SO ORDERED.

SIGNED this 22nd day of March, 2019.

BENJAMIN A. KAHN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In re:	)	
	)	
Rosetta Woods Paylor,	)	Case No. 17-80884
	)	
Debtor.	)	Chapter 7

ORDER

THIS CASE came before the Court for hearing on the Objection to Notice of Postpetition Fees (the "Objection") filed by Debtor Rosetta Woods Paylor on October 10, 2018. ECF No. 31. At the hearing, Koury Hicks appeared on behalf of Debtor, Andrew L. Vining appeared on behalf of Ditech Financial, LLC ("Ditech"), and Benjamin Lovell appeared on behalf of the Standing Trustee (the "Trustee"). For the reasons set forth below, the Objection will be overruled.

BACKGROUND

Debtor filed a petition for relief under chapter 13 of the Bankruptcy Code on October 25, 2017. In December of the same year, U.S. Bank National Association, as Trustee, as successor to Firstar

Trust Company as Trustee, for Manufactured Housing Contract Senior/Subordinate Pass-Through Certificate Trust 1996-3 ("U.S. Bank"), filed a proof of claim on Official Form 410 in the amount of $43,857.51. Claim No. 2-1. The claim provides that notices should be sent to U.S. Bank care of Ditech. The debt reflected in the claim arises from a mortgage loan secured by a deed of trust on Debtor's principal residence. Id. at 16. Among other provisions, the deed of trust requires the borrower to maintain hazard insurance as follows:

> Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. The insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property. . . .

Id. at 19, ¶ 5. Attached to the claim is a Limited Power of Attorney (the "U.S. Bank Power of Attorney") executed on behalf of U.S. Bank appointing Ditech as servicer and attorney in fact for broad purposes with respect to the underlying loan documents, including demanding, suing, collecting, or recovering any amount due to U.S. Bank in any bankruptcy action. Id. at 25-29 (particularly at 27, ¶ 1).

On July 30, 2018, Ditech filed a Notice of Postpetition Mortgage Fees, Expenses, and Charges (the "Postpetition Notice"), alleging $1,007 owed for "Lender Placed Insurance Effective 2/3/18-2/3/19."[1] The Postpetition Notice specifically refers to Claim No. 2 but lists Ditech as the creditor.

Debtor objected to the Postpetition Notice, alleging Ditech's failure to comply with N.C. Gen. Stat. § 45-91(1). According to Debtor, Ditech waived its right to payment for the insurance under § 45-91(3) because Ditech charged Debtor for the insurance without: (1) timely assessing the insurance; and (2) producing a copy of the clear and conspicuous explanatory statement about the insurance mailed to Debtor at her last known address.[2] Debtor also objected to Ditech's filing of the Postpetition Notice, arguing that the holder of the claim did not file the notice as required by Federal Rule of Bankruptcy Procedure 3002.1.

Ditech timely responded to the Objection. ECF No. 31.[3] Ditech asserts that insurance is not a "fee" as contemplated by

[1] Two days later, on August 1, the Trustee filed a motion to begin monthly disbursements to Ditech pursuant to the Postpetition Notice. ECF No. 27 Objections to the Trustee's motion were due on or before September 4, 2018. No party filed an objection and, on September 6, the Court entered an order authorizing the Trustee to begin making disbursements on the lender placed insurance expense. ECF No. 29.

[2] Ditech's Postpetition Notice provides that the fees, costs, and expenses were incurred on February 3, 2018, which was 177 days before Ditech's Postpetition Notice was filed with the Court, and therefore more than the forty-five days required by § 45-91.

[3] The Court set the Objection for hearing on November 20, and subsequently continued the hearing to December 20. ECF Nos. 38, 40.

§ 45-91(1). According to Ditech, § 45-91(1) does not apply to expenses typically collected by a lender or servicer for escrow accounts, and because a lender or servicer usually includes insurance as an escrow item, the insurance expense is not a "fee" as contemplated by the statute. Thus, Ditech argued that the time limits and notice requirements of § 45-91(1) are inapplicable. Ditech also asserted compliance with Rule 3002.1 in that U.S. Bank listed its claim as "care of" Ditech. Following the arguments of counsel, the Court took the matter under advisement.

DISCUSSION

The parties present two issues: (1) whether an expense incurred by a servicer for lender placed hazard insurance constitutes a "fee" under North Carolina General Statute § 45-91(1); and (2) whether the Postpetition Notice was defective because it was filed and served by Ditech and listed Ditech as the creditor on the official form.

A. An expense incurred by a servicer for a force placed insurance premium is not a fee as contemplated by N.C. Gen. Stat. § 45-91(1).

Chapter 45 of the North Carolina General Statutes governs mortgages and deeds of trust, including mortgage debt collection and servicing under Article 10. Pursuant to Article 10, a servicer of a home loan must comply with the time limits and notice requirements of § 45-91(1), which provides as follows:

Any fee that is incurred by a servicer shall be both:

> a. Assessed within 45 days of the date on which the fee was incurred. Provided, however, that attorney or trustee fees and costs incurred as a result of a foreclosure action shall be assessed within 45 days of the date they are charged by either the attorney or trustee to the servicer.
>
> b. Explained clearly and conspicuously in a statement mailed to the borrower at the borrower's last known address within 30 days after assessing the fee, provided the servicer shall not be required to take any action in violation of the provisions of the federal bankruptcy code. The servicer shall not be required to send such a statement for a fee that either:
>
> 1. Is otherwise included in a periodic statement sent to the borrower that meets the requirements of paragraphs (b), (c), and (d) of 12 C.F.R. § 1026.41.
>
> 2. Results from a service that is affirmatively requested by the borrower, is paid for by the borrower at the time the service is provided, and is not charged to the borrower's loan account.

N.C. Gen. Stat. § 45-91(1) (2018).[4] If a servicer fails to comply with these requirements, the fee is waived. § 45-91(3).[5]

Neither Article 10 nor the remainder of Chapter 45 contains a definition for the term "fee," see §§ 45-21.1, 45-36.4, 45-67,

[4] The reference to periodic statements in subdivision (b).1. addresses the timing, form, and content of periodic statements for residential mortgage loans under the Truth in Lending Act. 12 C.F.R. § 1026.41(b)-(d) (2019).

[5] "The filing of a proof of claim with the court does not satisfy the requirements of N.C. Gen. Stat. § 45-91(1)." In re Hillmon, 2011 Bankr. LEXIS 5536, *3.

45-81, 45-90,[6] and 45-101,[7] and the meaning of "fee" as contemplated by § 45-91(1) has not been addressed by the North Carolina courts. Because state law controls and there is no state law addressing the issue, the Court "must . . . offer its best judgment about how [North Carolina's] highest court would rule [on the issue], giving appropriate weight to any opinions of [North Carolina's] intermediate appellate courts." Anderson v. Sara Lee Corp., 508 F.3d 181, 190 (4th Cir. 2007) (citing Food Lion, Inc. v. Capital Cities/ABC, Inc., 194 F.3d 505, 512 (4th Cir. 1999)). The Court must therefore anticipate how the North Carolina Supreme Court would interpret the term "fee" as contemplated by § 45-91.

The North Carolina Supreme Court adheres to the following principles of statutory construction:

> In matters of statutory construction, our primary task is to ensure that the purpose of the legislature, the legislative intent, is accomplished. Hunt v. Reinsurance

[6] Section 45-90(2) defines "servicer" by incorporating the definition used in the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(i), which defines "servicer" as "the person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan)." 12 U.S.C. § 2605(i)(2) (2018); see also In re Saeed, No. 10-10303, 2010 WL 3745641, at *2 (Bankr. M.D.N.C. Sept. 17, 2010). Further a "home loan" is:

> A loan secured by real property located in this State used, or intended to be used, by an individual borrower or individual borrowers in this State as a dwelling, regardless of whether the loan is used to purchase the property or refinance the prior purchase of the property or whether the proceeds of the loan are used for personal, family, or business purposes.

§ 45-90(1). There is no dispute in this case that the loan is a home loan or that Ditech is a servicer as contemplated by the statute.

[7] The definitions contained in §§ 45-21.1, 45-36.4, 45-67, 45-81, and 45-101 apply only within each of the applicable Articles of Chapter 45. Nevertheless, none of these sections defines the term "fee."

> Facility, 302 N.C. 274, 288, 275 S.E.2d 399, 405 (1981). Legislative purpose is first ascertained from the plain words of the statute. See Burgess v. Your House of Raleigh, 326 N.C. 205, 209, 388 S.E.2d 134, 136 (1990). Moreover, we are guided by the structure of the statute and certain canons of statutory construction. See, e.g., Media, Inc. v. McDowell County, 304 N.C. 427, 430-31, 284 S.E.2d 457, 461 (1981) ("statutes dealing with the same subject matter must be construed in pari materia"); Builders, Inc. v. City of Winston-Salem, 302 N.C. 550, 556, 276 S.E.2d 443, 447 (1981) ("It is presumed that the legislature intended each portion to be given full effect and did not intend any provision to be mere surplusage").

Elec. Supply Co. of Durham v. Swain Elec. Co., 328 N.C. 651, 656, 403 S.E.2d 291, 294 (1991). A court may examine the legislative history of a statute only when, after analyzing the plain terms and structure, the court still is in doubt as to the legislative intent. Id. at 656, 403 S.E.2d at 295.

A statute's plain words are accorded their "natural and ordinary meaning unless the context requires otherwise." Turlington v. McLeod, 323 N.C. 591, 594, 374 S.E.2d 394, 397 (1988). That is, "[n]othing else appearing, the [North Carolina] Legislature is presumed to have used the words of a statute to convey their natural and ordinary meaning." Perkins v. Ark. Trucking Servs., Inc., 351 N.C. 634, 638, 528 S.E.2d 902, 904 (2000) (quoting In re McLean Trucking Co., 281 N.C. 242, 252, 188 S.E.2d 452, 458 (1972)). When "determining the plain meaning of undefined terms," the Supreme Court of North Carolina relies on "'standard, nonlegal dictionaries' as a guide." Midrex Techs.,

Inc. v. N.C. Dep't of Revenue, 369 N.C. 250, 258, 794 S.E.2d 785, 792 (2016) (quoting Elec. Supply Co., 328 N.C. at 656, 403 S.E.2d at 294) (consulting New Oxford American Dictionary (Angus Stevenson & Christine A. Lindberg eds., 3d ed. 2010) ("New Oxford") to interpret the meaning of the term "building" in § 105-130.4(a)(4)); see also Turlington v. McLeod, 323 N.C. 591, 594, 374 S.E.2d 394, 397 (1988) (citing Webster's Third New International Dictionary 2394 (1976) ("Webster's") and The American Heritage Dictionary of the English Language 1345 (1969) for a definition of "timber" that, in ordinary usage, gave effect to the statute's intent); Black v. Littlejohn, 312 N.C. 626, 638, 325 S.E.2d 469, 478 (1985) (citing Webster's (1971)) for a definition of "injury"). For terms commonly used in a legal and nonlegal context, the North Carolina Supreme Court also has relied on Black's Law Dictionary. See, e.g., Walker v. Bd. of Trs. of the N.C. Local, Governmental Emps.' Ret. Sys., 348 N.C. 63, 66, 499 S.E.2d 429, 431 (1998) (citing Black's Law Dictionary 1471 (6th ed. 1990) for a definition of "terminate" as used in chapter 128 of the North Carolina General Statues because "this word is unambiguous"); Nelson v. Battle Forest Friends Meeting, 335 N.C. 133, 136, 436 S.E.2d 122, 124 (1993) (relying on Deluxe Black's Law Dictionary 41 (6th ed. 1990), in addition to The Random House Dictionary of the English Language 25 (2d ed. 1987) ("Random House"), Chambers English Dictionary 16 (1988), and The Oxford

English Dictionary 156 (2d ed. 1989), for definitions of the term "adjoin" as used in § 1-44.2).

Finally, the court should "look at various related statutes in pari materia so as to determine and effectuate the legislative intent." Craig v. Cty. of Chatham, 356 N.C. 40, 46, 565 S.E.2d 172, 176 (2002); cf. In re R.L.C., 361 N.C. 287, 294, 643 S.E.2d 920, 924 (2007) ("When determining the meaning of a statute, the purpose of viewing the statute in pari materia with other statutes is to harmonize statutes of like subject matter and, if at all possible, give effect to each.")

(1) The natural and ordinary meaning of "fee" as used in § 45-91(1) does not include an insurance premium.

By its plain terms, N.C. Gen. Stat. § 45-91(1) applies only to "any fee[8] incurred by a servicer[9] . . . ." Guided by standard dictionaries on which the North Carolina Supreme Court previously has relied, the natural and ordinary meaning of "fee" in Chapter 45 does not contemplate payments for insurance premiums.

[8] Section 45-91 refers to "fee" or "fees" in two other instances in subdivisions (3) and (4) of the statute. Subdivision (3) provides that the failure to charge the "fee" or provide notice as required in subdivision (1) constitutes a waiver of "such fee," and subdivision (4) requires that "[a]ll fees charged . . . must be otherwise permitted under applicable law and the contracts between the parties." In each instance, the statute solely refers to fees without any reference to other costs, charges, or expenses.

[9] Article 10 does not purport to apply to fees charged under the loan documents by the holder, only fees incurred by a servicer. Fees chargeable by the lender under the loan documents are governed and limited by other statutes. See, e.g., §§ 24-1.1A(c), (g) 24-8(d); 24-10; 24-10.1(b)(6) (2017) (requiring lender to give a borrower notice of the imposition of late fees within 45 days following the date the payment was due).

The term "fee" is frequently used in both legal and nonlegal contexts. The dictionaries previously cited by the North Carolina Supreme Court include a number of definitions of "fee" inapplicable to Chapter 45. For example, "fee" is variously defined as an estate of inheritance in land, see Random House, supra, at 706 (2001); see also New Oxford, supra, at 634 (same); Webster's, supra, at 833 (same) (2002), personal property, an allowance, wages, or reward for a servant, or a charge for admission. Webster's, supra, at 833 (2002). None of these definitions comport with the meaning of fees that may be incurred by a servicer or with the nature of insurance premiums as discussed below.

The definitions the Court will consider in more detail include the following:

> **Fee**. A charge fixed by law for services of public officers or for use of a privilege under control of government . . . . A recompense for an official or professional service or a charge or emolument or compensation for a particular act or service. A fixed charge or perquisite charged as recompense for labor; reward, compensation, or wage given to a person for performance of services or something done or to be done.

Deluxe Black's Law Dictionary 614 (6th ed. 1990).

> **fee** . . . **3b :** a charge fixed by law or by an institution (as a university) for certain privileges or services <a license fee> <a toll-road fee> <a college-admission fee> <research fees> <laboratory fees> <tuition fees>. **4b :** compensation often in the form of a fixed charge for professional service or special and requested exercise of talent or of skill . . . <a doctor's ~> <a lawyer's retainer ~>.

Webster's, supra, at 833.

> **fee** . . . **1** a payment made to a professional person or to a professional or public body in exchange for advice or services. . . . (usu. **fees**) money regularly paid (esp. to a school or similar institution) for continuing services: *high tuition fees required by the schools*.

New Oxford, supra, at 634.

> **fee** . . . **1.** A charge or payment for professional services: *a doctor's fee*. 2. A sum paid or charged for a privilege: *an admission fee*.

Random House, supra, at 705–06 (2001).

> **fee** . . . **4**(b) a reward for professional services: as, a lawyer's *fee*; a clergyman's marriage *fee*.

III The Century Dictionary and Encyclopedia 2168 (1911).

> **fee** . . . the price paid for services, such as to a lawyer or physician.

C.M. Schwarz, The Chambers Dictionary (13th ed. 2015).

These definitions fall into two general categories. First, a fee is defined as a charge fixed by a contract, law, or institution in exchange for certain privileges or personal services, such as a filing fee, registration fees, license fee, or other fixed charge. Second, a fee is defined as a charge for professional services, such as an attorney's fee or a trustee's fee. Insurance and insurance premiums fall into neither of these two categories because, for the reasons that follow, insurance premiums are not a fixed charge for a personal service, nor does insurance constitute a professional service as contemplated by Chapter 45.

a. An insurance premium is not a fixed charge for a personal service.

Generally, insurance is not considered a personal service for which premiums are charged.[10] In North Carolina, insurance contracts are governed by state law, § 58-3-1,[11] and are defined as

> an agreement by which the insurer is bound to pay money or its equivalent or to do some act of value to the insured upon, and as an indemnity or reimbursement for the destruction, loss, or injury of something in which the other party has an interest.

§ 58-1-10.

An insurer's contractual obligation to pay money under a hazard insurance policy is not a personal service; that is, insurance is not work or labor,[12] nor is it related to other personal services. Cf. Mitchell, Brewer, Richardson, Adams, Burge & Boughman v. Brewer, No. 06 CVS 6091, 2013 WL 765372, at *6 (N.C. Super. Feb. 26, 2013), aff'd, 803 S.E.2d 433 (N.C. Ct. App. 2017) (describing "personal services" as "personal skill and effort"); Henry Angelo & Sons, Inc. v. Prop. Dev. Corp., 63 N.C. App. 569, 574, 306 S.E.2d 162, 166 (1983) (quoting Black's Law Dictionary

[10] Insurance premiums constitute "the consideration paid for undertaking to indemnify the insured against a specified peril." Steven Plitt, Daniel Maldonado, Joshua D. Rogers, & Jordan R. Plitt, 5 Couch on Insurance § 69:1 (3d ed. 2018) ("Couch on Insurance"); see also 5-24 Appleman on Insurance Law & Practice Archive § 24.2 (premium is the consideration paid "by the insured in bargain for the insurer's assumption of the risk transferred from the insured").

[11] In North Carolina, a contract for insurance is unlawful "unless and except as authorized under" Chapter 58. § 58-3-5.

[12] The North Carolina General Assembly also has defined personal services in the context of warranties under Chapter 58 as "work, labor, and other personal services." § 58-1-15.

943 (rev. 4th ed. 1968) ("Insurance is 'a contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils.'")); Fairbanks v. Superior Court, 46 Cal. 4th 56, 61, 205 P.3d 201, 203 (2009) (concluding that insurance is not a service for purposes of California's Consumer Legal Remedies Act, Cal. Civil Code § 175, et seq., and observing that "[a]n insurer's contractual obligation to pay money under a life insurance policy is not work or labor, nor is it related to the sale or repair of any tangible chattel");[13] see also Buckley v. Cracchiolo, Case No. 2:13-cv-4609-CAS(PJWx), 2014 WL 545751 (C.D. Cal. Feb. 7, 2014) (extending holding in Fairbanks to automobile insurance).

Further, even if an insurance premium could be considered a charge for a service, the natural and ordinary meaning of "fee" under § 45-91 does not include an insurance premium because such premium is not a fixed charge. Instead, "[t]he amount of the premium varies in proportion to the risk assumed." Couch on

[13] The court in Fairbanks indicates that insurance is an intangible good, rather than a service. Id. at 65, 205 P.3d at 285 (rejecting argument that ancillary services provided by insurance agents and other insurance company employees render insurance a service, and noting that "ancillary services are provided by the sellers of virtually all intangible goods——investment securities, bank deposit accounts and loans, and so forth" (emphasis added)). Because this Court concludes that insurance premiums are not fees as contemplated by § 45-91, it is unnecessary for the Court to determine the precise nature of insurance or insurance premiums for other purposes.

Insurance, supra, § 69:1.[14] Therefore, the Court concludes that insurance premiums are not fixed charges for personal services.

b. An insurance premium is not payment for a professional service.

The Court has not found any North Carolina law construing a payment of an insurance premium for hazard insurance as a payment for a professional service. In contrast, Chapter 75 of the North Carolina General Statutes specifically contemplates that the sale of insurance is not a professional service. Chapter 75 applies to methods, acts, and practices "in or affecting commerce," where commerce is defined as "all business activities . . . but does not include professional services rendered by a member of a learned profession." § 75-1.1(a),(b). Demonstrating that insurance does not fall within the professional services exception to the statute,

[14] Even in the insurance context, the terms "fee" and "premium" have implicitly separate meanings. There is a split of authority with respect to whether a premium includes fees if the fees are not required to obtain coverage, such as fees paid for the privilege of paying premiums in installments. Compare, Cacomo v. Liberty Mut. Fire Ins. Co., 885 So.2d 1248 (La. Ct. App. 4th Cir. 2004) (fees paid to permit insureds to pay premiums in installments were not part of premiums where the fees were not for the insurance or the procurement of insurance), writ denied, 891 So.2d 691 (La. 2005); Farm Bureau Policy Holders & Members v. Farm Bureau Mut. Ins. Co. of Ark., Inc., 335 Ark 285, 984 S.2.2d 6 (1998) (membership fees were not part of insurance premium where membership provided benefits in addition to ability to obtain insurance coverage); Glenn v. State Farm Mut. Auto. Ins. Co., 341 F.2d 5, 8 (10th Cir. 1965) (determining that a membership fee is part of the premium where the insurance cannot be obtained without paying the membership fee); with Troyk v. Farmers Group, Inc., 171 Cal. App. 4th 1305, 90 Cal. Rptr. 3d 589 (2009) (premium included fee for paying in installments even where the fee was not required unless the insured desired to pay the premium in installments). Regardless of the split between these courts as to whether some types of fees paid to an insurer can constitute part of a premium, even those cases recognizing that some fees constitute premiums necessarily recognize a different meaning for the term "fee" from the term "premium." In this case, Debtor did not offer any evidence that any portion of the premium charged in this case included any fee.

the North Carolina Supreme Court has held that unfair and deceptive acts in connection with the sale of insurance under § 58-63-15 constitute a per se violation of § 75-1.1. See, e.g., Pearce v. Am. Def. Life Ins. Co., 316 N.C. 461, 469, 343 S.E.2d 174, 179 (1986) (holding that a violation of the former North Carolina § 58-54.4, recodified at § 58-63-15, governing unfair and deceptive insurance practices, constitutes a violation of Chapter 75 as a matter of law); see also High Country Arts & Craft Guild v. Hartford Fire Ins. Co., 126 F.3d 629, 635 (4th Cir. 1997) (unfair insurance claims practices constitute per se proof of unfair and deceptive trade practices under § 75-1.1). Due to the statutory exclusion of professional services from the ambit of Chapter 75, the sale of insurance could not constitute a per se violation of Chapter 75 if it were a professional service. This Court therefore concludes that a servicer's expense for hazard insurance is not incurred as a charge for a professional service.

(2) The context and structure of Chapter 45 confirm that the term "fee" does not contemplate an expense for an insurance premium.

Reading Chapter 45 in pari materia,[15] the North Carolina General Assembly did not intend for "fee" to include all

[15] "Statutes 'in pari materia' are those relating to the same person or thing or having a common purpose." Deluxe Black's Law Dictionary 41 (6th ed. 1990). "Statutes in pari materia are to be construed together, and it is a general rule that the courts must harmonize such statutes, if possible, and give effect to each, that is, all applicable laws on the same subject matter should be construed together so as to produce a harmonious body of legislation, if possible." Justice v. Scheidt, 252 N.C. 361, 363, 113 S.E.2d 709, 711 (1960) (quoting Town of Blowing Rock v. Gregorie, 243 N.C. 364, 371, 90 S.E.2d 898,

"payments," "charges," "expenses," or "costs" that may be chargeable to a borrower under loan documents and applicable law such as hazard insurance premiums. Unlike many other sections of Chapter 45, § 45-91 refers solely to "fees" without including other "payments," "charges," "expenses," or "costs."

Throughout Chapter 45 the legislature distinguished between fees and broader categories of costs or expenses. Read as a harmonious body of legislation, the North Carolina legislature intended "fees" to be a limited subcategory of charges that may be assessed to borrowers. For example, under Article 2a of Chapter 45, the proceeds of a sale must be applied first to "[c]osts and expenses of the sale, including the trustee's commission, if any, and a reasonable auctioneer's fee, . . . and reasonable counsel fees for an attorney serving as a trustee . . . ." N.C. Gen. Stat. § 45-21.31(a)(1) (2018) (emphasis added). Therefore, by including fees among certain costs and expenses, the legislature plainly considers fees to be a subcategory of costs and expenses.

It is equally apparent that the legislature did not intend for "fee" to be coextensive with "charge," "cost," or "expense." In fact, the legislature's inclusion of "fees" elsewhere along with these broader terms demonstrates the limitation of "fees,"

904 (1956)) (concluding that separate acts governing safety on public highways should be construed together). In this case, the Court finds that the appropriate subject matter is statutes governing home loans and mortgages in Chapters 24 and 45 of the North Carolina General Statutes.

and the legislature particularly refers to insurance in Chapter 45 by other terms.

Article 10 specifically addresses insurance in only one instance. In § 45-92, the North Carolina General Assembly regulated the manner in which a servicer may exercise the authority to collect escrow amounts "for insurance, taxes, and other charges with respect to the property . . . ." (emphasis added). Thus, the only mention of insurance in Article 10 contemplates insurance as a "charge." Elsewhere in Article 10, the General Assembly indicated its intent that "fees" does not encompass all "charges" assessed by a servicer. See § 45-93(2)(b) (requiring a written statement on the request of the borrower that "identifies and itemizes all fees and charges assessed under the loan transaction") (emphasis added). If the legislature intended all "charges" to be encompassed within "fees" for purposes of Article 10, there would have been no reason to require a statement to itemize "all fees and charges" as required by § 45-93(2)(b). The General Assembly simply could have required an itemization of "all fees." See Builders, Inc. v. City of Winston-Salem, 302 N.C. 550, 556, 276 S.E.2d 443, 447 (1981) ("It is presumed that the legislature intended each portion to be given full effect and did not intend any provision to be mere surplusage").

The legislature similarly refers to insurance elsewhere in Chapter 45 without referring to insurance as a fee. In § 45-

70(c), the legislature excepted from the concept of future advances those "payments made, sums advanced, and expenses incurred . . . for insurance, taxes, and assessments" to protect the creditor's interest under the security instrument or to preserve and protect the value or condition of the encumbered real property. The legislature included similar language when referring to "payments made, sums advanced, and expenses incurred . . . for insurance, taxes, and assessments" in connection with an equity line of credit under §§ 45-82 and 45-82.3(c)(1). Therefore, the General Assembly contemplates insurance as a "charge" in Article 10, and as "payments made, sums advanced, [or] expenses" elsewhere in Chapter 45, rather than as a "fee."

Chapter 45 contains other distinctions between "charges," "costs," "expenses," "disbursements," and "fees." Section 45-21.15 governs "Trustee's fees," and refers to such fees as compensation "for a trustee's services," without mentioning other trustee expenses or costs. Section 45-21.16(5a) requires a mortgagee or trustee that is granted a power of sale to provide notice of hearing in which the holder must confirm that "within 30 days of the date of the notice, the debtor was sent by first-class mail at the debtor's last known address a detailed written statement of the amount of principal, interest, and any other fees, expenses and disbursements that the holder in good faith is claiming to be due . . . ." (emphasis added). As in §§ 45-70, 45-

82, and 45-82.3(c)(1), if all such expenses and disbursements that are chargeable to the borrower constitute "fees," there would be no need for the latter categories of "expenses" and "disbursements" to be listed in this section.

Reading Chapter 45 as a whole, where the North Carolina General Assembly intended to legislate with respect to broader categories of expenses, charges, costs, or payments, it did so by specifically listing these broader categories within the statute. Tellingly, the legislature did not do so in § 45-91, which solely refers to "fees." Construing these statutes in pari materia, the Court concludes that an expense incurred by a servicer for hazard insurance is not the type of charge intended by the North Carolina legislature to constitute a "fee" under § 45-91.

B. A servicer may file a notice of postpetition fees, expenses, or charges as an undisputed authorized agent of the holder.

Debtor asserts that because the Postpetition Notice was filed by Ditech, rather than the holder, U.S. Bank, the notice should be disallowed under Rule 3002.1. Debtor does not dispute that U.S Bank, as Trustee, as successor to Firstar Trust Company as Trustee, for Manufactured Housing Contract Senior/Subordinate Pass-Through Certificate Trust 1996-3 is the holder of the loan, see Claim No. 2 at 4, 34, and Debtor has not objected to U.S. Bank's proof of claim. See 11 U.S.C. § 502 ("[a] claim . . . , proof of which is timely filed . . . , is deemed allowed unless a party in interest

. . . objects"). Debtor does not dispute that Ditech is the servicer of the loan, nor does Debtor challenge the efficacy of the U.S. Bank Power of Attorney. The Postpetition Notice specifically refers to Claim No. 2, and Debtor has not asserted that there was any confusion caused when the servicer filed and served the Postpetition Notice on behalf of U.S. Bank as the holder. Instead, without citing any authority, Debtor contends that the Postpetition Notice is defective because it was not signed by U.S. Bank and does not refer to U.S. Bank as the holder. Debtor's position lacks merit.

Bankruptcy Rule 3001 governs who may file claims. Under Rule 3001, a proof of claim may be executed by the creditor[16] or the creditor's authorized agent. Fed. R. Bankr. P. 3001(b).[17] Not only is there no dispute that Ditech, as servicer, is an authorized agent of U.S. Bank, but Ditech itself also was authorized to file a claim. "A servicer of a mortgage is clearly a creditor and has standing to file a proof of claim against a debtor pursuant to its duties as a servicer." In re Conde-Dedonato, 391 B.R. 247, 250 (Bankr. E.D.N.Y. 2008) (and cases cited therein)). Therefore, the

[16] U.S. Bank, as the "holder of the claim" contemplated by Rule 3002.1(c) is a "creditor." See 11 U.S.C. 101(10) ("'creditor' means . . . an entity that has a claim against the debtor"); Rule 9001 ("[t]he definitions of words and phrases in []§ 101 . . . govern their use in these rules").

[17] Specifically, "[a] proof of claim shall be executed by the creditor or the creditor's authorized agent except as provided in Rules 3004 and 3005." Id.

Debtor's objection based on Ditech filing the Postpetition Notice is overruled.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Objection is overruled.

[END OF DOCUMENT]

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