

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO

In re: :  
 :  
JOSE LUIS RIVERA SALAMAN, : Case No. 96-01027 (GAC)  
ANGELES GARRIDO RIVERA, :  
 :  
Debtors : Chapter 13  
 :  
\_\_\_\_\_ :

DECISION AND ORDER

On July 29, 1996, the debtors filed a motion objecting to claim #1 filed by Citibank, N.A. (Dkt. #26). Citibank filed a motion in opposition on September 6, 1996 (Dkt. #39). The debtors filed an answer on September 18, 1996 (Dkt. #40). Citibank then filed a motion requesting the Court to require the debtors to file a legal memorandum regarding the objection to claim (Dkt. #41). The debtors filed a response on November 12, 1996 (Dkt. #49).

Citibank has a first mortgage over the debtors' residential real property. The debtors' objection to Citibank's claim relates to Citibank's inclusion of the sum of \$3,000.00 as arrears for legal fees. Citibank indicates that the \$3,000.00 represents half of the legal fees contracted for with the debtors in the mortgage note. Citibank indicates that it filed a foreclosure complaint, which required investigation and

corroboration of the pertinent facts, receipt and review of a title search and three trips by the process server to the debtors' residence. Citibank also indicates that it monitored the development of the debtors' previous bankruptcy case and filed a motion for relief from stay based on the debtors' failure to make post-petition payments. The previous case was dismissed based on the debtors' failure to make payments. Citibank then negotiated with the debtors for payment of the debt. Thereafter, the debtors filed the present bankruptcy case. In this case, Citibank filed a proof of claim and has had to defend the claim against the debtors' objection.

The Bankruptcy Code provides that:

[t]o 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 under which such claim arose.

11 U.S.C. § 506(b). Attorney's fees owed to an oversecured creditor based on a default under a mortgage note are allowable as arrears that must be cured under 11 U.S.C. § 1322(b)(5). See 1 Keith M. Lundin, *Chapter 13 Bankruptcy*, § 4.55, p. 4-115 *et. seq.*

There is no dispute that the value of the debtors' property is greater than the amount owed to Citibank. Accordingly, Citibank is entitled to reasonable attorney's fees provided for under the mortgage agreement. The agreement in this case provides that Citibank is entitled to ten percent of the original principal in the event that it is required to resort to judicial proceedings to collect the mortgage amount.

Citing a collection of cases, Collier indicates that:

. . . [t]he bankruptcy courts will generally require the party seeking allowance of attorneys' fees to carry the burden of demonstrating reasonableness by providing a detailed description of the services rendered, supporting documentation or other evidence prior to making a determination thereon. The bankruptcy court may also inquire into whether the services rendered are within the scope of the services covered by the attorneys' fees provision of the applicable agreement and whether the rendition of the services in question was reasonably required under the circumstances.

3 Collier on Bankruptcy ¶ 506.05 at pp. 506-54 *et. seq.*

(footnotes omitted).

The Court finds that the debtors defaulted under the mortgage note and concludes that pursuant to the note, Citibank is entitled to legal fees related to the default. The Court finds that Citibank had to resort to judicial proceedings to

collect the loan made to debtors. The Court finds that Citibank has incurred significant legal fees and concludes that Citibank has provided sufficient detail of the legal services. The Court concludes that these services are covered by the mortgage agreement and that the services were reasonably required under the circumstances. The Court concludes that the amount requested by Citibank for legal fees is reasonable. Accordingly, the debtors' objection to Citibank's claim will be denied.

ORDER

WHEREFORE, IT IS ORDERED that the debtors' objection to claim #1, filed by Citibank, N.A., is DENIED. Citibank's claim is allowed as filed.

SO ORDERED.

San Juan, Puerto Rico, this \_\_\_\_\_ day of December, 1996.

---

GERARDO A. CARLO  
U.S. Bankruptcy Judge