

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

IN RE:

Michele Christine Longhurst,

Debtor(s).

C/A No. 19-01926-HB

Chapter 13

**ORDER REGARDING MOTION TO
DETERMINE MORTGAGE FEES
AND EXPENSES**

THIS MATTER is before the Court on the Motion to Determine Mortgage Fees and Expenses filed by Debtor Michele Christine Longhurst.¹ Creditor U.S. Bank National Association, not in its individual capacity but solely as trustee for the RMAC Trust, Series 2018 G-CTT (“U.S. Bank”) filed a Reply² and a hearing was held on October 24, 2019.

FACTS

Many relevant facts are not in dispute and are gleaned from the docket and pleadings in this case. Longhurst filed a petition for Chapter 13 relief and a plan on April 2, 2019. Her plan required 60 monthly payments of \$550.00, and provided she would maintain all ongoing contractual payments due directly to U.S. Bank and cure any prepetition arrearages through plan payments to the trustee pursuant to 11 U.S.C. § 1322(b)(5). Section 3.1(b) of the plan stated:

The debtor is in default and will maintain the current contractual installment payments on the secured claims listed below, with any changes required by the applicable contract and noticed in conformity with any applicable rules. The arrearage payments will be disbursed by the trustee, with interest, if any, at the rate stated. The trustee shall pay the arrearage as stated in creditor’s allowed claim or as otherwise ordered by the Court.

¹ ECF No 28, filed Sept. 30, 2019.

² ECF No. 30, filed Oct. 15, 2019.

Longhurst filled in “\$11,000” under the plan heading “[e]stimated amount of arrearage.” The plan stated this figure “includes amounts accrued through the May 2019 payment,” (indicating her intention to resume direct contractual payments in June 2019) and provided a “[m]onthly arrearage payment” of “\$184.00 (or more)” from the trustee.³

On May 7, 2019, U.S. Bank objected to the plan because it “does not provide for adequate payments to U.S. Bank . . . sufficient to pay off the pre-petition arrearage in the amount of \$18,380.88.” The objection demanded a hearing. On the same day, U.S. Bank filed its proof of claim in the amount of \$118,978.10, of which \$18,380.88 is for prepetition arrears and amounts owed for May 2019.⁴ The filing includes a Mortgage Proof of Claim Attachment (Official Form 410A), copies of the note and mortgage, and annual escrow account disclosure statement. The note states the “Lender may require Borrower to pay costs and expenses including reasonable and customary attorneys’ fees for enforcing this Note . . .” The mortgage provides “[i]f Borrower fails to make . . . the payments required . . . or there is a legal proceeding that may significantly affect Lender’s rights in the Property (such as a proceeding in bankruptcy . . .), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender’s rights in the Property . . .”

On June 24, 2019, U.S. Bank withdrew its plan objection by a text entry on the docket, which stated “debtor’s plan calls for payment of POC.” An initial confirmation hearing was held on July 3, 2019 and continued. There is no indication that U.S. Bank appeared at that hearing or needed to take any steps to further pursue its plan objection on any grounds. A result of a modified plan filed on August 9, 2019, another confirmation

³ This language is part of this district’s mandatory form plan designed to clarify the intention of the debtor as to any arrearage to be paid, provide flexibility as exact amounts are determined, and at the same time reduce the need for creditor objections.

⁴ POC No. 6-1.

hearing was scheduled for September 24, 2019. The debtor's modified plan was then confirmed without objection.⁵

On September 30, 2019, U.S. Bank filed a Notice of Postpetition Mortgage Fees, Expenses, and Charges ("Rule 3002.1 Notice") in the total amount of \$1,715.34, indicating the following: attorney's fees, incurred on May 14, 2019, in the amount \$500.00; filing fees and court costs, incurred on April 3, 2019 and April 11, 2019, in the amount of \$295.34; bankruptcy/proof of claim fees, incurred on May 14, 2019, in the amount of \$600.00; property inspection fees, incurred August 28, 2019, in the amount of \$20.00; and plan review fees, incurred on May 14, 2019, in the amount of \$300.00. No supporting documents were attached to the Rule 3002.1 Notice. On the same day, Longhurst filed this Motion asking that U.S. Bank's expenses, fees, and charges be limited to \$650.00.

On October 9, 2019, U.S. Bank filed an Amended Rule 3002.1 Notice that included an invoice from the attorney for the work performed and removed the \$295.34 charge for filing fees and court costs, which lowered the total amount charged to \$1,420.00. The attorney's fees comprise \$1,400.00 of this amount and were all incurred on May 14, 2019. These fees include \$500.00 for objection to plan, \$600.00 for proof of claim and 410 form, and \$300.00 for plan review. U.S. Bank then filed a Reply to the Motion and attached a list of charges it identifies as part of the Fannie Mae guidelines, which includes the following:

⁵ See ECF Nos. 19 & 25. The modified plan, filed after U.S. Bank's objection was withdrawn, indicated a prepetition arrearage amount of \$18,381.00 and proposed a monthly payment on that arrearage of "\$307 (or more)."

Allowable Fee Type	Maximum Allowable	Applicable Dates	Notes
Objection to Plan	\$500	Services rendered on or after 11/01/2013	<p>These fees include the legal services generally required in connection with the prosecution of an Objection to Plan, including communications with the servicer, legal research, preparation and filing of objection papers, negotiations with debtor's counsel and trustee, attendance at up to two hearings, and preparing a stipulation or order.</p> <p>This allowable fee covers all Objections to the original Plan and up to two amended Plans, regardless of the number of Objections required, the number of debtors involved, or the number of Fannie Mae loans involved.</p> <p>Fees for any legal work related to Objections to the third and subsequent Amended Plans, litigated or contested Objections, or Objections related to new factual or legal issues raised in any amended Plans, will require excess fee approval.</p>

Proof of Claim Preparation & Plan Review	\$650	Services rendered on or after 11/01/2013	<p>These fees include:</p> <ul style="list-style-type: none"> Communicating with the servicer to obtain the necessary information about the debtor's loan(s) and backup documentation for the POC; Preparing and filing the POC form, and up to one amended POC form; Verifying that the POC is properly docketed; Monitoring the docket, and obtaining and reviewing the original and up to two amended Plans; Analyzing Plan(s); Reviewing any disclosure statement and ballot (if applicable); and Communicating and negotiating with the Servicer, any trustee and debtor's counsel. <p>Fannie Mae will authorize excess fees in unusually complex cases in accordance with our usual excess fee approval process. The fee for POC & Plan Review covers all Fannie Mae mortgage loans involved in a proceeding.</p>
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Notice of Fees, Expenses, and Charges	\$150	All active files effective 08/16/2017 or later	This fee includes all legal services provided by bankruptcy counsel in compliance with Bankruptcy Rule 3002.1 concerning notices of post-petition fees, charges, or expenses that the creditor seeks to collect from the debtor. This allowable fee includes communications with the servicer; verifying the validity of the fees, expenses, or charges being sought; drafting, serving and filing the requisite form (Form B10S2); and verifying that the Notice is docketed properly.
	\$100	Services rendered on or after 11/01/2013 and files closed prior to 08/16/2017	This fee is allowed for each Notice of Fees, Expenses and Charges, even if notices must be given to multiple debtors. However, the fee is limited to notices for fees, expenses and charges that aggregate \$150 or more. If a servicer incurs out-of-pocket expenses that aggregate less than \$150, (a) a notice may be filed at the servicer's expense as a cost of servicing or (b) attempts to collect from the borrower may be waived and reimbursement may be sought by the servicer from Fannie Mae in accordance with the provisions of the Servicing Guide.

The parties disagree as to whether all fees charged by U.S. Bank are in fact reasonable or necessary. After U.S. Bank filed the Amended Rule 3002.1 Notice and provided additional information, Longhurst asked that these fees be limited to \$900.00.

APPLICABLE AUTHORITY

Fed. R. Bankr. P. 3002.1(e) provides:

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.

This Court has previously warned that a mortgage creditor's Rule 3002.1 Notice should provide adequate descriptions for the charges contained therein so a debtor and/or the Court can determine the reasonableness of the charges. *In re Lighty*, 513 B.R. 489 (Bankr. D.S.C. 2014).

When a contract provides for "reasonable" attorney's fees, the Court should consider six factors to determine reasonableness:

[1] the nature, extent and difficulty of the legal services rendered; [2] the time and labor necessarily devoted to the case; [3] the professional standing of counsel; [4] the contingency of compensation; [5] the fee customarily charged in the locality for similar legal services; and [6] the beneficial results obtained.

Id. at 497 (quoting *Dedes v. Strickland*, 307 S.C. 155, 414 S.E.2d 134, 137 (1992)).

Although "consideration should be given to all six criteria in establishing reasonable attorney's fees[,] none of these six factors is controlling." *Id.* (quoting *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296, 297 (1989)). Only factors (1), (2), (5) and (6) appear relevant here.

DISCUSSION AND CONCLUSION

U.S. Bank asserts the charges in the Amended Rule 3002.1 Notice are reasonable because the fees charged are in accordance with the Fannie Mae guidelines (a purported industry standard) in effect at the time the services were rendered. The portions of the Fannie Mae fee schedule provided by U.S. Bank indicate *maximum* customary charges for certain categories of work. The categories include a broad range of tasks that may not be necessary or reasonable in every case and it appears that tasks in one category may overlap work described in another. While the schedule has some value here, it is not dispositive.

For the schedule to support a finding that the charges made here are customary, the Court must compare the necessary and reasonable work in this case against the descriptions and charges included in the schedule.

Turning specifically to the events of this case, it clearly was necessary for U.S. Bank to file a Proof of Claim and 410 form, review the plan, monitor its progress, file a Rule 3002.1 Notice, and undertake related acts to successfully participate in this case. However, the Court cannot conclude that a separate charge for a plan objection is reasonable or necessary here because, as Longhurst points out, Section 3.1(b) of the plan clearly stated that “[t]he trustee shall pay the arrearage *as stated in creditor’s allowed claim* or as otherwise ordered by the Court,” Longhurst’s proposed payment “includes amounts accrued through the May 2019 payment,” and it would be made in monthly amounts of “\$184.00 (*or more*).” (Emphasis added). The objection was later withdrawn prior to any modified plan because U.S. Bank recognized that “debtor’s plan calls for payment of POC.” The objection was not the cause of any beneficial result for U.S. Bank. Further, the objection to plan is brief and generic in nature, does not appear difficult in any way, and the Court cannot see evidence that it was labor intensive. The record, therefore, does not support a finding that the charge of \$500.00 for the objection to plan is reasonable or necessary.

U.S. Bank also charged \$300.00 for plan review and \$600.00 for bankruptcy/proof of claim fees. However, the Fannie Mae fee schedule it offers in support of these charges appears to combine these tasks and provides a maximum charge of \$650.00. U.S. Bank did not provide sufficient information of any extra work necessary to increase the amount above the guidelines it utilizes. Without more information, it is difficult to determine why

plan review would not be a part of the work necessary for a plan objection or included within the charge for the proof of claim.

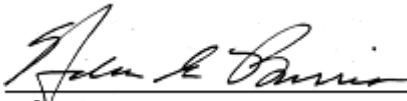
In conclusion, because there is little evidence that the legal services were difficult or extensive, without sufficient information regarding the time devoted to the matters in question, and considering that the charges do not sufficiently align with the Fannie Mae guidelines that U.S. Bank asserts as evidence of customary charges, and because the objection to plan was not necessary for a beneficial outcome, the Court grants Longhurst's Motion to limit the fees set forth in U.S. Bank's Rule 3002.1 Notice and Amended Rule 3002.1 Notice to \$900.00. This is the amount required by the underlying agreements and applicable nonbankruptcy law to cure a default or maintain payments in accordance with 11 U.S.C. § 1322(b)(5).

AND IT IS SO ORDERED.

**FILED BY THE COURT
10/29/2019**



Entered: 10/29/2019


US Bankruptcy Judge
District of South Carolina