

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
DANITA HIGGINS,) CASE NO. 07-23028 JPK
) Chapter 13
Debtor.)

ORDER ON DEBTOR'S OBJECTION TO CLAIM NO. 6-1 ("OBJECTION")

The Objection was filed on October 1, 2009.

The Objection states as follows in its entirety:

Come now the Debtor, by counsel, Ricardo B. Casas, and objects to Claim #6-1 filed by the Household Finance Corporation, III, wherein it states that the monthly mortgage payments beginning 1/1/08 is \$458.78, at an interest rate of 13.23%. Debtors assert that the monthly payment on their contract is \$491.92, at an interest rate of 13.98%. Trustee's website shows monthly mortgage payment of \$458.78 as of 12/07 but \$548.78, beginning 01/08.

First, the focus of the objection is the "current mortgage payment" to be provided to the claimant, presumably pursuant to 11 U.S.C. § 1322(b)(5). While a proof of claim of a mortgage creditor in a bankruptcy case may state information concerning the asserted current payment with respect to that mortgage, that is not the function of a proof of claim. The purpose of a proof of claim is to state the outstanding amount of the indebtedness due to a creditor as of the date of the filing of a debtor's bankruptcy case, unless the claim is clearly delineated as an administrative claim or request for payment filed pursuant to 11 U.S.C. § 503(a). The "claim" to which the debtor has objected is clearly not of the latter category, and thus any valid objection by the debtor to the proof of claim must be limited to the amount of the indebtedness (including an asserted arrearage) stated in the claim. The Objection states no such objection, but is limited exclusively to contesting the amount of the current mortgage payment to be made to the claimant subsequent to the date of filing the petition. Determination of this amount, as the court has previously stated in written opinions, requires an adversary proceeding for an accounting

pursuant to Fed.R.Bankr.P. 7001(7)/(9).

The court notes in passing that even if it were to permit an objection of the nature of the debtor's to be made by means of a claim objection rather than an adversary proceeding, the Objection fails to overcome the *prima facie* validity of the claim provided for by 11 U.S.C. § 502(a)/Fed.R.Bankr.P. 3001(f). The Objection merely states that the debtor disagrees with the assertion of the creditor, without any substantiating or supporting information or documentation as to the assertion of the reason for disagreement.

Finally, the notice of the Objection (record entry #81) has an incorrect case caption.

IT IS ORDERED that the Objection is denied, without prejudice to the debtor to the filing of an adversary proceeding which properly seeks to determine the amount of any current mortgage payment to be made under the plan pursuant to 11 U.S.C. § 1322(b)(5).

Dated at Hammond, Indiana on November 19, 2009.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee