

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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In re: Case No. 9:17-bk-09422-FMD
Chapter 13

Tiffany Marie Carter-Major,

Debtor.

**ORDER DENYING
DEBTOR'S EMERGENCY MOTION
FOR SANCTIONS AND DETERMINING
ADEQUATE ASSURANCE AS TO
THE CITY OF CAPE CORAL**

THIS CASE came on for hearing on Debtor's Amended Emergency Motion for Sanctions against the City of Cape Coral (the "Motion for Sanctions") (Doc. No. 38) on June 8, 2018, and June 12, 2018.

This case was filed on November 6, 2017. The City of Cape Coral provides water and sewer services to Debtor's residence and is a "utility" as that term is used in 11 U.S.C § 366. At the June 8, 2018 hearing, the Court was advised that Debtor was delinquent in payments on her water/sewer bill to the City of Cape Coral (the "City") as of the date that she filed bankruptcy, that the City had notice of Debtor's bankruptcy case, that Debtor had since made significant payments to the City, but that on or about May 23, 2018, the City turned off the water to Debtor's residence.

Section 366 permits a utility to discontinue service if the debtor, within 20 days after the date of the petition, has not provided the utility with adequate assurance of payment for service. Debtor had not provided with the City with adequate assurance of payment for service after the date of the Petition (Doc. No. 1). Therefore, the Court concluded that the City did not violate the automatic stay in turning off Debtor's water. However, the Court directed the City to turn the water back on, and continued the hearing to June 12, 2018, at 1:30 p.m. for the parties to confer regarding the appropriate amount of a deposit for Debtor to provide the City as adequate assurance of future payments for water/sewer services.

On June 12, 2018, a representative of the City, Steve Griffin, testified regarding Debtor's account balance, including the prepetition balance due, the monthly bills, late charges and fees that have accrued postpetition, and the postpetition payments made by Debtor. The Court determined that Debtor's water/sewer bill to the City averages \$175.00 per month and that Debtor had paid the City \$280.05 in excess of postpetition water/sewer billings.

Accordingly, having considered the Motion and the arguments of counsel, for the reasons set forth above and those stated orally in open court at the June 8 and 12, 2018 hearings, it is hereby

ORDERED:

1. A deposit of \$350.00, which is equal to twice the amount of Debtor's average monthly charge for water/sewer services, is sufficient to provide the City with adequate assurance of future performance.

2. As Debtor has already paid the City \$280.05 in excess of the postpetition water/sewer charges, she shall pay the City of Cape Coral an additional \$69.95 of adequate assurance of payment within 14 days from the date of this Order.

3. The City shall forthwith file a proof of claim for any monies it claims Debtor owes prepetition, including the October 2017 water/sewer bill.

4. Within 14 days of the filing of the City's proof of claim, Debtor shall file an amended Chapter 13 plan to cure the prepetition default to the City.

5. Debtor shall make the May 2018 water payment when it becomes due.

6. The Motion for Sanctions is DENIED.

DATED: June 18, 2018.

/s/ Caryl E. Delano

Caryl E. Delano
United States Bankruptcy Judge