Professor Katherine Porter and Proofs of Claims by Mortgage Servicers

by O. Max Gardner III*

Professor Porter's study[1] and her review of hundreds of sworn proofs of claim filed by mortgage servicers in Chapter 13 bankruptcy cases is probably one of the top five such studies conducted in the past ten years. She has accomplished much good with little funding and a volunteer staff of dedicated law students and committed consumer lawyers. The extent of the problem is so pervasive that it is really and truly a challenge to name one servicer who is consistently complying with the law and rules.

The first draft of Professor Porter's paper was presented to the National Conference of Bankruptcy Judges (NCBJ) last November at the annual meeting in Orlando. I had the honor of being on the panel with Professor Porter. Her presentation provided a learning bridge for every bankruptcy judge and law clerk that was lucky enough to be in attendance. One of our biggest struggles, from the consumer's point of view, has been convincing courts that mortgage servicers are really and truly intentionally stealing the debtors' and the trustees' money. This is always a problem when you are talking about some of the marquee names in the history of our financial system.

I think it is also important to note that Professor Porter's project was funded by the NCBJ Study Committee. The bankruptcy courts have led the way in indentifying what I call "predatory mortgage servicing." And I am very proud to say that I have played a very small role in uncovering what continues to be a pervasive and systematic fraud on our courts. I am proud to say that I am a consumer bankruptcy lawyer.

The proof-of-claim process is only one aspect of a monumental problem created by intentional creditor misconduct. My first case in the Western District of North Carolina was filed over ten years ago and during the course of these past ten years, I regret to say that the problems have only gotten worse, not better.

I believe that the NCBJ authorized the Porter Project due to the mounting concern of bankruptcy courts about the institutional accuracy and truthfulness of mortgage servicers' claims. Mortgage debt is the largest claim against almost all consumer debtors who file for bankruptcy relief. Professor Porter has provided the lawyers advocating for these consumers

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* Attorney at Law. PO Box 1000, Shelby, NC 28150. maxgardner@maxgardner.com. 704.487.0616

1. Katherine Porter, *Misbehavior and Mistake in Bankruptcy Mortgage Claims*, 87 TEXAS L. REV. 121 (2008).

with the keys to evaluating these claims and the bizarre accounting practices behind them. Her study provides a wealth of knowledge even for the most sophisticated consumer bankruptcy attorney.

During the past ten years, mortgage servicers have increasingly augmented the costs of their "work" in preparing a proof of claim with an array of fees, costs, and expenses. All of this only adds to the cost of a consumer's bankruptcy filing and, for the most part, is clouded by an amazingly complex system designed to dazzle and confuse borrowers and their lawyers.

Professor Porter has no time to rest on the acclaim for this study. The way I see it, she has about twenty more years of full-time work to assist us in uncovering all of the fraud and intentional misconduct mortgage servicers commit.

Nearly forty years ago, Congress addressed the problems caused by lack of transparency in credit pricing when it enacted the Truth in Lending Act[2] (TILA). Congress intended to promote informed consumer shopping and a level playing field for lenders by requiring standard disclosure of the cost of credit, most simply through the annual percentage rate (APR) and the finance charges upon which the APR is based. I would rank Professor Porter's study, along with the enactment of TILA, as major steps in the right direction for consumer protection. Her study is also timely, given the massive financial problems created by the secondary mortgage markets.

2. Codified at 15 U.S.C. § 1601 (2006).