

SIXTH CIRCUIT CASE SUMMARIES
CBA BANKRUPTCY COMMITTEE MEETING
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In re Village Green I, GP, 811 F.3d 816 (January 27, 2016).

The Debtor, a general partnership, fell behind on the mortgage for its only asset, an apartment building valued at \$5.4 million. The mortgage holder, Fannie Mae, was owed \$8.6 million at \$55,000.00 per month. The Debtor filed a chapter 11 bankruptcy to deal with several months of arrears. Knowing that it needed an impaired class of claims that would accept the plan and that Fannie Mae would be impaired, but unlikely to agree to its proposed treatment under the Plan, the Debtor added another class of impaired claims, its former lawyer and former CPA. Both of those creditors were owed a combined amount of \$2,400.00, payable immediately. The Plan proposed to pay these creditors over 60 days, thus rendering their claims impaired.

FannieMae objected to confirmation of the Plan arguing that the other class of claims was not really impaired because the Plan paid them in full. It also argued that the Plan was filed in bad faith. The Sixth Circuit ruled that the other class of claims was impaired because it was not paid in full immediately as it was entitled to be paid.

However, the Sixth Circuit held that the plan could not be confirmed as it was filed in bad faith in violation of 11 U.S.C. §1129(a)(3). In support of its holding, the Court stated that if the Debtor's plan were confirmed, the Debtor would net more than \$857,000 per year while leaving a balance owed to Fannie Mae of \$6.6 million after 10 years of payments. Plus, when Fannie Mae offered to pay in full the former lawyer and CPA, they refused payments which supported Fannie Mae's claim that the plan was "an artifice to circumvent" the requirement that there be at least one class of impaired claims to accept the plan.

Weary v. Poteat, 627 Fed.Appx. 475 (September 30, 2015).

Debtor Poteat filed a chapter 7 bankruptcy, including her former landlord, John Weary, as a creditor for approximately \$25,000.00 in damages owed to him. Weary received notice of the bankruptcy and sent a demand letter to Poteat's mother and bankruptcy lawyer demanding payment and threatening criminal prosecution.

The Debtor filed a motion for contempt and the lower court ruled in her favor, awarding her costs, attorney fees, and \$7,500.00 in punitive damages. Weary argued in his defense that 11 U.S.C. §362(b)(1) allowed him to send the letter. That provision provides an exception to the automatic stay for "the commencement or continuation of a criminal action or proceeding against the debtor." The Court held that Weary could not avail himself of this defense because his letters