

SPECIFICATION OF ERRORS

1. The Bankruptcy Court clearly abused its discretion in denying Wells Fargo's Rule 60(b)(3) request to vacate the Judgment.
 - a. Debtor Michael L. Jones had an affirmative duty to disclose the Vioxx lawsuit.
 - b. The Bankruptcy Court abused its discretion when it based its decision on an erroneous view of the law.
 - c. In determining the propriety of the denial of relief, the Bankruptcy Court erred in calculating that the Debtor's failure or neglect to disclose the Vioxx suit was "immaterial."
 - d. The Bankruptcy Court erred in failing to consider how the Debtor's misconduct effected the discovery process, and thereby subsequently infected the entire trial.
 - e. The concealment misconduct by Michael L. Jones in this case is identical to the concealment misconduct discussed by the United States Fifth Circuit in *In re Superior Crewboats, Inc.* supra.
 - f. In both this instant case and in *Rozier*, supra, the adverse party was under court order to disclose relevant information.
 - g. The Bankruptcy Court further abused its discretion in denying Wells Fargo's Rule 60(b) request to vacate the Judgment without conducting an evidentiary hearing. Because the Bankruptcy Court failed to conduct an evidentiary hearing, it was bound to accept all of Wells Fargo's well-pleaded allegations made in the motion as true. Under the allegations made, Wells Fargo presented cognizable claims of misconduct by the Debtor.
 - h. The Bankruptcy Court erred in failing to consider the alternative reliefs requested.
 - i. The seriousness of concealing assets of the bankruptcy estate and violating a Bankruptcy Court's orders was recently underscored by the Judicial Counsel of

³⁸ Pacer Document 226, "Michael L. Jones v. Wells Fargo Home Mortgage," U.S.B.C., E.D. La. No. 06-01093.

³⁹ Pacer Document 234, "Notice of Appeal," "Michael L. Jones v. Wells Fargo Home Mortgage," U.S.B.C., E.D. La. No. 06-01093.

United States Fifth Circuit in *In re Porteous, Jr.*, Docket No. 07-05-351-0085.

2. In the September 14, 2007 “Second Amended Judgment”, the Bankruptcy Court abused its discretion and erred as a matter of law in awarding Michael L. Jones \$67,202.45 “*in reimbursement for attorney’s fees and costs incurred in connection with this matter*”.
 - a. Simply put, no attorney/client contract evidencing an obligation to pay was introduced into evidence.
 - b. Even as a sanction, the award of \$67,202.45 fails legally.
 - c. The award of \$67,202.45 as a sanction is excessive under the circumstances.
 - d. The award of \$67,202.45 as “sanctions and damages” is a de facto award of attorney fees that is impermissible given that the Plaintiff and Plaintiff’s Counsel never filed the requisite disclosures, never formally applied for compensation and never disclosed the receipt of \$5,206.25 from the debtor while the debtor was in bankruptcy until trial.

3. The Bankruptcy Court abused its discretion in denying Wells Fargo’s Motion To Submit Additional Evidence Or Alternatively, Motion To Reopen Evidence.
 - a. The law in this Circuit requires that a court must consider “conclusive evidence” submitted post-trial despite any lack of diligence in finding the dispositive evidence. See *Ferrell v. Trailmobile, Inc.*, 223 F.2d 697, 698 (5th Cir. 1955).
 - b. The Bankruptcy Court also abused its discretion in failing to act fairly. On the same day the Bankruptcy Court denied Wells Fargo the opportunity to supplement the evidence, the Bankruptcy Court accepted additional evidence from Michael L. Jones.
 - c. The Bankruptcy Court also abused its discretion in failing to follow the long-standing policy of the United States District Courts for the Eastern District of Louisiana to wit: “Where the additional evidence is presently available, the trial court could and did in the interest of fairness and justice, permit the case to be re-opened after both sides had rested and submitted the case for a decision.” *Caracci v. Bro. Internat’l Sewing Mach. Corp. Of La.* (E.D. La. 1963), 222 F.Supp. 769, *aff’d.*, 341 F.2d 377 (5th Cir. 1964).
 - d. The Bankruptcy Court abused its discretion by not looking with more favor upon the motion to reopen made after submissions but before any indication as to its decision.
 - e. The Bankruptcy Court abused its discretion in denying Wells Fargo’s Motion To Submit Additional Evidence or Alternative Motion To Reopen Evidence on the erroneous basis that the evidence was too prejudicial to the Debtor.
 - f. The Bankruptcy Court abused its discretion in denying Wells Fargo’s Motion To

Wells Fargo's *right* to payment under the mortgage and note as per *Nobleman*.

- c. The Bankruptcy Court erred in ruling that the Debtor/Plaintiff has not obligated to pay to Wells Fargo interest, inspection fees, sheriff's commissions, attorney fees, and other assessments that the mortgage between Wells Fargo and Michael L. Jones obligated Michael L. Jones to pay.
 - f. The Bankruptcy Court erred when it ruled that the balance due on an overly secured first mortgage on the Debtor's residence (as allowed by the mortgage and state law) is discharged when the Chapter 13 plan is completed and/or the amount due under the proof of claim is also paid.
 - g. The Bankruptcy Court erred in requiring that any bankruptcy-related attorney's fees and costs assessed by Wells Fargo after the bankruptcy petition is filed are not allowed to accrue without application to and approval by the Bankruptcy Court. Under *Nobleman*, an overly secured first mortgage holder may actually ignore the Bankruptcy Court and demand its payments be made outside the plan.
6. The Bankruptcy Court erred in holding that the burden of proof rested with the Defendant.
- a. The Bankruptcy Court also erred in holding that the Debtor/Plaintiff ever satisfied its burden of proof and/or that the burden of proof shifted to the Creditor/Defendant.
 - b. The Bankruptcy Court erred in recognizing Plaintiff as an expert and in allowing opinion testimony over the objection of the defendant where the Plaintiff never identified himself as an expert in the pre-trial order, where Defendant had no notice that the Plaintiff would offer expert testimony, and where the Plaintiff in fact was not qualified as an expert.
7. The Bankruptcy Court erred in its interpretation of certain accountings, erred in the application of simple interest calculations to transactions involving installment and mortgage payments and debits, and erred in ruling that the Plaintiff was not required to provide any expert testimony in this regard.
- a. By applying simple interest calculations, the Bankruptcy Court went outside the contractual terms of the mortgage and therefore committed manifest error when it calculated the debtor's loan and calculated the amounts to be forfeited by Wells Fargo.
 - b. Where the Plaintiff had previously notified Defendant that it would not offer any expert testimony at trial, the Bankruptcy Court erred in attempting to assist the Plaintiff by providing its own expertise in accounting.
 - c. The Defendant was denied the opportunity to question and to refute the methodology and opinion because the Defendant was given no notice that the Bankruptcy Court would apply such expertise in accounting.

- d. Once the Bankruptcy Court provided its expertise in accounting to assist the Plaintiff where the Plaintiff had previously notified Defendant and the Bankruptcy Court that Plaintiff would not offer such evidence at trial, the Bankruptcy Court erred in not granting the Defendant's Rule 59 motion to offer expert testimony in the field of accounting to show where the Bankruptcy Court's calculations were in error.
8. It was manifest error for the Bankruptcy Court not to apply the Voluntary Payment Doctrine as a bar to plaintiff's claims.
 - a. The Bankruptcy Court committed manifest error in not applying the Voluntary Payment Doctrine based on several errors of fact, including that there was no case pending between Wells Fargo and the Debtor.
 - b. The Bankruptcy Court committed manifest error in not applying the Voluntary Payment Doctrine based on the error of law that a case needed to be pending between Wells Fargo and the Debtor.
 - c. The Bankruptcy Court committed manifest error in not considering the failure of the Plaintiff to mitigate his damages. The Debtor testified himself that he had sufficient time to seek advice from legal counsel on the issues prior to voluntarily paying the disputed sums. No evidence was introduced that the Debtor was going to "lose" his loan commitment if he sought court intervention "at the first instance".
 - d. The Voluntary Payment Doctrine clearly and certainly applies to this case and bars any recovery by Plaintiff/Debtor, and disposes of this case completely.
9. The Debtor and his legal counsel clearly violated the automatic stay when the Debtor paid to, and his legal counsel accepted, \$5,206.25 of estate property without prior Bankruptcy Court approval.
 - a. Based upon this violation of the stay and the disclosure violations, it was manifest error for the Bankruptcy Court to determine there was no conflict of interest between the Debtor and his legal counsel, particularly where the funds paid to the Debtor's legal counsel by Debtor could have satisfied the Debtor's Chapter 13 plan.
 - b. It was manifest error for the Bankruptcy Court to allow the Debtor's legal counsel to continue to serve as counsel for the Debtor when the Debtor paid, and the legal counsel accepted, \$5,206.25 in estate property while the bankruptcy was pending and without the notice to or the approval of the Bankruptcy Court. The Bankruptcy Court should have disqualified the Debtor's legal counsel immediately.
 - c. The Bankruptcy Court committed manifest error when it denied Wells Fargo's motion to strike the request for attorney fees from the debtor's prayer on the basis of prematurity.
10. The Bankruptcy Court committed manifest error when the Bankruptcy Court ruled that the

amounts assessed by Wells Fargo for inspection fees and other charges were unreasonable.

- a. It was manifest error for the Bankruptcy Court to find that all of the inspections were unreasonable.
 - b. The Bankruptcy Court committed manifest error when the Bankruptcy Court ruled that Wells Fargo acted unreasonably in incurring inspection fees and other charges and in assessing these charges to the debtor's account.
11. The Bankruptcy Court erred in determining that Wells Fargo violated the stay by providing a payoff letter to the debtor that included amounts due under the mortgage, and not just the proof of claim, where the order that authorized the debtor to refinance the security directed that Wells Fargo be paid the amount due under its mortgage, and not just the proof of claim. The Bankruptcy Court erred when it ruled that the collection of interest, fees, commissions, and costs due to Wells Fargo under the terms of the mortgage violated the stay and the confirmation order of the Bankruptcy Court.
12. Both the "Amended Judgment " of August 29, 2007 and the September 14, 2007 "Second Amended Judgment" of the Bankruptcy Court impermissibly created new rights and privileges for debtors, and new obligations of Wells Fargo Bank, N.A., as a creditor, that are not allowed or provided for by the Bankruptcy Code and federal or state authority. Only Congress may enact such laws and create such rights, not the Bankruptcy Court.
- a. Both the "Amended Judgment " of August 29, 2007 and the September 14, 2007 "Second Amended Judgment" impermissibly effect, diminish, and limit the rights of Wells Fargo to collect amounts after the filing of bankruptcy by allowing debtors in bankruptcy to defer the payment of post-petition charges until the end of the bankruptcy case⁴⁰ or until relief from the stay is obtained or the debtor pays the charge "voluntarily".⁴¹ Only Congress may bestow such rights by legislation.
 - b. Both the "Amended Judgment " of August 29, 2007 and the September 14, 2007 "Second Amended Judgment" impermissibly impose upon Wells Fargo an obligation to provide notice to debtors that is not required by law, and the judgments impermissibly set a limitation of time on Wells Fargo to provide such notice to debtors with a bar to asserting the claims outside the limitation of time⁴² where the law does not impose such an obligation or time limitation.
 - c. Both the "Amended Judgment " of August 29, 2007 and the September 14, 2007 "Second Amended Judgment" impermissibly bar Wells Fargo from "collecting any charge accrued against the debtor for that year," including charges that Wells Fargo

⁴⁰ September 14, 2007 "Second Amended Judgment", Section 2, paragraph 3.

⁴¹ September 14, 2007 "Second Amended Judgment", Section 2, paragraph 5.

⁴² September 14, 2007 "Second Amended Judgment", Section 2, paragraph 2.

is otherwise entitled to collect as a matter of law. Furthermore, the terms “any charges” are overly broad and vague.

- d. It was reversible error for the Bankruptcy Court to mandate that Wells Fargo shall treat all debtors as fully current at the time of discharge for all purposes since such a mandate violates the rights afforded to Wells Fargo under the law and the contracts with the debtors.

Only Congress may enact such laws and create such rights, not the Bankruptcy Court.

13. It was error for the Bankruptcy Court to issue an “Amended Judgment” and a “Second Amended Judgment” since a final “Judgment” had been issued April 13, 2007.

The April 13, 2007 Judgment had all indicia of a final judgment, to wit:

- a. The April 13, 2007 Judgment had been entered separately on the docket as a “JUDGMENT”;
 - b. The April 13, 2007 Judgment was docketed separately from the memorandum opinion expressing the reasons for the judgment;
 - c. The April 13, 2007 Judgment awarded a sum certain of \$16,852.01 in damages and \$21.57 in interest;
 - d. The Bankruptcy Court exercised its jurisdiction to consider and deny post-judgment motions, including a Motion for Reconsideration and a Rule 60(b)(3) Motion. By law, a court could not consider and then deny a Rule 60(b)(3) Motion unless the underlying judgment was final;
 - e. A Notice of Appeal of the April 13, 2007 judgment had been lodged;
14. It was error for the Bankruptcy Court to find that the parties consented to parts of the “Amended Judgment” and the “Second Amended Judgment.”
 - a. It was further error for the Bankruptcy Court to find that Wells Fargo consented to the deferment of the consideration of sanctions and punitive damages.
 - b. The Bankruptcy Court committed error in that the judgments of the Bankruptcy Court sanction Wells Fargo Bank, N.A., even though the Bankruptcy Court expresses that its outlined process of assessing and collecting post-confirmation charges was in lieu of sanctions.
 - c. The Bankruptcy Court committed error in that the “Amended Judgment” and the “Second Amended Judgment” of the Bankruptcy Court impose a monetary sanction against Wells Fargo Bank, N.A., even though the Bankruptcy Court found that the

outlined process of assessing and collecting post-confirmation charges was in lieu of any monetary sanctions.

15. This District Appellate Court had authority to issue a stay pending appeal from the orders of the Bankruptcy Court and the Bankruptcy Court was without authority to amend this Court's orders and deny the stay pending the appeal.