

Entered: October 10th, 2024

Signed: October 9th, 2024

**SO ORDERED***Maria Elena Chavez-Ruark***MARIA ELLENA CHAVEZ-RUARK**  
U.S. BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
at Greenbelt**

**In re:****SONIA DEL ROCIO CRUZ,****Debtor.****Case Number: 22-16947-MCR  
(Chapter 13)**

**ORDER DETERMINING THAT FEES OF  
LENDER'S COUNSEL ARE ALLOWABLE AND REASONABLE**

Before the Court is a *Motion to Determine Reasonableness of Attorney's Fees Pursuant to ERBP 3002.1(e)* [[Dkt. No. 29](#)] (the "Motion") filed on August 19, 2024, by Sonia Del Rocio Cruz, the debtor herein (the "Debtor"). The Motion requests that the Court enter an order directing a reduction in the fees charged by Citibank N.A. (the "Lender") for filing notices pursuant to Bankruptcy Rule 3002.1. On September 16, 2024, the Lender filed an opposition to the Motion [[Dkt. No. 35](#)]. On September 18, 2024, the Court held a hearing on the Debtor's Motion and the Lender's opposition.

For the reasons set forth below, the Court determines that the fees charged by the Lender are allowable under the loan documents between the Debtor and the Lender and further determines that the fees charged are reasonable.

## **I. RELEVANT BACKGROUND**

On December 13, 2022, the Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code. On February 17, 2023, the Lender filed Claim No. 20-2 in the Debtor's case, asserting a claim in the amount of \$45,011.72 (the "Claim"). The Claim arises from a Home Equity Line of Credit (the "HELOC Loan"), and payment of the Claim is secured by the Debtor's principal residence pursuant to a Deed of Trust. On May 16, 2024, the Debtor filed an Amended Chapter 13 Plan [Dkt. No. 20] (the "Amended Plan") in which she proposes to pay the Lender outside of the Amended Plan as set forth in Section 4.6.5. On July 26, 2023, the Court entered an Order Confirming the Debtor's Amended Plan [Dkt. No. 26].

The payments due on the HELOC Loan vary depending on the outstanding balance each month. Accordingly, the Lender has filed a Notice of Mortgage Payment Change (Official Form 410S1) every month since filing its Claim as required by Bankruptcy Rule 3002.1(b) (collectively, the "Payment Change Notices"). In addition, the Lender has filed nine Notices of Postpetition Mortgage Fees, Expenses, and Charges (Official Form 410S2) since filing its Claim pursuant to Bankruptcy Rule 3002.1(c) (collectively, the "Postpetition Fee Notices"). According to the Postpetition Fee Notices, counsel for the Lender charged a fee of \$150.00 for each Payment Change Notice filed and a fee of \$125.00 for each Postpetition Fee Notice filed.

## **II. ANALYSIS**

### **A. The Fees Under the HELOC Loan Documents are Allowable.**

The Debtor first argues that the Lender is not entitled to charge fees to the Debtor in connection with the HELOC Loan because the Debtor has never been in default on her obligations to the Lender. The Court looks to the Home Equity Line of Credit Agreement and Disclosure and the related Home Equity Line of Credit Deed of Trust executed on October 5,

2004 (collectively, the “HELOC Loan Documents”) and Bankruptcy Rule 3002.1 to determine whether the fees charged by the Lender are allowable.

The HELOC Loan Documents<sup>1</sup> provide in relevant part:

Protection of Our Security. If You fail to perform Your obligations under this Deed of Trust, or if any action or proceedings adversely affects Our interest in the Property, We may, at Our Option, take any action reasonably necessary ... to perform Your obligations or to protect Our interests. Any amounts disbursed by Us pursuant to this Paragraph 6 ... shall become indebtedness secured by the Deed of Trust.

Claim No. 20-1, att. 2 (Deed of Trust), at ¶ 6.

Bankruptcy Rule 3002.1 governs notices relating to claims secured by a security interest in the Debtor’s principal residence. Bankruptcy Rule 3002.1(a) provides:

This rule applies in a chapter 13 case to claims (1) that are secured by a security interest in the debtor’s principal residence, and (2) for which the plan provides that either the trustee or the debtor will make contractual installment payments. Unless the court orders otherwise, the notice requirements of this rule cease to apply when an order terminating or annulling the automatic stay becomes effective with respect to the residence that secures the claim.

Fed. R. Bankr. P. 3002.1(a).

As stated above, Section 4.6.5 of the Amended Plan states that the Debtor will directly pay the Lender outside of the plan. In addition, the Lender has not filed a motion for relief from stay and there is no order terminating or annulling the automatic stay as to the Debtor’s principal residence. Therefore, Bankruptcy Rule 3002.1 applies here.

Bankruptcy Rule 3002.1(b) imposes on the Lender the obligation to disclose any payment changes under the HELOC Loan Documents:

(1) *Notice.* The holder of the claim shall file and serve on the debtor, debtor’s counsel, and the trustee a notice of any

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<sup>1</sup> The Lender attached the HELOC Loan Documents to its original proof of claim, Claim No. 20-1, but not its amended proof of claim, Claim No. 20-2. The Lender filed both proofs of claim on February 17, 2023.

change in the payment amount, including any change that results from an interest-rate or escrow-account adjustment, no later than 21 days before a payment in the new amount is due. If the claim arises from a home-equity line of credit, this requirement may be modified by court order.

(2) *Objection.* A party in interest who objects to the payment change may file a motion to determine whether the change is required to maintain payments in accordance with § 1322(b)(5) of the Code. If no motion is filed by the day before the new amount is due, the change goes into effect, unless the court orders otherwise.

Fed. R. Bankr. P. 3002.1(b).

Because the loan at issue is a home equity line of credit, the balance and payment amount fluctuate monthly. The Lender has satisfied its obligation to disclose payment changes by filing the Payment Change Notices every month since filing its Claim. At the September 18, 2024 hearing, the Debtor acknowledged that her payment amounts are likely to change monthly and argued that the additional fees incurred from the filing of future notices would create an additional burden on the Debtor. The Debtor requested that the Court excuse the Lender from the requirement to file future notices, and counsel for the Lender did not oppose this request. With the agreement of both parties and to alleviate any further financial burden on the Debtor, the Court will grant this request with respect to future Payment Change Notices.

Bankruptcy Rule 3002.1(c) requires the Lender to disclose any postpetition fees, expenses, or other charges incurred in connection with its Claim:

The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred.

Fed. R. Bankr. P. 3002.1(c). The Debtor does not dispute that the Lender has complied with this requirement.

Bankruptcy Rule 3002.1(d) requires that the Lender's Payment Change Notices and Postpetition Fee Notices be prepared using the appropriate official forms:

A notice filed and served under subdivision (b) or (c) of this rule shall be prepared as prescribed by the appropriate Official Form, and filed as a supplement to the holder's proof of claim.

Fed. R. Bankr. P. 3002.1(d). The Lender complied with these requirements by using the appropriate official forms when filing its Payment Change Notices (Official Form 410S1) and its Postpetition Fee Notices (Official Form 410S2) and by filing the notices as supplements to its Claim.

Bankruptcy Rule 3002.1(e) sets forth the procedure for a debtor or other party in interest to challenge a secured creditor's fees or other charges:

On motion of a party in interest filed within one year after service of a notice under subdivision (c) of this rule, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code.

Fed. R. Bankr. P. 3002.1(e).

As set forth above, paragraph six of the HELOC Loan Documents allows the Lender to recover fees to protect its interest. The Court finds that the Lender's fees for filing its Payment Change Notices and Postpetition Fee Notices were reasonably necessary to protect the Lender's interest because such notices are expressly required by Bankruptcy Rule 3002.1. Accordingly, the Court concludes that the HELOC Loan Documents and Bankruptcy Rule 3002.1 permit the Lender to recover its fees in this case.

**B. The Fees Under the HELOC Loan Documents are Reasonable.**

The Debtor also argues that the Lender's fees are not reasonable under Section 506(b) of the Bankruptcy Code, which provides:

To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any *reasonable* fees, costs, or charges provided for under the agreement or State statute under which such claim arose.

11 U.S.C. § 506(b) (emphasis added).

The Lender concedes that its fees are recoverable only to the extent they are reasonable. Reasonable fees are “those fees which are necessary to the collection and protection of a creditor's claim.” *In re Ward*, 190 B.R. 242, 245 (Bankr. D. Md. 1995) (internal quotation marks and citations omitted). Courts enjoy broad discretion in determining the reasonableness of fees. *Id.* at 246.

The Debtor argues that the combined number of notices filed by the Lender resulted in legal fees that are almost as much as the principal payments made by the Debtor over the same time period. However, the Lender did not have a choice whether to file the Payment Change Notices and Postpetition Fee Notices; Bankruptcy Rule 3002.1 requires them. Counsel for the Lender charged \$150.00 per notice for the Payment Change Notices and charged \$125.00 per notice for the Postpetition Fee Notices. The Court determines that the amounts charged by the Lender's counsel to prepare and file each notice are reasonable.

**C. Conclusion**

For the reasons state on the record at the September 18, 2024 hearing and as set forth herein, the Court determines that the fees charged by the Lender are both allowable under the HELOC Loan Documents and Bankruptcy Rule 3002.1 and are reasonable. At the request of

the Debtor, the Court will excuse the Lender from filing future notices of payment change but not from filing future notices regarding fees, expenses, or charges incurred in connection with its Claim.

Upon consideration of the foregoing, it is, by the United States Bankruptcy Court for the District of Maryland,

ORDERED, that the Motion is denied as set forth herein; and it is further

ORDERED, that the fees claimed by the Lender are deemed allowable under the HELOC Loan Documents and Bankruptcy Rule 3002.1 and deemed reasonable in amount; and it is further

ORDERED, that as of September 18, 2024, the Lender is excused from filing further notices of payment changes under Bankruptcy Rule 3002.1(b); and it is further

ORDERED, that the Lender shall continue to comply with Bankruptcy Rule 3002.1(c), which requires the Lender to file notices regarding fees, expenses, or charges incurred in connection with its Claim.

cc: Debtor  
Debtor's Counsel – William A. Grafton  
Counsel for Citibank N.A. – Richard Rogers  
Chapter 13 Trustee  
All creditors and parties in interest

**END OF ORDER**