



1           On August 27, 2009, the law firm of Tiffany & Bosco filed a notice of appearance for  
2 BAC Home Loan Servicing, fka Countrywide Home Loans Servicing, L.P. On that same day, the  
3 law firm also filed a proof of claim for \$339,928.49, and attached to the proof of claim a deed of  
4 trust, signed by Debtor David M. Wilson and recorded February 14,2006. The deed of trust noted  
5 that it secured a debt of \$319,500, and it identified the secured collateral as the Edna Place  
6 residence.

7           Also, on August 27, 2009, the law firm of Tiffany & Bosco filed an objection to the  
8 Chapter 13 plan, and objected on the basis that the plan failed to account for necessary repayment  
9 of any arrearages, alleged to be \$25,456.93.

10           The Debtors then objected to the proof of claim, on a number of grounds, and asked  
11 the court to disallow the claim and overrule the objection to the plan (DN 24).

12           In the meantime, the Chapter 13 Trustee moved to dismiss the Debtors' case, for  
13 failure to make payments under the plan. That matter was set for December 10, 2009.

14           A hearing was held on December 7, 2009, at which only the Debtors' counsel  
15 appeared. The court posed a number of questions, dealing principally with notice and procedure.

16           FED. R. BANKR. P. 7001 requires an adversary proceeding if the extent, validity and  
17 priority of a lien or other legal interest is to be altered. FED. R. BANKR. P. 3001 provides *prima facie*  
18 validity to a proof of claim. Here, the deed of trust attached to the proof of claim is signed by one  
19 of the Debtors, and the address and legal description of the Edna Place residence is noted within the  
20 body of the deed of trust. The claim and its attachments satisfy the rule.

21           This court does not believe that a motion to disallow a valid secured claim, evidenced  
22 by a *prima facie* valid proof of claim, is the proper procedural vehicle to remove a lien claim from  
23 a parcel of real property. In addition, on the proof of claim itself, BAC specified that notices should  
24 be sent to: BAC Home Loans Servicing, L.P. . . . 7105 Corporate Dr., Mail Stop PTX-209, Plano,  
25 TX 75024. However, the objection and notices were not sent to that address but to claimant's  
26 attorney, who had signed the proof of claim, Tiffany & Bosco.

27           Should the Debtors seek to remove the lien, or otherwise contest it, they must: (1) file  
28 an adversary complaint; (2) serve the statutory agent for the creditor; (3) serve creditor's counsel,

1 Tiffany & Bosco, with a copy of the adversary complaint; and (4) prove substantive grounds as to  
2 why the lien should be stricken.

3 For now, because adequate procedural due process has not been provided for the relief  
4 requested, an order will be entered which OVERRULES and DENIES the Debtors' objection to  
5 Claim No. 14, and SUSTAINS the objection to confirmation.

6 A separate order will be entered. FED. R. BANKR. P. 9021.

7  
8 DATED AND SIGNED ABOVE.

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10 COPIES to be sent by the Bankruptcy Notification  
11 Center ("BNC") to the following:

12 Michael W. Baldwin, Attorney for Debtors

13 Mark S. Bosco, Attorney for BAC Home Loan Servicing, L.P.  
14 fka Countrywide Home Loans Servicing, L.P.

15 Dianne C. Kerns, Trustee

16 Office of the U.S. Trustee  
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