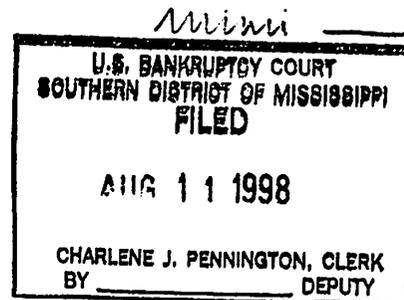


UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION



IN THE MATTER OF

BANKRUPTCY NO.

LAWRENCE E. FOSTER
and BRENDA L. FOSTER

93-02185 WEE

LAWRENCE E. FOSTER
and BRENDA L. FOSTER

ADVERSARY NO.
98-0025 WEE

PLAINTIFFS

v.

TOWER LOAN OF MISSISSIPPI, INC.

DEFENDANT

ORDER AND REASONS

This adversary proceeding presents four motions for decision:

- (1) the defendant's opposition to plaintiffs' request for jury trial and motion for bench trial (Pl. 7);
- (2) the plaintiffs/debtors' motion to compel (Pl. 18);
- (3) the defendant's motion for a more definite statement (Pl. 16); and
- (4) the plaintiffs/debtors' motion for extension of time. (Pl. 20).

A. Debtors' request for jury trial

The debtors filed this bankruptcy case as a Chapter 13 in 1993. The debtors filed the pending adversary proceeding against Tower Loan of Mississippi, Inc., a creditor, on January 29, 1998. On February 2, 1998, the debtors filed a request for jury trial. (Pl. 3).

On March 25, 1998, Tower Loan filed a response in opposition to the debtor's request for

jury trial, and moved for a bench trial. Citing In re Jensen,¹ Tower Loan argues that its filing of a proof of claim denied both it and the debtors any right to a jury trial because it triggered the "claims-allowance process" that is triable only in equity.

In response, the debtors assert that the complaint sounds in both law and equity, that mixed questions of law and equity have traditionally been the province of a jury, and that they have an absolute right to a trial before a jury.

In the case of In re Jensen, the debtors were involved in litigation over prepetition claims against noncreditor third parties at the time of the filing of their Chapter 11 bankruptcy petition. The confirmed plan specifically reserved the authority to prosecute the extant claims of the estate to the Jensens. The defendants removed the state court case to the bankruptcy court. The Fifth Circuit held that the debtors did not lose their right to a jury trial on the pre-petition claims by the filing of the bankruptcy petition. The court further discussed the Seventh Circuit case of In re Hallahan,² and determined that the filing of a proof of claim submits the claim to the equity jurisdiction of the bankruptcy court, and deprives both the debtor and the creditor of a jury trial.³

Following Jensen, the court holds that the filing of a proof of claim by Tower Loan submits the claim to the equity jurisdiction of the bankruptcy court, and deprives the parties of a right to a jury trial. The request of the debtors/plaintiffs for a jury trial is denied.

¹ 946 F.2d 369, 374 (5th Cir. 1991).

² 936 F.2d 1496 (7th Cir. 1991).

³ 946 F.2d at 374.

B. Debtors' motion to compel

The debtors filed a motion to compel objecting to certain responses made by Tower Loan to their requests for production of documents. The documents sought by the debtors in the motion to compel can be classified into three categories:

(a) documents that Eagle Federal Bank for Savings, the predecessor of Tower Loan, may have generated in connection with the initial loan to the debtors (Request numbers 2, 3, 14, and 20);

(b) documents pertaining to Tower Loan's loan closing practices, fees, and Truth in Lending compliance (Request numbers 18, 21, 22, 24, and 25); and

(c) insurance policies that Tower Loan allegedly sold to debtors (Request numbers 9, 10, 13, 29, 30, 31, and 32).

Tower Loan's response to the requests is virtually the same for all of the requests, i.e.: Tower Loan did not make the initial loan, but bought the loan from Eagle Federal, which made the loan. Further, because it purchased the note, among other assets from Eagle Federal, it argues that it enjoys the rights of a holder in due course that has no involvement with or duties or responsibilities with respect to the initial credit application, the extension of credit, the providing of insurance, or any other aspects of the initial loan.

The debtors respond that Tower Loan purchased all of the documents pertaining to this series of loans when it purchased assets and liabilities previously belonging to Eagle Federal. Tower Loan is therefore asserted to have custody and control of the documents, and should be required to furnish them.

The court finds that the documents requested are relevant to the issues before the court, and consist of either admissible evidence or evidence that is calculated to lead to the discovery of

admissible evidence as provided by Bankruptcy Rule 7026 and Rule 26(b)(1) of the Federal Rules of Civil Procedure. Tower Loan must furnish all of the requested documents that it has within 30 days of entry of this order.

C. Tower Loan's motion for a more definite statement

Tower Loan moved for a more definite statement, averring that the plaintiffs' first and third causes of action are so vague and ambiguous that Tower Loan cannot respond without a more definite statement.

The court agrees that plaintiffs' first and third causes of actions are too general, vague, and ambiguous. The plaintiffs/debtors must furnish a more definite statement within 30 days from the time that Tower Loan responds to the discovery request that the court has ordered in paragraph (2) above.

D. The debtors' motion for extension of time

Contemporaneously with the motion to compel, the debtors filed a motion for extension of time. The motion seeks additional time both to amend the pleadings and to join other parties as defendants, until after the defendants have responded to the discovery and the debtors have had a reasonable opportunity to inspect the responses.

The debtors' request is reasonable. The court will grant the motion, and give the debtors 30 days from the time they receive the additional discovery responses to amend their complaint and/or add parties.

For these reasons,

IT IS ORDERED:

1. The request of the plaintiffs/debtors for a jury trial is **DENIED**.
2. The motion of Tower Loan of Mississippi, Inc. for a bench trial is **GRANTED**.
3. The motion to compel filed by the debtors is **GRANTED**; Tower Loan must furnish all of the documents requested that it has within 30 days of entry of this order.
4. The motion for Tower Loan of Mississippi, Inc. for a more definite statement is **GRANTED**. The plaintiffs/debtors must furnish a more definite statement on the first and third counts of the complaint within 30 days from the time that Tower Loan responds to the discovery request that the court has ordered in paragraph (3) above.
5. The debtors' motion for extension of time is **GRANTED**; the debtors are allowed 30 days from the time they receive the additional discovery responses from Tower Loan of Mississippi, Inc. to amend their complaint and/or to add additional parties.

New Orleans, Louisiana, this 30th day of July 1998.



JERRY A. BROWN
U. S. BANKRUPTCY COURT

On July 30, 1998, the Original Order and Reasons was mailed to Judge Ellington's office and will be served thereafter:

Original forwarded to Clerk's Office

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c/o Hon. Edward Ellington
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