

Excerpts from Congressional debate on Schumer Amendment to BANKRUPTCY REFORM ACT OF 2001--(this amendment passed the US Senate - March 13, 2001)

.....

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, first, I just came into this discussion. I've had a lot of people speaking on my behalf, and I greatly appreciate it, but I am even more appreciative of the right to speak for myself. I never made any agreement with regard to this amendment.

One of my predecessors, Lyndon Johnson, used to say, "I resent a deal I am not a party to."

Having said that, when I read Senator *Grassley's* comments in full, I do not see the deal that our dear colleague from New York sees. Senator *Grassley* says on March 8, on page S. 2032, "The point is we can assure the Senator from New York the yeas and nays on his amendment. We can't assure the Senator from New York when we are going to vote on the amendment."

Reasonable men looking at the same facts are prone to disagree, as Thomas

[Page: S2191]

Jefferson said. But it looks to me as if this is a commitment to have the yeas and nays on having a rollcall vote. I don't see any commitment about ending debate on the amendment in advance.

Having said that, let me say what I want to say.

No. 1, I will object to a time limit on any amendment within the jurisdiction of the Banking Committee from this point forward. We have all had a good time. We have debated a lot of amendments, many of which were of dubious merit and no relevance whatsoever to the underlying bill. But we have reached the point now where you are either for the bankruptcy bill or you are against it. I am for it. And I think we need to get on with our job. Cloture has been filed. We are going to vote on that tomorrow.

What I am willing to do is sit down with the Senator from New York and his staff, if we can do that, and try to figure out exactly what it is he is trying to do, get an opportunity to raise concerns I have, and then basically make a decision as to whether we can move forward with an amendment or substitute. But in terms of reaching a resolution, the best use of our time would be to sit down for a few minutes with our staff and see if we can potentially work something out. I would like to propose that to my colleague from New York.

Let me also make clear, it would make me happy to have no more amendments. I don't understand why we are continuing to have all these votes. If the Senator wants to hold the Senate up and not allow votes, that doesn't break my heart. But that is up to the Senator from New York. What I would like to do is see if something can be worked out and for the two of us and our staff to sit down and see if something can be worked out.

.....

..... Mr. HATCH. Mr. President, I ask unanimous consent that the Senate now resume consideration of the Schumer amendment, No. 25, that the amendment be modified, and following a statement by Senators GRAMM and SCHUMER--with Senator *Gramm* going first--for up to 5 minutes each, the amendment be temporarily laid aside in order for Senator *Dodd* to offer an amendment, No. 75.

.....

Without objection, it is so ordered.

AMENDMENT NO. 25, AS MODIFIED

The amendment (No. 25), as modified, is as follows:

At the appropriate place, insert:

SEC. 204. PRESERVATION OF CLAIMS AND DEFENSES UPON SALE OF PREDATORY LOANS.

Section 363 of title 11, U.S. Code, is amended by adding at the end the following:

“(p) Notwithstanding subsection (f), if a person purchases any interest in a consumer credit transaction that is subject to the Truth in Lending Act (15 U.S. Code 1601 et. seq.), or any interest in a consumer credit contract as defined by the Federal Trade Commission Preservation of Claims Trade Regulation, and that interest is purchased through a sale under this section, then that person shall remain subject to all claims and defenses that are related to the consumer credit transaction or contract, to the same extent as that person would be subject to such claims and defenses of the consumer had the sale taken place other than under title 11.”

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Texas is recognized for up to 5 minutes.

Mr. GRAMM. Mr. President, this is a very complicated issue. I am opposed to the amendment. There was a dispute about whether an agreement had been reached. I think you can read the language and argue it one way or the other, but the Senator from New York thought he had an agreement. And if he thought he had an agreement, I am willing to defer to it.

Here is the whole argument in a nutshell. The amendment would affect insurance companies, mortgage companies, securities companies. It is a change in current law. Here is the whole issue.

Currently, if I have a mortgage, or if I am a customer of a company, and the company holds an asset as a result of my doing business with them, when bankruptcy occurs and that company goes out of business--declares bankruptcy--my ability to file a claim against those assets is severed. Why is that the case? It is severed because at that point the people who are creditors of the company that has gone bankrupt have first claim against its assets.

If the amendment of Senator *Schumer* is adopted, well-intended as it is--and I am sure we will have dire examples of why it would be a good thing in some very limited cases--what it will really mean is that if I have a mortgage with a company that goes bankrupt, under current law the creditors of that company can sell that mortgage to try to pay off their debt. Under the *Schumer* amendment, at that point, never having raised any complaint whatsoever, I would have the right to come in and say: I believe there was something wrong. I never raised the point before, but

now that the company has gone bankrupt, I want to claim that there is a problem with that loan and whoever bought the loan should carry the problem with them.

Here is the problem in a nutshell: This will destroy the secondary market for the assets of bankrupt companies. Now, who will suffer? Senator *Schumer* is going to say, maybe these people are crooks. But they are not going to suffer. They went bankrupt. The people who are going to suffer are the creditors who won't be able to sell the assets of the company because there will be a potential cloud against those assets.

This is a perfect case in point where, to correct a little wrong, you create a great big wrong that hurts ten thousand times as many people. The reason we have bankruptcy laws is that the first claim against assets goes to creditors, not people who may have real or imagined or made-up grievances against the company.

Surely in the midst of bankruptcy law in a country where we have a sanctity of contracts and where creditors have first claim, we are not going to create a situation where we taint the

assets of a bankrupt company so that

[Page: S2192]

the people to whom the company owes money will end up not being able to get their money. That is the problem in a nutshell.

I am not saying there may not be unscrupulous lenders. The point is, if you listen to Senator *Schumer*, he is, essentially, penalizing not on the unscrupulous party, but the people who are owed money. What we would do if this amendment passed is we would literally cloud the title and the marketability of every financial asset of every financial company in America.

I hope this amendment will not be adopted. If it is adopted, I am determined that it not become law. I urge my colleagues to look at this amendment and keep in mind that bankruptcy law is primarily aimed at protecting creditors. Destroying the marketability of financial assets by creating the potential to raise new claims after the bankruptcy is something that cannot be in the public interest. It does nothing to hurt the bankrupt company.

If we want to strengthen laws to put people in jail longer for bad lending practices, that is one thing. To punish creditors who have had nothing to do with this issue is fundamentally wrong.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York is recognized for 5 minutes.

Mr. SCHUMER. Mr. President, I thank my colleagues from Nevada and Utah for helping, as well as Senators from Connecticut and Oregon.

I say to my good friend, the Senator from Texas, his statements about the proposal are about as accurate as the statements about my title. I was elected to the Senate 2 years ago. He was calling

me ``Congressman **SCHUMER.**" He was about as accurate in my appellation as he is in his description of the amendment.

First, this amendment is a simple amendment. When someone is terribly victimized because of a **predatory** lender, this amendment prevents that **predatory** lender from declaring bankruptcy, selling its loans into the secondary market, and then vamoosing, leaving the poor homeowner with nothing. This has happened time and time again. **Predatory** lenders have filed Chapter 11.

United Companies, First Alliance, Conti Mortgage, all listed hundreds of individual suits, class actions, and State government enforcement actions pending when they filed. Worse yet, when they sold their loan portfolios, the purchasers of these loans were fully aware of the **predatory** claims pending and serious questions about whether all the mortgages were valid or enforceable.

This is not some innocent creditor. Any creditor who buys loans in bankruptcy knows the score. And even when they do, under present law they can say to the poor homeowner who has basically been financially raped: Sorry, you have no claim against us. Go sue the bankrupt **predatory** lender.

What this does in effect is allow new **predatory** lenders to exist because they know even if someone goes after them, having made all their money beforehand and paid it out in salaries and

everything else, they can then sell the loans into the secondary market and start up the business in a new name. If the secondary lender knew they might be susceptible to the claims of the homeowner who was seduced, they wouldn't be so fast to buy the loan from the **predatory** lender.

This is an amendment that is narrow. I supported the amendment by my colleague from Illinois, but that was much broader, dealing with all **predatory** lending. Not this. This only deals with those **predatory** lenders who declare bankruptcy as a means of escaping claims of people who have struggled, who have saved their \$25 and \$50 and \$100 every week or month, so that they buy their home, and when they buy that home, they find that the home is in disrepair, that the mortgage is not what they were told, and their American dream is smashed.

If this amendment is so detrimental to honest secondary mortgage buyers, then why do Fannie Mae and Freddie Mac support this amendment? They are the largest secondary market makers in the country when it comes to mortgages, far and away, and they are supportive. I am sure they are not doing something to damage themselves.

This is not an overreaching amendment. It is a modest amendment. It is the most modest amendment that has been offered on **predatory** lending on this bill. It does not involve the Banking Committee, no more so than any of the other amendments that deal with money and banks and credit cards because we solely amend the bankruptcy code, not RESPA or TILA or any of the other laws in the Banking Committee's jurisdiction.

What it does is very simple: It deals with the kinds of situations that my good colleague, Senator *Sarbanes*, mentioned when he rose in support of the amendment: That the **predatory**

lender sells knowingly to the secondary mortgagor and that mortgagor then says: There is nothing I can do. Even though I knew these were horrible loans that violated the law, I am immune from any claim.

It is a simple amendment. It is a fair amendment. It is a humane amendment. I expect that this kind of amendment on its own should pass close to unanimously in this body. I don't know if it will. Based on the merits, it could hardly be fairer or any less controversial.

I remind my colleagues that everyone who cares about this issue is watching this vote. It is a simple and fair one and seeks only to protect innocent consumers, American families, by whom we have each been elected.

I thank the Chair and yield the floor.

[After a motion to table the Schumer Amendment failed 44 to 55, the Senate adopted it by unanimous consent.]