



THE FOLLOWING ORDER  
IS APPROVED AND ENTERED  
AS THE ORDER OF THIS COURT:

DATED: April 18, 2012

A handwritten signature in black ink, appearing to be "P. Pepper", is written over a horizontal line.

Honorable Pamela Pepper  
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WISCONSIN

Court Minutes and Order

CHAPTER: 13  
DATE: April 17, 2012  
JUDGE: Pamela Pepper  
CASE NO.: 2010-34534  
DEBTOR: Vianca Wright  
NATURE OF HEARING: Motion to compel  
APPEARANCES: Christopher Shattuck - Attorney for the debtor  
Rebecca Quiroz - Chapter 13 Trustee, by phone  
Jay Pitner - Attorney for U.S. Bank, NA  
LAW CLERK: Esa Movroydis  
TIME: 1:19 p.m. - 1:43 p.m.  
ADJOURNED DATE:

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The Court previously had adjourned the hearing so that it had could confer with the other judges in this district about how the Chapter 13 trustees should treat the notices that mortgage creditors now had to file under Fed. R. Bankr. P. 3002.1—specifically, Form B10S2 regarding post-petition fees, costs and expenses. The Court provided a background of the events that had transpired relating to the creditor’s motion to compel. It explained that, in the motion, counsel for the creditor had argued that the trustees should treat the notice Form B10S2 as a supplemental claim and should pay the fees listed in the notice through the plan. The trustee had objected to the motion, arguing that the Court’s order resolving the creditor’s motion for relief ordered the trustee to pay a supplemental claim, and that the notice under Rule 3002.1 was not a supplemental claim. The Court noted that because the issue was one of first impression, it had wanted to speak with the other judges before issuing a decision, to determine whether there was consensus among them on the appropriate treatment of the notice.

The Court explained that since the last hearing, the following events had

occurred: (1) Trustee Mary Grossman had submitted comments about how she had been treating Form B10S2; (2) Trustee Thomas King had submitted an internal handout from the Administrative Office of U. S. Courts' Office of Information Technology, providing technical instructions to court employees and staff on how to docket the notices required by Rule 3002.1; (3) the Court had spoken with Judge Gene Wedoff, the chairman of the Bankruptcy Rules Committee of the Judicial Conference of the United States (who also was a member of the committee at the time that the committee had drafted Rule 3002.1); and (4) the Court had conferred with the other bankruptcy judges in this district on the issue.

The Court explained that Trustee Grossman had indicated that she typically paid out on these notices if there was an accompanying court order (either resolving a motion for relief or confirming an amended plan that included payment of the notice). If there was no order for payment of the amount listed in the notice, then Trustee Grossman would not pay out on the notice. The Court stated that this approach seemed similar to the approach that Trustee King wanted to take—he too was seeking an order authorizing payment of the amount listed in the creditor's notice. The Court also referenced the A.O.'s white paper that Trustee King had submitted. It acknowledged that both the trustee and counsel for the creditor had agreed that the white paper was not legally binding authority. The Court noted, however, that the white paper specifically stated that Form B10S2 was *not* to function as an amended claim (and in a sense, the “supplemental claim” for post-petition arrearages, costs and fees which courts in this district allow functions as an amendment to the original proof of claim). The Court recalled that, at the last hearing, counsel for the creditor had argued that because Rule 3002.1 required creditors to file Form B10S2 as a “supplement” to the proof of claim, it was clear that the Rules Committee intended the form to function as a supplemental claim. The Court explained that both the term “supplemental claim” and the practice of using supplemental claims to pay post-petition arrearages were particular to this district. The Court, therefore, did not agree that the fact that the rule required the notice to be filed as a “supplement” to the proof of claim was evidence that the notice was to function as a “supplemental” claim. Judge Wedoff's comments on this issue further supported the Court's conclusion. Judge Wedoff explained that the new rule was intended to make a debtor aware of any post-petition fees and/or charges that had accrued during the Chapter 13 plan commitment period. The Court explained that there had been instances where a debtor would complete the plan, believe that the debtor had made all the mortgage payments required during the plan, receive a discharge, and then find out shortly thereafter that the creditor's records showed a deficiency on the mortgage because certain post-petition fees and charges had accrued during the life of the plan. The notices under Rule 3002.1 were intended to prevent that situation from occurring. Finally, the Court had conferred with the other judges, and all four agreed that the notices under Rule 3002.1 were

not intended to function as a supplemental claim. Rather, the notice was intended simply to make debtors aware of any post-petition fees and/or charges.

The Court, however, noted that the judges also had agreed that it would make sense to consider amending the model Chapter 13 plan to include a box that the debtor could check, and if that box was checked, the trustee would be allowed to pay the amounts listed in any B10S2 notices through the plan. The Court indicated that it would communicate this suggestion to the Model Plan Committee.

For these reasons (and as stated in more detail on the record), the Court denied the creditor's motion to compel and held that the Court would not require the trustees to treat notices of post-petition fees, expenses and costs under Rule 3002.1 as supplemental claims. The Court stated that if the creditor wanted payment of the arrearage listed in the order resolving the creditor's motion for relief from stay, the creditor would need to file a supplemental claim.

Accordingly, the Court hereby **DENIES** U.S. Bank, N.A.'s motion to compel.

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