



SO ORDERED.

SIGNED this 25th day of August, 2016.

Catharine R Aron

UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION**

IN RE:

Laurie B. Lundy,

Debtor.

Case No. 14-10421

ORDER GRANTING APPLICATION FOR COMPENSATION

THIS CASE came before the Court on July 19, 2016, after due and proper notice, for consideration of an Application for Compensation by Attorney for the Debtor [Doc. # 77] (the "Application for Compensation"). At the hearing, William E. Mathers appeared on behalf of the Debtor, Kyle Stewart appeared on behalf of JP Morgan Chase Bank, Jennifer Harris appeared on behalf of the Chapter 13 Trustee, and Sarah Bruce appeared on behalf of the Bankruptcy Administrator. After considering the Application for Compensation; the arguments of counsel, including the statements in support of the application by the Chapter 13 Trustee and the Bankruptcy Administrator; and the record in this case, the Court finds that the application should be granted for the reasons which follow.

BACKGROUND AND ANALYSIS

Chase Home Finance, LLC (also known as JP Morgan Chase Bank, or “Chase”) held a perfected security interest in property owned by the Debtor and her spouse located at 6123 Old US Highway 220, Seagrove, NC (the “Property”), with a tax value in the amount of \$156,575. The confirmed plan in this case directed the Trustee to disburse regular monthly mortgage payments to Chase in the amount of \$1,052.85 beginning in July of 2014 and to pay an arrearage claim in the amount of \$5,229.45.¹

On August 10, 2015, Chase decreased its arrearage claim to \$3,014.88 and amended its proof of claim to reflect a total debt of \$151,910.12. The Trustee filed a motion to allow the amended claim, which the Court granted on October 13, 2015 [Doc. # 47].

On October 30, 2015, the Debtor filed a motion for private sale of the Property [Doc. # 49] (the “Motion to Sell”) for \$178,000. Chase responded that it did not oppose the motion, provided that it would be paid in full at closing [Doc. # 52]. A hearing on the motion was scheduled for December 1, 2015 and continued to December 14, 2015.

At the December 14, 2015 hearing, the attorney for the Debtor noted that he had received a payoff statement from Chase requesting new, additional fees: \$3,052.08 for interest from July 1, 2015, a late fee in the amount of \$30.17, and attorneys’ fees in the amount of \$500. The Court allowed the sale and directed these fees, totaling \$3,582.25, be held in escrow pending further order [Doc. # 54].

The sale proceeded as scheduled, and, in light of ongoing payments from the Chapter 13 Trustee to Chase, a payoff in the amount of \$148,420.75 was wired to Chase at closing.

¹ The order confirming plan [Doc. # 22] noted an arrearage of \$5,229.45. This amount was ultimately established by order entered December 16, 2014 [Doc. # 35].

On March 22, 2016, the Debtor filed a Motion for Determination that Debtor Paid Mortgage Account in Full [Doc. # 65] (the “Motion to Deem Account Paid”). The motion explained that the attorney for the Debtor had attempted to discuss the \$3,582.25 in escrow with Chase and its authorized agent, attorney Alison Wadsworth. Chase had refused or failed to explain why it believed it should be owed the money. Further confusing matters, Chase also had mailed an Annual Tax and Interest Statement Notice to the Debtor, stating that it had credited \$142,434.96 to the Debtor’s account, despite having been paid in full. It had, moreover, filed a Notice of Mortgage Payment Change with the Court on May 27, 2016 and sent this notice directly to the Debtor (collectively, the Annual Tax and Interest Statement Notice and Notice of Mortgage Payment Change shall be referred to as the “Notices”).

A hearing on the Motion to Deem Account Paid was ultimately held on June 7, 2016. At the hearing, Kyle Stewart appeared on behalf of Chase² and noted that his client did not contest a determination that the account had been paid in full. The Court entered an order deeming the account satisfied, directing Chase to cancel its lien, and ordering the escrow agent to release the \$3,582.25 directly to the Debtor [Doc. # 82].

On June 27, 2016, the attorney for the Debtor filed the Application for Compensation presently before the Court. The application requests \$3,312 from Chase for over eleven hours of services to the Debtor in attempting to resolve the escrow dispute and to determine why only \$142,434.96 in sale proceeds had been credited to the Debtor’s account. Chase filed an objection to the application on July 8, 2016 [Doc. # 81] (the “Objection”).

While the Application for Compensation and Objection thereto rely upon the so-called American Rule and judicially fashioned exceptions to this rule to justify an award of attorneys’ fees, or lack thereof, the Court does not find it necessary to invoke a discussion of this rule in the

² Mr. Stewart entered a notice of appearance on behalf of Chase on April 5, 2016.

case at present. The Notices sent to the Debtor in this case constituted a willful violation of the automatic stay under 11 U.S.C. § 362(a). *See In re Clayton*, 235 B.R. 801, 807 (Bankr. M.D.N.C. 1998) (noting that, to prove a willful violation of the stay, it is sufficient to show that “the party knew of the existence of the bankruptcy case and that the creditor’s actions were intentional”); *In re Hamrick*, 175 B.R. 890, 892 (W.D.N.C. 1994) (explaining that a willful violation of the automatic stay occurs when a creditor knows about a bankruptcy proceeding, and, nevertheless, intentionally attempts continued collection procedures). Those who are injured “by any willful violation of a stay . . . shall recover actual damages, including costs and attorneys’ fees, and in appropriate circumstances, may recover punitive damages.” 11 U.S.C. § 362(k)(1). In this case, the Debtor was injured by the willful stay violations in that she incurred fees and costs discussing these documents with her attorney, who attempted to determine why Chase had only credited \$142,434.96 to her account and further expended time in several unsuccessful attempts to discuss the matter with Chase, before ultimately being required to file the Motion to Deem Account Paid and appear before the Court on the motion. Attorneys’ fees directly related to these notices constitute the Debtor’s actual damages.

Moreover, while the Application for Compensation requests damages for fees incurred as early as December 15, 2015, before the notices were sent to the Debtor, the Court finds it appropriate to award the attorney for the Debtor the entire fee request in this case as punitive damages for violation of the automatic stay. An award of punitive damages is within the discretion of the court and proper when a creditor has demonstrated intentional, egregious misconduct. *See In re Mann*, No. 03-82973, 2004 WL 574354, at *2-3 (Bankr. M.D.N.C. Mar. 8, 2004) (explaining the purpose of punitive damages and noting various factors to consider when imposing such damages for violation of the automatic stay, factors such as “the nature of the

creditor's conduct . . . ; the nature and extent of harm to the debtor; the creditor's ability to pay damages; the level of sophistication of the creditor; the creditor's motives; any provocation by the debtor; and the creditor's efforts to defend its action"). Chase had actual notice of the bankruptcy case and the sale of the Property. Its counsel filed notices of appearance with the Court, and it filed responses to the Motion to Sell and Motion to Deem Account Paid. Chase had an ample amount of time and opportunity to appropriately credit the Debtor's account or dispute the payoff with the Debtor's attorney, who contacted Chase directly, on multiple occasions, through an authorized agent. Instead, Chase chose to explain nothing and send unsubstantiated, unauthorized notices directly to the Debtor. Chase expressed no remorse and provided no justification for these actions at the hearing on the Application for Compensation. Chase's actions were deliberate and unwarranted.

NOW, THEREFORE, FOR THE ABOVE STATED REASONS, IT IS HEREBY ORDERED that Chase pay the entire sum of \$3,312 to the attorney for the Debtor, as actual and punitive damages for violation of the automatic stay, within 30 (thirty) days of entry of this Order.

END OF DOCUMENT

PARTIES OF INTEREST

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