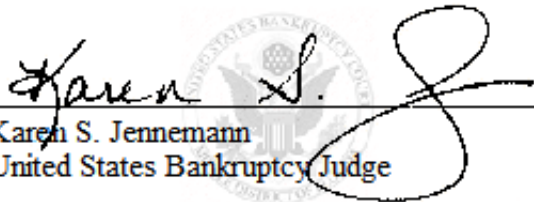


ORDERED.

Dated: January 07, 2022



Karen S. Jennemann  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

|                          |   |                            |
|--------------------------|---|----------------------------|
| In re                    | ) |                            |
|                          | ) |                            |
| JIMMIE L. EZELL, JR. and | ) | Case No. 6:20-bk-03564-GER |
| MARY D. EZELL,           | ) | Chapter 13                 |
|                          | ) |                            |
| Debtors.                 | ) |                            |

**ORDER SUSTAINING DEBTORS’ OBJECTION  
TO US BANK’S POST-PETITION ATTORNEYS’ FEES AND COSTS**

Debtors, Jimmie and Mary Ezell, object (the “Objection”) to the post-petition attorneys’ fees of \$1,750, requested by their mortgage lender, US Bank,<sup>1</sup> in this Chapter 13 case, contending the amount is unreasonable.<sup>2</sup> Debtors do not object to paying a reasonable fee of \$700. US Bank responded that its fees were in line with national Fannie Mae Servicing Guidelines but has failed to support its request with billing records establishing the *actual* time its attorneys spent working on this case.<sup>3</sup> I will sustain Debtors’ Objection and allow post-petition fees of \$700 to US Bank.

<sup>1</sup> U.S. Bank Trust National Association is acting not in its individual capacity but as the servicer or owner trustee for GS Mortgage-Backed Securities Trust 2021-RPL1. In turn, MTGLQ Investors, LP earlier had assigned their interest in Debtors’ mortgage to GS Mortgage-Backed Securities Trust 2021-RPL1 on July 29, 2021. Doc. No. 71. The prior servicers of the loan for MTGLQ Investors, LP was Select Portfolio Servicing, Inc. and Rushmore Loan Management Services. For simplicity, I will refer to these parties collectively as “US Bank.”

<sup>2</sup> Doc. No. 68.

<sup>3</sup> Doc. Nos. 71 and 77.

Debtors filed this Chapter 13 case on June 25, 2020.<sup>4</sup> US Bank holds a mortgage on Debtors' home, and, on the petition date, Debtors were behind in their mortgage payments with arrears due of over \$42,000.<sup>5</sup> Almost immediately and with no formal mediation, US Bank offered Debtors a mortgage loan modification.<sup>6</sup> Debtors promptly filed an Amended Chapter 13 Plan to reflect the terms of the agreed modification, paying US Bank the required monthly payment of \$1,071.52.<sup>7</sup>

After timely making several months of trial mortgage payments under their agreement with US Bank, Debtors sought final approval of a permanent loan modification.<sup>8</sup> Debtors served the motion on all required creditors, including US Bank, giving parties 21 days to object. No objections were filed, and, on December 1, 2020, an order approving the permanent loan modification agreement was entered.<sup>9</sup> Debtors' permanent modified mortgage payment amount is \$1,067.38.<sup>10</sup>

Consistent with their now final and approved permanent loan modification with US Bank, Debtors filed a Second Amended Chapter 13 Plan.<sup>11</sup> The Court considered this version of Debtors' Chapter 13 Plan at a confirmation hearing held on January 6, 2021, and then confirmed it.<sup>12</sup> No representative of US Bank attended the confirmation hearing or objected to confirmation. Although Mr. Ezell died on September 5, 2021,<sup>13</sup> necessitating a modification of Debtors' Chapter

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<sup>4</sup> Doc. No. 1.

<sup>5</sup> Proof of Claim 13. The principal balance of the mortgage loan on Debtors' home, located at 1174 S. Highland Avenue, Apopka, Florida 32703, was \$145,389.29. The exact amount of the outstanding arrears was \$42,515.85. Before filing this bankruptcy case, the normal monthly mortgage payment was \$1,166.69.

<sup>6</sup> Doc. Nos. 20 and 22.

<sup>7</sup> Doc. No. 28.

<sup>8</sup> Doc. No. 42.

<sup>9</sup> Doc. No. 44.

<sup>10</sup> The monthly payment amount now has decreased to \$1,053.48, due to continuing reductions in the escrow calculation.

<sup>11</sup> Doc. No. 48.

<sup>12</sup> Doc. No. 53.

<sup>13</sup> Doc. No. 63.

13 Plan,<sup>14</sup> Mrs. Ezell has timely complied with the agreed modification of US Bank's mortgage loan.

To summarize, within a month of filing this uneventful bankruptcy case, US Bank voluntarily offered Debtors a loan modification, apparently without the help of a lawyer. I approved the modification on July 17, 2020,<sup>15</sup> less than 30 days after Debtors filed this case on June 29, 2020. No formal mediation was required. Debtors timely performed everything required under the loan modification, and no *actual* disputes between Debtors and US Bank existed. So, although US Bank is entitled to reimbursement of reasonable attorneys' fees under the loan documents, little (if any) legal work was required. And modest compensation is justified.

US Bank, however, requests legal fees of \$1,750 for four services: (1) \$350 for plan review on July 27, 2020; (2) \$600 to prepare and file a proof of claim on August 6, 2020; (3) \$250 for a payment history review; and (4) \$550 to prepare and file an objection to confirmation on August 3, 2020.<sup>16</sup> In their Objection to US Bank's attorneys' fees,<sup>17</sup> Debtors contend the fees are unreasonable.

US Bank offers little in response. The initial written response<sup>18</sup> offers no support for these fees. US Bank just argues the loan documents require Debtors to pay its legal fees. No one disputes Debtors must pay US Bank's reasonable attorneys' fees, but the loan terms, as cited by

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<sup>14</sup> Doc. Nos. 65, 67, and 72.

<sup>15</sup> Doc. No. 22.

<sup>16</sup> Doc. No. 31. US Bank filed this Objection to Confirmation solely to preserve its right to claim a higher monthly mortgage payment (\$1,166.69) if Debtors failed to complete the lesser payments (\$1,071.52) under the parties' mortgage modification agreement. Of course, Debtors made the required payments, and the permanent modification, again lowering Debtors' payments to \$1,067.38, later was approved. Doc. Nos. 42 and 44. The Objection to Confirmation likely was unnecessary and, given the approval of the permanent loan modification, was moot by the time of the confirmation hearing.

<sup>17</sup> Doc. No. 68.

<sup>18</sup> Doc. No. 71.

US Bank, specifically state the compensation is limited to fees “*reasonable or appropriate to protect*” US Bank’s interest.<sup>19</sup>

At the hearing on the Objection, held on November 8, 2021, I encouraged US Bank to supply billing records or additional support for their fee request. US Bank instead filed an attorney affidavit merely restating the same request without supplying billing records or additional support.<sup>20</sup> The Affiant states, “I have personally reviewed the invoices of prior counsel[,] . . . which were billed in accordance with the Fannie Mae Servicing Guide.” US Bank did not attach the referenced invoices or billing statements. Affiant delineated no specific services performed by prior counsel. Rather, relying on her “experience,” she merely recited what *generally* is included and payable under the Fannie Mae Servicing Guidelines without opining whether US Bank’s attorneys performed those services in this case.

In awarding reasonable fees in a bankruptcy case, bankruptcy courts generally use the lodestar method based on multiplying the reasonable number of hours expended on services by a reasonable hourly rate.<sup>21</sup> After calculating a lodestar fee, courts then adjust it upward or downward as merited.<sup>22</sup> Here, no lodestar calculation is possible because US Bank has failed to describe the actual services rendered by its lawyers, list the hours spent, or state the hourly rate charged.<sup>23</sup>

US Bank instead asks the Court to blindly accept the Fannie Mae Servicing Guidelines for attorneys’ fees without regard for the actual, reasonable services performed. This I decline to do.

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<sup>19</sup> Doc. No. 71, ¶ 6 (emphasis added).

<sup>20</sup> Doc. No. 77.

<sup>21</sup> *Grant v. George Schumann Tire & Battery Co.*, 908 F.2d 874, 879 (11th Cir. 1990); *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S. Ct. 1933, 1939 (1983).

<sup>22</sup> *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974).

<sup>23</sup> *See In re Howell*, 226 B.R. 279, 281 (Bankr. M.D. Fla. 1998) (“Awarding fees in a bankruptcy case is typically a three-step process. To begin the fee award process, counsel has the initial responsibility to file an application containing sufficient documentation of the amount of time spent and the type of work performed.”); *see also In re Pak*, 252 B.R. 215, 219 (Bankr. M.D. Fla. 2000) (recognizing that in determining attorney’s fees, a court “must 1) determine the nature and extent of the services rendered; 2) determine the value of those services; and 3) consider the factors laid out in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974) and explain how they affect the award”).

Although these guidelines may help lawyers negotiate fees with their lender clients, the guidelines are irrelevant in determining what constitutes reasonable attorneys' fees a particular lender may charge a specific bankruptcy debtor in an actual case.

US Bank has failed to show what services their *lawyers* performed in this case. The Court cannot tell if any attorney prepared or reviewed US Bank's proof of claim or Debtors' Chapter 13 Plan. Did a client representative do this work? A paralegal? A lawyer? Who knows because US Bank has provided no supporting information. And, although a largely irrelevant Objection to Confirmation<sup>24</sup> was filed by a law firm, US Bank offers no proof as to how long the attorney took to prepare the paper or why it was necessary or reasonable.

Mrs. Ezell suggests a reasonable fee is \$700 for whatever work US Bank's attorneys performed. The Court believes this amount is more than generous in a Chapter 13 case where Debtors are current under a consensually modified mortgage and are making timely payments. Debtors' Objection is sustained. Rarely would the Court award more than \$700 for lender counsel fees in a routine Chapter 13 case, with the caveat that creditors always can seek higher amounts by filing a fee application with supporting billing and time records. Accordingly, it is

**ORDERED:**

1. Debtors' Objection to Post-Petition Mortgage Fees, Expenses, and Charges (Doc. No. 68) is **SUSTAINED**.
2. US Bank is awarded post-petition attorneys' fees of \$700.

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Debtors' Attorney Matthew R Gross shall serve a copy of this order on interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of the order.

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<sup>24</sup> Doc. No. 31.