

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT**

IN RE:)	CASE No.	15-50151 (JAM)
)		
CHRISTOPHER H. PETERSON, AND)	CHAPTER	13
)		
MYRIAN I. PETERSON,)	RE: ECF Nos.	39, 57
)		
DEBTORS.)		
)		

RULING AND ORDER: (i) GRANTING IN PART AMENDED REQUEST FOR ATTORNEY’S FEES UNDER FED. R. BANKR. P. 3002.1(b); AND (ii) REQUIRING STATEMENT TO BE FILED IN CONNECTION WITH AMENDED MOTION FOR RELIEF FROM THE AUTOMATIC STAY

I. Background

On February 4, 2015, the Debtors jointly filed a petition for relief under Chapter 13 of the Bankruptcy Code. On June 15, 2015, Wells Fargo Bank, N.A. ("Wells Fargo"), filed a Proof of Claim No. 9 secured by a mortgage lien against the Debtors' primary residence. On September 18, 2015, the Court entered an Order Confirming First Amended Chapter 13 Plan (the "Confirmed Plan," ECF No. 23). Under the Confirmed Plan, the Debtors were required to make current monthly mortgage payments directly to Wells Fargo.

On April 19, 2017, Wells Fargo filed a Transfer of Claim, transferring its interest in the Debtors' mortgage to Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, Not in its Individual Capacity but Solely as Trustee for Brougham Fund I Trust ("Wilmington") (ECF No. 25). On July 11, 2017, Wilmington filed a Notice of Mortgage Payment Change setting forth the new monthly mortgage payment in the amount of \$2,072.24 effective August 1, 2017 (the "Notice of Mortgage Payment Change"). On November 7, 2017, pursuant to 11 U.S.C. § 362¹,

¹ Unless otherwise specified, all future statutory references are to Title 11 of the United States Code.

Wilmington filed a Motion for Relief from the Automatic Stay, asserting that the Debtors failed to make mortgage payments since June 1, 2017 (the “Motion for Relief from the Automatic Stay,” ECF No. 28).

On November 20, 2017, the Debtors filed an Objection to the Motion for Relief from the Automatic Stay, asserting that they are current on their home mortgage (the "Objection to the Motion for Relief from the Automatic Stay," ECF No. 29). Between December 2017 and January 2018, the parties sought and obtained continuances of the hearings on the Motion for Relief from the Automatic Stay and the Debtors' Objection to the Motion for Relief from the Automatic Stay.

On January 25, 2018, the Debtors filed a Request for Attorney's Fees for Failure of Wilmington to Comply with Fed. R. Bankr. P. 3002.1(b) asserting that: (i) Wilmington failed to provide the Debtors with accurate information required by Rule 3002.1(b); and (ii) pursuant to Rule 3002.1(i), the Court should award the Debtors the attorney's fees in the amount of \$1,750.00 (the “Request for Attorney's Fees,” ECF No. 34). In support of the Request for Attorney's Fees, the Debtors submitted a Post-Petition Delinquency Calculation which shows that the Debtors' monthly mortgage payment increased from \$2,072.24 to \$2,233.21 for the period between October 2017 and January 2018 (the “Post-Petition Delinquency Calculation,” Ex. B of the Request for Attorney's Fees, ECF No. 34). According to the Debtors, Wilmington failed to provide any information about any change in the Debtors' monthly mortgage payments in violation of Rule 3002.1(b).

On February 5, 2018, Wilmington filed an Amended Motion for Relief from the Automatic Stay (the “Amended Motion for Relief from the Automatic Stay,” ECF No. 39). On February 15, 2018, the Debtors filed an Objection to the Amended Motion for Relief from the

Automatic Stay (ECF No. 42). On February 20, 2018, Wilmington filed an Objection to the Request for Attorney's Fees asserting, in relevant part:

[Wilmington] acknowledged that there was an error in the [Post-Petition Delinquency Calculation] in that it included an increase in the monthly payment of \$160.97, for the months of October 2017 through January 2018, and said increase in the payment amount was not noticed with the court pursuant to Federal Rule of Bankruptcy Procedure 3002.1(b).

[Wilmington] has since corrected the [Post-Petition Delinquency Calculation] and on February 5, 2018, [Wilmington] filed an Amended Motion for Relief from [the Automatic Stay] on the basis that as of November[] 2, 2017[,] the Debtors had failed to make [mortgage] payments in an aggregate amount sufficient to satisfy in full the post-petition payment contractually due under the Note on July 1, 2017. Additional, since the [Motion for Relief from the Automatic Stay] was filed[,] the Debtors made additional payments, and as of February 4, 2018 were due for the October 1, 2017 post-petition payment [*sic*].

....

. . . As the Debtors were in post-petition default of the payments required by Creditor's security instrument as well as the terms of the Debtor[s]' confirmed plan even after the error was corrected, the lack of notice of the increased payment used in the initial post-petition delinquency calculations cannot be said to the cause of the Debtors' need to defend against the [Motion for Relief from the Automatic Stay].

Wilmington's Objection to the Request for Attorney's Fees at 2–4, ECF No. 46.

On March 22, 2018, BSI Financial Services ("BSI"), the servicer of Wilmington's loan, filed a declaration in support of the Amended Motion for Relief from the Automatic Stay, asserting that the Debtors failed to make mortgage payments since December 2017 (ECF No. 55). On April 2, 2018, the Debtors filed an Amended Request for Attorney's Fees, seeking attorney's fees in the amount of \$4,494.50 for violation of Fed. R. Bankr. P. 3002.1(b) (the "Amended Request for Attorney's Fees," ECF No. 57). In the Amended Request for Attorney's

Fees, the Debtors attached an affidavit of their counsel setting forth an itemization of the time spent and the amount of fees and costs he expended in connection with the Motions for Relief from the Automatic Stay (the “Affidavit,” ECF No. 57). In April 2018, the Debtors filed additional documents in support of the Amended Request for Attorney’s Fees. *See* ECF Nos. 60, 61, 62, 64. Between April 2018 and May 2018, BSI filed two declarations in support of the Amended Motion for Relief from the Automatic Stay, with the latest being filed on May 7, 2018 (ECF Nos. 63, 65). According to the May 7th declaration, the Debtors failed to make mortgage payments since March 2018. *See* ECF No. 65.

A hearing on the Amended Request for Attorney’s Fees and the Amended Motion for Relief from the Automatic Stay was held on May 8, 2018. These matters are now fully briefed and ripe for adjudication.

II. Analysis

Federal Rule of Bankruptcy Procedure 3002.1(b) is a procedural rule that requires a holder of a secured claim secured by an interest in the debtor’s principal residence to file and serve on the debtor, debtor’s counsel, and the trustee a notice of any change in the payment amount at least 21 days before a payment in the new amount is due.

Bankruptcy Rule 3002.1(i)² provides that if a mortgage creditor fails to provide the information required by Fed. R. Bankr. P. 3002.1(b), (c), or (g), the Court may take either or both of the following actions: (i) preclude the creditor from presenting the omitted information as evidence in any contested matter or adversary proceeding, unless the Court determines that the

² The District of Vermont is the only district in the Second Circuit to address the applicability of Rule 3002.1(i). In *PHH Mortgage Corp. v. Sensenich*, 2017 WL 6999820, at *4 (D. Vt. Dec. 18, 2017), the court addressed the issue of whether Rule 3002.1(i) authorizes a bankruptcy court to impose *punitive* sanctions for violation of Rule 3002.1. Unlike *Sensenich*, however, the Debtors in this case are seeking the attorney’s fees that are remedial or compensatory in nature as opposed to being punitive.

failure was substantially justified or is harmless; or (ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure. *See In re Howard*, 563 B.R. 308, 318 (Bankr. N.D. Ca. 2016) (awarding attorney's fees for violation of Rule 3002.1(g)); *In re Tollios*, 491 B.R. 886, 893 (Bankr. N.D. Ill. 2013) (awarding attorney's fees for violation of Rule 3002.1)

Here, prior to the filing of the Motion for Relief from the Automatic Stay, Wilmington failed to provide any information about any change in the Debtors' monthly mortgage payments in violation of Fed. R. Bankr. P. 3002.1(b). The failure of Wilmington to comply with Rule 3002.1(b) was neither substantially justified, nor harmless to the Debtors. The Motion for Relief from the Automatic Stay caused the Debtors to incur attorney's fees by having to file and prosecute the Objection to the Motion for Relief from the Automatic Stay.

However, some of the requested attorney's fees sought by the Debtors do not appear to be reasonable. According to the Affidavit, counsel for the Debtors charged \$118.50 for legal services rendered prior to the filing of any of the Motions for Relief from the Automatic Stay. Counsel for the Debtors also charged \$79.00 for making a phone call to seek a continuance of the December 12th hearing due to his own scheduling conflict, and \$79.00 for receiving and reviewing email informing the Debtors which counsel was assigned to represent Wilmington. These fees, totaling \$276.50, will not be awarded pursuant to Fed. R. Bankr. P. 3002.1(i).

With respect to the Amended Motion for Relief from the Automatic Stay, the Debtors shall file a statement indicating whether they are current on their home mortgage by June 22nd, 2018. Upon reviewing the Debtors' statement, the Court will determine whether a further hearing on the Amended Motion for Relief from the Automatic Stay is necessary.

Therefore, it is hereby

ORDERED: The Debtors' Amended Request for Attorney's Fees is **GRANTED** in part, and pursuant to Fed. R. Bankr. P. 3002.1(i), Wilmington shall pay \$4,218.00 to the Debtors within ten (10) business days of entry of this Order; and it is further

ORDERED: At or before 4:00 p.m. on June 22nd, 2018, the Debtors shall file a statement indicating whether they are current on their home mortgage.

IT IS SO ORDERED at Bridgeport, Connecticut this 11th day of June, 2018.

Julie A. Manning
Chief United States Bankruptcy Judge
District of Connecticut

