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Does Bankruptcy Rule 3002.1's Remedy Provision Apply for Filings with Inaccurate Information?

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Federal Rule of Bankruptcy Rule 3002.1 went into effect December 1, 2011. It was implemented to address a perceived problem in "cure and maintain" Chapter 13 cases (cases in which the debtor cures any pre-petition arrearage and maintains monthly post-petition payments on long-term loans) – that mortgage creditors were not providing the debtor with notice of post-petition payment changes and fees assessed post-petition, causing debtors to often exit a successful Chapter 13 with a delinquent loan. Subjections (b) and (c) of Rule 3002.1 require a mortgage creditor to file notices of post-petition payment changes and fees incurred post-petition. Subsection (g) requires a mortgage creditor to file a response to a Chapter 13 trustee's notice of final cure filed under subsection (f), stating whether or not it agrees that the debtor has cured any prepetition arrearage and whether or not the debtor is current on monthly post-petition payments.

Subsection (i) of the Rule, entitled "Failure to Notify," allows certain remedies if "the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) . . . ." These remedies include the preclusion of the presentation of the omitted information in any form as evidence in a bankruptcy contested matter or adversary proceeding (subsection (i)(1)) and awarding other appropriate relief, including reasonable expenses and attorneys' fees caused by the failure (subsection (i)(2)).

It may appear from a plain reading of subsection (i) that the remedy provisions are available only if the mortgage creditor fails to make one of the three required filings, not if it makes the filing but the information stated therein is inaccurate. The fact that the Rule has separate procedural mechanisms for challenging any of the three filings that the debtor alleges is inaccurate (subsections (b)(2), (e), and (h)) might buttress this plain reading view. Indeed, a few courts have reached this conclusion. *E.g.*, *In re Trevino*, 535 B.R. 110, 131 (Bankr. S.D. Tex. 2015.

What may be surprising, however, is that numerous courts facing the issue have held that Rule 3002.1(i)'s remedy provisions are triggered if the required filing is made but contains inaccurate information. *E.g.*, *In re Tollstrup*, 2018 WL 1384378, at *3 (Bankr. D. Or. Mar. 16, 2018). The *Tollstrup* court appears to be the only court that has provided any analysis, stating that"[t]he purpose of Rule 3002.1 . . . is served only if the creditor provides correct information."

Mortgage creditors should pay close attention to this narrow and developing area of the law, given

recent focus on potential punitive sanctions under Rule 3002.1(i) as a form of "other appropriate" relief as a result of the Second Circuit's August 2021 decision in *In re Gravel*, 6th F.4th 503. While *Gravel* – which involved a failure to file a subsection (c) fee notice and not a notice with incorrect information – rejected the availability of such punitive sanctions, one bankruptcy court has subsequently disagreed and held that punitive sanctions under subsection (i) are indeed available. *In re Blanco*, 2021 WL 4190170, at *24 (Bankr. S.D. Tex. Sept. 14, 2021).

Servicing loans with "cure and maintain" treatment in Chapter 13 plans with the very specific requirements and deadlines of the Rule (not to mention those of various local versions of Rule 3002.1) is certainly not the easiest task mortgage creditors face, and mistakes sometimes happen. Given the renewed debate over the availability of punitive sanctions under Rule 3002.1(i), mortgage creditors may increasingly find themselves in contentious litigation even when they meet their obligations under the Rule by filing one of the three types of notices if the information contained therein is incorrect. For these reasons, mortgage creditors should renew their focus on their Rule 3002.1 practices to ensure that the filings they make contain accurate information.

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