

Gizmo's 3001 (d)

Early this morning I received an email whose content¹ was authored by Neil Garfield from Livinglie's Weblog. I do not normally allow these types of email to influence my path of writing, but this email warranted interruption. The email dealt with the Federal Rules of Evidence 901 and 902. The following was stated within Garfield's email:

"Judge Case' 'New Rules" say as follows, citing In Re VEAL: "A party seeking stay relief in order to enforce a secured obligation against real property has the burden of making a colorable showing that it has standing to enforce the note and deed of trust or mortgage. To meet this burden, Movant must provide evidence, in the form of assignments, endorsements or otherwise, demonstrating that it is a person entitled to enforce the note under the Uniform Commercial Code as well as a complete chain of title of the beneficial interest under the deed of trust or mortgage."

Where I am one that understands, I will partially disagree with Garfield and agree with Judge Case only in regard to "Burden". Where one understands laws involving securitization, Uniform Commercial Code, state laws concerning lien perfection in public records and assignment of lien perfection, which in many cases exposes fraud, gathering evidence establishing proof is not difficult but tedious.

Rule 3001 (d) mimics the Federal Rules of Evidence 901 and 902.

Federal Rules of Bankruptcy Procedure

PART III—CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS: Rule 3001. Proof of Claim

(a) Form and content.

¹ <http://livinglies.wordpress.com/2011/09/27/new-rules-in-judge-case-court-federal-rules-of-evidence/>

A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

(b) Who may execute.

A proof of claim shall be executed by the creditor or the creditor's authorized agent except as provided in Rules 3004 and 3005.

(c) Claim based on a writing.

When a claim, or an interest in property of the debtor securing the claim, is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

(d) Evidence of perfection of security interest.

If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.

(e) Transferred claim.

(1) Transfer of claim other than for security before proof filed. If a claim has been transferred other than for security before proof of the claim has been filed, the proof of claim may be filed only by the transferee or an indenture trustee.

(2) Transfer of claim other than for security after proof filed. If a claim other than one based on a publicly traded note, bond, or debenture has been transferred other than for security after the proof of claim has been filed, evidence of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 21 days of the mailing of the notice or within any additional time allowed by the court. If the alleged transferor files a timely objection and the court finds, after notice and a hearing, that the claim has been transferred other than for security, it shall enter an order substituting the transferee for the transferor. If a timely objection is not filed by the alleged transferor, the transferee shall be substituted for the transferor.

(3) Transfer of claim for security before proof filed. If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security before proof of the claim has been filed, the transferor or transferee or both may file a proof of claim for the full amount. The proof shall be supported by a statement setting forth the terms of the transfer. If either the transferor or the transferee files a proof of claim, the clerk shall immediately notify the other by mail of the right to join in the filed claim. If both transferor and transferee file proofs of the same claim, the proofs shall be consolidated. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by a party in interest and after notice and a

hearing, the court shall enter such orders respecting these matters as may be appropriate.

(4) *Transfer of claim for security after proof filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security after the proof of claim has been filed, evidence of the terms of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 21 days of the mailing of the notice or within any additional time allowed by the court. If a timely objection is filed by the alleged transferor, the court, after notice and a hearing, shall determine whether the claim has been transferred for security. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by a party in interest and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate.

(5) *Service of objection or motion; notice of hearing.* A copy of an objection filed pursuant to paragraph (2) or (4) or a motion filed pursuant to paragraph (3) or (4) of this subdivision together with a notice of a hearing shall be mailed or otherwise delivered to the transferor or transferee, whichever is appropriate, at least 30 days prior to the hearing.

(f) Evidentiary effect.

A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

(g) *To the extent not inconsistent with the United States Warehouse Act or applicable State law, a warehouse receipt, scale ticket, or similar document of the type routinely issued as evidence of title by a grain storage facility, as defined in section 557 of title 11, shall constitute prima facie evidence of the validity and amount of a claim of ownership of a quantity of grain.*

If I were a market person, I would bet many of the United States Bankruptcy Judges will rule according to law.

GOD'S & MAN'S