



Dated: March 08, 2021
The following is ORDERED:

A handwritten signature in cursive script that reads "Jennie D. Latta".

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

In re
CHANDRA LYNETTE BERRY,
Debtor.

Case No. 11-28881-L
Chapter 7

CHANDRA LYNETTE BERRY,
Movant,
v.
OCWEN LOAN SERVICING, LLC,
and its subsidiary
PHH MORTGAGE CORPORATION,
Respondents.

Motion for Contempt and
Amended Motion for Sanctions
[Dkt. No. 76]
Notice of Written Argument
[Dkt. No. 99]

**ORDER DENYING MOTION TO HOLD OCWEN LOAN SERVICING, LLC, AND ITS
SUBSIDIARY PHH MORTGAGE CORPORATION IN CONTEMPT AND FOR
SANCTIONS FOR VIOLATIONS OF THE DEBTOR'S DISCHARGE INJUNCTION**

BEFORE THE COURT is the Debtor's *Motion to Hold Ocwen Loan Servicing, LLC, and its subsidiary PHH Mortgage Corporation in Contempt and for Sanctions for Violations of Debtor's Discharge Injunction*, filed January 19, 2021 (the "Motion for Sanctions") [Dkt. No. 76]; and the Debtor's *Notice to the Court of Debtor's Written [Oral] Argument for Good Cause Shown*,

filed on February 23, 2021, after oral argument because the Debtor experienced technical difficulties on the day of argument. [Dkt. No. 99]. Responses were not filed by the Respondents, which is understandable because the Debtor did not obtain personal service upon them. The court heard oral argument on February 18, 2021 and has reviewed the Debtor's written argument. The court will deny the motion without prejudice for lack of proper service.

FINDINGS OF FACT

The Debtor commenced her case by filing a voluntary petition under Chapter 7 of the Bankruptcy Code on August 30, 2011. [Dkt. No. 1]. At that time, the Debtor was represented by attorney Gene Bell.

Among her assets was a house located at 6215 Malloch Drive, Memphis, Tennessee (the "Property"). [Dkt. No. 1, Schedule A].

The Property was encumbered by two liens, the first scheduled at \$263,000, serviced by American Servicing Center, and the second scheduled at \$22,000, serviced by Greentree. [Dkt. No. 1, Schedule D].

According to the Declaration of the Debtor, on February 6, 2015, Ocwen Loan Servicing, LLC ("Ocwen") "and its agents on behalf of [The Bank of New York Mellon (the "Bank of New York")] executed an Appointment of Successor Trustee to initiate foreclosure of the Property. [Dkt. No. 76, p. 14 of 26, ¶ 3].

According to the Declaration of the Debtor, Ocwen and its agents on behalf of the Bank of New York wrongfully foreclosed on the Property and filed a Trustee's Deed at Shelby County Register of Deeds, Instrument Number 15048488. [Dkt. No. 76, pp. 14-15 of 26, ¶ 4].

According to the Declaration of the Debtor “Ocwen/PHH on behalf of [Bank of New York] sold the discharged mortgage for at least \$177,000.00 to NRZ Inventory Trust . . . then transferred the discharged debt for collection.” [Dkt. No. 76, p. 16 of 26, ¶ 8].

The court has recited only some of the allegations of the Motion for Sanctions in order to identify the parties.

The Debtor’s *pro se* motion to reopen her bankruptcy case was granted by order entered January 8, 2021. [Dkt. No. 74].

The Debtor filed the Motion for Sanctions on January 19, 2021. The Debtor asks for actual damages and punitive damages against the Respondents for violation of the discharge injunction pursuant to 11 U.S.C. §§ 105(a) and 524(a)(1). The Debtor also asks for an “Order for release of mortgage.” [Dkt. No. 76, pp. 1, 11-12].

The Certificate of Service for the Motion for Sanctions reflects service by “U.S. Certified Mail” to:

Ocwen Loan Servicing, LLC
1661 Worthington Road, Suite 100
West Palm Beach, FL 33409

NRZ REO VII, LLC
C/O PHH Mortgage Corporation
5720 Park Drive
West Palm Beach, FL 33407

Neither of the Respondents has filed a proof of claim or otherwise made an appearance in this bankruptcy case.¹

¹ The Claims Register reflects only two proofs of claim filed, one by the Shelby County Trustee and the other by First Tennessee Bank.

JURISDICTION, VENUE, AND AUTHORITY

Jurisdiction over a contested matter arising under the Bankruptcy Code lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). The discharge injunction arises under the Bankruptcy Code. 11 U.S.C. § 524(a)(2). Motions arising out of alleged violations of the discharge injunction are thus core proceedings. *See* 28 U.S.C. § 157(b)(1). The bankruptcy court has authority to enter a final order determining that a violation of the discharge injunction has occurred and imposing appropriate sanctions. *See* 11 U.S.C. § 105(a) and 28 U.S.C. § 157(b)(1). Venue of this contested matter is proper to the Western District of Tennessee because this matter arises in a bankruptcy case pending in this district. *See* 28 U.S.C. §1409(a).

CONCLUSIONS OF LAW

Personal Jurisdiction

Before proceeding to consider the substance of the Debtor's arguments, the court must pause to consider whether Ocwen or PHH Mortgage are properly before the court. Neither of these creditors filed proofs of claim in the bankruptcy case. Neither of them has made an appearance in this case. Federal Rule of Bankruptcy Procedure 9020 states that Rule 9014 governs a motion for order of contempt. Rule 9014(b) specifies that service of motions initiating a contested matter shall be in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined under Rule 9006(d). Rule 7004(b) permits service by first class mail but only

when addressed as specified in that rule. Service upon a domestic or foreign corporation requires mailing a copy of the summons and complaint “to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process” Fed. R. Bankr. P. 7004(b)(3). Service or the waiver of service consistent with Rule 7004(b) “is effective to establish personal jurisdiction over the person of the defendant with respect to a case under the Code or a civil proceeding arising under the Code, or arising in or related to a case under the Code.” Rule 7004(f). The converse is likewise true – the failure to obtain service or the waiver of service is not effective to establish personal jurisdiction. Rule 9014(a) requires that when relief is requested by motion, “reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought.” Ocwen and PHH Mortgage have not been served with the Motion for Contempt in accordance with the applicable Federal Rules of Bankruptcy Procedure. Therefore, they have not been afforded reasonable notice and an opportunity for hearing, and no relief may be granted the Debtor with respect to them.

CONCLUSION

As a result of the failure of the Debtor to properly serve the Respondents, the Motion for Sanctions is **DENIED** without prejudice.

cc: Debtor/Movant
Attorney for Debtor/Movant (if any)
Respondents
Attorney(s) for Respondents (if any)
Chapter 7 Trustee (if any)
United States Trustee