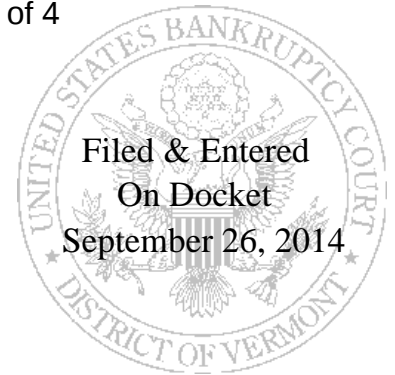


**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT**



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**In re:**

**Gerald Rumrill and  
Denise Rumrill,  
Debtors.**

**Chapter 13 Case  
# 13-10649**

**ORDER**

**GRANTING DEBTOR'S MOTION TO DISALLOW REQUEST FOR POST PETITION MORTGAGE EXPENSES  
AND GRANTING DEBTOR'S MOTION FOR AN AWARD OF ATTORNEY'S FEES**

On July 15, 2014, the Debtors filed a motion asking the Court to disallow Claim 8, filed by Bank of America, N.A. ("BOA"), or at least modify it, *i.e.*, disallow the portion attributable to BOA's attorney's fees for filing its proof of claim ("POC"), in the amount of \$400 (doc. # 19) (the "Motion"). The Debtors assert that requiring the Debtors to pay BOA's attorney's fees is not reasonable given (1) the ministerial nature of a proof of claim filing, and (2) the fact that the only "arrearage" on the mortgage was a \$156.58 escrow shortfall resulting from a recent property tax increase, that would have been due regardless of whether the Debtors had filed bankruptcy. Further, the Debtors argue BOA is not entitled to an award of the attorney's fees because it has not filed an itemized statement showing BOA's attorney expended time reasonably valued at \$400 in preparing the POC. Finally, the Debtors request the Court require BOA to reimburse the Debtors for the attorney's fees they incurred in filing the Motion.

BOA objects to the Motion, asserting that if it had not filed a POC, it could not have otherwise collected on the \$156.58 arrears to which it was entitled (doc. # 22) (the "Objection"). Additionally, BOA argues – without citation to authority – that the filing of a POC is no longer ministerial given the recent abundant and complicated litigation surrounding mortgagees' standing to do so, and the potential for sanctions if a creditor fails to file a POC correctly. BOA attaches an itemized statement to its Objection detailing the time spent in preparing the POC, which supports its \$400 attorney's fee claim for the preparation thereof.

The Debtors' response to BOA's Objection argues that the mortgage was not technically delinquent since the escrow shortage was only \$156.58, and the escrow cushion was \$426.92 (doc. # 23) (the "Response"). Therefore, the Debtors point out, pursuant to the mortgage servicer's own guidelines, the account should not have been referred to outside counsel. Further, the Debtors assert, the amount charged was unreasonable given the duplication of services shown by the itemized statement.

The Court held a hearing on the matter on September 5, 2014, at which the parties generally reiterated the positions they had delineated in the pleadings. However, at that hearing, BOA also affirmatively challenged the Debtors' Response argument that the account was not technically delinquent, alleging that, pursuant to the loan terms, the \$426.92 was in a separate account that could not be used to cover an escrow shortage. The Trustee contended that even if this was accurate, BOA can and should recover its escrow shortage by filing a notice of mortgage payment change, and a POC is not necessary. At the conclusion of those arguments, the Court took the contested matter under advisement.

The Court finds good cause to grant the Debtors' Motion and disallow the portion of BOA's claim that seeks attorney's fees for filing its POC. Although 11 U.S.C. § 506(b) allows oversecured creditors to include in their allowed claims charges for attorney's fees otherwise provided by the parties' agreement, the creditor bears the burden of proving that such fees are reasonable. See In re Ron Pair Enterprises, Inc., 489 U.S. 235, 241 (1989); In re Chase, 336 B.R. 681, 687 (Bankr. D. Vt. 2005). Bankruptcy courts have broad discretion in deciding upon the reasonableness of fees under § 506(b). In re University Towers Owners' Corp., 278 B.R. 302, 306-307 (D. Conn. 2002). "The view that an oversecured creditor can incur legal expenses with impunity in the expectation that its collateral will cover such costs is detrimental to the remedial goals of . . . [bankruptcy]. A creditor who fails to heed § 506(b)'s warning that only reasonable costs can be recovered does so at substantial risk." Id. at 305 (citing In re Irick, 216 B.R. 433, 435 (Bankr. E.D. Cal. 1997)).

Attorney's fees are unreasonable when based upon a creditor's actions in pursuing a new legal theory. In re Crowley, 293 B.R. 628, 635 (Bankr. D. Vt. 2003). Additionally, attorney's fees are not reasonable under § 506(b) where a debtor's mortgage is not in default on the petition date. See In re Wallett, No. 11-10801, 2012 WL 4062657 at \*3-4 (Bankr. D. Vt., Sept. 14, 2012). Further, expenses are not reasonable where "other reasonable, less expensive alternatives were available." In re Fibermark, Inc., 349 B.R. 385, 395 (Bankr. D. Vt. 2006). Although some courts have allowed a nominal fee for filing a POC where the creditor needed to assess legal issues, see, e.g., In re Powe, 278 B.R. 539 (Bankr. S.D. Ala. 2002), others have found that the filing of a POC is a ministerial act for which the services of an attorney are not required, see, e.g., In re Cipriano, 8 B.R. 697 (Bankr. D.R.I. 1981).

In this case, the Court finds that requiring the Debtors to pay attorney's fees in connection with BOA's filing of its POC is not reasonable. Here, there was no legal issue that needed to be assessed. The Debtors were current on their mortgage, with the exception of a minor escrow shortage that was not due as a result of any delinquency or failure on the part of the Debtors. The discovery of the escrow shortage was part of the bank's annual escrow analysis, and nothing in the record indicates that the

circumstances of the Debtors' escrow analysis was anything more than an administrative task or so complex as to require the services of an attorney. Further, even assuming the escrow shortfall properly constituted an arrearage as of the petition date, as the Trustee observed, the appropriate procedural mechanism for addressing it is the filing of a notice of mortgage payment change, not a POC.

Moreover, the Court is not convinced by BOA's arguments about the pitfalls facing mortgage creditors trying to file proper POCs. Creditors have always had to prove standing to file a proof of claim, and recent "complications" relating to mortgagees' rights and responsibilities when filing a POC have arisen primarily as a result of creditor business practices surrounding transfers of notes and mortgages.

The issue remains a simple one: is the fee both authorized by the note and reasonable? The Court finds that (1) while BOA had the right to file the POC it was not required to do so, (2) it was unreasonable for the creditor to do so and thereby incur double the cost in attorney's fees as the claimed arrearage, when any arrears could have been adequately recouped through the administrative filing of a notice of mortgage payment change, and (3) it would be unjust to impose the attorney's fee it incurred in doing so on the Debtors.

The Court turns next to the Debtors' request for an award of attorney's fees. The Court recognizes the general rule that each party pays its own attorney's fees. See Astrue v. Ratliff, 560 U.S. 586, 591 (2010). However, it is appropriate to grant an award of attorney's fees here, where BOA had an opportunity to modify its POC voluntarily when the Debtors notified it of their well-founded objection and BOA failed to do so. Debtors such as those in this case are struggling to make ends meet and to stay current with their plan payment, so they can pay their mortgages and generate a dividend to unsecured creditors. They cannot afford to pay attorney's fees that should never have been sought and should not be compelled to do so. Since BOA has not presented even a colorable argument for the allowance of the § 506(b) fees it seeks in this case, the Court finds it appropriate to award the Debtors attorney's fees they incurred in defending against BOA's unreasonable claim.

Accordingly, IT IS HEREBY ORDERED that Debtor's motion to disallow Bank of America's request for attorney's fees in connection with the filing of its proof of claim is GRANTED and the Bank of America claim is allowed in the amount of \$161,547.90.

IT IS FURTHER ORDERED that the Debtors' motion for an award of attorney's fees is also GRANTED; the Debtors shall file an application for fees, accompanied by time sheets detailing the time spent and fees sought, within one week, and the creditor shall have one week thereafter to file any objection to the reasonableness of the fee the Debtors request.

September 26, 2014  
Burlington, Vermont



Colleen A. Brown  
United States Bankruptcy Judge