

In re Okafor, 595 B.R. 903 (Bankr. W.D. Mo. 2018) (Dow, J.)

Issue:

Does the filing of a bankruptcy petition sufficiently affect Lender's interests to allow attorney fees as provided in a deed of trust? Does the filing of a proof of claim and reviewing of a plan constitute the unauthorized practice of law by an out-of-state attorney? What is a reasonable fee for review of a Chapter 13 plan and preparation of a proof of claim?

Facts:

Debtors filed bankruptcy in Mo. Lender retained California based attorneys to review Plan and file proof of claim. Attorneys weren't licensed in Mo. nor admitted before the court. Attorneys filed notice of fees and requested \$550 to prepare proof of claim and \$350 for reviewing plan. Debtors objected and argued there wasn't a triggering event under the promissory note or deed of trust that would authorize payment of attorney fees and that the attorney couldn't seek fees if not licensed or otherwise admitted in this jurisdiction.

Lender countered that filing a claim is not the unauthorized practice of law in Mo. or under Rule 9010 and that the bankruptcy filing itself was a triggering event under the deed of trust.

Analysis:

The Court first determined if attorney fees were authorized by the note or deed of trust. The deed of trust terms authorized attorney fees if there is a legal proceeding that might significantly affect Lender's interest in the property. Debtors argued the filing of bankruptcy did not significantly affect Lender's rights because the account was current. The Court looked at the plain language of the deed that includes the word "might" affect Lender's rights and determined a bankruptcy filing certainly might affect Lender's interest in the property. Reviewing the plan and filing a proof of claim are appropriate actions to protect Lender's interest. Debtors' cited authority was not persuasive.

The Court next looked at whether attorneys engaged in the unauthorized practice of law in Mo. by charging to review a plan and file a claim. Rule 9010 was not applicable because attorneys did not

appear before the court. A Mo. Bar Informal Ethics Opinion that determined the preparation, supervision of execution and recording of a deed by an out of state lawyer not licensed in Mo. was not the unauthorized practice of law in Mo. if all of the work was done in the other state strengthens Lender's argument. This Court determined that some type of appearance in a contested matter or adversarial proceeding or filing an adversarial pleading is required. Something more than reviewing a plan and preparing and filing a claim is required to meet the threshold of unauthorized practice of law in Mo.

Finally, the Court looked at the reasonableness of the claimed \$900 attorney fees. Filing a proof of claim is more than a ministerial act but there are certain administrative aspects. The court determined that \$900 is unreasonable for a large law firm that routinely performs such tasks for lenders and specializes in this area and is familiar with the procedure. Because nothing extraordinary or complex was involved, the Court reduced the allowed attorney fees to \$600 (based on an appropriate

hourly rate similar to debtor's attorney of \$300/hour x 2 hours for a reasonable amount of time for the tasks involved).

Holding:

Debtors' objection to attorney fees denied in part and granted in part.