

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

KATINA M MOORE,

BK 18-12444 CLB

Debtor.

DECISION & ORDER

Barry H. Sternberg, Esq.
Barry Sternberg Law Office
4245 Union Road, Suite 101
Cheektowaga, New York 14225
Attorney for Debtor

Woods Oviatt Gilman LLP
Aleksandra K. Fugate, Esq., of counsel
500 Bausch & Lomb Place
Rochester, New York 14604
Attorneys for M&T Bank

Bucki, Chief U.S.B.J., W.D.N.Y.

The debtor objects to the claim of a secured creditor for reimbursement of legal costs incurred post-petition. A central issue is whether guidelines of the Department of Housing and Urban Development control in determining the reasonableness of these charges.

Katina Moore filed a petition for relief under Chapter 13 of the Bankruptcy Code on November 26, 2018. Utilizing Official Bankruptcy Form 113, the debtor also filed a proposed plan. Among other provisions, the plan contemplated a cure of outstanding arrears on a mortgage that M & T Bank holds on the debtor's home at 20 Dakota Street in the City of Buffalo, New York. Part 3.1 of the plan includes the following recitation: "In the absence of a contrary timely filed proof of claim, the amounts stated

below are controlling.” The debtor then represented that the outstanding arrears totaled \$3,000, and that the current installment payment on the mortgage was \$880.

On January 29, 2019, M & T Bank filed an objection to confirmation. This objection raised two concerns. First, the mortgagee asserted actual arrears of \$3,891.13, rather than the sum of \$3,000 listed in the debtor’s plan. Second, the bank noted that regular monthly mortgage payments were in the amount of \$890.87, and not the \$880 that the debtor had indicated. Then on February 1, 2019, M & T Bank filed a proof of claim that reiterated the same facts recited in the plan objection. At a confirmation hearing on April 2, 2019, the Court was advised that the parties had resolved all disputes. Accordingly, on April 18, the Court approved a plan whose modified provisions included the debtor’s commitment to resume regular monthly mortgage payments and to cure the amount of arrears that the bank claimed as due and owing.

Bankruptcy Rule 3002.1(c) imposes a noticing requirement on lenders holding claims that are secured by the debtor’s principal residence, as follows:

“The holder of the [secured] claim shall file and serve on the debtor, debtor’s counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor’s principal residence.”

Pursuant to this rule, the attorneys for M & T Bank served a notice that the debtor would be charged for post-petition fees totaling \$1,150. In papers filed on June 18, 2020, counsel advised that these charges include \$150 for its review of the Chapter

13 plan, \$500 for preparation of a plan objection, and \$500 for preparation of a proof of claim. Pursuant to Bankruptcy Rule 3002.1(e), the debtor now challenges these items. In particular, she asserts that \$1,150 "is excessive for the amount of time that it would normally take to perform such a routine task."

The claim of M & T Bank is based on a note that Katina Moore signed on June 4, 2010. Prepared on a form approved for FHA insured loans, this note includes the debtor's promise "to pay costs and expenses including reasonable and customary attorneys' fees for enforcing this Note." Counsel for M & T contends that its charges of \$1,150 are reasonable and customary, in that they are consistent with the HUD Schedule of Standard Attorney Fees. In relevant part, this schedule states that "[t]he maximum attorney fee varies based on the chapter under which the bankruptcy action is filed." For Chapter 13 bankruptcies, "the maximum allowable fee" includes charges for proof of claim preparation and plan review in the amount of \$650, and charges for an objection to plan in the amount of \$500. See <http://www.hud.gov/sites/documents/16-03ML.PDF>.

The HUD Schedule of Standard Attorney Fees merely sets a maximum permissible charge. By its language, therefore, this schedule suggests only a ceiling and not a floor of reasonableness. A finding of reasonableness must still address at least two considerations: whether the services were necessary and whether the proposed charges are appropriate under the circumstances. For the reasons stated hereafter, part of the claimed charges relate to services not reasonably expended while other portions are excessive.

Bankruptcy Rule 3015(c) states that "[i]f there is an Official Form for a plan filed in a chapter 13 case, that form must be used unless a Local Form has been adopted

in compliance with Rule 3015.1.” Because this District has not established a local form for Chapter 13 plans, Official Bankruptcy Form 113 is mandated. Adopted in 2017, Official Form 113 presents a uniform format designed to facilitate an efficient and cost-effective review by creditors. Here, the debtor fully complied with the requirement for its use.

By her use of Official Form 113, the debtor precluded any justification for reimbursement of charges for preparing the plan objection. In the present instance, the objection merely advises that the plan misstates the mortgage arrears and the monthly mortgage payment. However, the plan anticipated this correction. Part 3.1 of the plan recites that the stated amount of arrears and mortgage payment are controlling only “[i]n the absence of a contrary timely filed proof of claim.” The proof of claim served fully to correct the listed numbers, without need for any formal objection. Although the plan objection was not improper, it was unnecessary. Accordingly, the Court will deny the requested reimbursement of \$500 for the cost of its preparation.

M & T Bank additionally seeks reimbursement of legal fees in the amount of \$150 for a review of the Chapter 13 plan and \$500 for preparation of the Proof of Claim. This Court rejected a similar request for reimbursement in 2009, for the reason that the proof of claim in that case was “in the nature of a simple statement of moneys due and owing.” *In re Wasson*, 402 B.R. 561, 567 (Bankr. W.D.N.Y. 2009). In both 2009 and when M & T filed its proof of claim in 2019, Bankruptcy Rule 3001(a) directed that “[a] proof of claim shall conform substantially to the appropriate Official Form.” However, the Official Form for proofs of claim has changed substantially, and here required the presentment of greater detail. *Compare* Official Bankruptcy Form 10 (effective as of December 2008) *with* Official Bankruptcy Form 410 (effective as of

December 2016). Consequently, some reimbursement for plan review and claim preparation is appropriate, but only in an amount that is reasonable under the present circumstances.

M & T holds an undisputed claim for mortgage arrears in a routine case that involves no unusual issues regarding the validity of the secured indebtedness. By using Official Form 113 in the preparation of her plan, the debtor minimized the need for extensive creditor review. Nor should this matter have necessitated any special or unique response. M & T is an institutional creditor with a large portfolio of loans that regularly become the subject of claims in Chapter 13. In all likelihood, clerical or paralegal staff prepared the proof of claim for expeditious review by counsel. Having given due consideration to all of these factors, the Court finds that the reasonable fee for plan review and claim preparation should together not exceed \$150.

We recognize that proceedings in Chapter 13 are not necessarily routine for some creditors and that some cases involve special issues or disputes. In such instances, the Court might allow greater reimbursement for post-petition legal services, particularly where time records demonstrate a higher level of attorney involvement. *See In re Bulger*, 606 B.R. 526 (Bankr. W.D.N.Y. 2019). In the present instance of routine response, however, the Court will allow a charge for post-petition legal services of \$150. Any additional reimbursement is denied.

So ordered.

Dated: August 4, 2020
Buffalo, New York

/s/ Carl L. Bucki _____
Hon. Carl L. Bucki, Chief U.S.B.J., W.D.N.Y.