

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: §
LARRY PRESTON § CASE NO. 16-30580
DEBTOR § CHAPTER 13
§

DEBTOR'S OBJECTION TO CLAIM NO. 5 BY OCWEN LOAN SERVICING

THIS IS AN OBJECTION TO YOUR CLAIM. THE OBJECTING PARTY IS ASKING THE COURT TO DISALLOW THE CLAIM THAT YOU FILED IN THIS BANKRUPTCY CASE. YOU SHOULD IMMEDIATELY CONTACT THE OBJECTING PARTY TO RESOLVE THE DISPUTE. IF YOU DO NOT REACH AN AGREEMENT YOU MUST FILE A RESPONSE TO THIS OBJECTION AND SEND A COPY OF YOUR RESPONSE TO THE OBJECTING PARTY WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE OBJECTION IS NOT VALID. IF YOU DO NOT FILE A RESPONSE WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU, YOUR CLAIM MAY BE DISALLOWED. A HEARING HAS BEEN SET ON THIS MATTER ON SEPTEMBER 16, 2016 AT 9:00 AM AT THE UNITED STATES COURTHOUSE 403, 515 RUSK AVENUE, HOUSTON, TEXAS 77002.

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW LARRY PRESTON, "Debtor" herein, and files this Objection to Claim No. 5 by OCWEN LOAN SERVICING "Claimant" herein, and would show the Court the following.

1. Introduction:

- a. Debtor filed this Chapter 13 bankruptcy case on 2/1/2016;
- b. Claimant filed a secured claim on 6/23/2016 for the amount of \$35,472.00, attached as EXHIBIT A;
- c. Debtor has instructed the undersigned attorney to file an objection because he believes the Claimant is no longer a secured creditor for this property, as another creditor has wiped out the lien held by the Claimant. Debtor's declaration is attached here as EXHIBIT B.

2. Basis for Objection:

- a. The Debtor files this objection pursuant to 11 U.S.C. §501;
- b. **§502(b)(1):**
 - i. Under 11 U.S.C §502(b)(1), the debt which made the basis of the Claim is unenforceable against the debtor or property of the Debtor under any agreement or applicable law;
 - ii. Debtor believes that another creditor, Berry Group now owns this property, and Debtor has made several months of payments to that creditor.
- c. **Debtor does not believe that the Claimant has authority anymore to file this claim as a secured claim:**
 - i. Debtor believes that Claimant no longer has a lien on the property located at 5709 Langley Rd. Houston, TX 77016. The account information for Harris County Appraisal District showing the current lien holder as Berry Group, LP is attached as EXHIBIT C;
 - ii. Debtor owed money to an unsecured creditor, SPCO Federal Credit Union, for a personal loan. On 5/19/2009 SPCO Federal Credit Union, by default, won a judgment against the Debtor which allowed for the sale of the said property. The property was levied by Harris County Constable. The Notice of Levy is attached as EXHIBIT D;
 - iii. Debtor got concerned about the levy, and informed the Claimant of the levy, who told the Debtor not to worry. Claimant then agreed to pay off the amount to stop the sale. However, the payment by Claimant was not

only sent late, but addressed to the wrong department, which resulted in the property to be sold to the Berry Group on 10/7/2016. Therefore Debtor believes that the lien held by Bank of New York Mellon and/or Ocwen Loan Servicing was wiped out by Berry Group. The statement reflecting the late payment made by Claimant is attached as EXHIBIT E. Berry Group got the deed to the property in the constable sale, which is attached here as EXHIBIT F;

iv. Debtor was unaware of the sale. On 11/1/2014 Berry Group contacted the Debtor threatening to evict him, and forced him to execute separate rental agreement with an option to buy the property. The letter for eviction is attached here as EXHIBIT G, and agreement for sale is attached here as EXHIBIT H.

d. Even if Claimant can prove it still has a security interest in the property, the debt amount as alleged is inaccurate:

i. Debtor has made several months of payments Berry Group and believes that proper credit and accounting for such payments should be given to him.

WHEREFORE, Debtor requests this Honorable Court to Order Claimant to file an accurate Claim with proper credit given to Debtor for payments to Berry Group, and provide such other and further relief which this Court deems just and proper.

Date: 7/25/2016

Respectfully submitted,

DAMANI LAW FIRM, PLLC

By: /s/ Anis Damani

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following parties, and on the attached list, if any, by first-class mail or by electronic service via the Court's ECF filing system on 7/25/2016:

- 1- Chapter 13 Trustee via Electronic Service;
- 2- US Trustee via Electronic Service;
- 3- Debtor via First-Class Mail;
- 4- All creditors and parties in interest via First Class Mail.