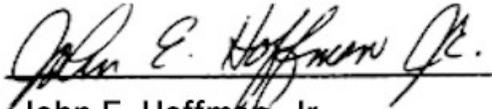


**This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.**

**IT IS SO ORDERED.**

**Dated: April 19, 2005**

  
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John E. Hoffman, Jr.  
United States Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION AT COLUMBUS**

*In re:* :  
 :  
Jennifer Marie Leggett, : Case No. 04-61246  
 : Chapter 13  
 : Judge Hoffman  
*Debtor.* :

**ORDER SUSTAINING DEBTOR'S  
OBJECTION TO CLAIM OF WELLS FARGO**

This contested matter came before the Court on April 11, 2005 for hearing (“Hearing”) on the Debtor’s Objection to Claim of Wells Fargo (“Objection”) (Doc. 26) filed by Jennifer Marie Leggett (“Debtor”) and the response and supplement (“Response”) (Docs. 36, 41) filed by Wells Fargo Bank, N.A., successor by merger with Wells Fargo Home Mortgage, Inc., fka, Norwest Mortgage, Inc. (“Wells Fargo”). Appearing at the Hearing were the Debtor, attorney Grady L. Pettigrew, Jr., on behalf of the Debtor, Litigation Specialist Barbara Beauchamp of Wells Fargo and attorney Phyllis A. Ulrich, on behalf of Wells Fargo.

Debtor filed for Chapter 13 bankruptcy relief on July 16, 2004. In her schedules, she listed her residence located at 6077 Leafridge Lane, Columbus, OH 43232 and valued it at \$111,800. *See* Schedule A - Real Property. In her Schedule D (Creditors Holding Secured Claims) Debtor listed an \$88,800 claim held by Wells Fargo secured by a mortgage on her residence (“Mortgage”), approximated her Mortgage arrearage at \$2,076 and listed her monthly payment on the Mortgage at \$918. Based on its Mortgage, Wells Fargo filed a proof of claim on August 17, 2004 (“Proof of Claim”) with an itemization listing (1) a payoff balance of \$100,332.26 as of July 16, 2004; (2) a monthly payment amount of \$1,038.29; and (3) an arrearage of \$14,050.61 (“Arrearage Claim”). *See* Wells Fargo Exhibit (“Ex.”) H.

After filing an amended Chapter 13 plan, Debtor objected to the Proof of Claim, primarily challenging the amount of the Arrearage Claim. She maintains that she has made payments that had not been timely applied (or applied at all) to decrease the amount due on the Mortgage. Objection at 1-5. Wells Fargo attempted to establish the accuracy of its Proof of Claim by producing a payment history for Debtor’s account (“Payment Log”), which it alleged clearly showed the application of all payments made either directly by the Debtor to Wells Fargo or by the Chapter 13 Trustee to Wells Fargo in Debtor’s prior Chapter 13 case.<sup>1</sup> Wells Fargo Ex. I.

“The filing of a proof of claim gives a prima facie evidentiary effect to the validity and amount of a claim. That evidentiary effect is overcome, however, when an objecting party comes forth with sufficient evidence to place the claimant’s entitlement at issue.” *In re Taylor*, 99 B.R.

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<sup>1</sup>Debtor filed an earlier Chapter 13 case, No. 00-50755, on February 3, 2000 that was ultimately dismissed in May 5, 2004.

371, 373 (Bankr. S.D. Ohio 1989) (citing Fed. R. Bankr. P. 3001(f)).<sup>2</sup> “The party objecting to a proof of claim bears the burden of presenting evidence sufficient to overcome the proof of claim’s prima facie effect.” *In re Pi*, 239 B.R. 778, 781 (Bankr. S.D. Ohio 1999) (citations omitted). “[T]here must be some production of evidence by the debtor to rebut the presumption favoring the claimant. Once the requisite quantum of evidence, then, is offered by the debtor, the burden then shifts back to the claimant to prove his claim by a preponderance of the evidence.” *In re Hollars*, 198 B.R. 270, 271 (Bankr. S.D. Ohio 1996) (citations omitted). “Then the burden of going forward with evidence to sustain the claim shifts to the claimant. The burden of persuasion is always on the claimant.” *Taylor*, 99 B.R. at 373-74 (citing *In re All-American Auxiliary Assoc.*, 95 B.R. 540 (Bankr. S.D. Ohio 1989)) (other citation omitted).

Having considered the Objection, Response, testimony of Debtor and Ms. Beauchamp, and the arguments and representations of counsel, the Court made oral findings of fact and conclusions of law at the Hearing, which are incorporated in this order by reference.

Based upon the Debtor’s testimony, the documentary evidence showing that Wells Fargo did not timely apply payments and the inconsistencies that Debtor identified at the Hearing between the admitted exhibits,<sup>3</sup> the Court finds that the Debtor has come forth with sufficient evidence to overcome the evidentiary presumption favoring the Proof of Claim. *See, e.g.*, Payment Log (showing that payments from the Chapter 13 Trustee on behalf of the Debtor made to Wells Fargo

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<sup>2</sup>“A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.” Fed. R. Bankr. P. 3001(f).

<sup>3</sup>The court admitted all the documents proffered for admission by the parties at the Hearing. At the Hearing, the Court also overruled an objection by the Debtor to the admission of the Payment Log because the Debtor did not make the objection in a timely fashion in compliance with the Court’s Pretrial Scheduling Order Following Pretrial Conference (Doc. 56).

between November 2000 and March 2001 were placed in a suspense account and not applied immediately to reduce the Mortgage balance or Arrearage Claim). *Compare* Payment Log (showing a \$905.79 Mortgage payment due in July 2003), *with* Debtor Ex. 9 (showing a \$1,038.29 Mortgage payment due in July 2003 taken from Wells Fargo escrow documentation).

Therefore, the burden of going forward with evidence to sustain its Proof of Claim rested with Wells Fargo. At the Hearing, Wells Fargo presented the testimony of Ms. Beauchamp. Despite the fact that she admittedly did not have a hand in creating the Payment Log, she nevertheless attempted to explain its construction and meaning. While the Court does not question Ms. Beauchamp's sincerity, she simply could not explain significant portions of the Payment Log and even proffered testimony that contradicted it. For example, Ms. Beauchamp testified that Wells Fargo waived all the late fees assessed against the Debtor, yet the Payment Log showed that \$150.02 in late fees had not been waived.

Based upon the inconsistencies between the admitted exhibits, the lack of explanatory evidence as to the Payment Log and the inconsistencies in the testimony of Ms. Beauchamp, the Court finds that Wells Fargo failed to establish its Arrearage Claim by a preponderance of the evidence. Therefore, the Court **SUSTAINS** Debtor's Objection and disallows the Arrearage Claim.

Wells Fargo shall file an amended Proof of Claim within thirty (30) days of the Hearing, i.e., by **May 11, 2005**. Any amended Proof of Claim filed by Wells Fargo shall be prepared in accordance with the methodology described by the Court on the record at the Hearing.

**IT IS SO ORDERED.**

Copies to:

Jennifer Marie Leggett, Debtor, *6077 Leafridge Lane, Columbus, OH 43232*  
Grady L. Pettigrew, Jr., Attorney for Debtor, *115 W. Main, 4th floor, Columbus, OH 43215*

Phyllis A. Ulrich, Attorney for Creditor Wells Fargo Bank, N.A., *24755 Chagrin Blvd., Suite 200, Cleveland, Ohio 44122-5690*

Frank M. Pees, Chapter 13 Trustee, *130 E. Wilson Bridge Road, Suite 200, Worthington, OH 43085*

Office of the U.S. Trustee, *170 N. High Street, Suite 200, Columbus, Ohio 43215*

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