

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:

Beverly Jacobs Brown
aka Beverly Ann Jacobs

Debtor.

C/A No. 16-04122-dd

Chapter 13

ORDER

This matter comes before the Court upon the Certification of Plan Completion and Request for Discharge (“Request for Discharge”) filed by Beverly Jacobs Brown (“Debtor”) on July 2, 2021. Pursuant to Fed. R. Bankr. P. 3002.1(g), Citizens Bank NA (“Citizens Bank” or “Creditor”) filed a response (“Response”) to the Trustee’s Notice of Final Cure Payment indicating that Debtor is due for certain post-petition fees in the amount of \$1,085 to Creditor. Based on the Response, the Court held a hearing on the Request for Discharge attended by counsel for Debtor and Creditor. Pursuant to Fed. R. Civ. P. 52, made applicable to this proceeding by Fed. R. Bankr. P. 7052, the Court makes the following findings of fact and conclusions of law.¹

FINDINGS OF FACT

1. On August 15, 2016, Debtor filed a petition for relief under chapter 13 of the Bankruptcy Code. On August 15, 2016, Debtor filed a proposed chapter 13 plan, which was subsequently amended on December 8, 2016 (“Chapter 13 Plan”). The Chapter 13 Plan provided the following regarding Creditor’s claim:

B. Secured Creditor Claim: The plan treats secured claims as follows:

1. General Provisions: The terms of the debtors pre-petition agreement with a secured creditor **shall continue to apply except as modified by this plan**, the order confirming plan, or other order of the Court

¹ To the extent the following findings of fact are conclusions of law, they are adopted as such, and to the extent the following conclusions of law are findings of fact, they are so adopted.

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

a. Arrearage payments. The trustee shall pay the arrearage as stated in the creditors allowed claim or as otherwise ordered by the Court to [Citizens Bank] at the rate of **\$9.00** or more per month, for **[3]08 W. Washington Street Winnsboro, SC 29180**, along with **0%** interest. The creditor shall apply 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 **January, 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.

5. On October 11, 2016, Citizens Bank filed a proof of claim based on the Mortgage.

6. The Chapter 13 Plan was confirmed on January 13, 2017.

7. On February 1, 2017, Citizens Bank filed a Notice of Postpetition Mortgage Fees, Expenses, and Charges (“Postpetition Fee Notice”) asserting post-petition fees in the amount of \$1,085. No party contested this filing as permitted by Fed. R. Bankr. P. 3002.1(e).

8. On July 7, 2021, the Chapter 13 Trustee filed the Notice of Final Cure Mortgage Payment pursuant to Fed. R. Bankr. P. 3002.1(f).

9. On July 8, 2021, Citizens Bank filed the Response agreeing that all prepetition arrears were paid in full, noting that “postpetition ongoing payments” were paid, but indicating that Debtor was due for certain outstanding postpetition fees in the amount of \$1,085.

10. On September 2, 2021, the Court held a hearing on the Request for Discharge attended by Debtor’s counsel and Creditor’s counsel.

CONCLUSIONS OF LAW

At the hearing on the Request for Discharge, Debtor's counsel argued that the amounts reflected in the Response are comprised of post-petition fees and expenses incurred by Citizens Bank during the pendency of Debtor's bankruptcy case. Debtor does not dispute that she has not paid the post-petition fees and expenses to Citizens Bank. Debtor's counsel argues that the payments of post-petition fees and expenses on a mortgage claim treated under 11 U.S.C. § 1322(b)(5) are not "payments under the plan" as defined in 11 U.S.C. § 1328(a), and therefore, Debtor should be entitled to a discharge regardless of whether she has paid those post-petition fees and expenses. Section 1328(a) provides that "as soon as practicable after completion by the debtor of all payments under the plan, . . . the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of [the Bankruptcy Code]."

Following the majority of bankruptcy courts that have addressed the issue, the court in *In re Dowe*y held that a debtor's ongoing maintenance payments provided for under § 1322(b)(5) that are paid directly by the debtor to the creditor are "payments under the plan" for purposes of a discharge under § 1328(a). 580 B.R. 168 (Bankr. D.S.C. 2017). In reaching that determination, however, the Court noted that "[a] determination of whether other payments included in a chapter 13 plan constitute a 'payment under the plan' would depend on the language of the particular plan and the type of debt being paid." *Id.* at 172 n. 6. Thus, in the instant case, the Court will turn to the language of the Chapter 13 Plan to determine if the post-petition fees and expenses in this specific matter are "payments under the plan."

Here, the Chapter 13 Plan provides that the terms of the loan documents "shall continue to apply except as modified by [the Chapter 13 Plan], the order confirming the plan, or other order of the Court." As to the fees and expenses noticed in 2017 in the amount of \$1,085, the loan

documents provide that these are owed at the lender's option; specifically, the language of the agreement includes collection costs among expenses that are "payable on demand." Here, under the terms of the documents, the Creditor has not stated the fees at issue are due and payable and counsel for the Creditor stated at the hearing that it had not sought payment of the \$1,085.

Rule 3002.1 does not go so far as to say that nonpayment of additional interest or charges will prevent the entry of a debtor's discharge. It is § 1328(a) that governs the entry or denial of discharge, requiring completion of "all payments *under the plan*." (emphasis added). The post-petition fees at issue did not become a part of the Debtor's confirmed plan by subsequent modification and their nonpayment will not prevent the entry of discharge since, while the fees were incurred, no demand for payment has been made. The incurred fees are due as part of a claim with a last payment due after the date of the final plan payment and not subject to the discharge. See §§ 1328(a)(1), 1322(b)(5). Thus this case can proceed to closing with the Debtor awarded such discharge as she is otherwise entitled.

AND IT IS SO ORDERED.

**FILED BY THE COURT
09/15/2021**



Entered: 09/15/2021

David R. Duncan
US Bankruptcy Judge
District of South Carolina