Attacking Standing in Federal / Bankruptcy Court

by Tiffany Sanders on FEBRUARY 9, 2012 in UNCATEGORIZED

It is apodictic there can be no cause of action to foreclose a mortgage unless we know where the paper is and that it actually represents something. There is much "sand in the gears" of our property transfer system in these times. However, we cannot bend the rules. A person seeking to enforce an instrument conveying an interest in real property must demonstrate he has directly or indirectly acquired ownership of the instrument. – Max Gardner

Robin Miller has compiled an extensive bibliography on standing issues for us, and we'll be sharing the case citations she has aggregated in a series of articles over the next several newsletters. Today, we'll start with the basics: standing in federal court generally and bankruptcy court specifically. Later in the series, we'll look at state court standing decisions, cases relating to MERS, right to enforce the note and more.

Standing in Federal Court – the Basics

Standing is a threshold issue in every federal case and cannot be waived; if the litigant does not have standing, the court has no power to hear the case, even if no objection has been raised. Unfortunately, not all courts exercise that affirmative duty, so it's up to us as attorneys for the debtor/defendant to ensure that claimants without standing don't slip through. The cases below establish those basic principles.

Sprint Communications Co. v. APCC Services, Inc., 554 U.S. 269 (2008): Assignee to claim must hold legal title at the time that it is asserted in action.

Elk Grove Unified School District v. Newdow, 542 U.S. 1 (2004): Federal court can only exercise jurisdiction when litigant meets both constitutional and prudential standing requirements.

Warth v. Seldin, 422 U.S. 490 (1975): Standing is a threshold question in every

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- November 2011 (3)
- September 2011 (3)
- August 2011 (3)
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- Foreclosure (5)
- In the News (5)
- Political (3)
- Q & A (4)
- Uncategorized (3)

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federal case determining the power of the court to entertain the suit.

St. Paul Fire and Marine Insurance Co. v. PepsiCo, Inc., 884 F. 2d 688 (2nd Cir. 1989): Court has independent duty to examine standing.

Barhold v. Rodriguez, 863 F.2d 233 (2nd Cir. 1988): Parties cannot consent to waive standing.

Constitutional and Prudential Standing in Bankruptcy Courts

Numerous U.S. Bankruptcy Court rulings have reaffirmed the general rule that federal court jurisdiction requires that the litigant have both Constitutional and prudential standing. That requirement and what exactly is required to satisfy the standard is elaborated upon in:

In re Jackson, 451 B.R. 24 (Bankr. E.D. Cal., June 6, 2011): For a federal court to have jurisdiction, the proponent of a matter must have both constitutional standing, which requires an injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief, and prudential standing.

In re Veal, 450 B.R. 897 (9th Cir. B.A.P., June 10, 2011): A federal court may exercise jurisdiction over a litigant only when that litigant meets constitutional and prudential standing requirements; constitutional standing requires an injury in fact, which is caused by or fairly traceable to some conduct or some statutory prohibition, and which the requested relief will likely redress; prudential standing embodies judicially self-imposed limits on the exercise of federal jurisdiction; here, Wells Fargo did not establish standing to seek relief from stay, as it did not show that it or its agent had actual possession of the note, so that it could not establish that it was a "person entitled to enforce" the note under UCC § 3-301.

In re Burnett, 450 B.R. 589 (Bankr. W.D. Va., April 28, 2011): In order to establish a colorable claim, a movant for relief from stay must satisfy the constitutional limitations on federal court jurisdiction and prudential limitations on its exercise.

In re Hill, 2009 WL 1956174 (Bankr. D.Ariz., July 6, 2009): In addition to the procedural "real party in interest" requirements of Rule 17, a litigant must also have standing to bring a motion; a litigant must have both constitutional standing and prudential standing for a federal court to have jurisdiction to hear the case.

Party in Interest Issues in Bankruptcy Courts

In re Wilhelm, 407 B.R. 392 (Bankr. D. Idaho, July 7, 2009): To obtain stay relief, a movant must have standing and be the real party in interest under Federal Rule of Civil Procedure 17.

Standing of a Servicer

In re Alcide, 450 B.R. 526 (Bankr. E.D. Pa., May 27, 2011): To establish its status as a party in interest entitled to seek relief from the automatic stay, a mortgage servicer must demonstrate that (1) the initiation of a stay relief motion is within the scope of authority delegated to the servicer by its principal and; and (2) the principal itself is a party in interest (i.e., the principal is a party with the right to enforce the mortgage).

In re Gulley, 436 B.R. 878 (Bankr. N.D.Tex., August 23, 2010): A mortgage loan servicer is considered a creditor with standing to file a proof of claim by virtue of its pecuniary interest in collecting payments under the terms of the note.

In re Jacobson, 402 B.R. 359 (Bankr. W.D. Wash., March 6, 2009): Even if a servicer or agent has authority to bring a motion for relief from stay on behalf of the holder, it is the holder, rather than the servicer, that must be the moving party, and so identified in the papers and in the electronic docketing done by the moving party's counsel.

Possession of the Note

In re Escobar, 457 B.R. 229 (Bankr. E.D. N.Y., August 22, 2011): Where the stay relief movant claims rights as a secured creditor by virtue of an assignment of rights to a promissory note secured by a lien against real property, it must provide satisfactory proof of its status as the owner or holder of the note; here, the movants had met this burden of proof through their uncontroverted affidavit testimony that they were holders of the notes by virtue of possession of the original notes executed with endorsements in blank.

In re Veal, 450 B.R. 897 (9th Cir. B.A.P., June 10, 2011): (See Constitutional and Prudential Standing in Bankruptcy Courts)

In re Banks, 457 B.R. 9 (8th Cir. B.A.P., Oct. 11, 2011): The bankruptcy court erred in holding that a creditor possessed the right to enforce a note endorsed in blank where the creditor did not establish that it was in possession of the note.

Date of Possession

In re Ruest, Case No. 08-10512, Adv. Proc. No. 09-1035 (Bankr. D. Vt., August 23, 2011): Even though it was undisputed that loan servicer was in possession of the note and the note was endorsed in blank, the date that the bank came into possession of the note was a genuine issue of material fact sufficient to deny motion for summary judgment.

In re Parker, 445 B.R. 301 (Bankr. D.Vt., March 18, 2011): The creditor needed to show that it was the holder of the note on the date of the debtor's bankruptcy petition, and, since the endorsement was not dated, the court would hold a hearing to receive evidence on the issue.

In the coming weeks, we'll be providing additional information in more specific areas, and updating this material as new pertinent cases are decided. If you're not already a subscriber, sign up for the newsletter to receive those additional articles and updates.

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