



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
November 19, 2018

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 18-11946-MKN
)	Chapter 13
DAN WILLIAM HILL and VIRGINIA)	
ELLEN HILL,)	
)	Date: November 14, 2018
Debtors.)	Time: 2:30 p.m.
)	

ORDER REGARDING OBJECTION TO NATIONSTAR MORTGAGE LLC D/B/A MR. COOPER'S POST PETITION MORTGAGE FEES SUPPLEMENTING PROOF OF CLAIM NO. 6-1¹

On November 14, 2018, the court heard the Objection to Nationstar Mortgage LLC D/B/A Mr. Cooper's Post Petition Mortgage Fees Supplementing Proof of Claim No. 6-1. ("Objection"). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

On April 9, 2018, Dan William Hill and Virginia Ellen Hill ("Debtors") filed a joint Chapter 13 petition, accompanied by their schedules of assets and liabilities ("Schedules") and Statement of Financial Affairs ("SOFA"). According to their Schedule A/B and Schedule D, the Debtors have a fee simple interest in their primary residence located at 4589 Cedar Island Court, Las Vegas, Nevada ("Residence"). They attest that the Residence has a current value of \$347,000, and that it secures a claim in the amount of \$304,244 in favor of Nationstar/Mr.

¹ In this Order, all references to "ECF No." are to the number assigned to the documents filed in the case as they appear on the docket maintained by the clerk of court. All references to "Section" are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure.

1 Cooper (“Nationstar”). According to their SOFA, the Debtors filed their Chapter 13 petition four
2 days prior to a scheduled foreclosure sale of the Residence by Nationstar. Along with their
3 Schedules and SOFA, Debtors filed a proposed Chapter 13 plan (“Plan”) that provides for them
4 to make their regular monthly loan payments to Nationstar, and to cure any prepetition
5 arrearages over the life of the Plan.

6 On May 15, 2018, Nationstar filed a proof of claim (“POC”) in the amount of
7 \$322,454.58, that was signed under penalty of perjury on May 14, 2018, by Bryan S, Fairman, of
8 the San Diego law firm of Aldridge Pite, LLP (“Aldridge Pite”), as agent for Nationstar.²
9 Affixed to the POC is a 43-page attachment (“Attachment”) consisting of a computer generated
10 loan payment history, a “standing notice” used by Nationstar, a proof of claim disclosure form
11 used by the law firm, a copy of an annual escrow account disclosure statement generated by
12 Nationstar, a copy of the underlying promissory note, and a copy of the assignment of the
13 underlying deed of trust.³

14 On June 29, 2018, Nationstar filed a Notice of Postpetition Mortgage Fees, Expenses, and
15 Charges (“Mortgage Fee Notice”) by which it seeks to supplement its POC by the total amount
16 of \$950.00. That figure consists of attorney’s fees of \$300 incurred on April 20, 2018, to review
17 the proposed Plan, plus another \$400 incurred on May 15, 2018, to prepare the POC, and another
18 \$250 to prepare the Attachment. The Mortgage Fee Notice, like the POC, is signed under
19 penalty of perjury by Nationstar’s local counsel.

20 On September 24, 2018, Debtors filed a 3-page Objection to the Mortgage Fee Notice
21 (“Objection”). Debtors argue that only \$50 in attorney’s fees, rather than \$300, should be
22 allowed for review of the Plan. They also argue that only \$100, rather than \$400, should be
23 allowed to prepare the POC, and only \$50, rather than \$250, should be allowed to prepare the
24

25 ² The official POC form includes, *inter alia*, the admonition in the signature block, at Part
26 2, that: “A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up
27 to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.”

28 ³ Included with the deed of trust is a “VA GUARANTEED LOAN AND ASSUMPTION
POLICY RIDER” authorized pursuant to the veterans’ benefits provisions of Title 38 of the U.S.
Code.

1 Attachment. Debtors therefore argue that instead of \$950, Nationstar should be allowed only
2 \$200. The Objection is not accompanied by an affidavit, declaration, or other admissible
3 evidence establishing the appropriate amount of attorney's fees for the services rendered.

4 On October 18, 2018, Nationstar, through its local Nevada counsel, filed a 62-page
5 response to the Objection, most of which consists of a copy of its POC as well as a copy of the
6 Mortgage Fee Notice. The response is accompanied by a 6-page Declaration of Nichole Glowin
7 ("Glowin Declaration") in support of the response. That declaration attests that local Nevada
8 counsel prepared the Mortgage Fee Notice, see Glowin Declaration at ¶ 5, but that the Aldridge
9 Pite firm performed the services set forth in the document. Although there is no evidence of the
10 actual amount of time spent by the Aldridge Pite firm, nor the hourly rate charged by the
11 professional that performed the services, Nationstar maintains that charges reflect services on a
12 "flat fee" basis according to "industry-recognized Fannie Mae guidelines." Response at 5:23.
13 Nationstar suggests that the purported flat fees "appear to be highly reasonable as they are at
14 most equivalent to about 1-2 hours of billing at most firms at rate of \$295.00 per, including the
15 firm at issue herein..." Id. at 5:25-27.

16 On November 14, 2018, a hearing was held on the Objection, attended by counsel for
17 both the Debtor and Nationstar. After arguments were presented, the matter was taken under
18 submission.

19 There is no dispute in this proceeding that Nationstar is an oversecured creditor that may
20 be allowed reasonable attorney's fees under its contract pursuant to Section 506(b). By their
21 Objection to the Mortgage Fee Notice, Debtors seek a \$750 reduction in the attorney's fees
22 sought by Nationstar. Debtors do not suggest that the Aldridge Pite firm charged an excessive
23 hourly rate, or that too much time was spent, because there is no information in the Mortgage
24 Fee Notice how the fees were determined. In response, Nationstar also provides no evidence of
25 the hourly rates charged or the time spent by the Aldridge Pite firm, but simply argues that the
26 flat fees charged are reasonable.

1 The court does not recall having to resolve an objection to a flat fee requested under
2 Section 506(b) by an oversecured creditor.⁴ Attorneys whose creditor clients require services to
3 be provided on a flat fee basis may be spared the tedium of maintaining contemporaneous time
4 records in exchange for handling a greater volume of matters for the client. There is no direct
5 analogue in bankruptcy practice, however, because the court, not the client, determines the
6 reasonableness of the requested fee. As Nationstar acknowledges in the current proceeding, a
7 “lodestar” method typically is applied in bankruptcy that looks to a reasonable amount of time to
8 perform a service at a reasonable hourly rate. See Response at 4:28 to 5:8. Thus, reference to
9 purported flat fees under “industry-recognized Fannie Mae guidelines” may support some
10 argument somewhere, but not here.⁵

11 In this case, the Mortgage Fee Notice was signed under penalty of perjury as a
12 supplement to the POC under FRBP 3002.1. Under Section 502(a), a claim set forth in a proof

13 ⁴ Charging a flat fee for services in bankruptcy cases is not impermissible, but typically
14 arises where compensation for legal services to a debtor are subject to court approval in Chapter
15 13 and Chapter 11 proceedings. In some judicial districts, attorneys for Chapter 13 debtors are
16 allowed a so-called “no look” fee for providing basic services to the client, see Law Offices of
17 David A. Boone v. U.S. Trustee (In re Eliapo), 468 F.3d 592 (9th Cir. 2006), while attorneys for
Chapter 11 debtors also may be allowed a set fee for taking a client through plan confirmation.

18 ⁵ Even the Fannie Mae guidelines do not support Nationstar’s argument. The Servicing
19 Guide for single family homes published by Fannie Mae on November 14, 2018, are found on
20 the Fannie Mae website at <https://www.fanniemae.com/singlefamily/servicing>. According to
21 Part E-5-03, Allowable Bankruptcy Fees (09/13/2017), Fannie Mae’s schedule of maximum
22 allowable attorney fees for services rendered in connection with bankruptcy matters is found in a
23 separate Allowable Bankruptcy Attorney Fees Exhibit. That exhibit consists of a table listing the
24 “Maximum Fee Reimbursement” for legal services under the various chapters of the Bankruptcy
25 Code, including Chapter 13. The table sets for a maximum fee reimbursement in Chapter 13
26 cases of \$650 for “Proof of Claim Preparation & Plan Review.” The table also sets a maximum
27 fee reimbursement in all chapters of \$250 for “Proof of Claim – Form 410A Loan Payment
28 History.” The schedule, however, does not authorize the maximum amounts to be charged in
every case. Rather, Part E-5-03 expressly provides that “The servicer should charge the
borrower only those bankruptcy fees and costs that are permitted under the terms of the note,
security instrument, and applicable law and that are prorated to reasonably relate to the amount
of work actually performed.” (Emphasis added). In the instant case, the \$950 charged by the
Aldridge Pite firm to review the Plan, and to prepare the POC and the Attachment, already
exceeds the maximum fee reimbursement under the Fannie Mae guidelines irrespective of the
amount of work actually performed. Moreover, because the Fannie Mae guidelines impose a
maximum fee for work actually performed, it does not authorize a “flat fee” at all.

1 of claim is deemed allowed unless a party in interest objects. Under FRBP 3002(f), a properly
2 filed and executed proof of claim constitutes prima facie evidence of the validity and amount of
3 the claim because it is supported by evidence, i.e., a party attesting to its accuracy under penalty
4 of perjury. Compare Garner v. Shier (In re Garner), 246 B.R. 617, 622 (B.A.P. 9th Cir. 2000)
5 (“In short, a proof of claim that is executed by an attorney has an evidentiary effect similar to
6 that of a verified complaint.”). To overcome the prima facie validity of a proof of claim, an
7 objecting party therefore is required to raise a legal or factual basis to challenge the claim. See
8 Campbell v. Verizon Wireless (In re Campbell), 336 B.R. 430, 434-35 (B.A.P. 9th Cir. 2005).
9 See also Davis v. CSMC Mortgage-Backed Pass-Through Certificates (In re Davis), 2017 WL
10 3014349, at *5 (B.A.P. 9th Cir. July 14, 2017)(“The proof of claim...is, unless rebutted, ‘prima
11 facie’ evidence. One rebuts evidence with counter-evidence.’...The debtor’s decision not to
12 offer evidence ‘narrow[ed] the issue to whether the proof of claim is executed and filed in
13 accordance with the rules.’...Accordingly, the objection ‘was not adequate to rebut the Rule
14 3001(f) evidentiary presumption’ and the bankruptcy court ‘was not required to consider the
15 controversy on its full-blown merits...”). Often the evidence may consist of an admission in the
16 proof of claim itself, such as the date the statute of limitations commenced, sufficient to conclude
17 that the claim cannot be enforced under non-bankruptcy law. Even more often, the creditor that
18 filed the proof of claim does not respond to an unsupported objection and the claim is disallowed
19 on a default basis.

20 In this unusual case, Debtors filed their Objection, but it was not accompanied by any
21 evidence to overcome the prima facie validity of the Mortgage Fee Notice. Nationstar
22 responded, however, by submitting the Glowin Declaration attesting to services that allegedly
23 were performed by the Aldridge Pite firm. Additionally, Nationstar admits in its written
24 response that the attorney’s fees included in the Mortgage Fee Notice were not charged on a
25 lodestar basis and were included as a purported “flat fee” modeled after the Fannie Mae
26 guidelines. As a result, the court concludes that the Mortgage Fee Notice is entitled to no
27 presumption as to validity or amount.

28

1 As previously mentioned, the Debtors suggest that the allowance of \$200 is appropriate
2 while Nationstar believes that \$950 is warranted. Unfortunately, there is no evidence in the
3 record nor suggestion at the hearing, however, that counsel for either party ever attempted to
4 resolve this \$750 dispute without necessity of incurring additional attorney's fees or requiring
5 judicial intervention. Neither party to this Objection has been practical nor reasonable in this
6 matter.

7 Under these circumstances, rather than simply wishing a pox on both parties' houses, the
8 court will sustain the Objection in part. The total amount set forth in the Mortgage Fee Notice
9 will be reduced to \$500 allowed and the remaining \$450 will be disallowed. In the event similar
10 matters are presented to this court in the future, the court will consider whether sanctions should
11 be imposed under 28 U.S.C. § 1927.

12 **IT IS THEREFORE ORDERED** that the Objection to Nationstar Mortgage LLC
13 D/B/A Mr. Cooper's Notice of Postpetition Mortgage Fees Supplementing Proof of Claim No. 6-
14 1, Docket No. 41, brought by the above-captioned Chapter 13 debtors, be, and the same hereby
15 is, **SUSTAINED in part and OVERRULED in part.**

16 **IT IS FURTHER ORDERED** that the Notice of Postpetition Mortgage Fees, Expenses,
17 and Charges filed by Nationstar Mortgage LLC is allowed in the amount of \$500.00 and
18 disallowed in the remaining amount of \$450.00.

19
20 Copies sent via CM/ECF ELECTRONIC FILING

21 Copies sent via BNC to:
22 DAN WILLIAM HILL
23 VIRGINIA ELLEN HILL
24 4589 CEDAR ISLAND CT.
25 LAS VEGAS, NV 89147

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