

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE: )  
 )  
DOMINIC L. JOHNSON, ) Case No. 18-122  
 )  
Debtor. )

ORDER GRANTING MOTION TO DETERMINE MORTGAGE FEES AND EXPENSES

This case is before the court on the debtor’s motion (doc. 50) to determine mortgage fees and expenses pursuant to Federal Rule of Bankruptcy Procedure 3002.1(e) and the response filed by the lender Guaranty Trust Company (doc. 54). The debtor challenges the fees listed in Guaranty’s Notice of Postpetition Mortgage Fees, Expenses, and Charges under Rule 3002.1 filed on June 26, 2018. Specifically, Guaranty listed “Bankruptcy/Proof of Claim Fees” in the amount of \$550.00 and fees for “Plan Review” in the amount of \$350.00. Having carefully considered the record in this case, the parties’ arguments, the language of the mortgage,<sup>1</sup> and the applicable law, the court grants the motion and disallows the fees.

In analyzing the debtor’s motion, “the [c]ourt must look to the underlying agreement and applicable nonbankruptcy law to determine if the amounts are permissible.” *See In re Clark*, 593 B.R. 661, 663 (Bankr. S.D. Ala. 2018) (citation and quotation marks omitted). “A lender is only permitted to collect mortgage fees, expenses, and charges in bankruptcy if the underlying agreement or applicable nonbankruptcy law so permit.” *Id.* (citation omitted).

The Guaranty mortgage contains a choice of law provision that the law of the jurisdiction in which the property is located – in this case, Alabama – applies. “It is well-established law in Alabama that the parties to a mortgage may agree to the payment of reasonable fees if certain

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<sup>1</sup> A copy of the mortgage is attached to Guaranty’s proof of claim no. 13.

circumstances arise or actions are taken.” *In re England*, 586 B.R. 795, 799-800 (Bankr. M.D. Ala. 2018) (emphasis omitted). “Therefore, a mortgagee may recover reasonable fees incurred in connection with the enforcement of a mortgage only where the mortgage contractually imposes a duty on the mortgagor to pay those fees.” *Id.* at 800 (citation and quotation marks omitted). “Furthermore, provisions in a mortgage permitting fees must be unambiguous and will only be enforced to the extent so provided for by the language of the mortgage.” *Id.*

Guaranty bears the burden of establishing its entitlement to the attorney’s fees. *See id.* at 802; *In re Trudelle*, No. 16-60382-EJC, 2017 WL 4411004, at \*3 (Bankr. S.D. Ga. Sept. 29, 2017). Guaranty argues that the fees are permitted by the language of paragraph 7 of the mortgage. This court has explicitly rejected that argument with respect to fees associated with the preparing and filing a proof of claim in *In re Edwards*, No. 17-1707 (Apr. 4, 2019). Judge Oldshue has also found the language at issue is ambiguous and thus unenforceable with respect to attorney’s fees for “plan review,” and this court now adopts that holding. *See In re Clark*, 593 B.R. at 663.

The court thus grants the debtor’s motion (doc. 50) to determine mortgage fees and expenses and disallows the fees listed on Guaranty Trust Company’s Notice of Postpetition Mortgage Fees, Expenses, and Charges filed on June 26, 2018.

Dated: August 1, 2019

  
HENRY A. CALLAWAY  
CHIEF U.S. BANKRUPTCY JUDGE