees as an oversecured creditor under 11 U.S.C. § 506(b).

D. Countrywide continues to accept payments from the estate notwithstanding the satisfaction of its claim

36. Countrywide executed a "Satisfaction of Mortgage" reflecting the payoff of the Atchleys' loan on May 18, 2007. A true copy of the Satisfaction of Mortgage is attached as Exhibit 15.

37. On June 1 and July 2, 2007, following the satisfaction of its claim, Countrywide received payments from the chapter 13 trustee administering the Atchleys' case. True copies of the checks sent to Countrywide by the chapter 13 trustee that included these payments are attached as Exhibits 16 and 17.

38. On July 19, 2007, the debtors filed a motion to disallow Countrywide's Proof of Claim (the "Motion to Disallow Claim"). A true copy of the Motion to Disallow Claim is attached as Exhibit 18.

39. On or about November 7, 2007, Countrywide issued refund checks to the chapter 13 trustee returning the moneys it received from the chapter 13 trustee in June and July, 2007 from the Atchleys' estate in the amounts of \$143.31 and \$213.95, respectively. True copies of these refund checks are attached as Exhibit 19.

40. On November 15, 2007, the Atchleys set November 29, 2007 as the hearing date for the Motion to Disallow Claim. A true copy of the notice of assignment of hearing is attached as Exhibit 20.

41. On November 17, 2007, nearly six months after its claim had been satisfied, Countrywide filed a withdrawal of its Proof of Claim, requesting that "the Trustee cease funding the claim." A true copy of the withdrawal of its Proof of Claim is attached as Exhibit 21.

E. Countrywide's pattern of conduct

42. Countrywide is a national lender and servicer of secured loans. Countrywide regularly appears before this and other United States bankruptcy courts around the country, asserting claims seeking the payment of money from bankruptcy estates and/or prosecuting motions seeking relief from the automatic stay to foreclose on consumer mortgages.

43. In this case, Countrywide failed to ensure the accuracy of two motions for relief from the automatic stay that contained allegations that were inaccurate and/or misleading concerning the existence and amount of the Atchleys' postpetition default.

44. Countrywide failed to properly account for moneys paid by the debtors. As a consequence, Countrywide accepted payments from the chapter 13 trustee after the Atchleys paid Countrywide's claim in full. By executing the "Satisfaction of Mortgage," Countrywide had previously acknowledged that there was no longer any legal basis for it to receive such payments.

45. Countrywide failed to return the estate funds to which it knew it was not entitled and withdraw its Proof of Claim until three months after the Atchleys commenced a contested matter before this Court with respect to the Proof of Claim.

46. Countrywide failed to provide information sufficient to determine whether the various fees and escrow charges assessed by Countrywide and collected from the Atchleys were properly recoverable under applicable state law and the Bankruptcy Code.

47. Countrywide's failure to ensure the accuracy of its pleadings and accounts in this case is not an isolated incident. In recent years, Countrywide and its representatives have been sanctioned for filing inaccurate pleadings and other similar abuses within the bankruptcy system.

48. Cases in which bankruptcy courts sanctioned Countrywide and/or its representatives include: *In re Robert and Kathleen Ennis*, Case No. 05-11985 (Bankr. W.D. Pa. July 31, 2006) (sanctioning Countrywide and its counsel for failing to make reasonable inquiry prior to filing factually inaccurate motion for relief from the automatic stay); *In re James Allen*, Case No. 06-60121 (Bankr. S.D. Tex. Jan. 9, 2007) (sanctioning Countrywide's attorneys based upon finding that Countrywide's objection to a chapter 13 plan "had no basis in fact or law and was materially disruptive to the efficient and effective operation of this Court"); *In re Paul Mann*, Case No. 03-82973 (Bankr. M.D.N.C. March 8, 2004) (awarding punitive damages against Countrywide for repeated violations of the automatic stay and finding that Countrywide's conduct was "aggravated and egregious").

49. Countrywide's failure to ensure the accuracy of its claims and pleadings has resulted in an abuse of the bankruptcy process and has prejudiced, and will continue to prejudice, parties in interest in the bankruptcy cases in which Countrywide participates. Absent injunctive relief by this

Court, Countrywide's practices and conduct are likely to continue to prejudice parties in interest and result in additional abuses of the bankruptcy process.

50. United States Trustees have simultaneously brought complaints, including the instant action, against Countrywide in Ohio and Florida to address Countrywide's sustained bad faith conduct in failing to ensure the accuracy of its claims and pleadings in attempting to obtain money or property from debtors and/or the bankruptcy estates.

COUNT I

(Materially Inaccurate And/or Misleading Representations of Fact)

51. The United States Trustee hereby repeats and reasserts the allegations contained in the preceding 50 paragraphs, as if fully set forth herein.

52. Countrywide authorized, directed and caused the filing of two motions for relief from the automatic stay that were premised on a contention that the Atchleys had missed two payments as of the filing of each motion and that there was a clear inability of the debtors to make all required payments.

53. Based on the documentation produced by the Atchleys, which was not contradicted by Countrywide, both motions contained allegations that were inaccurate and/or misleading concerning the existence and amount of the Atchleys' postpetition default and their ability to make the required payments.

54. Countrywide directed and caused the filing of two motions for relief from the automatic stay that contained inaccurate and/or misleading representations of fact. Countrywide failed to take adequate precautions to ensure the accuracy of its pleadings. Countrywide filed

these motions in an attempt to obtain money or property from the debtors and/or the bankruptcy estate. Countrywide's conduct and practices in filing these motions created unnecessary delay and expense in the administration of this bankruptcy case. By filing these motions for stay relief, Countrywide has acted in bad faith in the conduct of litigation before the Court in this case that the rules are not up to the task of adequately sanctioning. Countrywide's conduct and practices in filing these motions for stay relief are sanctionable under the Court's inherent equitable powers.

55. Countrywide directed and caused the filing of two motions for relief from the automatic stay that contained inaccurate and/or misleading representations of fact. Countrywide failed to take adequate precautions to ensure the accuracy of its pleadings. Countrywide filed these motions in an attempt to obtain money or property from the debtor and/or the bankruptcy estate. Countrywide's conduct and practices in filing these motions created unnecessary delay and expense in the administration of this bankruptcy case. By filing these motions for stay relief, Countrywide has abused the bankruptcy process and its conduct and practices are sanctionable under 11 U.S.C. § 105(a).

COUNT II

(Improper Acceptance of Property of the Estate)

56. The United States Trustee hereby repeats and reasserts the allegations contained in the preceding 55 paragraphs, as if fully set forth herein.

57. In June and July, 2007, Countrywide improperly accepted payments from the chapter 13 trustee notwithstanding that the Atchleys had already paid Countrywide's claim in full and Countrywide had previously executed a "Satisfaction of Mortgage" acknowledging that there

was no longer any legal basis for it to receive such payments.

58. Having accepted estate funds to which it knew it was not entitled, Countrywide unreasonably retained such payments for approximately four months. Countrywide did not voluntarily return such payments or withdraw its Proof of Claim until more than three months after the Atchleys commenced a contested matter before this Court with respect to the Proof of Claim.

59. Countrywide's conduct and practices in accepting the June and July, 2007 plan payments to which it knew it was not entitled, and failing to promptly return such payments, created unnecessary delay and expense in the administration of this bankruptcy case. By accepting the plan payments to which it knew it was not entitled, and failing to promptly return such payments, Countrywide has acted in bad faith in the conduct of litigation before the Court in this case that the rules are not up to the task of adequately sanctioning. Countrywide's conduct and practices in accepting the plan payments to which it knew it was not entitled, and failing to promptly return such payments, are sanctionable under the Court's inherent equitable powers.

60. Countrywide's conduct and practices in accepting the June and July, 2007 plan payments to which it knew it was not entitled, and failing to promptly return such payments, created unnecessary delay and expense in the administration of this bankruptcy case. By accepting the plan payments to which it knew it was not entitled, and failing to promptly return such payments, Countrywide has abused the bankruptcy process and its conduct and practices are sanctionable under 11 U.S.C. § 105(a).

COUNT III

(Failure to Reconcile the Proof of Claim with the Payoff Amount)

61. The United States Trustee hereby repeats and reasserts the allegations contained in the preceding 60 paragraphs, as if fully set forth herein.

62. In its dealings with the Atchleys, Countrywide failed to provide information sufficient to permit the debtors, the chapter 13 trustee, the United States Trustee, or this Court to apprise themselves whether the various fees and escrow charges assessed by Countrywide were properly recoverable under applicable state law and the Bankruptcy Code.

63. To the extent that any portion of the fees and escrow charges assessed and collected by Countrywide were improper under applicable state law or the Bankruptcy Code, Countrywide's failure to disclose all relevant facts relating to such charges has prejudiced parties in interest and constitutes bad faith in the conduct of litigation before the Court in this case that the rules are not up to the task of adequately sanctioning. If Countrywide assessed and collected fees and escrow charges that were improper under applicable state law or the Bankruptcy Code, its failure to disclose all relevant facts relating to such charges is sanctionable under the Court's inherent equitable powers.

64. To the extent that any portion of the fees and escrow charges assessed and collected by Countrywide were improper under applicable state law or the Bankruptcy Code, Countrywide's failure to disclose all relevant facts relating to such charges has prejudiced parties in interest and constitutes an abuse of the bankruptcy process sanctionable under 11 U.S.C. § 105(a).

COUNT IV

(Repeated Failure to Ensure the Accuracy of Pleadings and Accounts)

65. The United States Trustee hereby repeats and reasserts the allegations contained in the preceding 64 paragraphs, as if fully set forth herein.

66. Countrywide directed and caused the filing of two motions for relief from the automatic stay that contained allegations that were inaccurate and/or misleading concerning the existence and amount of the Atchleys' postpetition default.

67. Countrywide improperly accepted payments from the chapter 13 trustee after the Atchleys paid Countrywide's claim in full and Countrywide executed a "Satisfaction of Mortgage" acknowledging that there was no longer any legal basis for it to receive such payments.

68. Despite receiving estate funds to which it knew it was not entitled, Countrywide returned such payments and withdrew its Proof of Claim only after the Atchleys commenced a contested matter before this Court with respect to the Proof of Claim.

69. Countrywide did not return such payments and withdraw its Proof of Claim for more than three months after the Atchleys commenced their contested matter before this Court with respect to the Proof of Claim.

70. Countrywide failed to provide information sufficient to determine whether the various fees and escrow charges assessed by Countrywide and collected from the Atchleys were properly recoverable under applicable state law and the Bankruptcy Code.

71. Countrywide's conduct and practices in authorizing, directing and causing the filing of both motions seeking relief from the automatic stay and asserting claims, including the

Proof of Claim, are indicative of a repeated failure to ensure the accuracy of its pleadings and accounts. Countrywide filed these motions and asserted these claims in an attempt to obtain money or property from the debtors and/or the bankruptcy estate. Countrywide's conduct and practices in failing to ensure the accuracy of its pleadings and accounts have created unnecessary delay and expense in the administration of this bankruptcy case. By its conduct and practices in failing to ensure the accuracy of its pleadings and accounts, Countrywide has acted in bad faith in the conduct of litigation before the Court in this case for which the rules are not up to the task of adequately sanctioning. Countrywide's conduct and practices in failing to ensure the accuracy of its pleadings and accounts is sanctionable under the Court's inherent equitable powers.

72. Countrywide's conduct and practices in authorizing, directing and causing the filing of both motions seeking relief from the automatic stay and asserting claims, including the Proof of Claim, are indicative of a repeated failure to ensure the accuracy of its pleadings and accounts. Countrywide filed these motions and asserted these claims in an attempt to obtain money or property from the debtors and/or the bankruptcy estate. Countrywide's conduct and practices in failing to ensure the accuracy of its pleadings and accounts have created unnecessary delay and expense in the administration of this bankruptcy case. By its conduct and practices in failing to ensure the accuracy of its pleadings and accounts, Countrywide has abused the bankruptcy process and its conduct and practices are sanctionable under 11 U.S.C. § 105(a).

PRAYER FOR RELIEF

WHEREFORE, with respect to Counts I, II, III, and IV, the United States Trustee requests that this Court, on each and every count, issue an order pursuant to 11 U.S.C. § 105(a) and the Court's inherent equitable powers:

- a. imposing appropriate monetary sanctions against Countrywide;
- b. enjoining and restraining Countrywide from engaging in bad faith and abusive practices in connection with: (i) its preparation, verification, filing and prosecution of pleadings and proofs of claims in bankruptcy cases; (ii) its identification and return of payments received from bankruptcy estates after the satisfaction of its claim; and (iii) its assessment and disclosure of contractual fees and escrow charges; and
- c. granting such other and further relief as the Court deems just and proper.

DONALD F. WALTON
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