

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

In re:

Case No. 6:08-bk-02171-ABB  
Chapter 7

JUAN A. AQUINO and

DULCE M. AQUINO,

Debtors.

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**ORDER**

This matter came before the Court on the Objection to Proof of Claim (Doc. No. 33) filed by Juan A. Aquino and Dulce M. Aquino, the Debtors herein (collectively, "Debtors"), seeking to have Claim No. 2-4 filed by Chase Home Finance LLC ("Chase") disallowed. An evidentiary hearing was held on September 18, 2008 at which the Debtors, counsel for the Debtors, and counsel for Chase appeared. Chase was directed to file a response to the Debtors' Objection within fourteen days of the hearing. Chase did not file a response.

The Debtors filed a joint Chapter 13 petition on March 31, 2008 and their case was converted to Chapter 7 on June 19, 2008. The Chapter 7 Trustee has declared this case a no asset case.

The Debtors' residence located at 3119 Erskine Drive, Orlando, Florida 32825 ("Property") is encumbered by a first priority mortgage held by Chase and a second priority mortgage held by CitiFinancial Equity Services.

The Debtors' Schedules reflect the Chase loan balance exceeds the value of the Property. The Debtors filed a Statement of Intention setting forth they intend to surrender the Property (Doc. No. 36). Chase was granted relief from the automatic stay to obtain an *in rem* foreclosure judgment as to the Property by Order entered on September 9, 2008 (Doc. No. 43).

Chase filed a Second Amended Claim, Claim No. 2-4, asserting a secured claim of \$303,343.83. Its claim is based upon a Note with a principal balance of \$270,000.00 executed

by Juan Aquino on July 15, 2005 and held by Chase. The Note term is thirty years with monthly payments of \$1,728.84 and interest accruing on the principal balance at the fixed annual rate of 6.625%, which rate applies in the event of a default. The Note provides the holder is entitled to late fees and recovery of costs and expenses, including "reasonable attorneys' fees," incurred in enforcing the Note (Note at ¶ 6). The Note is secured by a Mortgage on the Property. The parties did not present a copy of the Mortgage.

The Debtors defaulted on the Note and Juan Aquino executed a forbearance agreement with Chase on April 14, 2007 (Doc. No. 33). The forbearance agreement requires four forbearance payments of \$2,362.67 be made from April 15, 2007 through July 15, 2007, with regular monthly mortgage payments to resume thereafter.

The Debtors made four forbearance payments to Chase totaling \$9,450.68 during the period April 15, 2007 through August 15, 2007. Claim No. 2-4 does not reflect the forbearance payments received by Chase and the claim total is overstated by \$9,450.68.

Schedule A of Claim No. 2-4 sets forth the Debtors' monthly mortgage payment "adjusted" upwards to \$2,185.94 as of September 1, 2006 and to \$2,362.67 as of January 1, 2007. The claim sets forth "post-petition monthly mortgage payments are: \$2,185.94." The Note is a fixed-rate promissory note requiring monthly payments of \$1,728.84. Claim No. 2-4 is inconsistent with the terms of the Note. Chase has not established a basis for such upward adjustments of the Debtors' monthly mortgage payment.

Chase asserts late charges of \$1,555.92 are due and owing. The Note provides a late charge of 5.00 percent "of overdue payment of principal and interest" shall be assessed for any payment fifteen or more days late. Chase did not set forth how the late charges of \$1,555.92 were calculated. The late charges are overstated if an "adjusted" monthly mortgage payment figure was used in the calculation.

The Court has insufficient information to calculate the actual amounts due and owing to Chase pursuant to the Note and Mortgage. Claim No. 2-4 is due to be disallowed if Chase

does not file within fourteen days of the entry of this Order an amended claim setting forth detailed substantiations for the amounts it asserts are due and owing pursuant to the Note and Mortgage, with a copy of the Mortgage to be included with such amended claim.

Accordingly, it is

**ORDERED, ADJUDGED and DECREED** that the Debtors' Objection (Doc. No. 33) is hereby **SUSTAINED**; and it is further

**ORDERED, ADJUDGED and DECREED** that, within fourteen (14) days of the entry of this Order, Chase shall file a claim amending Claim No. 2-4 setting forth detailed substantiations for the amounts it asserts are due and owing pursuant to the Note and Mortgage, with a copy of the of the Mortgage to be included with such amended claim; and it is

**ORDERED, ADJUDGED and DECREED** that should Chase fail to timely file an amended claim in conformity with this Order, Claim No. 2-4 shall be **DISALLOWED**.

Dated this 17<sup>th</sup> day of October, 2008.

/s/Arthur B. Briskman

ARTHUR B. BRISKMAN

United States Bankruptcy Judge