

**ENTERED**

SEP 09 2010

**K.R.W.**

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

Shaughn P. Wile and Prissela A. Wile,

Debtor(s).

C/A No. 09-04657 ~~Wile~~

Chapter 13

**ORDER**

**FILED**  
SEP - 9 2010  
South Carolina  
Min. M

United States Bankruptcy Court  
Columbia, South Carolina (26)

This matter comes before the Court pursuant to an Order and Rule to Show Cause entered August 17, 2010 (the "Rule") which directed Chase Home Finance, LLC ("Chase") to appear and explain why it should not be held in contempt of court and sanctioned for violating the Court's Order entered on July 23, 2010 ("the Order").

The Order was entered in In re Vaughn, C/A No. 08-03826, after Chase, without the assistance of counsel, directly filed on the general case docket via CM/ECF a Notice of Payment Change ("Notices") using the classification of "correspondence."<sup>1</sup> The Order directed Chase to discontinue the filing of Notices or similar documents on the general case docket of the Court without the assistance of counsel in all cases within twenty (20) days. The record of the Court indicates and Chase acknowledged at the hearing that it violated the Order in ten cases on or before September 1, 2010. (Case Nos. 10-05029, 10-05321, 10-05356, 09-04657, 08-05767, 10-05504, 10-00632, 10-03201, 10-03370, 10-03380).<sup>2</sup>

In the undersigned's view, such filings by creditors should be prohibited. First, filing Notices without the assistance of counsel is a violation of South Carolina Local Bankruptcy Rule 9011-2, which requires, "all partnerships, corporations and other

<sup>1</sup> In many instances, 4 S Technologies, a servicing company, has filed Notices on behalf of Chase without the assistance of counsel.

<sup>2</sup> These cases are pending before the undersigned. Chase has also filed Notices after the Order was entered in cases pending before other judges of this Court.

business entities” that appear in this Court to be “represented by an attorney . . . except with respect to the filing of proofs of claim or interests and reaffirmation agreements.”<sup>3</sup>

Second, documents and notices intended to supplement or amend proofs of claim should be filed in the separate claims register maintained in each case. This view is supported by proposed Federal Rule of Bankruptcy Procedure 3002.1 which requires such a filing on the claims register.

Third, in this District, adjustments to future mortgage payments due to changes in interest rates, taxes or insurance do not affect the distributions made by the Chapter 13 Trustee because post-petition payments to mortgage creditors under 11 U.S.C. § 1322 are not paid through the Chapter 13 plan. The typical plan provides that mortgage arrearages are cured through payments distributed by the Trustee with post-confirmation regular payments being made directly to the mortgage creditor by the debtor. The Court realizes that in other districts trustees do make post-petition mortgage payments. These trustees need this information and prefer the convenience of the automatic alert they receive through a filing on the court’s general case docket rather than scheduling a regular review of the claims register. Convenience, however, is an insufficient reason to allow such a practice, especially in this District where the information is not needed for the distribution of plan payments.

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<sup>3</sup> Pursuant to 28 U.S.C. § 1654, bankruptcy courts have the statutory authority to regulate who may appear before them. See also Local Civil Rule 83.IX.02 DSC (authorizing Bankruptcy Judges of this District “to make such rules of practice and procedure as they may deem appropriate.”). Federal courts have uniformly held that 28 U.S.C. § 1654 does not allow corporations, partnerships, or any other artificial entity to appear in federal court except through a licensed attorney. Rowland v. Cal. Men’s Colony, Unit II Men’s Advisory Coun., 506 U.S. 194, 202 (1993); see also Secured Construction, LLC v. Executive Construction, LLC, C/A No. 3:10-903-JFA-PJG (Report and Recommendation) (D.S.C. Apr. 23, 2010) (recognizing that a pro se litigant may not represent a corporation or partnership).

Fourth, allowing Chase to file the Notices as a “correspondence” on the general case docket that does not relate to a pleading or hearing, but rather seeks to convey information between parties (even counsel) in lieu of direct communication is ill-advised. Such filings may constitute *ex parte* communication of information which may arise in disputes before the Court and unnecessarily broadcasts the information to other creditors and parties in interest.

Finally, such filings are a misuse and mischaracterization of the “correspondence” event which should not serve as a substitute for notifications required under the parties’ agreement.<sup>4</sup> In some situations, such correspondence has even been addressed to the Judge, requiring unnecessary attention and consideration.

For all these reasons, and others stated at the hearing, the Court finds that it is necessary to order the prohibition such filings and enforce the order by way of its contempt and sanction authority, if necessary.

Chase appeared at the hearing through a representative and through counsel. A representative of 4 S Technologies, the primary servicer of Chase, also appeared at the Rule hearing. Through its counsel, Chase warranted that it had discontinued the practice of filing Notices on the general case dockets in this Court and requested that any sanction be suspended upon its agreement of no further filings in violation of the Order.

After considering the record of the Court and the statements by Chase, the Court finds Chase, after adequate notice, acted in violation of the Order and therefore is in

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<sup>4</sup> While the filing of such Notices does provide debtor’s counsel notice, it does not provide effective notice to the debtor individually.

