

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 01-06695-DHW
Chapter 13

CHARLES RAY MONEY,

Debtor.

**ORDER OVERRULING OBJECTION
TO PROOF OF CLAIM**

On May 5, 2003, Charles Ray Money (hereinafter “debtor”) filed an objection to Countrywide Home Loans, Inc.’s (hereinafter “Countrywide”) proof of claim (Docket Entry 32). The objection was initially set for hearing on June 9, 2003, but was continued from time to time at the request of the parties. Finally, at a hearing on December 1, 2003, the court was advised that the parties would file a joint stipulation of undisputed facts and that thereafter the matter could be taken by the court as submitted.

On December 22, 2003, the debtor’s counsel filed a letter which contained, *inter alia*, stipulated facts (Docket Entry 45). That same day Countrywide filed a brief, which also contained certain factual allegations (Docket Entry 46). Taking these two documents cumulatively, the court concludes that the following facts are undisputed.

The debtor filed this chapter 13 case on October 24, 2001. His 100% repayment plan was confirmed on December 20, 2001.

At the time of filing the debtor owned real property at 505 Chisholm Street, Montgomery, Alabama, which had a value of \$16,830. The property is subject to the mortgage of Countrywide.

On January 11, 2002, Countrywide filed a proof of claim for \$3,075.84. Thereafter, on September 4, 2002, Countrywide amended the original claim so that the claim then totaled \$8,493.48. A component of the amended claim is denominated “other costs” and totals \$2,405.00.

The debtor objects to four parts of the “other costs” component totaling \$1,671.10. This comprises 1) \$650 for the installation of a temporary roof tarp and travel charges to do so, 2) \$397.50 for lock installation, lawn maintenance, winterization, and photographs, 3) \$148.60 for lock installation and plywood¹, and 4) \$475.00 for legal fees associated with filing the amended claim and a motion for relief from stay. All four of these claim components were incurred after the debtor filed for bankruptcy relief.

Unless a party in interest objects, a proof of claim is deemed allowed merely upon its proper filing. *See* 11 U.S.C. § 502(a). Further, a properly filed claim constitutes prima facie evidence of the validity and amount of the claim. *See* Fed. R. Bankr. Proc. 3001(f). Once a party in interest objects to a properly filed proof of claim, the objecting party has the burden of presenting sufficient evidence to rebut the Rule 3001(f) presumption of validity, and once done, the ultimate burden of proof rests with the claimant to prove the amount of the claim. Hence, in a claims contest matter, there is a shifting burden of proof with the ultimate burden of proof resting upon the claimant. *In re Allegheny International, Inc.*, 954 F.2d 167, 173-174 (3rd Cir. 1992).

In the case *sub judice* the debtor contests the reasonableness of \$1,671.10 included in the “other costs” component of Countrywide’s claim. The objection is based upon the assertion that these charges were “unauthorized by either the debtor or his bankruptcy counsel” or were unreasonable and excessive in that the value of the debtor’s property was significantly greater than the debt to Countrywide. *See* Docket Entry 45, second page, “Debtor’s Contentions”. The court does not agree.

Here, the value of the debtor’s property is almost double the amount of Countrywide’s amended claim. Therefore, Countrywide is an over-secured creditor. The Bankruptcy Code provides:

(b) To the extent that an allowed secured claim is secured by property the value of which . . . is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

¹Apparently, the debtor removed or destroyed the locks that were originally installed by Countrywide’s representatives.

11 U.S.C. § 506(b). Therefore, Countrywide, as an over-secured creditor, is authorized by statute to include in its claim accrued post petition interest and other reasonable post petition costs as provided by the original contract. The mere fact that the costs were not authorized by the debtor or the debtor's counsel does not make the claim unreasonable.² Neither does the fact that there is a substantial equity in the property preclude these post petition costs as unreasonable. Indeed, it is a result of that equity that the creditor can make a claim for these costs.

The debtor, therefore, has failed to sufficiently meet his burden of overcoming the presumption of validity accorded to the properly filed claim. Accordingly, it is

ORDERED that the debtor's objection to the claim of Countrywide Home Loans, Inc. is OVERRULED.

Done this the 8th day of January, 2004.

/s/ Dwight H. Williams, Jr.
United States Bankruptcy Judge

c: Debtor

Lewis B. Hickman, Jr., Attorney for Debtor

John T. Bender, Attorney for Countrywide Home Loans Inc.

Curtis C. Reding, Trustee

² The debtor did not argue that the costs were not authorized by the contract.