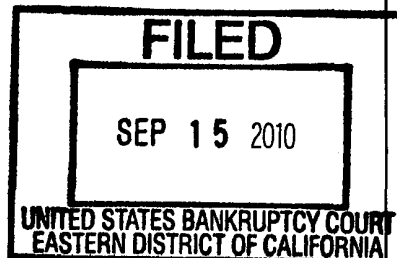


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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re) Case No. 10-25365-E-13
KENNETH WILLIAM WORLEY,) Docket Control No. MOH-2
Debtor(s).)
_____)

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM OPINION AND DECISION

The court issues this Memorandum Opinion and Decision determining the Objection filed by Kenneth W. Worley ("Debtor") to Proof of Claim No. 1 filed by Wells Fargo Bank, N.A., as Trustee for Ownit Mortgage Loan Trust, Mortgage Loan Asset Backed Certificates, Series 2006-2 ("Wells Fargo Bank"). This Decision constitutes the Findings of Fact and Conclusions of Law upon which the order determining the objection is based.

The Debtor withdrew his objection to all of Proof of Claim No. 1, except to the extent that the proof of claim seeks recovery of attorneys' fees, costs, and expenses beyond the principal and interest obligation owing by the Debtor. Debtor's Response filed on August 19, 2010, Docket Entry No. 49.

11 U.S.C. §502(a) provides that a claim supported by a Proof

1 of Claim is allowed unless a party in interest objects. Once an
2 objection has been filed, the court may determine the amount of the
3 claim after a noticed hearing. 11 U.S.C. §502(b). Once the
4 objecting party overcomes the *prima facie* effect given a proof of
5 claim, the ultimate burden generally remains on the creditor to
6 establish the validity of the claim by a preponderance of the
7 evidence. Collier on Bankruptcy, Sixteenth Edition, §502.02[3][f].

8 **Claim for Attorneys' Fees, Costs and**
9 **Expenses by Wells Fargo Bank.**

10 Proof of Claim No. 1 filed by Wells Fargo Bank in this case
11 consists of 22 pages. On Exhibit "A" to that proof of claim, Wells
12 Fargo Bank states that its claim includes:

13	Attorneys' Fees and Costs	\$4,568.43
14	Inspection Fees	\$ 30.50
14	Appraisal Fees	\$ 190.00

15 No further description or additional information as to these
16 attorneys' fees, costs, and expenses is provided in Proof of Claim
17 No. 1.

18 The Objection to Proof of Claim No. 1 was set for an
19 evidentiary hearing. The Debtor submitted the declaration of
20 Michael O. Hays, Debtor's counsel, objecting to the reasonableness
21 of the fees and costs sought by Wells Fargo Bank through this proof
22 of claim. Though counsel for party is rarely a percipient witness,
23 in this case his declaration provides an analysis of the total
24 attorneys' fees and costs claimed by Wells Fargo Bank. This
25 declaration does not purport to provide a legal conclusion as to
26 what is reasonable, but provides a review of what has been claimed.

27 Mr. Hays' analysis is of Exhibit "D" filed by Wells Fargo Bank
28 in support of its claim the attorneys' fees, costs, and expenses as

1 part of Proof of Claim No. 1. A review of Exhibit "D" discloses
2 that Wells Fargo Bank is asserting the right to recover \$8,003.75
3 in attorneys' fees, costs, and expenses from this Debtor. The
4 \$4,568.43 amount is included in Proof of Claim No. 1 because Wells
5 Fargo Bank has allocated \$3,435.32 in prior payments by the Debtor
6 to these fees, costs and expenses. It is correct to state that
7 Wells Fargo Bank is seeking to recover \$8,003.75 in attorneys'
8 fees, costs, and expenses relating to this loan.

9 To support the contention that Wells Fargo Bank is entitled to
10 \$8,003.75 in attorneys' fees, costs, and expenses, the following
11 evidence has been provided:

12 1. Declaration of Nancy Rexford, Litton Loan Servicing, LP
13 employee, as the Servicing Agent for Wells Fargo Bank on this loan.

14 2. Proof of Claim No. 1 filed by Wells Fargo Bank,
15 Exhibit "A."

16 3. Itemization of fees and costs, Exhibit "D."

17 4. September 19, 2008, Repayment Plan Agreement,
18 Exhibit "E."

19 a. This Agreement provides the past due amount
20 includes \$1,207.90 for "Servicer Advances," which
21 "may include attorney fees and costs, property
preservation expenses, inspections, and other
expenses."

22 5. November 25, 2008, Repayment Plan Agreement, Exhibit "F."

23 a. This Agreement provides the past due amount
24 includes \$400.00 for "Servicer Advances," which
25 "may include attorney fees and costs, property
preservation expenses, inspections, and other
expenses."

26 6. February 24, 2009, Repayment Plan Agreement, Exhibit "G."

27 a. This Agreement provides the past due amount
28 includes \$1,507.58 for "Servicer Advances," which
"may include attorney fees and costs, property

1 preservation expenses, inspections, and other
2 expenses."

3 The testimony of Ms. Rexford is that the Debtor commenced
4 making payment under each of the Repayment Plan Agreements, then
5 went into default thereon. She further testified that these
6 additional amounts were corporate advances to cover the identified
7 expenses.

8 The first potential issue presented to the court is whether
9 Wells Fargo Bank or Litton Loan Servicer, as the loan servicer, is
10 entitled to any or all of the asserted costs and expenses. Neither
11 party has addressed this issue or directed the court to provisions
12 in the Note and Trust Deed upon which such an objection could be
13 made or right to fees shown. Because no dispute has been raised to
14 Wells Fargo Bank having the right to recover such fees, the court
15 will move to the objection stated by the Debtor - the amounts are
16 unreasonable.

17 The court's analysis begins with Exhibit "D" filed by Wells
18 Fargo Bank, the Itemization of attorneys' fees, costs, and
19 expenses. While Exhibit "D" is referenced in Ms. Rexford's
20 declaration, the court cannot identify who prepared the
21 itemization, when it was prepared, and the source documents used to
22 create Exhibit "D." This Exhibit virtually arises out of the mist
23 and is relied upon by both parties for their arguments. No
24 objection having been made to this Exhibit, the court will consider
25 it, giving appropriate weight to the information contained therein.

26 The various fees, costs, and expenses which Wells Fargo Bank
27 seeks to include in its proof of claim are broken down into the
28 following main categories:

1	A.	Inspection Fee	\$ 152.50
2	B.	BPO	\$ 505.00
3	C.	Attorney Fees and Costs	\$2,700.00
4	D.	Statutory Mailings	\$ 248.60
5	E.	Title Costs	\$1,680.00
6	F.	Recording Costs	\$ 125.00
7	G.	Publication	\$2,535.27
8	H.	Posting Notice of Sale	<u>\$ 120.00</u>
9		Total	\$8,066.37

10 The challenge facing the court in determining which and what
11 of these costs is reasonable is that little evidence has been
12 offered as to what costs were incurred, who was paid, the actual
13 services rendered, and why they were necessary.

14 For the attorneys' fees, there is a reference to "\$550.00
15 Attorney Fees - MFR" for October 20, 2009. In searching the
16 court's files, there is a Chapter 7 bankruptcy case filed by
17 Kenneth William Worley and Lisa Katharine Worley, Case No.
18 09-34424. In that case Wells Fargo Bank filed a motion for relief
19 from the automatic stay for the trust deed secured by the same real
20 property in which it asserts a security interest in this case. The
21 order granting relief from the automatic stay for Wells Fargo Bank
22 affirmatively states, "All requests for attorney fees or other
23 costs are **denied with prejudice.**" Order granting relief from the
24 automatic stay, Case No. 09-34424, Docket Control no. KAT-1, Docket
25 Entry No. 16. The order granting relief was entered on
26 September 18, 2009, which is consistent with the October 20, 2009
27 expenses. There are also periodic \$450.00 attorneys' fees
28 amounts, without any explanation as to what legal services were

1 provided or the purpose.

2 No explanation is provided in any testimony as to the
3 publication costs. It was advanced in oral argument that these
4 relate to notices of default and notices of sale, but there is no
5 testimony. Based on Exhibit "D," Wells Fargo asserts that it paid
6 the \$2,535.27 in publication costs on November 25, 2009. At oral
7 argument this was explained as not really being incurred at that
8 time, but when those costs were recorded. But the court cannot
9 identify who was paid, what was paid, when it was paid, and the
10 actual purpose of the payment.

11 The same is true for the various inspection fees, statutory
12 mailings, and title costs. Amounts appear on Exhibit "D" and Wells
13 Fargo asserts the right to be paid.

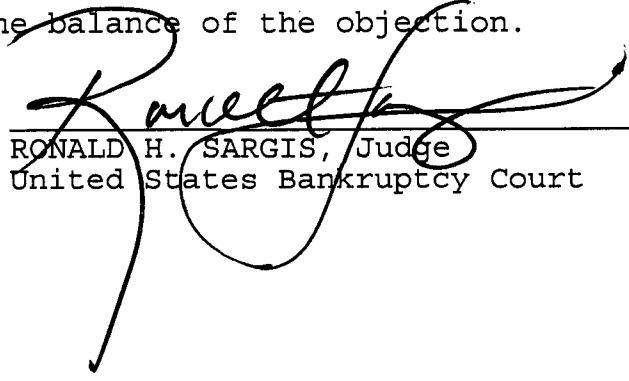
14 The court recognizes that Wells Fargo has incurred some costs
15 and expenses relating to this loan going into default, the Debtor
16 entering into Loan Repayment Agreements, the Debtor defaulting on
17 the Loan Repayment Agreements, and Wells Fargo (or its Servicing
18 Agent) having to address the defaulted loan. However, Wells Fargo
19 has not established by a preponderance of the evidence what is
20 entitled to beyond what the Debtor has already paid.

21 Therefore, the court determines that of the attorneys' fees,
22 costs and expenses totaling \$8,066.37 sought by Wells Fargo Bank,
23 the reasonable amount it was and is entitled to recover is
24 \$3,115.48, the amount identified in the Loan Repayment Agreements
25 executed by the Debtor and knowingly paid by the Debtor. The
26 objection of the Debtor is sustained to the balance of the
27 attorneys' fees, costs, and expenses sought by Wells Fargo Bank in
28 Proof of Claim No. 1. To the extent that there are additional

1 amounts shown as "Recovery" on Exhibit "D," Wells Fargo shall
2 retain such amounts as having been applied to costs, expenses, and
3 other additional amounts due by the Debtor beyond what has been
4 requested in Proof of Claim No. 1.

5 The court shall issue an order sustaining the Debtor's
6 objection as to the attorneys' fees, costs, and expenses in excess
7 of \$3,115.48 and overruling the balance of the objection.

8 Dated: September 15, 2010

9 
RONALD H. SARGIS, Judge
United States Bankruptcy Court