

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

IN RE:

Megan Nicole Mackie,

Debtor(s).

C/A No. 19-03915-HB

Chapter 13

**ORDER DETERMINING
MORTGAGE FEES AND EXPENSES
PURSUANT TO
FED. R. BANKR. P. 3002.1**

THIS MATTER came before the Court on October 8, 2020, for consideration of the Motion to Determine Mortgage Fees and Expenses filed by Debtor Megan Nicole Mackie.¹ Participating in the hearing by telephone were F. Lee O'Steen on behalf of Mackie and Jason M. Hunter on behalf of Carrington Mortgage Services, LLC.

FINDINGS OF FACT

Mackie filed a petition for Chapter 13 bankruptcy relief and plan on July 25, 2019. On September 2019, Carrington filed an amended proof of claim attaching a note secured by a mortgage on Mackie's residence. The principal balance at the time of filing was \$120,991.05, and the claim indicates a modest pre-petition arrearage of \$72.47 for a "projected escrow shortage."²

The note states:

If Borrower defaults by failing to pay in full any monthly payment, then Lender may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full on the principal balance remaining due and all accrued interest . . .

. . . .

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary

¹ ECF No. 29, filed Aug. 31, 2020.

² POC No. 14. The claim was initially filed on September 11, 2019, and included prepetition arrears of \$78.91. It was amended on September 18, 2019 to reduce this arrearage amount. Carrington subsequently transferred its claim to J.P. Morgan Mortgage Acquisition Corp. on September 30, 2020.

attorneys' fees for enforcing this Note to the extent not prohibited by applicable law . . .

Additionally, the mortgage provides:

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, 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...

Although Mackie believed she was current on her mortgage payments to Carrington at filing, her attorney explained it is his practice to include plan terms for arrearages in case this proves incorrect. Therefore, Section 3.1(b) of Mackie's plan provides any arrearage to Carrington would be cured through plan payments to the Chapter 13 trustee while Mackie continued to make regular ongoing payments directly to Carrington pursuant to 11 U.S.C. § 1322(b)(5). Mackie's plan provided for payments to the trustee of \$875.00 for sixty (60) months. That plan, filed on July 25, 2019, was confirmed on October 10, 2019.

On October 24, 2019, Carrington filed its first Notice of Postpetition Mortgage, Fees, Expenses, and Charges under Fed. R. Bankr. P. 3002.1(c) ("3002.1 Notice"), indicating attorney's fees of \$300.00 were incurred on July 30, 2019 for "plan review" and \$350.00 in attorney's fees were incurred on September 11, 2019 for "poc." Even a cursory review of the plan and claim would lead to the conclusion that the plan is not a conduit plan³ and only a total of \$72.47 was to be paid to Carrington through Chapter 13 plan payments to the trustee.

Approximately six months later, on March 23, 2020, Mackie filed a motion, requesting suspension of her Chapter 13 plan payments to the trustee for a period of three months. This motion did not request a suspension of regular post-petition mortgage payments to any creditor.

³ See Am. Op. Or. 16-03, entered Oct. 2, 2019.

An order approving the request was entered without objection on April 20, 2020 (“Moratorium Order”).

On August 31, 2020, Carrington filed a second 3002.1 Notice, indicating attorney’s fees of \$150.00 were incurred on May 12, 2020 for “Moratorium.” That same day, Mackie filed this Motion, asserting this 3002.1 Notice failed to provide sufficient information or description to determine the reasonableness of the fees included therein. In response, Carrington filed an Amended 3002.1 Notice indicating a charge of \$150.00 incurred on May 12, 2020 for “Moratorium review and monitor.”⁴ Attached to the Amended 3002.1 Notice is a bill for work performed on that date for “Bankruptcy fees – Motion for Moratorium” and the following explanation: “Creditor’s Counsel must monitor [moratorium] applications for any order granting the request. Counsel must then track the moratorium and plan for its conclusion by reaching out to Debtor or their counsel in order to come to an agreement regarding the repayment of any newly-accrued arrearage.” At the hearing on this matter, Hunter further explained the \$150.00 incurred represented his research and review of this file to determine whether the Moratorium Order affected Carrington’s claim.

The docket indicates the following additional events: (a) on June 24, 2020, Carrington and Mackie entered into a forbearance agreement due to the impact of the COVID-19 pandemic; and (b) on September 28, 2020, a motion to modify post-confirmation plan was filed by Mackie, seeking to reduce her monthly payments to the Chapter 13 trustee but not to alter the treatment of Carrington’s claim.⁵ The record does not indicate any amounts charged thus far as a result of these

⁴ ECF No. 32, filed Sept. 11, 2020.

⁵ The events of this case must be considered in the context of the effects of COVID-19 on the economy and bankruptcy practice beginning in March 2020 and continuing through the date of this Order.

two events and there is no indication that the description of services in the 3002.1 Notice (or Amended 3002.1 Notice) is intended to include any work related to these events.

DISCUSSION AND CONCLUSIONS

If the underlying agreement provides for payment of “reasonable” attorney’s fees by the debtor, then creditors must provide adequate descriptions for the charges contained in notices under Fed. R. Bankr. P. 3002.1(c) for the debtor and Court to determine whether they are reasonable. *In re Longhurst*, 607 B.R. 822, 826-27 (Bankr. D.S.C. 2019); *In re Lighty*, 513 B.R. 489 (Bankr. D.S.C. 2014); *In re Hale*, C/A No. 14-04337-HB, 2015 WL 1263255 (Bankr. D.S.C. Mar. 16, 2015).

The mortgage here provides if “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” While Mackie’s bankruptcy overall may significantly affect Carrington’s rights in the property, that fact alone does not cover every post-petition charge it makes. Generally, in a non-conduit case when a debtor is current on mortgage payments at the time of filing, a moratorium of plan payments to the Chapter 13 trustee does not affect the value of property or the lender’s rights in the property. It is difficult to understand, and is not explained here, how the same is not true for a debtor with a miniscule pre-petition arrearage. Carrington failed to show how its rights in the property were at risk by a temporary pause in payments on such a modest arrearage to render these fees necessary to protect its interest.

Further, Carrington had already charged Mackie \$350.00 for “plan review” and \$300.00 to file a proof of claim only months before this new charge. Even if only a superficial “plan review” had been done previously, resulting conclusions would indicate that if a moratorium request is

made during this case, reviewing or monitoring the effect of such moratorium is not beneficial or necessary to protect Carrington's rights. If there was cause for or a beneficial result from this review and monitoring, Carrington has not demonstrated it on the record.

Further, the description of fees incurred in Carrington's 3002.1 Notice was insufficient. Considering this creditor's position in this case and the prior charges it had already incurred for plan review, the word "moratorium" does not explain what was done, much less demonstrate the fees are reasonable.⁶ Even considering the additional information provided in the Amended 3002.1 Notice, the \$150.00 charged for this work was recorded as performed 22 days after the Moratorium Order was entered and does not appear to match work actually done in this case related to a moratorium. Overall, Carrington has not demonstrated the \$150.00 of post-petition fees incurred were reasonable, necessary, or allowable under the underlying agreement or applicable law and allowable under Fed. R. Bankr. P. 3002.1(e).

IT IS, THEREFORE, ORDERED that Mackie's Motion to Determine Mortgage Fees and Expenses is resolved in Mackie's favor and Carrington's request for post-petition fees of \$150.00 is **DENIED** and may not be charged to Mackie under the applicable loan documents or applicable law.

FILED BY THE COURT
10/19/2020




Chief US Bankruptcy Judge
District of South Carolina

Entered: 10/19/2020

⁶ The same one-word description may be adequate in other contexts where the need for the work is evident, such as when used in a fee request by the debtor's counsel or in a conduit case.