

SO ORDERED.

SIGNED this 10th day of April, 2018.



*Lena Mansori James*  
LENA MANSORI JAMES  
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

In re:	)	
	)	
Maurice Wilson and	)	Case No. 13-80652
Mary Daniel Wilson,	)	
	)	
Debtors.	)	Chapter 13
	)	

**ORDER SUSTAINING OBJECTION TO AMENDED CLAIM NUMBER 6**

THIS MATTER came before the court for hearing on April 5, 2018 in Durham, North Carolina upon the Debtors' Objection to Amended Claim Number 6 of Ocwen Loan Servicing LLC. At the hearing, A.B. Harrington, III appeared on behalf of the Debtors, Michael Emery appeared on behalf of Ocwen, and Chapter 13 Trustee Richard Hutson, II appeared. Mrs. Wilson appeared and testified at the hearing. After considering the pleadings, evidence, and other matters of record, the court finds and concludes as follows:

1. The Debtors filed a petition for relief under Chapter 13 of the Bankruptcy Code on May 17, 2013. Ocwen has a first priority deed of trust on the Debtors' real property located at 1101 Broadway Road in Sanford, North Carolina. The Debtors' Chapter 13 plan,

confirmed in August 2013, provides for monthly payments on Ocwen's claim as a long-term continuing debt as well as payment of its arrearage claim.

2. The deadline for filing claims was September 26, 2013; Ocwen did not timely file a claim. On November 5, 2013, the Debtors filed a proof of claim on behalf of Ocwen in the amount of \$92,700.28, with the arrearage listed at \$4,797.86. The Trustee filed a motion to allow Ocwen's claim as a long-term continuing debt, paid in monthly installments of \$813.72, and an arrearage claim of \$7,239.02. Ocwen was served a copy of this motion in accordance with Rule 7004 of the Federal Rules of Bankruptcy Procedure and did not file a response. The court granted the Trustee's motion on December 17, 2013.

3. Since December 2013, the Trustee has disbursed monthly mortgage payments to Ocwen, adjusting the payment amount eight times in response to notices of mortgage payment change filed by Ocwen. On January 3, 2018, more than four years after the Debtors' plan was confirmed, Ocwen filed an amended proof of claim which lists Ocwen's secured claim as \$100,580.01 with an arrearage of \$10,379.07. On February 26, 2018, the Debtors filed the Objection, asserting the amended claim was untimely and prejudicial to the Debtors. The Debtors contend that Ocwen should be estopped from amending its claim as a matter of fairness and equity. Ocwen filed a response to the Objection indicating it was reviewing the allegations and exploring potential resolutions.

4. At the hearing, the Trustee argued in support the Debtors' Objection, noting that his office had sent correspondence to Ocwen on multiple occasions since the petition date and received no response. Counsel for Ocwen represented that his firm had been retained to file notice of mortgage payment changes after the Debtors filed the petition; the firm had not been retained to file a proof of claim until recently. The Debtors introduced into evidence a Form 1098 mortgage interest statement for year 2017 as Exhibit 1 which reflects an outstanding principal balance as of January 1, 2017 of \$86,797.74. Ocwen does not object to a finding that the principal balance on the Debtors' loan to Ocwen was \$86,797.74 as of January 1, 2017.

5. In this district, courts have considered the totality of the circumstances in deciding whether to allow an amendment to an earlier claim, including a review of the following factors: (1) the diligence of the creditor; (2) the diligence of the debtor; (3) the sophistication of the parties; (4) whether the actions of the debtor indicate a lack of good faith; (5) whether the actions of the creditor indicate a lack of good faith; (6) whether there is any indication that either party is attempting to game the system; and (7) any impermissible prejudice to parties in interest that will result in allowance or disallowance of an amendment. *In re Dilone*, No. 13-11303C-13G, 2015 WL 6951688, at \*1 (Bankr. M.D.N.C. June 29, 2015).

6. Here, Ocwen waited almost 50 months to file its amended claim; Ocwen's delay was unreasonable and shows a lack of diligence that weighs against allowing the amended claim. *See Id.* at \*8 (finding that waiting seven months to file an amendment to claim constitutes a lack of diligence). *See also In re Mason*, 520 B.R. 508 (Bankr. S.D. Miss. 2014) (disallowing an amended proof of claim where the creditor waited over 52 months to file the amendment).

7. Prior to filing its amended claim, Ocwen ignored numerous requests by the Trustee's office to file a claim while it otherwise fully participated in the case by receiving disbursements from the Trustee and filing eight notices of mortgage payment change over a period of three and half years. Ocwen finally amended its claim just months from the completion of the Debtors' case, leaving the Debtors little time to absorb the impact of the increased arrearage claim, effectively sandbagging the Debtors' Chapter 13 plan. Ocwen's actions suggest a lack of good faith.<sup>1</sup>

8. The court further notes that Ocwen is a sophisticated mortgage servicing company with frequent involvement in Chapter 13 cases in this district and a full understanding of the importance of determining the amount of an arrearage claim well before the last six months of a Chapter 13 plan.

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<sup>1</sup> The court finds no fault with counsel for Ocwen, who has conducted himself with professionalism, diligence, and care in handling the matters for which he was retained.

9. Turning to the Debtors, the record reflects that they have acted with diligence throughout their case. In response to Ocwen's failure to timely file a proof of claim, the Debtors filed a claim on Ocwen's behalf so that the Trustee would disburse ongoing mortgage payments as well as payments on the arrearage. The Debtors have made all required payments under their Chapter 13 plan without a payroll deduction, and are current on their plan payments. Finally, the Debtors filed the Objection less than two months after Ocwen filed the amended claim, and Mrs. Wilson appeared at the hearing. There is nothing in the record to indicate the Debtors' lack of good faith in any of their actions.

9. Further, the Debtors would be substantially and impermissibly prejudiced if the court were to allow the amended claim. Since the Debtors have only a handful of months remaining in which to complete their plan, allowing the amendment would result in a plan payment increase of approximately \$1,000.00 per month, almost doubling the Debtors' current plan payment. The evidence shows that the Debtors cannot afford such an increase, and the increase would jeopardize the successful completion of their plan.

10. Ocwen does not refute that allowing its amendment will substantially prejudice the Debtors. Also, nothing in the record indicates that Ocwen would be impermissibly prejudiced by sustaining the Objection, nor does Ocwen argue as such.

As a general rule amendments to proofs of claims should be allowed liberally, but in this case after careful consideration of the totality of the circumstances, the court finds cause to sustain the Debtors' Objection. It is hereby ORDERED that the Debtors' Objection to Amended Claim Number 6 is SUSTAINED and the Amended Claim is DISALLOWED. The outstanding principal balance of the Debtors' mortgage with Ocwen is declared to be \$86,797.74 as of January 1, 2017; and upon successful completion of the Debtors' confirmed plan and payment of all arrears provided for under existing court orders, the Debtors' mortgage shall be deemed current.

**END OF DOCUMENT**

PARTIES TO BE SERVED

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13-80652 C-13

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