

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

IN RE: LESLIE C. ROUSH, Debtor

**No. 4:15-bk-15986
Ch. 13**

ORDER

Before the Court is the amended proof of claim filed by creditor U.S. Bank Trust, N.A. [U.S. Bank] on May 4, 2016. Caliber Home Loans, Inc. [Caliber], the servicer of the loan and mortgage at issue in this case, is listed on the amended proof of claim as the entity for which notices and payments for the creditor are to be sent.¹ Initially, the debtor did not object to U.S. Bank's amended proof of claim but at the hearing on the amended proof of claim on July 12, 2016, all parties agreed on the record that (1) the debtor was objecting to the amended proof of claim and (2) to proceed accordingly. For the reasons stated below, the Court overrules the debtor's objection to U.S. Bank's amended proof of claim and finds that U.S. Bank has an allowed claim in the amount of \$173,344.73 and an arrearage in the amount of \$4696.87.

The history of this case is well-papered.² In January 2015, the debtor and his spouse executed a loan modification with Caliber. According to the modification agreement signed by the parties, the debtor's unpaid principal balance at the time the modification was entered into was \$140,018.91; the "Modification Interest Only Payment" was \$700.09; the monthly escrow payment was \$219.66; and the total new monthly payment was \$919.75. Caliber deferred \$29,737.50 in advances and unpaid interest until payment in full of the debt or June 1, 2036, whichever happened first.

In November 2015, after falling behind in his payments, the debtor filed his chapter 13

¹ Because of the relationship between the two entities, the Court may refer to U.S. Bank and Caliber interchangeably.

² The debtor's Exhibit A lists a complete history of the mortgage and loan transactions beginning in May 2006 with Home Funds Direct. Only the relevant transactions between the debtor, Caliber, and U.S. Bank are noted in this order.

petition. April 11, 2106, was set as the last day to file a proof of claim. After the debtor filed his petition, U.S. Bank filed the following documents:

1. Objection to Confirmation filed on 3/4/2016, withdrawn on 5/3/2016;
2. Proof of Claim filed on 3/14/2016;
3. Motion for Relief From Stay filed on 3/15/2016, withdrawn on 6/5/2016;
4. Amended Motion for Relief From Stay filed on 5/4/2016, withdrawn on 6/5/2016;
5. Amended Proof of Claim filed on 5/4/2016.

Although the debtor objected to the initial Proof of Claim filed by U.S. Bank, he did not object to the Amended Proof of Claim until the hearing on July 12, 2016.

Despite the discrepancies in amounts that appear in the pleadings that have been filed by U.S. Bank and then withdrawn, U.S. Bank argues that the amounts listed in its amended proof of claim filed on May 4, 2016, are accurate. The debtor disagrees and argues that the amount Caliber is withholding for escrow and the allegedly improper amounts paid to taxing authorities are not correct. Based on the debtor's V.A. disability, the debtor alleges that he is not required to pay real property tax, which is being collected and paid to the county by Caliber. The debtor also argues that the interest-only payment in the amount of \$699.05 that U.S. Bank lists in its amended proof of claim is \$1.04 less than the amount disclosed in the debtor's loan modification from January 2015. Because of these "incorrect" calculations, the debtor argues that the total debt amount and arrearage amount stated on U.S. Bank's proof of claim may be in error. The debtor also believes that because U.S. Bank has filed inconsistent pleadings in the debtor's case that led to a "significant amount of legal work," the debtor should not be required to pay his own attorney fees and U.S. Bank should not be allowed to add its attorney fees to the loan. As authority for this fee argument, the debtor's counsel states that the contract between the parties allows for the payment of attorney fees and that such award should be allowed by the Court.

The Court has previously explained the burdens of proof in claims litigation in detail. *See In re Muller*, 479 B.R. 508 (Bankr. W.D. Ark. 2012). If a creditor executes and files a proof of claim in accordance with the Federal Rules of Bankruptcy Procedure, the proof

of claim constitutes “prima facie evidence of the validity and amount of the claim.” Fed. R. Bankr. P. 3001(f). Prima facie validity

simply means that all the facts in the claim are presumed to be true unless disproved by some evidence to the contrary. If a claim's prima facie validity is lost, then the creditor has the initial burden of proving that the claim exists and the amount of that claim. Failure to fulfill this burden results in the disallowance of a creditor's claim.

In re Cluff, 313 B.R. 323, 337 (Bankr. D. Utah 2004) (footnotes omitted). Prima facie validity is established by substantial compliance with “the spirit of the applicable rules” *Dove-Nation v. eCast Settlement Corp. (In re Dove-Nation)*, 318 B.R. 147, 152 (B.A.P. 8th Cir. 2004). If the proof of claim fails to meet prima facie validity or that validity is refuted with a modicum of evidence to meet the filed proof of claim, the burden of proof is on the claimant to provide “sufficient evidence to establish the validity of the claim by a preponderance of the evidence.” *In re Marcita Taylor*, 363 B.R. 303, 308 (Bankr. M.D. Fla. 2007); *see also In re Dove-Nation*, 318 B.R. at 152 (“Had the Debtor presented any evidence supporting an objection to the claim, the ultimate burden of persuasion would have shifted to the Claimant to establish its entitlement to the claims.”). If the claimant meets its burden of proof, the burden shifts to the objecting party to prove one of the nine enumerated exceptions found in § 502(b). 11 U.S.C. § 502(b)(1)-(9); *In re Dove-Nation*, 318 B.R. at 150. The nine exceptions found in § 502(b) are “the sole grounds for objecting to a claim and [§ 502(b)] directs the court to allow the claim unless one of the exceptions applies.” *Id.*; *see also In re Cluff*, 313 B.R. at 331 (“Courts have no discretion to disallow claims for reasons beyond those stated in the statute.”); *In re Todd Michael Taylor*, 289 B.R. 379, 384 (Bankr. N.D. Ind. 2003) (“a claim may not be denied for just any reason, but only for one of the reasons Congress has included in § 502(b).”).

U.S. Bank filed its amended proof of claim on May 4, 2016. At the beginning of the July 12 hearing, based on the amended proof of claim and the attached documentation, the Court stated that the proof of claim was prima facie evidence of the validity and amount of U.S. Bank’s claim and placed the burden of proof on the debtor to prove one of the

nine exceptions under § 502(b). At the hearing, the debtor provided the Court with the “modicum of evidence [needed] to meet or equalize the filed proof of claim.”³ The burden then shifted to U.S. Bank to prove its entitlement to its claim.

U.S. Bank presented testimony through its witness, Stevie Glowacz, a default servicing officer for Caliber.⁴ Ms. Glowacz testified that she had reviewed the debtor’s loan, mortgage, and loan history and had made herself familiar with all of the documents in the case. She also testified that she knew the policies and procedures of the departments within Caliber. Ms. Glowacz agreed with the debtor’s counsel that the loan modification agreement stated that the monthly interest-only payment was \$700.09 and that under the terms of the modification, all delinquent amounts were deferred “to the end.” She also testified about the escrow account for the loan, through which taxes and insurance are paid, and stated that Caliber analyzes the loan once a year and obtains information regarding county taxes through the county tax assessor’s website. When asked why she believed the information contained in the POC payment history (attached to U.S. Bank’s proof of claim) was correct, Ms. Glowacz said that she had looked at the records in the file and had become familiar with them.

Ms. Glowacz also testified that even though the debtor does not believe he is required to pay real property taxes, Caliber would need something in writing from the debtor so it “could reach out to the county for that discrepancy of why their website is showing one amount if he doesn’t have to pay them.” The debtor had testified earlier in the hearing that he could not remember if he informed Caliber that he was a veteran but was “relatively certain” that he spoke to Caliber about the exemption over the phone. He did believe that the revenue office had documentation of the exemption, though. Ms.

³ Rather than objecting to the amended proof of claim when it was filed—allegedly out of concern that another amendment would be filed—the debtor waited until the hearing to present testimony supporting the objection now before the Court.

⁴ Ms. Glowacz was called by the debtor in the debtor’s case-in-chief.

Glowacz testified that Caliber has received no information from the debtor indicating that he is exempt from property tax but also stated that if the escrow analysis was inaccurate, Caliber would adjust it accordingly.

Ms. Glowacz also testified as to the amounts listed on U.S. Bank's proof of claim that were from the POC payment history attached to U.S. Bank's proof of claim. The total debt calculation in the amount of \$173,344.73 consisted of the principal balance in the amount of \$139,810.12, interest due in the amount of \$4054.49, an escrow deficiency in the amount of \$405.70 for funds advanced by Caliber, less total funds Caliber had on hand in the amount of \$663.08. The arrearage as of the date of the petition in the amount of \$4696.87 consisted of principal and interest due in the amount of \$3495.25,⁵ the escrow deficiency in the amount of \$405.70, a projected escrow shortage in the amount of \$1459.00 and a credit in the amount of \$663.08 for funds Caliber had on hand.

According to the POC payment history, the debtor's monthly mortgage payment includes a monthly escrow in the amount of \$125.33 and a "Principal & interest" payment of \$699.05 for a total monthly payment of \$824.38.

The Court finds that U.S. Bank has met its burden of proving its entitlement to a claim in the debtor's bankruptcy estate in the amount of \$173,344.73 and a prepetition arrearage in the amount of \$4696.87 by a preponderance of the evidence. If, as the debtor argues, the amount paid into escrow monthly to satisfy the debtor's obligations is not correct, Caliber has stated that it would adjust the amount accordingly. *See* 12 U.S.C. § 2605(g); 12 C.F.R. § 1024.17 (2015) ("the servicer must conduct an escrow account analysis at the completion of the escrow account computation year to determine the borrower's monthly escrow account payments for the next computation year . . ."). Finally, the Court was not provided any testimony by either party concerning the discrepancy between the agreed-to modification documents that state a monthly interest payment of \$700.09 and the

⁵ The debtor testified that he believed the arrearage was \$3224.52 at the time he filed his petition but provided no supporting documentation for this belief.

attachment to U.S. Bank's proof of claim that states a monthly payment of \$699.05—a difference of \$1.04. Because U.S. Bank has met its burden to establish the validity and amount of its claim, the burden now shifts to debtor to prove one of the nine exceptions set forth in § 502 of the code.

Unfortunately, after reviewing a transcript of the July 12 hearing, all of the evidence introduced by both sides, and the debtor's post-trial brief, the Court cannot identify any of the exceptions provided for under § 502(b). At the conclusion of trial, the Court gave the debtor's counsel clear directions concerning information to include in a post-trial brief, including the following: "What I want you to do is tell me why you think the amended proof of claim is inaccurate under 502(b), under what basis are you claiming." The debtor argues that the claim should be disallowed for the following reasons:

1. that the loan modification states an interest only payment of \$700.09 yet all of the filings by U.S. Bank state an interest only payment of \$699.05;
2. that the History of Account attached to the amended proof of claim indicates a tax disbursement payment;
3. that the Court must *assume* that because the History of Account indicates a tax disbursement that the escrow account has not been properly administered (emphasis added by the Court);
4. that the disbursements for "county taxes" in January and April 2015 were in error;⁶
5. that the debtor proved that U.S. Bank was not entitled to prima facie validity of its claim;
6. that because U.S. Bank has stated three different principal amounts owed

⁶ During 2015, the escrow history report indicates a payment for county tax in the amount of \$56.63 in January, a payment for homeowner insurance in the amount of \$1459.00 in January, and another payment for county tax in the amount of \$45.00 in April. The debtor testified that a fee for the fire department is charged each year. According to a footnote in the debtor's post-trial brief, "Debtor did testify that a small fee is paid for the fire department services. Based on the records, it appears that the fee was only \$56.63 in January 2015 and \$but that it was only \$40" [sic].

- in its pleadings that the Court should find that the amount stated in its amended proof of claim is not accurate;
7. that the escrow analysis is dated May 2, 2016, not the date the debtor filed his bankruptcy petition;
 8. that Caliber has attempted to change the debtor's monthly mortgage payment without filing a Notice of Mortgage Payment Change in violation of Federal Rule of Bankruptcy Procedure 3002.1; and
 9. that U.S. Bank failed to attach the documents required by Rule 3002.1.

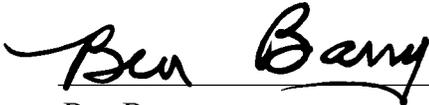
The debtor has stated a number of reasons why U.S. Bank was not entitled to the prima facie validity of its claim. However, although requested by the Court, he has failed to state even one of the exceptions listed in § 502(b) to support his objection to U.S. Bank's amended claim. As the Court stated earlier, "[t]he nine exceptions found in § 502(b) are 'the sole grounds for objecting to a claim and [§ 502(b)] directs the court to allow the claim unless one of the exceptions applies.'" *Muller*, 479 B.R. at 512 (citing *In re Dove-Nation*, 318 B.R. at 150). The Court has no discretion but to overrule the debtor's objection to U.S. Bank's claim. The Court finds that U.S. Bank is entitled to an allowed claim in the debtor's bankruptcy estate in the amount of \$173,344.73 and a prepetition arrearage in the amount of \$4696.87.

The Court also directed the debtor's counsel to give the Court a path showing why the debtor may be entitled to attorney fees or why U.S. Bank should not be able to charge its attorney fees against the debtor's loan if the contract between the parties so provides. In response, the debtor's counsel stated that U.S. Bank's inconsistent filings have led to a significant amount of legal work that the debtor should not be required to absorb. According to counsel, because the contract between the parties allows for the payment of attorney fees, such an award should be allowed by the Court. The Court notes that this is the identical language that appeared in the debtor's original objection to U.S. Bank's first proof of claim that was filed in April 2016 and completely fails to respond to the Court's

request for a path that would enable the Court to award attorney fees.⁷ Consideration of that position may have been warranted had the debtor proven one of the exceptions under § 502(b). However, because it does not appear that any of the exceptions were considered, the Court will not interpret the contract provisions between the parties with regard to attorney fees.

Finally, the debtor raised some potential issues concerning Federal Rule of Bankruptcy Procedure 3002.1 in his post-trial brief. Although Rule 3002.1 was not referred to at the hearing, the identical language that now appears in the debtor's post-trial brief also appeared in the debtor's objection to U.S. Bank's original claim. U.S. Bank responded to the original objection by denying the relevant allegations. Because the debtor did not argue this point or introduce any evidence in support of his argument during the July 12 hearing, the Court denies the debtor's Rule 3002.1 violation allegations without prejudice to the debtor refiling a motion with the Court for any alleged future violation.

IT IS SO ORDERED.


Ben Barry
United States Bankruptcy Judge
Dated: 09/07/2016

cc: Lyndsey D. Dilks
Leslie C. Roush
Scott Lauck
Mark T. McCarty

⁷ In fact, many of the arguments that are contained in the debtor's post-trial brief first appeared in the debtor's objection to U.S. Bank's first proof of claim, word for word.