

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>IN RE:</b>	)	<b>CHAPTER 13</b>
	)	
<b>NOLAN KEITH BURNETT</b>	)	<b>CASE NO. 11-71622</b>
	)	
<b>Debtor.</b>	)	

---

**DECISION AND ORDER**

The matter before the Court is the Debtor's Objection to Claim # 3 filed by Beneficial Mortgage Co. of Virginia (the "creditor") as an unsecured claim in the amount of \$19,968.84. The Objection came on to be heard in Abingdon on November 16, 2011. The Debtor appeared by counsel but the creditor did not appear and did not respond to the Objection. The Court finds:

1. That valid and timely service of the Objection was made on the registered agent of the creditor and that the creditor has failed to make any response to it.
2. That the claim was filed as an unsecured claim although it was filed with proof of perfection of a deed of trust securing the obligation payable to the creditor.
3. That the schedules filed in this case reflect that the creditor is fully secured by a second deed of trust lien upon the Debtor's property.
4. That the Debtor's Chapter 13 Plan now before the Court proposes to treat the creditor as having a secured claim, for an arrearage estimated by the Plan as being \$1,500 to be cured by the Chapter 13 Trustee during the term of the Plan, and that the Debtor will continue paying directly the regular monthly payment obligation due the creditor.

5. That counsel for the Debtor has contacted the creditor to request that an amended claim be filed as a secured claim but the creditor's representative has declined to do so and advised counsel that the creditor had made a business decision to file an unsecured claim although still holding its perfected deed of trust lien against the Debtor's property.

6. That treatment of the creditor's claim as unsecured would frustrate the Debtor's ability to confirm a Plan which proposes to pay his unsecured creditors in full.

7. That the intentional filing of an unsecured claim by the creditor which in fact has a fully secured claim and is being so treated in the Plan may violate the provisions of Federal Rule of Bankruptcy Procedure 9011(b)(1), (2) and (4) and subject the creditor to possible sanctions.

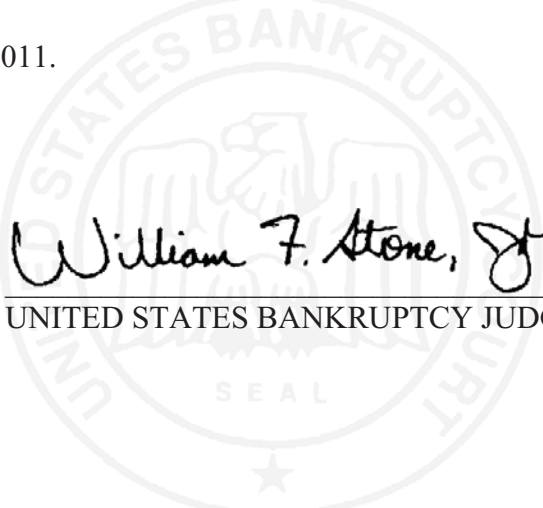
8. That the claim as filed includes unmatured interest.

On the basis of such findings, the Court concludes that it has jurisdiction over the Claim and the Objection to it, that this dispute constitutes a "core" bankruptcy proceeding pursuant to 28 U.S.C. § 157(b)(2)(B), that the Objection should be sustained and the creditor's claim disallowed. Accordingly, it is ORDERED that Claim # 3 is DISALLOWED and the creditor shall file within thirty (30) days of the date of this Order an amended claim as a secured creditor and completing all of the sections provided in the Official Proof of Claim form to provide the particulars of its claim as of the filing date, including specifically but not limited to the amount of any arrearage existing as of the petition filing date. In the event that the creditor fails to file an amended proof of claim as required by this Order, it shall be bound by the amount of the arrearage set forth in the Debtor's Plan as ultimately confirmed.

The Clerk shall serve a copy of this Decision and Order upon the Debtor; Scot S. Farthing, Esq., counsel for the Debtor; and Beneficial Mortgage Co. of Virginia at the address

specified in Claim # 3 and to the attention of the person having executed such Claim. **Counsel for the Debtor shall also promptly serve a copy of this Decision and Order upon the creditor's Registered Agent and file a certificate to such effect with the Court.**

ENTER this 18<sup>th</sup> day of November, 2011.



*William F. Stone, Jr.*

---

UNITED STATES BANKRUPTCY JUDGE