IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
NNN 400 CAPITAL CENTER 16, LLC, *et al.*,	)	Case No. 16-12728 (JTD)
	)	(Jointly Administered)
Debtor(s).	)	
	)	**Re: D.I. 617**
NNN 400 CAPITAL CENTER, LLC, *et al.*,	)	
	)	
Plaintiff(s),	)	
v.	)	Adv. Proc. No. 18-50384 (JTD)
	)	
WELLS FARGO BANK, N.A., *et al.*,	)	
	)	**Re: Adv. D.I. 795**
Defendant(s).	)	

MEMORANDUM ORDER

Little Rock – 400 West Capitol Trust (the "Secured Lender") moved for Relief under Rule 7052 and Rule 9023 of the Federal Rules of Bankruptcy Procedure (the "Motion") (D.I. 617, Adv. 795), seeking to alter and/or amend the Court's Findings of Fact and Conclusions of Law (the "Findings") (D.I. 602, Adv. D.I. 785) and the accompanying Final Judgment (D.I. 603, Adv. D.I. 786) and Order (Adv. D.I. 604) partially sustaining Plaintiff's objection to the Secured Lender's Proof of Claim. For the reasons set forth below, the Motion is denied.

I. BACKGROUND

On April 27, 2017, the Secured Lender's predecessor in interest, Wells Fargo, filed Claim 5-1 (the "Proof of Claim"), asserting a claim in the amount of $29,837,613.44 against the Plaintiffs including "without limitation, fees, costs, expenses and interest, which continue to accrue up to the petition date and thereafter". On April 16, 2018, Plaintiffs filed their Objection to the Claim ("Objection") (Bankr. D.I. 278), questioning, among other things, "the reasonableness of the fees and expenses asserted in the Secured Lender Claim in the amount of

$979,897.64 (or whatever other amount LR 400 may assert)."[1] *Id.* at 26. In addition to their Objection, Plaintiffs also commenced this adversary proceeding. The parties stipulated to consolidate the Objection and the adversary proceeding for pre-trial and trial purposes. (Bankr. D.I. 354). Trial was held in December of 2019 and the Findings were issued on August 10, 2020 (D.I. 602, Adv. D.I. 785). On August 24, 2020, the Secured Lender filed this Motion.

II. STANDARD OF REVIEW

Federal Rule of Bankruptcy Procedure 7052(b) states that "[o]n a party's motion . . . the court may amend its findings – or make additional findings – and may amend the judgment accordingly." Fed. R. Bankr. P. 7052(b). "The motion may accompany a motion for a new trial under Rule 59." *Id.* Federal Rule of Civil Procedure 59, made applicable to these proceedings by Federal Rule of Bankruptcy Procedure 9023, also allows parties to move the Court to alter or amend a judgment. Fed. R. Bankr. P. 9023(e). "Thus, a bankruptcy judge may alter or amend factual findings without granting a new trial if the changes are warranted." *Perotti v. Perotti (In re Perotti)*, No. 1:07-bk-01889MDF, 2008 Bankr. LEXIS 4629, *1-3 (Bankr. M.D. Pa. Oct. 22, 2008). "The record must support the requested changes to the findings, otherwise the motion must be denied." *Id.*, citing *U.S. Gypsum Co. v. Schiavo Bros., Inc.*, 668 F.2d 172, 180 n. 9 (3d Cir. 1981). "Whether to amend findings of fact or conclusions of law under Rule 52(b) is within the discretion of the trial court." *Id.; see also Dash v. Chicago Insurance Co.*, No. 00-11911-DPW, 2004 U.S. Dist. LEXIS 20682, at *1 (D. Mass. Oct. 18, 2004). "Generally, a motion to amend a court's findings of fact must be based on a 'manifest error of law or mistake of fact, and a judgment should not be set aside except for substantial reasons.'" *Id.*, citing *In re*

[1] The Secured Lender never updated the Proof of Claim and Plaintiffs used the amount of fees and costs alleged in the Payoff Statement attached to Secured Lender's Objection to the Disclosure Statement (Bankr. D.I. 265, Ex. A) as a basis for their objection to the Proof of Claim.

Novak, 223 B.R. 363, 371 (Bankr. M.D. Fla. 1997) (quoting *Ramos v. Boehringer Manheim Corp*., 896 F.Supp. 1213, 1214 (S.D. Fla. 1994)). "In addition to cases in which there has been a manifest error of law or mistake of fact, relief under Rule 52(b) may be granted on the basis of newly discovered evidence or when the court needs to clarify the record for appeal." *Id.*; *Dow Chem. Co. v. United States*, 278 F. Supp.2d 844, 847 (E.D. Mich. 2003); *see also Nat'l Metal Finishing Co., Inc. v. Barclays/American/Commercial, Inc*., 899 F.2d 119, 123 (1st Cir. 1990); *In re Smith Corona Corp*., 212 B.R. 59, 60 (Bankr. D. Del. 1997).

III. DISCUSSION

In its Memorandum of Law in Support of its Motion (D.I. 618, Adv. D.I. 796), the Secured Lender argues that "the Court should alter and/or amend its Order because it could (wrongly) be read to disallow more legal fees and miscellaneous charges than those: (i) that Plaintiffs disputed at trial with actual evidence; and (ii) that Secured Lender included in its Proof of Claim." *Id.* at 1. Specifically, Secured Lender argues that its Proof of Claim does not include any post-petition legal fees or miscellaneous charges, and that even if the Objection could properly be construed as objecting to post-petition fees and charges, Plaintiffs' trial evidence only disputed $38,353.68 of those fees. Lastly, Secured Lender argues that the Court's Order is based on incorrect facts because the Findings refer to the amounts listed in the "Payoff Statement" and not the actual Proof of Claim. (D.I. 618, Adv. D.I. 796 at 3-4).

As set forth in the Court's Findings (D.I. 602, Adv. D.I. 785), the burden of proof with respect to the validity of a proof of claim is shifting. *Id.* at 34; *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992). The burden first rests on the claimant to establish prima facie evidence of validity by executing and filing the proof of claim in accordance with Rule 3001. Fed. R. Bankr. P. 3001(f). The Court found that the Secured Lender met this initial burden by

attaching a rider and loan documents to its Proof of Claim that established the basis of the claim. (Findings at 35.)

The burden then shifted to the Plaintiffs, as the party objecting to the Proof of Claim, to present evidence to overcome the presumed validity of the claim that is "of probative force equal to that of the allegations of the creditor's proof of claim." (Findings at 34); *In re New Century TRS Holding*, 495 B.R. 625, 633 (Bankr. D. Del. 2013). The Court found that the Plaintiffs met this burden through their examination of Mr. Polcari, the Secured Lender's corporate representative, who was asked to show why the claimed fees and expenses were reasonable but was unable to do so. (Findings at 15-16) ("Mr. Polcari did not have any information to support any of the fees and charges asserted in the payoff statement."); (Findings at 35) ("[W]hen questioned about the expenses, [Mr. Polcari] could not identify the basis for any of the expenses that LNR asserted in its payoff statement as a part of its secured claim."). *See In re Northbelt, LLC*, No. 19-30388, 2020 Bankr. LEXIS 1409, at *61-62 (Bankr. S.D. Tex. May 29, 2020) (finding witness testimony elicited by Debtor to be sufficient to rebut claim's prima facie validity where the witness did not possess adequate information about the basis for the claim). The testimony elicited by the Plaintiffs at trial was sufficient to rebut the Secured Lender's claim that the fees and costs asserted in the Proof of Claim were reasonable.

At this point, the burden then shifted back to the lender to prove its claim by a preponderance of the evidence. *In re United Companies Financial Corp.*, No. 99-450, 2001 WL 1819941, at *1 (Bankr. D. Del. Feb. 1, 2001). The Secured Lender should have then submitted its own evidence establishing the reasonableness of the fees and expenses. *See In re Ashby-Bacon*, No. 16-10003-MDC, 2016 Bankr. LEXIS 4307, at *5 (Bankr. E.D. Pa. Dec. 14, 2016) ("In a claims objection contested matter in which a proof of claim is *prima facie* valid and the objector meets its burden of production, the ultimate burden of proof remains with the

claimant. Thus, once the objector has presented evidence, the claimant may then need to offer additional evidence to carry its burden of persuasion.") (internal citations omitted). The Secured Lender chose not to do so. (Findings at 35-36) ("In addition to LNR's representative being unable to testify to the basis for the expenses, the lenders failed to introduce *any* evidence at trial to satisfy its burden with respect to its fees and expenses.") (emphasis added). Notably, the Secured Lender's Proposed Findings of Fact and Conclusions of Law (D.I. 713) make no mention of the Proof of Claim or Claim Objection whatsoever. The ultimate burden was therefore not met and the Objection to legal fees and expenses was properly sustained in its entirety.[2]

IV. CONCLUSION

The Secured Lender's Motion for Relief under Rule 7052 and 9023 of the Federal Rules of Bankruptcy Procedure is denied.

SO ORDERED

Dated: October 21, 2020

JOHN T. DORSEY, U.S.B.J.

[2] The Secured Lender's argument regarding the specific dollar amount of the fees and expenses that Plaintiffs disputed at trial is misplaced. It was the Secured Lender's burden to establish that all the fees and expenses sought in the Proof of Claim were reasonable. The Secured Lender failed to show that any of the fees and expenses it sought were reasonable. Therefore, the Objection was sustained with respect to all the fees and expenses encompassed by the Proof of Claim. Because the Rider to the Proof of Claim stated that the indebtedness listed in the claim included "without limitation, fees, costs, expenses, and interest, which continue to accrue up to the petition date and thereafter. . ." the Proof of Claim indebtedness includes any pre-petition fees and expenses that relate to the Secured Lender's enforcement of its rights under the Loan Agreement, as well as any post-petition fees and expenses that relate to the Secured Lender's enforcement of its rights within the bankruptcy. However, and as is discussed in detail in the Court's Findings of Facts and Conclusions of Law with respect to the Secured Lender's Motion for Attorney's Fees Pursuant to Rule 7054, dated October 21, 2020, this does not include any post-petition fees incurred in connection with this adversary proceeding.