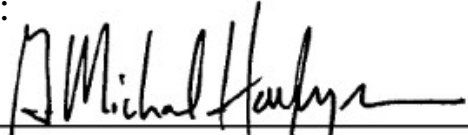




THE FOLLOWING ORDER
IS APPROVED AND ENTERED
AS THE ORDER OF THIS COURT:

DATED: March 3, 2017


G. Michael Halfenger
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In Re:

Angela Wright,

Case No. 16-21463-GMH

Debtor.

Chapter 13

**ORDER DENYING FIRST NATIONAL BANK'S APPLICATION FOR APPROVAL
OF ATTORNEY FEES PURSUANT TO BANKRUPTCY RULE 2016**

On September 9, 2016, First National Bank filed an application for approval of attorney fees and costs pursuant to Bankruptcy Rule 2016. CM-ECF Doc. No. 46. First National Bank is a mortgage creditor in the debtor's bankruptcy case. *Id.* at ¶2. It seeks to recover fees that First National Bank paid its own lawyers to litigate on First National Bank's behalf and associated costs. *Id.* at ¶4, 5. It bases its right to payment on a promissory note and mortgage, which allow the bank to recover reasonable collection costs from the debtor. CM-ECF Doc. No. 62 at 3, 26–38.

The issue is whether Rule 2016 affords an appropriate mechanism for First

National Bank to pursue “[c]ompensation or [r]eimbursement” of \$10,890.98 in attorney fees and costs. See Fed. R. Bankr. P. 2016(a). First National Bank incurred some of these fees and costs filing a claim and objecting to the debtor’s chapter 13 plan in this case; it incurred the remaining fees and costs before the debtor commenced this case. CM-ECF Doc. No. 46 at 3–32.

Rule 2016’s text uses terms suggesting that its purpose is to provide a mechanism for seeking the allowance of administrative expenses under 11 U.S.C. §503. Compare Fed. R. Bankr. P. 2016(a) (the title of this subsection is “Application for Compensation or Reimbursement”) with 11 U.S.C. §503(2), (3) (also using the terms “compensation” and “reimbursement”). And while Rule 2016 does permit a creditor to file a Rule 2016 application, this is most readily explained by the fact that §503(b)(3) authorizes the allowance of administrative expenses to creditors who further the cause of the bankruptcy estate under specific circumstances, such as creditors who file an involuntary petition under §303 or, with the court’s permission, recover property for the estate that the debtor had transferred or concealed. 11 U.S.C. §503(b)(3)(A)–(B). First National Bank’s fees were not incurred to benefit the estate in a way captured by §503(b)(3), so, it could not seek allowance of those fees using Rule 2016, if one accepts that Rule 2016 is a procedure limited to seeking the allowance of administrative expenses.

Several decisions, however, have given Rule 2016 a broader domain. *Patterson v. Homecomings Financial, LLC (In re Patterson)*, for example, concluded that in the days before Rule 3002.1, Rule 2016 provided an avenue for compelling mortgage creditors to disclose post-petition fees and expenses purportedly due under the mortgage note. 444 B.R. 564, 571 (Bankr. E.D. Wis. 2011). Regardless of the merits of that approach in 2011, the adoption of Rule 3002.1 in 2016 has displaced it. The claims allowance procedure of §502, supplemented by Rule 3002.1(c)’s requirement that the creditor give notice of allegedly recoverable post-petition “fees, expenses, or charges”, leaves no

obvious need for incurring the cost to judicial administration by requiring Rule 2016 applications for fees and costs claimed by creditors that are not governed by §503.

In all events, First National Bank filed a timely proof of claim based on its status as the holder of a mortgage note. Claim No. 7-1. The fees it alleges are due under the note and mortgage are properly part of its claim. See 11 U.S.C. §§501, 502. First National Bank subsequently filed an amended claim and Rule 3002.1 notice seeking the same fees it seeks in its Rule 2016 application. See Claim No. 7. No one has objected. And, in the absence of an objection, the fees are allowed. 11 U.S.C. §502(a).

As a result, First National Bank's Rule 2016 application is unnecessary. The application is denied as moot, without prejudice to First National Bank's pursuing payment of its fees and costs through the claims allowance process.

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