

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

Leigh Allyson Bell,

Debtor(s).

C/A No. 17-00194-HB

Chapter 13

**ORDER ON MOTION TO
DETERMINE POSTPETITION FEES,
EXPENSES, AND CHARGES UNDER
FED. R. BANKR. P. 3002.1**

THIS MATTER is before the Court for consideration of Debtor Leigh Allyson Bell's *Motion to Determine Postpetition Fees, Expenses, and Charges under Fed. R. Bankr. P. 3002.1* ("Motion") and PHH Mortgage Corporation's ("PHH") Response thereto.¹ A hearing was held on August 17, 2017. F. Lee O'Steen appeared on behalf of Bell and Jason Wyman appeared on behalf of PHH.

Bell filed a voluntary petition for Chapter 13 relief on January 13, 2017. On the same day, the Court issued a Notice of Chapter 13 Bankruptcy Case, which included the deadline to file a proof of claim. Also on January 13, 2017, Bell filed her Chapter 13 plan consistent with the form plan used in this district.² The plan was confirmed on March 28, 2017, without amendment.³ Section IV(B) of Bell's confirmed plan provides:

1. General Provisions: The terms of the debtor's pre-petition agreement with a secured creditor shall continue to apply except as modified by this plan, the order confirming the plan, or other order of the Court. Holders of secured claims shall retain liens to the extent provided by 11 U.S.C. § 1325(a)(5)(B)(i) . . .

. . . .

3. Long term or mortgage debt. Curing default: 11 U.S.C. 1322(b)(3) and/or (5):

¹ ECF No. 16, filed May, 31, 2017.

² See Ex. A, SC LBR 3015-1. The plan at issue here is not a conduit plan. The conduit form plan language provides for payment of all mortgage fees, expenses, and charges by the Chapter 13 trustee while the case is pending.

³ ECF No. 13.

a. Arrearage payments. The trustee shall pay the arrearage as stated in the creditor[']s allowed claim or as otherwise ordered by the Court to PHH Mortgage/Mortgage Service Center at the rate of \$168 or more per month, for 3060 Orr Road Sharon, SC 29742 York County 1998 Mascot Homes 40x60 mobile home with land, along with 0% interest. The creditor shall apply trustee payments solely to those designated arrearages, i.e., those arrearages accruing before the month specified in (b.) below. For so long as the debtor complies with this plan, a creditor may not declare a default based on any payment delinquency to be cured by this paragraph and the creditor shall not impose any post-petition fee on account of any arrearage paid by the trustee.

b. Maintenance of regular non-arrearage payments. Beginning March 2017, the Debtor shall pay directly to the creditor non-arrearage payments arising under the agreement with the secured creditor. The creditor shall apply each payment under this paragraph solely to post-petition obligations that accrue during or after the month specified herein.

Section 1322(b)(5) allows a Chapter 13 plan to “provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due[.]” 11 U.S.C. § 1322(b)(5). As evidenced by the March 2017 date set forth in this confirmed plan, § 1322(b)(5) does not require the default cured thereunder consist only of amounts due, billed, or incurred prepetition.

On April 14, 2017, PHH filed a claim secured by Bell’s primary residence (“PHH claim”).⁴ Consistent with the official proof of claim form (Official Form 410), the PHH claim lists the amount of Bell’s default as of the petition date.⁵ PHH then filed a *Notice of Postpetition Mortgage Fees, Expenses, and Charges* (“3002.1 Notice”)⁶ that includes

⁴ POC No. 8-1.

⁵ Official Form 410 provides space for the creditor to provide the “amount necessary to cure any default as of the date of the petition.” Official Form 410-A, which incorporates Fed. R. Bankr. P. 3001(c)(2)(C), provides similar language, including “arrearage as of the date of the petition” and “prepetition fees due.”

⁶ Fed. R. Bankr. P. 3002.1 provides, in relevant part:

(c) Notice of fees, expenses, and charges

The holder of the 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

\$425.00 in postpetition attorney's fees for plan review (\$200.00) and PHH claim preparation (\$225.00).⁷ An attachment to the 3002.1 Notice states the fees for the plan review were billed to PHH by the attorney postpetition on February 1, 2017, and the fees for the PHH claim preparation were billed thereafter on April 14, 2017 (the date the PHH claim was filed).

Bell does not challenge the amounts charged or PHH's entitlement to the fees at issue and there is no question that the attorney's fees are "required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code." Fed. R. Bankr. P. 3002.1(e); *In re Lighty*, 513 B.R. 489, 496 (Bankr. D.S.C. 2014). Bell instead asserts these fees should be part of the PHH claim, and not in the 3002.1 Notice, so they can be paid as part of the § 1322(b)(5) cure and the arrearage payments of Section IV(B)(3)(a) of her confirmed plan.

Although the case was filed on January 13, 2017, Section IV(B)(3)(a) states the trustee will cure the "arrearages" that "accrue" before March 2017, and PHH must "apply trustee payments [under Section IV(B)(3)(a)] solely to those designated arrearages."⁸ The

against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred.

(d) Form and content

A notice filed and served under subdivision (b) or (c) of this rule shall be prepared as prescribed by the appropriate Official Form, and filed as a supplement to the holder's proof of claim. The notice is not subject to Rule 3001(f).

(e) Determination of fees, expenses, or charges

On motion of the debtor or trustee filed within one year after service of a notice under subdivision (c) of this rule, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code.

Official Form 410-S2, which implements Fed. R. Bankr. P. 3002.1, instructs creditors to include "any fees, expenses, and charges incurred after the bankruptcy filing . . ."

⁷ As a part of a partial resolution prior to the hearing, PHH agreed to amend its arrearage claim to include some amounts previously included in its 3002.1 Notice. The only amount that remains in question here is the \$425.00 in attorney's fees for these services.

⁸ A parallel provision of the plan states "[t]he creditor shall apply each payment under this paragraph [3(b)] solely to post-petition obligations that accrue during or after the month specified herein." *Compare* Ex. A,

meaning of “accrue” is “[t]o come into existence as an enforceable claim or right; to arise[.]” BLACK’S LAW DICTIONARY (10th ed. 2014).

PHH’s 3002.1 Notice indicates the attorney’s fees of \$200.00 for reviewing the plan were billed to PHH in February 2017. These fees are necessary for a creditor to review and respond to a plan that utilizes § 1322(b)(5) cure provisions and clearly came into existence before March 2017. Therefore, these fees are fairly included within the arrearage to be paid pursuant to Section IV(B)(3)(a) of Bell’s confirmed plan.

The attorney’s fees of \$225.00 for preparation of the PHH claim were billed to PHH in April 2017. It is not clear when this work began, but it was completed after March 2017. However, immediately upon Bell’s filing of this case in January 2017, the Court issued a notice of the deadline to file a proof of claim. The form plan filed on the same date required PHH to file a proof of claim to receive payment from the Chapter 13 trustee and to carry out the provisions of Section IV(B)(3)(a). Regardless of when the PHH claim work was actually performed, or when the fees were incurred or billed by PHH’s counsel, the Court finds that PHH’s right to claim attorney’s fees for the PHH claim arose and came into existence as an enforceable claim or right, and thus *accrued*, immediately upon the filing of this Chapter 13 case and plan. As a result, those fees may be paid pursuant to Section IV(B)(3)(a) of the confirmed plan.

SC LBR 3015-1 (using the term “accrue” in the form plan) with Fed. R. Bankr. P. 3002.1 and Official Forms 410-A and 410-S2 (using the term “incur” throughout); *see also In re Quintus Corp.*, 353 B.R. 77, 86 (Bankr. D. Del. 2006), *appeal granted in part, cause remanded*, No. 01-501 TO 01-503MFW, 2007 WL 4233665 (D. Del. Nov. 29, 2007), and *amended in part*, 389 B.R. 390 (Bankr. D. Del. 2008) (discussing the meaning of “accrued” under the contract at issue and noting that Black’s Law Dictionary does not provide “that ‘accrue’ is interchangeable with ‘incur.’” (citing BLACK’S LAW DICTIONARY 21 (7th ed. 1999); BLACK’S LAW DICTIONARY 22 (8th ed. 2004))).

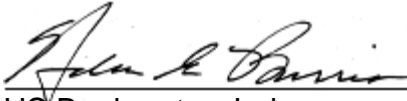
Section IV(B)(3)(a) of the plan provides the “trustee shall pay the arrearage as stated in the creditor[’]s allowed claim *or as otherwise ordered by the Court.*”⁹ (emphasis added). For the reasons set forth above, Bell has shown just cause for entry of such an order pursuant to Section IV(B)(3)(a).

IT IS, THEREFORE, ORDERED that the \$425.00 for attorney’s fees for the plan review and PHH claim shall be paid pursuant to Section IV(B)(3)(a) of the confirmed plan.

AND IT IS SO ORDERED.

**FILED BY THE COURT
08/30/2017**




US Bankruptcy Judge
District of South Carolina

Entered: 08/30/2017

⁹ The Court in *Lighty* noted that such fees were:

not indicated in the arrearages stated in the creditors’ claims, and the Court has not ordered a different amount be paid [via Section IV(B)(3)(a)]. Therefore the [attorney’s] fee that was noticed [in the Rule 3002.1 Notice] is not being paid by the chapter 13 trustee as part of distributing the funds the debtors pay into the plans.

513 B.R. at 494. Unlike the debtors in *Lighty*, Bell **has** asked this Court to “order otherwise” instead of accepting the arrearage as stated in the PHH claim.