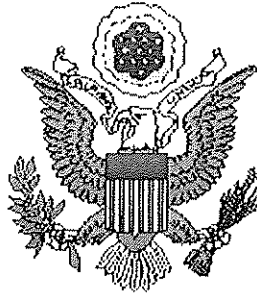


UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

JUDGE BRENDAN LINEHAN SHANNON



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WILMINGTON, DELAWARE  
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October 9, 2019

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Re: *In re Bernard Brown*  
Case No. 18-11843 (BLS) (Chapter 13)

Dear Counsel:

Before the Court are two matters: (i) a Motion for Relief from the Automatic Stay and Co-Debtor Automatic Stay (the "Bank's Motion") filed by The Bank of New York Mellon (the "Bank"), and (ii) an objection to the Bank's claim filed by the Debtor, Bernard Brown. The Bank holds a mortgage against the Debtor's residence and filed a proof of claim asserting a secured claim of \$75,985.36, including a pre-petition default in the amount of \$39,235.38. The parties disagree about the amount of the Debtor's arrears and the amount of the Debtor's monthly mortgage payments going forward. At a hearing on July 30, 2019, the parties asked the Court to decide these matters based on the documents submitted with the Bank's Motion, the Debtor's Claim Objection, and the parties' respective responses thereto.

On February 23, 2000, Anna Lee Brown executed and delivered to Centex Home Equity Corporation ("Centex") a promissory note (the "Note") in the amount of \$20,800.00, plus interest at the fixed rate of 12.25% per annum.<sup>1</sup> The Note provided for monthly payments in the amount of \$217.97, which were applied to interest before principal, and any amount still owing under the Note on March 1, 2030 (the "Maturity Date"), would be paid in full on that date.<sup>2</sup> To secure repayment for the amount due under the Note, Anna Lee Brown executed and delivered to Centex a mortgage dated February 23, 2000, encumbering real property located in Wilmington, DE.<sup>3</sup>

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<sup>1</sup> Bank's Motion, Ex. A (Docket No. 31-2)

<sup>2</sup> *Id.* at 1.

<sup>3</sup> Bank's Motion, Ex. B (Docket No. 31-3).

In 2012, the Debtor signed a Loan Modification Agreement, dated October 16, 2012, with Nationstar Mortgage, LLC (f/k/a Centex Home Equity Corporation) (“Nationstar”), acknowledging that the “Unpaid Principal Balance” due under the Note was \$43,048.54.<sup>4</sup> The Loan Modification Agreement noted that Anna Lee Brown was deceased. The Loan Modification Agreement further provided, in part, that:

Borrower [Debtor] promises to pay the Unpaid Principal Balance, plus interest, to the order of Lender. Interest will be charged on the Unpaid Principal Balance at the yearly rate 4.861% from November 1, 2012 until November 01, 2014. Borrower promises to make monthly payments of Interest of U.S.\$174.38, beginning on 12/1/2012, and continuing thereafter on the same day of each succeeding month until December 1, 2014 (the “Interest Only Period”). **After expiration of the modification period, the interest rate Borrower will pay will be determined in accordance with the terms of the original Note.** If on 3/1/2030 (the “Maturity Date”), Borrower still owes amounts under the Note and the Security Instrument, as amended by this Agreement, Borrower will pay these amounts in full on the Maturity Date.<sup>5</sup>

At the same time, the Debtor also signed an “Agreement to Maintain Escrow Account,” in which the Debtor requested that the lender, Nationstar, would collect payments from the Debtor to be held by the lender for the payment of certain sums due in connection with the Note and Security Instrument, including taxes, insurance premiums and other “Escrow Items.”<sup>6</sup>

On or about April 15, 2016, Nationstar filed a “Corporate Assignment of Mortgage” showing that Nationstar assigned its interest in the Mortgage to The Bank of New York Mellon f/k/a The Bank of New York as Trustee for Nationstar Home Equity Loan Trust 2007-A.<sup>7</sup>

In the objection to the Bank’s claim, the Debtor argues that the Bank is substantially overcharging him on his monthly payment.<sup>8</sup> The Debtor claims that the monthly payment should be \$217.97 in accordance with paragraph 3B of the Note, together with an escrow payment that is currently \$265.61. The Debtor further asserts that although the monthly payment is less than the accrued interest of 12.25%, paragraph 3A of the Note provides that all outstanding principal and interest is due at maturity on March 1, 2030. At the hearing, the Debtor’s counsel argued that this is a negative amortization loan.

In response to the Debtor’s objection and in the Bank’s Motion, the Bank argues that the Debtor’s monthly payment is \$784.70, consisting of \$519.09 in principal and interest, and \$265.61 in escrowed amounts.<sup>9</sup> The Bank argues that, after the passing of the Anna Lee Brown, the Debtor entered into the Loan Modification Agreement that permitted the Debtor to make interest-only payments from November 1, 2012 through November 1, 2014. Upon expiration of the loan

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<sup>4</sup> Bank’s Motion, Ex. D (Docket No. 31-5).

<sup>5</sup> *Id.* (emphasis added).

<sup>6</sup> *Id.*

<sup>7</sup> Bank’s Motion, Ex. C.

<sup>8</sup> Debtor’s Objection (Docket No. 46).

<sup>9</sup> Bank’s response to Debtor’s Objection (Docket No. 48).

modification period, the Bank argues that the Debtor was required to pay the remaining principal balance due under the Note, plus interest at the original interest rate, through the March 1, 2030 maturity date. According to the Bank, beginning December 1, 2014 (i.e., after the loan modification or “Interest Only Period”), the monthly principal and interest payment increased to \$519.09 per month, plus the escrow payment. The Bank argues that the validity and amount of the Bank’s claim is established by the proof of claim, unless the Debtor provides sufficient evidence to negate the claim’s *prima facie* validity.

The Bank is correct as to the shifting burden of proof in an objection to claim. “When a claim objection is filed in a bankruptcy case, the burden of proof as to the validity of the claim ‘rests on different parties at different times.’”<sup>10</sup> “The objecting party carries the burden of going forward with the evidence in support of its objection which much be of a probative force equal to that of the allegations of the creditor’s proof of claim.”<sup>11</sup> “If the objecting party succeeds in overcoming the *prima facie* effect of the proof of claim, the ultimate burden of persuasion then rests upon the claimant to prove the validity of the claim by a preponderance of the evidence.”<sup>12</sup> The Bank, however, is incorrect in asserting that the Debtor failed to meet his burden here.

Review of the relevant documents reveals that there is nothing in the Loan Modification Agreement setting a higher monthly payment of principal and interest upon the expiration of the Interest Only Period. The Loan Modification Agreement expressly provides that, when the Interest Only Period ends, the interest rate returns to the original rate set under the Note. It also provides that any amounts remaining unpaid under the Note and Mortgage are due on the maturity date of March 1, 2030. The Loan Modification Agreement does not address the monthly payment amount upon expiration of the Interest Only Period. The failure to address this matter in the four corners of the document leads me to conclude that the Debtor’s interpretation is correct -- that upon expiration of the Interest Only Period, the express monthly payment returns to the amount specified in the original Note.<sup>13</sup>

Accordingly, based on this record, the Court will sustain the Debtor’s objection to the monthly payment amount used in the Bank’s proof of claim to calculate the Debtor’s arrears in the post-Interest Only Period.

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<sup>10</sup> *In re Samson Resources Corp.*, 569 B.R. 605, 614-15 (Bankr. D. Del. 2017) (citing *In re Allegheny Int’l, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992)).

<sup>11</sup> *Id.* (citing *In re Kincaid*, 338 B.R. 610, 614 (Bankr. E.D. Pa. 2008)).


<sup>12</sup> *Id.*

<sup>13</sup> The Debtor also objected to the to the property inspection fees included in the Bank’s claim. Whether the property inspection fees were reasonable and necessary to protect the Bank’s interest in the Property is an issue of fact, which neither party addressed. The Debtor’s objection to property inspection fees is overruled, without prejudice.

Cynthia L. Carroll, Esq.  
Chase N. Miller, Esq.  
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The parties are requested to confer and promptly submit an order consistent with the foregoing.

Very truly yours,



Brendan Linchan Shannon  
United States Bankruptcy Judge

cc: Michael B. Joseph, Esquire

BLS/jim