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Commercial Banking, Collections and Bankruptcy

The newsletter of the Illinois State Bar Association's Section on Commercial Banking, Collections and Bankruptcy

As We Close the Year

BY JUDGE MICHAEL J. CHMIEL

AS WE ARRIVE AT THE END of the association year of the ISBA, allow me to extend thanks for your consideration of the newsletter of the Commercial Banking, Collections, and Bankruptcy Section, along with the opportunity to serve as its Editor. We are all passing through, and it is what we make of it. I hope the editions this year (including this edition) have been (and will be) helpful. As always, we look forward to comments, suggestions, and submissions.

In this edition, we are blessed with references to technology, including two articles which involve artificial technology and another which addresses remote proceedings. In reverse order, with remote proceedings here to stay under Rule 45 of the Supreme Court of Illinois, we have the writing of Circuit Judge Jaime Shapiro of the Circuit Court of Cook County and a law student from the University of Illinois College of Law. Please consider (*and heed*) what they say.

Next, we have an AI-facilitated offering by Attorney Deanna Litzenburg, who helps lead the Section Council, on new bankruptcy caselaw. And then, we have an article in part inspired by Attorney Julia Smolka of the Section Council, and authored by Claudia Badillo, on how AI can help you in your law practice.

As circumstances allow, we will continue to do what we can for the Section with material and other interest provided. Articles for publication can always be submitted in a Word format to me at mjchmiel@22ndcircuit.illinoiscourts.gov. Happy Spring! ■

Using AI to Help Run Your Law Practice

BY CLAUDIA BADILLO

AS A CONSUMER BANKRUPTCY attorney who is set in my ways, I have been reluctant to use AI to help me with legal work. I have experimented with AI for small projects, such as helping generate statistics about bankruptcy filings, but I have yet to use any AI assistance in my law practice, until now.

I was recently complaining to colleagues about the difficulty of communicating to clients all the important information they should know after they file a bankruptcy case. Of course, I have template letters that I draft and send to clients with basic information about the filing of their case, important court

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Using AI

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dates, and other requirements, but particularly for my Chapter 13 cases, it is quite time consuming and difficult to explain the legalities and nuances about the complex world of bankruptcy and the obligations for the next several years as a Debtor in a bankruptcy case.

When a person files for Chapter 13 bankruptcy, they are proposing a 3-to-5-year repayment plan of their debts to the court. This is known as a Chapter 13 plan. The plan is complex and involves a deep analysis of all the debt involved and categorizes the debt based on several factors. Some of the most common categories are secured debt, such as mortgages and car payments that can be paid through the plan or outside of the plan, priority debt, such as child support and IRS debt, and unsecured debt, such as credit cards and medical bills. The plan must provide instructions to the Chapter 13 Trustee on how to distribute funds to creditors based on their priority, while complying with national and local bankruptcy provisions. It can be exceptionally difficult to explain to your clients what to do with their long-term secured debt obligations, such as their car or mortgage payments, and how to read and understand the many letters they will receive over the years from their mortgage company or the trustee.

I finally sat down and wrote down the most common questions and issues I have to deal with in Chapter 13 cases and used Chat GPT for help. The most common issues include communicating with your mortgage company while in bankruptcy, why Debtors are not receiving monthly mortgage statements, and explanations for several standard legal notices they will receive throughout the life of the case.

Below is what Chat GPT came up with for each scenario. I then looked at the answers generated and reviewed them for accuracy, specifically reviewing the sections that cited parts of the Bankruptcy Code. After a quick review and edit, here is what I published in the FAQ section of my website. I was pleasantly surprised with my experience in using AI and will continue using AI to help automate my law practice. ■

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If you own a home and file for Chapter 13 Bankruptcy, here is some important information you should know:

Post Petition Mortgage Fees:

In a **Chapter 13 bankruptcy**, post-petition mortgage fees refer to **charges incurred after the bankruptcy filing** related to a debtor's mortgage. These fees can include late fees, inspection fees, attorney fees, or other servicing costs. However, mortgage lenders **must follow specific rules** before charging these fees to a debtor in bankruptcy.

Key Aspects of Post-Petition Mortgage Fees in Chapter 13:

- Notice Requirement (Rule 3002.1)
- Types of Post-Petition Mortgage Fees
  - **Late fees** (if allowed under the mortgage contract)
  - **Property inspection fees** (*e.g.,* drive-by inspections if the home is in default)
  - **Attorney fees** (for defending a motion or filing legal documents)
  - **Payment change notices** (for escrow or adjustable-rate mortgage changes)
- Impact on the Debtor
  - If the fees are valid and not objected to, they **become part of the debt** owed to the

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mortgage lender.
    - If the debtor does not pay these fees **before the end of the bankruptcy**, they could face a **default** or foreclosure risk after discharge.
- Objections and Challenges
    - Debtors or trustees can challenge fees if they seem **unreasonable, excessive, or improperly assessed**.
    - The court can **disallow** fees that are not properly noticed under Rule 3002.1.
- Cure and Maintain Cases
    - If the debtor is using **Chapter 13 to catch up on mortgage arrears ("cure and maintain")**, these fees could **increase the amount owed**, affecting the plan.
- Bottom Line
    - Post-petition mortgage fees in Chapter 13 are **regulated to protect debtors** from hidden or unfair charges. Mortgage lenders must provide **timely notice** of these fees, and debtors have the right to **review and dispute them** before they become due.

Mortgage Statements:

If you are in a **Chapter 13 bankruptcy** and are not receiving **mortgage statements**, there could be several reasons for this. Mortgage servicers sometimes stop sending statements due to confusion over bankruptcy rules, but in many cases, you **should still receive them** unless the court orders otherwise.

Possible Reasons You're Not Receiving Statements

- Servicer Policy on Bankruptcy Cases
    - Some mortgage lenders automatically stop sending statements after a **Chapter 13 filing**, believing they might violate the **automatic stay** or debt collection laws.
    - However, federal law generally requires them to **resume sending statements** in most cases.
- Bankruptcy Rule 3002.1 Requirements
    - If you are **curing mortgage arrears through your Chapter 13 plan**, your lender must **file notices of payment changes** and post-petition fees with the court.
    - If the servicer fails to comply, you might not receive statements or be unaware of changes in your payment amount.
- The Mortgage Statement Exception
    - The **Truth in Lending Act (TILA) Regulation Z** requires mortgage servicers to send periodic statements, but there's an exception for borrowers in bankruptcy.
    - Some servicers use this as a reason to **stop sending statements**, but many courts now require lenders to continue sending them.
- Court or Trustee Orders
    - Some bankruptcy courts or trustees issue **specific orders** about mortgage statements.
    - If your case is in a jurisdiction where **monthly statements are required**, your lender should be sending them.

What You Can Do

- Request Statements Directly from the Servicer
    - Contact your mortgage company and ask if they can resume sending statements.
    - If they refuse, ask if they require a written request or court order.
- Monitor Mortgage Payment Notices in the Bankruptcy Case
    - Your lender must **file notices of payment changes** with the court.
    - You or your attorney can check the bankruptcy docket for updates.
- Verify Payments with Your Trustee
    - If your **Chapter 13 plan includes mortgage payments**, check with the trustee to confirm the lender is receiving them.

Request a Payment History

- You have the right to request an **accounting of your mortgage payments** to ensure they are being applied correctly.

Bottom Line

You may still be entitled to receive mortgage statements during Chapter 13. If you are not receiving them, check with your lender, review court rules, and consult with your bankruptcy attorney if needed.

Making Post-Petition Mortgage Payments in Chapter 13

If you are in **Chapter 13 bankruptcy**, it is crucial to ensure that your **post-petition mortgage payments** (payments due after filing) are made properly to avoid default or foreclosure. How you make these payments depends on your **Chapter 13 plan** and your agreement with the mortgage lender.

How Post-Petition Mortgage Payments Are Made

There are two main ways mortgage payments are handled in Chapter 13:

1. Conduit Plan (Trustee Pays the Mortgage)

- In some jurisdictions, the **Chapter 13 trustee** collects your mortgage payments along with your plan payments and **sends them to the mortgage servicer**.
- The trustee ensures payments are made, but this **can include additional fees** for processing.
- If you are in a conduit plan, you must ensure your trustee is making the correct payments and **keep track of changes** in payment amounts.

2. Direct Pay (Debtor Pays the Mortgage)

- Many debtors are responsible for **paying the post-petition mortgage payments directly to the lender**, outside of the bankruptcy plan.
- This is common when a debtor is **current on mortgage payments** at the time of filing.
- You must make payments **on time and in full** to avoid post-petition default.

Best Practices for Making Post-Petition Mortgage Payments

1. Verify the Correct Payment Amount
   - Mortgage servicers may adjust escrow, taxes, or insurance.
   - Under **Bankruptcy Rule 3002.1**, servicers must file notices of any **payment changes** with the court.
   - Regularly check the bankruptcy docket or request an updated payment amount.
2. Use a Reliable Payment Method
   - Pay through **bank transfers, online bill pay, or certified checks** to maintain proof of payment.
   - Avoid sending cash or using unreliable payment methods.
3. Keep Records of Payments
   - Maintain **copies of checks, bank statements, or payment confirmations**.
   - If a servicer claims you missed a payment, having records can help resolve disputes.
4. Monitor Mortgage Statements (If Available)
   - If your lender continues sending statements, review them for errors.
   - If you are not receiving statements, you can request them from your lender.
5. Confirm Payments Are Applied Correctly
   - Some mortgage servicers misapply payments or hold them in **suspense accounts** (which can cause problems later).
   - Periodically request an **accounting statement** from your lender.
6. Address Payment Issues Immediately
   - If a payment is missed, catch up **as soon as possible** to avoid post-petition default.
   - If you experience financial hardship, speak with your **bankruptcy attorney** about options like **modifying the Chapter 13 plan**.
7. Review Discharge and Final Payment Details
   - At the end of Chapter 13, ensure the mortgage is **fully reinstated** and all payments are correctly applied.

What If You Can't Make Post-Petition Mortgage Payments?

- If you **fall behind on post-petition mortgage payments**, your lender may file a **Motion for Relief from Stay** to foreclose.
- You may be able to:
  - Get Caught up on payments BEFORE court (discuss this with your attorney)
  - Enter into a repayment plan for 6 months for this default
  - Modify your **Chapter 13 plan** to include missed payments.
  - Apply for a **loan modification** (with court approval).
  - Work out a repayment plan with your lender.

Bottom Line

Making post-petition mortgage payments in **Chapter 13 is essential** to keep your home. Whether you pay directly or through the trustee, always **verify payments, keep records, and monitor your account** to avoid surprises. If any issues arise, consult your bankruptcy attorney immediately.

NOTICE TO ASSIGNOR OF FILING OF ASSIGNMENT/ TRANSFER OF CLAIM

A **Notice of Assignor Transfer** in bankruptcy typically refers to a notice filed when a **claim** or **debt** is transferred from one creditor (assignor) to another (assignee). This often happens when a lender, mortgage servicer, or debt buyer acquires a claim from the original creditor.

Key Aspects of a Notice of Assignor Transfer in Bankruptcy

1. Purpose of the Notice
   - Informs the bankruptcy court, trustee, and debtor that a creditor has **transferred or sold its claim** to another entity.
   - Ensures that the correct party receives payments and legal notices.
2. Who Files the Notice?
   - The **new creditor (assignee)** usually files the notice with the **bankruptcy court**.
   - In some cases, the original creditor (assignor) may also provide notice.
3. **Contents of the Notice**

   A standard **Notice of Transfer of Claim** should include:
   - **Bankruptcy case number**
   - **Debtor's name**
   - **Assignor (original creditor)**
   - **Assignee (new creditor or debt buyer)**
   - **Claim number** (if the claim has been filed)
   - **Amount of the claim**
   - **Effective date of transfer**
4. Effect of the Transfer

- The **new creditor (assignee)** becomes the party responsible for collecting payments or enforcing the claim.
  - The debtor and trustee must **update their records** to ensure payments go to the correct entity.
  - The debtor may dispute the transfer if there is an error or if they believe the claim is invalid.

5. Objections and Disputes
   - If there are errors in the notice or the debtor disagrees with the claim transfer, they can **object** with the bankruptcy court.
   - Common reasons for objections include:
     - Incorrect claim amount
     - Invalid transfer or unauthorized assignment
     - Failure to provide proper documentation

What Should Debtors Do If They Receive a Notice of Transfer?

Most of the time you don't have to do anything! But otherwise:

- **Verify the new creditor's information** to ensure payments are made to the right entity.
- amounts or an unrecognized creditor.
- **Update payment instructions** if paying a secured debt (*e.g.,* mortgage or car loan).
- **attorney** if there are concerns about the validity of the transfer.

Turn On Your Video!

BY JUDGE JAMES A. SHAPIRO AND THOMAS DEMOUY

FEW THINGS ARE MORE ANNOYING to a judge than when we can't see the litigant or lawyer we are addressing (or who is addressing us). I once heard a judge describe it on Zoom as the equivalent of "hiding under the benches in court."

During the height of the pandemic, there were judges who were not turning on their video as well. Without naming names, my former presiding judge once had to remind everyone in the division to turn on their videos. To a self-represented litigant–much less a lawyer–it must be like addressing the Great Oz in "The Wizard of Oz": "Pay no attention to that man behind the curtain!" Pay no attention to that judge on the blank screen. It was inexcusable and unacceptable.

As the leaders of a hearing, judges have always had the obligation to set and exceed the standards of proper decorum in court. This maxim applies as much in the virtual courtrooms of Zoom as it does in traditional court. Judges wear robes–a more neutral garment than lawyers' suits–to set a standard of dignity in the courtroom.

Furthermore, every party in court should address judges as "Your Honor" to further establish that the judge is the highest authority in the room and to remind judges of the sacred obligation they hold. This title represents the sustained commitment to due process and fairness that citizens and voters expect of their esteemed judges.

The world, the United States, and Illinois are still in the first phase of a virtual transformation that has enveloped many aspects of life–not the least of which is our court system. Zoom court is now a reality that is here to stay. Judges are the standard bearers in establishing proper decorum in virtual court, just as they are in traditional court. Turning on one's Zoom camera is just as simple as slipping on a robe or saying, "Your Honor." Yet this straightforward component of virtual court is more integral to a fair trial or hearing than proper attire or properly addressing the judge. Without a video feed, the judge cannot demonstrate that they are paying attention to the adverse parties' arguments. A callous lawyer could assume that judges who fail to show themselves might as well be sleeping on the job. Considering everything that could happen behind a blank screen, a judge's resemblance to the Wizard of Oz may be wishful thinking.

It should be a given that judges use reliable microphones and a stable internet connection, yet some continue to have issues with this. Judges, in accordance with their role as leaders of court proceedings, should also have sufficient technological literacy to perform their duties and even help troubleshoot issues that less tech-savvy litigants are bound to encounter. Technological literacy by all parties is essential to a fair hearing, and judges should be committed to helping with this.

In addition to being a crucial component in the decorum of the virtual courtroom, video serves as one of the two components of communication that judges weigh–the other being oral communication. Body language, hand gestures, and facial expression are core visual communication elements that judges and juries have long relied on to assess the credibility of attorneys and witnesses (it is, of course, impossible to assess any of these from a blank screen). It is more difficult for the court to guarantee litigants a fair proceeding–especially in comparison with in-person hearings–if the visual element of communication is entirely absent. Thus, judges should expect parties and lawyers to use video at all times in virtual court.

Furthermore, video can often aid with Zoom's unreliable audio and help judges diagnose the parties' technical issues. A poor microphone or an unstable internet connection can create a communication barrier unknown in physical court proceedings. Although judges and court reporters can only marginally decipher oral communication through lip reading on the video feed, having this visual component can help them diagnose whether it is a microphone, internet, or technological literacy issue.

It is important not only for parties to complete the crucial step of turning on their video, but also to stay in an appropriate location during the proceedings and to minimize distractions.

In my time as a judge, I have seen litigants call from moving cars, on a busy street, and even on the toilet. Such behavior is the equivalent of showing up to a physical court in underwear or loudly eating a large lunch at the counsel table. These examples show a blatant disregard for court decorum that insults the dignity of the court. Judges should refrain from hearing litigants who cannot find an appropriate background until the litigants in question rectify these problems. Likewise, judges should make note of significant distractions and admonish parties to correct them. In principle, judges should not tolerate behaviors on Zoom that they would not tolerate in a physical court. This follows the established position that courts should be free from behaviors that disrupt decorum.

In sum, turning on one's video conveys the crucial element of visual communication. Video preserves court decorum and furthers the interests of justice. If litigants have video capability on their devices, they should be both heard *and* seen. They should not do the Zoom equivalent of hiding under the benches in a physical courtroom. Because that is exactly what appearing without video is like. Additionally, lawyers and litigants should expect litigants to find a suitable background and minimize distractions as a matter of respect for the court. They should come out from under the benches by turning on their video and respect the Court on Zoom just as they would in person. ■

Hon. James A. Shapiro is a judge in the Domestic Relations Division of the Circuit Court of Cook County and a Past President of the Decalogue Society of Lawyers.

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Bankruptcy Court Upholds CNB Bank's Secured Creditor Status Despite Entity Name Discrepancies: Southern District of Illinois Finds Name Misnomer Does Not Defeat UCC Attachment or Perfection

BY DEANNA L. LITZENBURG

IN A NOTABLE DECISION FROM THE U.S. BANKRUPTCY COURT for the Southern District of Illinois (Adversary Nos. 21-03013 and 21-03016), Judge William V. Altenberger granted summary judgment in favor of CNB Bank & Trust, N.A., affirming its status as a secured creditor in the Chapter 11 case of First to the Finish Kim and Mike Viano Sports, Inc., despite inconsistencies in the legal naming of the debtor across loan documentation.

The dispute arose from the debtor's historical use of variant entity names and structures, oscillating between corporate and unincorporated forms, all controlled by the same principals—the Vianos—and operating an uninterrupted athletic supply business. CNB's loan and security documentation, including a 1992 and a 2014 security agreement, as well as multiple 2018 promissory notes, predominantly identified the borrower as "First To The Finish Inc." rather than the debtor's full registered name of First to the Finish Kim and Mike Viano Sports, Inc.

Both Nike USA, Inc. and the Chapter 11 Trustee sought to avoid CNB's liens and relegate its $9.6 million claim to unsecured status under Article 9 of the Uniform Commercial Code, arguing that the naming inconsistency precluded attachment and perfection. They also cited *In re Duckworth,* 776 F.3d 453 (7th Cir. 2014), to argue against post-petition reformation. The Court noted that it was a matter of first impression under Illinois law as to whether the names needed to be identical for authentication purposes.

The Court rejected the arguments of Nike and the Chapter 11 Trustee, concluding that the documentation satisfied the UCC's requirements under §§ 9-203 and 9-308 of the Illinois Commercial Code. Judge Altenberger emphasized that

the use of a shortened or inaccurate name does not, in itself, void a security interest where the debtor's identity is ascertainable and consistent with the economic realities of the transaction. Citing both *Cheese Depot Inc. v. Sirob Imports, Inc.,* 2018 U.S. Dist. LEXIS 64024 (N.D. Ill. 2018), and *In re Mulkanoor,* 595 B.R. 795 (Bankr. N.D. Ill. 2018), the Court found that the name discrepancy amounted to a non-material misnomer.

Distinguishing *Duckworth,* the Court held that CNB was not seeking to reform a substantive term of the agreement (*e.g.,* collateral description or debt reference), but rather to affirm that a single business—continuously operated and controlled by the same principals—was the borrower in substance, if not in strict form.

This decision underscores a pragmatic approach to UCC enforcement within the bankruptcy context and highlights the courts' willingness to uphold commercial expectations where formal defects do not frustrate the underlying purpose of public notice or creditor protection. ■

Deanna L. Litzenburg is an attorney, member of the Commercial Banking, Collections, and Bankruptcy Section of the Illinois State Bar Association, and a shareholder in Mathis, Marifian & Richter, Ltd., with an office in Belleville, Illinois, with a virtual home at www.mmrltd.com.