

SO ORDERED.

SIGNED this 21st day of February, 2014.



Catharine R Aron

UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

In re:

Ricky Joe Styers and
Mary Ann Baity Styers,

Debtors.

Case No. 11-51057

**ORDER GRANTING WELLS FARGO BANK'S
REQUEST FOR ATTORNEY'S FEES**

This matter came before the Court on January 15, 2014, upon Wells Fargo Bank, N.A.'s Motion to Dismiss. Kimberly A. Sheek appeared on behalf of Wells Fargo Bank, N.A., Robert E. Price, Jr. appeared on behalf of the Bankruptcy Administrator, John Meadows appeared on behalf of the Debtors, and Kathryn L. Bringle appeared as the Chapter 13 Trustee. After considering the motion, arguments of counsel, and the record in this case, the Court finds as follows:

Ricky Joe Styers and Mary Ann Baity Styers (collectively the "Debtors") filed a chapter 13 petition on July 12, 2011. The Debtor's Chapter 13 Plan was confirmed on September 27,

2011 (“Plan”). In the Plan, the Debtors elected to pay the mortgages for their residential real property located at 219 Beauchamp Road, Advance, North Carolina (“Property”) directly to Wells Fargo Bank, N.A. (“Wells Fargo”). Due to the equity in the Property, the Plan estimated a 43% dividend to general unsecured claims. In September 2013 and November 2013, the Debtors failed to pay Wells Fargo the monthly mortgage payments for the Property.

As such, on November 25, 2013, Wells Fargo filed a Motion to Dismiss (“Motion to Dismiss”). The Bankruptcy Administrator filed an Objection to the Motion to Dismiss arguing that Wells Fargo’s Motion to Dismiss is based upon Debtors’ failure to make direct payments, which can be addressed by including the mortgage in the plan and that Wells Fargo only filed the Motion to Dismiss to avoid paying the filing fees that would have been required if Wells Fargo filed a motion for relief from stay. Prior to a hearing on the Motion, on January 9, 2014, the Chapter 13 Trustee filed a motion requesting, among other things, that the Debtors’ payments to Wells Fargo be paid inside the Plan.

At the hearing, all parties agreed that the payments to Wells Fargo should be placed inside the Plan and that the Motion to Dismiss should be denied. However, the parties did not agree on the issue of whether Wells Fargo should receive attorney’s fees in the amount of \$350.00 for filing the Motion to Dismiss. The Bankruptcy Administrator argued that Wells Fargo should have filed a motion for relief from stay and Wells Fargo argued that its Motion to Dismiss is proper and that a motion for relief from stay would not have been the proper avenue due to the excessive equity in the Property.

Wells Fargo filed its Motion to Dismiss pursuant to 11 U.S.C. 1307¹ due to the Debtors material default with respect to a term of the Plan by the Debtors failing to make monthly

¹ Although Wells Fargo did not explicitly cite 11 U.S.C. 1307, 11 U.S.C. 1307 is the appropriate code section relevant to Wells Fargo’s Motion.

payments to Wells Fargo for the Property. Due to the Debtors' failure to pay Wells Fargo directly as stated in the Plan, Wells Fargo's Motion is proper. The Trustee filed its motion to include the payments owed to Wells Fargo inside the Plan after Wells Fargo properly filed the Motion to Dismiss. As such, Wells Fargo is entitled to attorney's fees incurred for filing the Motion to Dismiss. The Court does not find merit in the Bankruptcy Administrator's argument that the Motion to Dismiss is improper under these circumstances.²

Based upon the foregoing, Wells Fargo's request for \$350.00 in attorney's fees is GRANTED.

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² The Court notes that had Wells Fargo filed a motion for relief from stay the attorney fee and filing costs incurred would have exceeded \$350.00.

PARTIES TO BE SERVED

Ricky Joe Styers
Mary Ann Baity Styers
Debtors

John Meadows
Attorney for Debtors

Kimberly Sheek
Attorney for Wells Fargo

William Miller
Robert Price
US Bankruptcy Administrator

Kathryn L. Bringle
Trustee