

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In Re: : Chapter 11
:
DITECH HOLDING CORPORATION, *et al.*, : Case No. 19-10422 (JLG)
:
Debtors.¹ : (Jointly Administered)
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**CREDITOR PAULA GOLDWYN’S OPPOSITION TO SIXTIETH OMNIBUS
OBJECTION TO PROOFS OF CLAIM (NO BASIS CONSUMER CLAIMS)**

Consumer Creditor Paula Goldwyn, appearing *pro se*, opposes the reclassification, disallowance, and expungement of her Proof of Claim (Claim No. 21502). This claim has been designated as “contingent,” “unliquidated,” and “disputed.” The amount of the claim is \$163,000 and is listed as “undetermined.” To be clear, I want to emphasize that **I am not asking for any money** from Debtor – I only want to remain living in the only home I have ever known.

CONCISE STATEMENT

1. In 2001, my mother, Bernice Enlow, was diagnosed with Alzheimer’s disease. SIX YEARS LATER, when Debtor obtained her signature upon its reverse mortgage loan documents through fraudulent means, she was (still) mentally incapacitated

¹ The Debtors’ *Third Amended Joint Chapter 11 Plan of Ditech Holding Corporation and Its Affiliated Debtors* (ECF No. 1326) was confirmed, which created the Wind Down Estates. The Wind Down Estates, along with the last four digits of each of their federal tax identification number, as applicable, are Ditech Holding Corporation (0486); DF Insurance Agency LLC (6918); Ditech Financial LLC (5868); Green Tree Credit LLC (5864); Green Tree Credit Solutions LLC (1565); Green Tree Insurance Agency of Nevada, Inc. (7331); Green Tree Investment Holdings III LLC (1008); Green Tree Servicing Corp. (3552); Marix Servicing LLC (6101); Walter Management Holding Company LLC (9818); and Walter Reverse Acquisition LLC (8837). The Wind Down Estates’ principal offices are located at 1100 Virginia Drive, Suite 100, Fort Washington, Pennsylvania 19034.

and incompetent and thus incapable of delivering, conveying, or entering into any contract or mortgage or acknowledging her approval of the same. Debtor either knew or should have known this, had they conducted any sort of decent inquiry with her prior to the signing of any contract, as surely required by law. I guarantee you there was no “meeting of the minds” at the time my mother entered into that contract.

Consequently, any illegal liens placed on my mother’s home as a result of that transaction are unenforceable and should be released immediately.

2. The loan was federally insured by the Federal Housing Administration (FHA) under Title II of the National Housing Act (12 U.S.C. § 1715 *et seq.*). As a quid pro quo for the governmental guaranty on this FHA-insured mortgage, Debtor was required to follow applicable FHA mortgage servicing guidelines. Debtor’s rights are subject to the regulations of the Secretary of the United States Department of Housing and Urban Development (“HUD”), and it must administer and service the mortgage in accordance with all relevant FHA regulations, including but not limited to 24 C.F.R. § 203.500 *et seq.* and the HUD handbook, 4330.1.

3. I have lived in this house since the day I moved here with my family in 1966 (when I was one year old). My mother passed away on August 2, 2012, at which time I became the sole owner of her home by virtue of a Transfer on Death Deed.

In accordance with 24 CFR § 206.125(c), when a reverse mortgage becomes due and payable as a result of the mortgagor’s death and the property is conveyed by will or operation of law to the mortgagor’s heir, that party **must be given the option** to satisfy the HECM debt by paying the lesser of the mortgage balance or 95% of the current appraised value of the property. (To determine the “current appraised value of the property,” FHA

regulations at 24 CFR § 206.125(b) require the lender to “obtain an appraisal of the property no later than 30 days after the mortgagee becomes aware of the mortgagor’s death.”)

In this case, Debtor **never** gave me the option to do either, at **any** time. It also **never** conducted an FHA appraisal on the home, at **any** time. **Therefore, if I lose my home to Debtor, then Debtor will have effectively STOLEN my home from me!**

4. Kansas is one of the few states that has an unlimited homestead exemption. The homestead exemption extends to members of a decedent’s family. See Kan. Const. Art. 15, § 9; and K.S.A. 59-401:

A homestead to the extent of 160 acres of land lying without, or of one acre lying within, the limits of an incorporated city, or a manufactured home or mobile home, occupied by the decedent and family, at the time of the owner's death, as a residence, and continued to be so occupied by the surviving spouse and children, after such death, together with all the improvements on the same, shall be wholly exempt from distribution under any of the laws of this state, and from the payment of the debts of the decedent, but it shall not be exempt from sale for taxes thereon, or for the payment of obligations contracted for the purchase thereof, or for the erection of improvements thereon.

5. The FHA/HUD Regulations mandate compliance with servicing regulations prior to acquiring title to a property: “It is the **intent** of the Department that no mortgagee shall commence foreclosure **or acquire title to a property** until the requirements of this subpart have been followed.” 24 C.F.R. § 203.500 (emphases added).

6. A “mortgagee’s deviation from compliance with the forbearance provisions of the HUD Handbook and regulations” may be raised as an equitable defense to foreclosure on an FHA-insured mortgage. *Fleet Real Estate Funding Corp. v. Smith*, 530 A.2d 919, 923, 366 Pa. Super. 116, 124 (1987). At the very least, I am asking this Court for equity by declaring that I, not Debtor, am the rightful owner of this property.

In closing, considering that I am appearing *pro se*, the only person possessing ultimate authority to reconcile, settle, or otherwise resolve this matter would be myself.

Dated: August 14, 2020
Manhattan, Kansas

Respectfully submitted,

/s/ Paula K Goldwyn
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Consumer Creditor