

IT IS ORDERED as set forth below:



Date: May 01, 2007

Mary Grace Diehl

**Mary Grace Diehl
U.S. Bankruptcy Court Judge**

In the United States Bankruptcy Court
for the Northern District of Georgia
Atlanta Division

In re)	Case No. 06-76846-MGD
)	
George Wesley Taylor, Jr.,)	Chapter 13
)	
Debtor.)	Judge Diehl

**ORDER ON OBJECTION TO CLAIM OF
COUNTRYWIDE HOME LOANS, INC.**

This case is before the Court on Debtor George Wesley Taylor, Jr.'s ("Debtor's") Objection to the Claim of Countrywide Home Loans, Inc. ("Countrywide"), (Proof of Claim No. 7, filed on February 7, 2007). (Docket No. 70). The claim is for the total amount of \$15,521.38 and is itemized as to Total Arrearage as of 12/29/2006 and Post-petition Amounts of \$350. The Objection filed by Debtor takes issue with several aspects of the Proof of Claim, specifically: (1) pre-petition escrow shortage of \$884; (2) pre-petition bankruptcy fees of which \$500 is disputed; (3) pre-petition foreclosure fees of \$1,200 and (4) pre-petition foreclosure costs of \$993.76. It should also be noted that in connection with the Court's January 18, 2007 Order Conditionally

Granting Debtor's Motion to Extend the Stay, Debtor has paid \$6,000 to the Chapter 13 Trustee toward the arrearage claim of Countrywide.

An evidentiary hearing on this matter was scheduled by the Court for April 10, 2007. Both parties appeared and the Court admitted certain documents and heard the testimony of Jonathan Lea. The parties were given ten days to file any additional briefs and authorities with the Court. Both parties filed briefs and the Court now enters its Findings of Fact and Conclusions of Law. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

Bankruptcy Rule 3001(f) provides that a Proof of Claim filed in accordance with the rules constitutes prima facie evidence of the validity and amount of the claim. Therefore, the initial burden of persuasion rests upon the party objecting to the claim to come forward with sufficient evidence to defeat the allegations contained in the Proof of Claim. 4 *Collier on Bankruptcy* ¶ 502.02[3][f] (15th Ed. Rev. 2006). The objecting party must produce evidence equal to the probative value of the proof of claim itself. Although the burden of persuasion shifts, the burden of proof always rests with the claimant and the claimant must prove the validity of the claim by a preponderance of the evidence. *In re Harrison*, 987 F.2d 677 (10th Cir. 1993); *In re Allegheny Int., Inc.*, 954 F.2d 167 (3d Cir. 1992).

The evidentiary presumption of Rule 3001(f) is limited to validity and amount. Where the claim is for fees, costs or charges which must be reasonable to be allowed under Section 506(b), the claimant must provide evidence from which the Court can determine reasonableness, or the evidentiary presumption will not arise. Thus, in *In re Baker*, 49 B.R. 240 (Bankr. E.D. Pa. 1985), the court held that Bankruptcy Rule 3001(f) did not apply to a mortgagee's claim for

attorney fees, given the debtor's objection and the claimant mortgagee's failure to establish the need or value of the legal services rendered, a condition precedent to the granting of the claim. Since the burden of proof includes the burden of production, a proof of claim that fails to attach documents in support of the claimed fees and costs fails to meet the burden of production. This does not render the claim improper or defective. It means only that the claimant, not having made its prima facie case with respect to fees and costs, is not entitled to an evidentiary presumption. *In re Coates*, 292 B.R. 894 (Bankr. C.D. Ill. 2003).

Using these evidentiary standards, the Court will address the items on the proof of claim which are the subject of objection. The first item concerns Pre-petition Escrow Shortage in the amount of \$884. The parties agree that this sum relates to property insurance which was purchased by Countrywide when Debtor's insurance lapsed. The dispute is with respect to the amount of the insurance premium. Countrywide's counsel appeared to concede that the amount was wrong because Debtor had obtained insurance again. Counsel indicated a credit of \$466 was due to Debtor, but produced no evidence with respect to that amount. Debtor likewise stated, but did not provide testimony, with respect to the amount of credit he was due. The only document tendered by either party with respect to the insurance issue was Debtor's Exhibit #8 which was tendered by Countrywide. That document, which was admitted into evidence, contains no information with respect to the amount of the premium. Inasmuch as Countrywide concedes that the amount shown on its Proof of Claim for Pre-petition Escrow Shortage is wrong, no presumption arises and Countrywide has not met its burden with respect to this issue in any other way. Therefore, Countrywide's claim for a pre-petition escrow shortage in the amount of \$884 is disallowed.

Countrywide's claims include Pre-petition Bankruptcy Fees in the amount of \$1,250. These are fees which were incurred in connection with Debtor's prior Chapter 13 case, Case No. 06-65999. Of the total of \$1,250, \$750 was provided for as post-petition arrearage in connection with a Motion for Relief From Stay filed by Countrywide and a Consent Order resolving that motion (Docket No. 45). Under the terms of the Consent Order, Countrywide was allowed \$750 as a portion of its post-petition arrearage which Debtor agreed to cure. Debtor does not dispute this portion of the fees. He disputes only the additional \$500. Countrywide provided the Court with copies of the Note (Exhibit No. 1) and Security Deed (Exhibit No. 2) pursuant to which it claims entitlement to its fees and expenses under 11 U.S.C. § 506(b). Countrywide did not provide any evidence with respect to the basis for these fees: there is no description of the legal services provided, no agreement between Countrywide and its counsel was produced and no testimony concerning the services or the reasonable costs thereof was provided to the Court. Since Countrywide is not entitled to an evidentiary presumption with respect to reasonableness, the Court must determine whether Countrywide has otherwise met its burden of proof. Countrywide's responsive brief points the Court to the docket in the prior bankruptcy case which included a number of hearings which were attended by counsel for Countrywide. While the Court acknowledges that counsel for Countrywide was present at hearings and filed pleadings, no evidentiary link has been provided between the presence at the hearings and the fees incurred by Countrywide. Without a fee agreement or an itemization, the Court would be speculating as to what the additional fees covered. Countrywide's claim for Pre-Bankruptcy Fees shall be allowed in the amount of \$750, and disallowed for the balance.

Countrywide seeks pre-petition foreclosure fees of \$1,200. Testimony at the hearing was

taken from Jonathan Lea, an assistant team leader at MR Default Services, LLC. Mr. Lea indicated that the fees charged for foreclosure services for a conventional loan were \$600 and this fee included the preparation of the publication notice, bankruptcy checks, necessary title check and notification requirements. Mr. Lea testified that Debtor's loan was referred twice for foreclosure and each foreclosure was halted by a bankruptcy filing. Mr. Lea testified that costs included the specific services which were performed such as publication costs, computer services, etc. Mr. Lea further stated that these fees and costs were typical in the industry. Debtor did not challenge this testimony. On cross examination, Debtor established that the two foreclosures were not concluded because of his bankruptcy filings and further established that the foreclosure ads were cancelled one day after they ran. Mr. Lea testified, however, that substantially all the work on a foreclosure was done prior to the running of the advertisement. Debtor offered no contrary evidence. The Court concludes that Countrywide has met its burden with respect to the foreclosure fees of \$1,200 and foreclosure costs of \$993.76 and those elements of the claim will be allowed.

Debtor argues that all of the contested fees and expenses should be disallowed because the pending case (Case No. 06-76846) should never have been filed because the Court should have confirmed his Chapter 13 Plan in his previous case (Case No. 06-65999). That argument is without merit. Debtor's prior 2006 case was dismissed on November 9, 2006 when confirmation was denied. Debtor did not appeal the dismissal and that Order became final. Any objection Debtor had to the dismissal of the previous case had to have been raised on appeal or a motion for reconsideration in that case. It was not.

Debtor also argues that the charges of Countrywide were unethical and discriminatory. However, Debtor did not support these allegations with any admissible evidence and, in fact, declined to give testimony under oath when advised by the Court that this statements to the Court were not evidence unless he took an oath and was subjected to cross-examination.

Debtor's Objection to the Proof of Claim of Countrywide is **GRANTED** in part and **DENIED** in part. The claim of Countrywide is allowed as a secured claim in the amount of \$14,137.38, exclusive of the \$6,000 paid in connection with the Court's prior Order.

END OF DOCUMENT