UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

MARY L. DESCHAMPS, Chapter 13

Debtor. Case No.: 98-12097

APPEARANCES:

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Attorneys for the Debtor

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Attorneys for Chase Manhattan Mortgage Corporation

Hon. Robert E. Littlefield, Jr., United States Bankruptcy Judge

Memorandum-Decision and Order

Before the court is a motion, filed by Mary L. Deschamps (the "Debtor") on September 19, 2003, under section 502 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 - 1330 (the "Code"), for an order disallowing, in part, the secured claim of Chase Manhattan Mortgage Corporation ("Chase"). Chase filed opposition to the motion and oral argument was heard during the court's regular motion term on March 25, 2004. The matter was then submitted for decision. The sole issue is the amount of Chase's prepetition mortgage arrearage that the Debtor proposes to cure in the Chapter 13 plan.

Jurisdiction

The court has core jurisdiction over the parties and subject matter of this dispute pursuant to 28 U.S.C. §§ 1334(b), 157(a), (b)(1), (b)(2), (b)(2)(B) and (O).

Factual Background

On March 27, 1998, the Debtor filed a Chapter 13 petition (the "Petition") and plan (the "Plan"). The Plan proposed to pay arrearage to Chase in the amount of $5,696.72, while making current monthly

payments outside the Plan. According to the Plan, this amount included eight monthly payments of $712.09 for the period from August 1997 to March 1998. (Plan ¶ 2.)

Under Federal Rule of Bankruptcy Procedure 3002, both secured and unsecured creditors must file their proofs of claim within ninety days after the first date set for the § 341 meeting of creditors. In this case, the proof of claim deadline was set for July 28, 1998. Chase filed its proof of claim against the Debtor in the amount of $97,762.96, which includes arrearage in the amount of $32,013.78, on June 24, 1998 (the "Claim"). Attached to the Claim is an arrearage computation sheet providing the following itemization:

Monthly Payments Due: 33 months 7/1/95 thru 3/27/98 at $712.09 each =	23, 498.97
Late Charges Due: 33 months 7/95 thru 3/98 at $10.17 each =	335.61
Late Charges prior to default of 7/1/95	369.81
Pre-Petition Escrow Shortage	5,612.73
Other: Property Inspections (12 @ $15.00 each)	180
Subtotal Due as of Filing Date	29,997.12
Prior Chapter 13 Fees and Costs	0
Attorney Fees for Proof of Claim	150
Foreclosure Fees and Costs under Index No.: 612-98	1,866.66
Subtotal Claimed	32,013.78
9% Interest over a 60 month period	7,859.48[1]
TOTAL ARREARAGE/CHARGES	**39,873.26**

As a basis for her motion, the Debtor states, "The worksheet attached to the Claim shows the Debtor did not make 26 payments from *May 1, 1991 to June 1, 1993*." (Debtor's Mot. Objecting to Claim Pursuant to 11 U.S.C. § 502 ¶ 3) (emphasis added.) The Debtor continues to state that she made eight payments of $722.26

[1] Chase did not include the interest amount on the face of its proof of claim.

each, or $5,778.08 total, during that time period. Attached to the Debtor's motion are photocopies of nine negotiated checks from the Debtor to Chase between January 31, 1991 and May 10, 1993, which total $6,487.65. The Debtor's motion, however, seeks an order reducing the arrearage portion of the Claim by only $5,778.08, from $32,013.78 to $26,235.70.

Arguments

In opposition to the Debtor's motion, Chase presented an initial affidavit and two supplemental affidavits of Joel P. Peller, Esq. The initial affidavit stated that the Debtor's motion did not correspond to the time period addressed by the Claim. The supplemental affidavits were provided in explanation of the attached partial payment histories provided by Chase. In sum, Chase argues that the arrearage is substantiated by its records.

The Debtor's argument is confined to the four corners of the motion; the Debtor did not provide an affidavit or supplemental papers in support of her position. While the Debtor unequivocally argues that Chase's arrearage claim is overstated, it is unclear from the Debtor's motion, together with the exhibits, whether the amount in question is $5,778.08 or $6,487.65. For purposes of this decision, the court will assume that the contested amount is limited to $5,778.08, the amount which appears on the face of the motion.

Discussion

Under Federal Rule of Bankruptcy Procedure 3001(f), "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." Code § 502(a) provides that "a claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects." Where an objection has been filed, the objecting party bears the burden of presenting evidence to overcome the presumed validity and amount of the claim. The burden returns to the claimant only if the objecting party can produce sufficient evidence to overcome

the *prima facie* effect given to the claim. COLLIER ON BANKRUPTCY ¶ 502.02[3][f] at 502-19 (15 ed. Rev. 2004).

When an objection is made, the court must determine, after notice and a hearing, the amount of the claim at the time the bankruptcy petition was filed. 11 U.S.C. § 502(b). In this case, however, the Debtor has failed to provide any evidence, including an affidavit detailing the date and amount of any prepetition payment made between July 1995 and March 1998, which is the relevant time period based upon the Claim, to sustain her burden. The only evidence in support of the motion is copies of checks which were negotiated several years prior to the filing of the Petition and are outside the scope of the Claim.

The court also notes that the motion has been adjourned, at the parties' request, ten times. At the hearing following the tenth adjournment, on March 25, 2004, the matter was placed on reserve. Despite this procedural history, the Debtor still has not provided corrective or supplemental papers that adequately address Chase's valid opposition concerning the default dates. Moreover, the Debtor filed the Plan in March of 1998, which was confirmed by Order issued September 9, 1998. The Debtor has already been in bankruptcy longer than the period allowed by 11 U.S.C. § 1322(d), which states that "the plan may not provide for payments over a period that is longer than three years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than five years."

Conclusion

Based on the foregoing, the court concludes that the Debtor has failed to satisfy her burden under 11 U.S.C. § 502. The relief requested cannot be granted; therefore, the motion is hereby dismissed.

Dated:
Albany, New York

Hon. Robert E. Littlefield, Jr.
United States Bankruptcy Judge