



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
November 12, 2019

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re: ) Case No.: 18-14954-MKN  
) Chapter 13  
PHILLIP RAMIREZ, )  
)  
Debtor. ) Date: October 28, 2019  
) Time: 9:30 a.m.  
)

**ORDER REGARDING OBJECTION TO PROOF OF CLAIM<sup>1</sup>**

On October 28, 2019, a status hearing was held on the Objection to Proof of Claim (“Claim Objection”) (ECF No. 89), brought on behalf of Phillip Ramirez<sup>2</sup> (“Debtor”). An evidentiary hearing also was held on the Motion to Dismiss Debtor’s Chapter 13 Case, brought on behalf of Steve and Linda Schweich (“Creditors”) (ECF No. 33), and in connection with confirmation of the Debtor’s proposed Chapter 13 Plan #3 and #4 (“Plan #4”). (ECF Nos. 91 and 109). Appearances were made by Michael J. Harker, Esq. on behalf of Debtor, Jeffrey R. Hall, Esq. on behalf of Creditors, and Danielle Townsend, Esq. on behalf of Chapter 13 trustee, Kathleen Leavitt. No other appearances were made.

**BACKGROUND**

At the October 28, 2019, status hearing, the parties agreed that confirmation of any proposed plan in this Chapter 13 proceeding depends on the amount owed on the Creditors’

<sup>1</sup> In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. All references to “Section” are to provisions of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.* All references to “Bankruptcy Rule” are to provisions of the Federal Rules of Bankruptcy Procedure.

<sup>2</sup> A “Substitution of Attorney” was filed on September 23 and 26, 2019 (ECF Nos. 99 and 105), substituting Michael J. Harker, Esq. as attorney of record for Debtor in place of Randal R. Leonard, Esq.

1 claim. The parties also agreed that any determination of the Creditors' motion to dismiss  
2 depends on the Debtor's ability to confirm a proposed plan. The Debtor also agreed that any  
3 treatment of the Creditors' claim in a proposed plan depends on the amount of attorney's fees  
4 that would be allowed on the Creditors' claim.

5 With respect to the allowance of attorney's fees, the parties also agreed that the record  
6 submitted by the parties is sufficient for the court to make a determination, without the necessity  
7 for an evidentiary hearing or further briefing. With respect to the attorney's fees requested by  
8 the Creditors, Debtor also does not object to the hourly rates charged by the law firm of  
9 Hutchison & Steffen ("H&S"), as counsel for the Creditors, nor to the quality of the services  
10 performed. The sole objection is to the total amount of attorney's fees sought by the Creditors in  
11 connection with this matter.

12 As a result of these agreements, the evidentiary hearing on Creditors' motion to dismiss,  
13 as well as on confirmation of a Chapter 13 plan, was abated, subject to a status conference being  
14 scheduled by the court upon resolution of the instant Claim Objection.

### 15 DISCUSSION

16 Debtor commenced this Chapter 13 proceeding on August 20, 2018, along with his  
17 schedule of assets and liabilities ("Schedules") and Statement of Financial Affairs ("SOFA").  
18 (ECF No. 1). His primary asset is described as an equitable interest in a residence located at  
19 1054 Linn Lane, Las Vegas, Nevada ("Residence"). Debtor's primary creditor is identified as  
20 Forsmann Accounting Service ("Forsmann") having a claim in the amount of \$128,806.74  
21 secured by the Residence that is not contingent, unliquidated or disputed.

22 The record before the court is a copy of two proofs of claim ("POC") signed under  
23 penalty of perjury by H&S on behalf of the Creditors. The first POC was filed on December 5,  
24 2018 ("POC 10-1"). A copy of POC 10-1 is attached to the Claim Objection. Attached to POC  
25 10-1 is a copy of a Contract of Sale dated March 1, 2014, between the Debtor and the Creditors.  
26 That Contract of Sale involves the Debtor's efforts to purchase the Residence from the Creditors.  
27 It appears that Forsmann services the Contract of Sale on the Creditors' behalf. Paragraph 12 of  
28 the Contract of Sale provides for the Debtor to pay the Creditors' costs and expenses, including

1 attorney's fees, incurred in any action or proceeding to which the Debtor shall be a party under  
2 the contract. POC 10-1 attests that the value of the Residence is \$245,000 and the amount owed  
3 on the contract is \$136,248.32. Because the value of the Residence exceeds the amount of the  
4 Creditors' claim, under Section 506(b), the Debtor apparently does not contest that Creditors are  
5 allowed, inter alia, any reasonable fees, costs, or charges provided under the Contract of Sale.  
6 See Claim Objection at 2:8-11.<sup>3</sup>

7 Also attached to POC 10-1 is a copy of a billing statement from H&S for services  
8 provided through October 31, 2018. That billing statement reflects that counsel charged the  
9 Creditors \$5,075 in attorney's fees and \$66.43 in costs in connection with enforcement of the  
10 Contract of Sale. That statement apparently encompasses services rendered both before and after  
11 the Debtor commenced this Chapter 13 proceeding.

12 Also attached to the Claim Objection is a copy of the second POC filed on June 18, 2019  
13 ("POC 10-2"). POC 10-2 attests that the value of the Residence is \$245,000 and the amount  
14 owed under the contract is \$149,148.32. Attached to POC 10-2 is a copy of a billing statement  
15 for services provided by the same counsel from November 5, 2018, through May 9, 2019. That  
16 billing statement reflects that counsel charged the Creditors for services after this bankruptcy  
17 was commenced, in the amount of \$12,900 in attorney's fees and \$597.90 in costs in connection  
18 with enforcement of the Contract of Sale.

19 In the Claim Objection, Debtor argues that the billing statements attached to POC 10-1  
20 and POC 10-2 did not detail the services performed by Creditors' counsel because either the  
21 statements were simply summaries, or, they had been completely redacted. Debtor, therefore,  
22  
23

---

24 <sup>3</sup> Section 506(b) addresses the rights of holders of allowed secured claims. At this  
25 juncture, however, Debtor has not completed the Contract of Sale and does not hold legal title to  
26 the Residence. Rather, Creditors are still owners of the Residence subject to any equitable  
27 interest that the Debtor owns pursuant to the Contract of Sale. Thus, whether the Creditors are  
28 holders of a secured claim at all within the meaning of Section 506(b) has not been determined.  
Additionally, if the Contract of Sale is an executory contract within the meaning of Section 365,  
then the Debtor's ability to assume the contract is subject to the requirements under Section  
365(b). Assumption of an executory contract under Section 365 may be included in a proposed  
Chapter 13 plan pursuant to Section 1322(b)(7).

1 argued that the reasonableness of the fees sought under Section 506(b) could not be determined  
2 and should be disallowed.

3 Creditors filed a response to the Claim Objection (“Response”). (ECF No. 97). In that  
4 response, H&S submitted a copy of a ledger or billing statement for services from August 15,  
5 2018, through August 29, 2019, that encompasses services rendered both before and after the  
6 Debtor commenced this proceeding.<sup>4</sup> It appears that H&S has billed 88.70 hours of attorney and  
7 paraprofessional services during the period, for a total dollar amount of \$20,312.50. Out of the  
8 total hours, 73.8 were billed by attorneys. Out of the total dollar amount, \$18,450 was billed by  
9 attorneys. Each attorney billed at a \$250.00 hourly rate. It also appears that H&S charged direct  
10 and indirect costs during the same period in the total amount of \$1,000.48.

11 Having reviewed the billing statement submitted by H&S, the court concludes that the  
12 total hours billed by counsel was reasonable under the circumstances of this case.

13 This Chapter 13 case is not typical because the Contract of Sale is not a typical means for  
14 an individual to acquire a residence. Instead of the more common process of selling and  
15 purchasing residential property, these parties engaged in a seller-financed transaction that could  
16 extend for thirty years or more. Debtor acknowledges in his Schedule A/B that he has an  
17 equitable interest in the Residence as a result of the Contract of Sale, rather than a fee simple  
18 interest. No one disputes that outside of bankruptcy, Creditors would be required to enforce the  
19 Contract of Sale through commencement of litigation, absent a consensual resolution of any  
20 payment defaults. No one disputes that if title to the Residence in fee simple had been conveyed  
21 to the Debtor with any loan secured by a deed of trust in favor of the Creditors, any default under  
22 the loan could be enforced through a non-judicial sale under the deed of trust. No one disputes  
23 that if the Debtor had title to the Residence in fee simple, his prospect of obtaining refinancing  
24 based on the equity in the Residence would be improved. But the parties did not choose the  
25 easier path. This resulted in a more difficult path for the Debtor to navigate in Chapter 13, and  
26 more uncertainty for the Creditors in preserving their rights under both the Contract of Sale and  
27 in bankruptcy. In short, the transaction between the Debtor and the Creditors fostered issues that

---

28 <sup>4</sup> The billing statement is attached as Exhibit “C” to the Response.

1 are more complex than those arising between similarly-situated parties in a common consumer  
2 bankruptcy proceeding.

3 Although the billing statement submitted by H&S reflects several inter-office  
4 communications between attorneys, as well as between the attorneys and the paraprofessional,  
5 the total number of hours is not excessive. Given the discrepancies reflected in the Schedules,  
6 SOFA, and Statement of Current Monthly Income (“CMI Statement”), and amendments filed by  
7 the Debtor in this case,<sup>5</sup> the Creditors’ resort to examinations of various income sources through  
8 Bankruptcy Rule 2004 was not unreasonable. Given the multiple Chapter 13 plans filed by the  
9 Debtor in this case,<sup>6</sup> the Creditors’ active participation in the case also is not unreasonable.

10 Due to the relative complexity of this Chapter 13 case and the way it has been  
11 prosecuted, the court concludes that the number of hours billed by H&S is reasonable under the  
12 circumstances. Thus, the total dollar amount of \$20,312.50 for services rendered by H&S for the  
13 period August 15, 2018, through August 29, 2019, as well as costs in the total amount of  
14 \$1,000.48, are allowed in favor of the Creditors under Section 506(b).<sup>7</sup>

15 **IT IS THEREFORE ORDERED** that the Objection to Proof of Claim brought by  
16 Phillip Ramirez, Docket No. 89, be, and the same hereby is, **OVERRULED**.

---

18  
19 <sup>5</sup> Debtor filed his original Schedules and SOFA on August 20, 2018. He filed his original  
20 CMI Statement on the same date. (ECF No. 4). Debtor filed an amended CMI Statement and an  
21 amended SOFA on September 21, 2018. (ECF Nos. 21 and 22). He filed further amended  
22 Schedules, CMI Statement, and SOFA on April 4, 2019. (ECF Nos. 64, 65 and 66).

23 <sup>6</sup> Debtor filed his initial Chapter 13 plan on August 29, 2018. (ECF No. 13). He filed his  
24 second proposed plan on April 4, 2019. (ECF No. 66). Debtor filed his third proposed Chapter  
25 13 plan on August 22, 2019. (ECF No. 91). He filed his fourth proposed plan, through new  
26 bankruptcy counsel, on October 4, 2019. (ECF No. 109). As discussed at the October 28, 2019  
27 hearing, Debtor will have to file a fifth proposed Chapter 13 plan to account for the disposition  
28 of the instant Claim Objection.

<sup>7</sup> Section 506(b), if applicable, permits an award of reasonable attorney’s fees. The  
court’s conclusions as to the reasonableness of the current fees billed by counsel may or may not  
apply to fees subsequently charged in completing this Chapter 13 proceeding. Whether the  
attorney’s fees and other legal expenses incurred by the Creditors under the Contract of Sale  
would be encompassed by the cure requirement to assume an executory contract under Section  
365(b)(1)(B), if applicable, also is not before the court.

1           **IT IS FURTHER ORDERED** that a status hearing will be held in this Chapter 13  
2 proceeding on **November 27, 2019**, at 11:00 a.m., before Judge Mike Nakagawa in courtroom  
3 #2, Foley Federal Building, 300 Las Vegas Blvd. South, Las Vegas, Nevada.

4  
5 Copies sent via CM/ECF ELECTRONIC FILING

6 Copies sent via BNC to:  
7 PHILLIP RAMIREZ  
8 1054 LINN LANE  
9 LAS VEGAS, NV 89110

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
# # #