The Margaret Thomas Case

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Federal Rule of Bankruptcy Procedure 3001 (herein, "Rule 3001"), sets out the requirements for filing a proof of claim in a bankruptcy case. One of the requirements under the Rule is that in the case of a residential mortgage, if there is an escrow account, the mortgage servicer is required to perform an escrow analysis as of the date the bankruptcy case was filed and attach a copy of that escrow analysis to the proof of claim.[1]

Although the case law on the subject is sparse, it is well settled, especially after the adoption of Official Forms 410 and 410A in 2015, that the projected escrow shortage at the time a bankruptcy case is filed is to be placed into the proof of claim (i.e., the arrears).[2] The instructions to Official Form 410A provide that the escrow shortage is to be listed on the "Projected" Escrow Shortage line in Part 3. Specifically, the instructions provide:

> "Insert any escrow deficiency for funds advanced. This amount should be the same as the amount of escrow deficiency stated in Part 2.
>
> **Insert the Projected escrow shortage as of the date the bankruptcy petition was filed.** (emphasis added). The projected escrow shortage is the amount the claimant asserts

[1] In his expert witness report (Doc. No. 41-1) filed in *In re Benner*, Case 15-31477-hcd (Bankr. N.D. Ill. 08/11/2017)(herein, "the Benner Report"), John Rao, consumer attorney and former member of the Judicial Conference Advisory Committee on Bankruptcy Rules, discussed the requirement for servicers to perform an escrow analysis when the bankruptcy case is filed:

> "…the escrow account analysis should have been prepared as of the petition date, showing the amount of the first post-petition payment due. . .[t]his method of determining a new escrow computation year has become the industry standard practice since Bankruptcy Rule 3001(c)(2)(C) went into effect on December 1, 2011."

[2] See, e.g., *Campbell v. Countrywide Home Loans, Inc.*, 545 F.23d 348 (5th Cir. 2008); *In re Rodriguez*, 629 F.3d 136, 138-139 (3d Cir. 2010)(The principle of protecting a bankruptcy debtor from all efforts to collect pre-petition claims outside of the Chapter 13 structure takes precedence over a creditor's rights under RESPA to recalculate escrow payments); *JPMorgan Chase Bank, Nat'l Ass'n v. Deguiseppi*, 2019 U.S. Dist. LEXIS 66125, 2019 WL 1724629 (C.D. Ill. 2019)(The Court concludes projected escrow shortages may constitute prepetition claims).

> should exist in the escrow account as of the petition date, less the amount actually held. The amount actually held should equal the amount of a positive escrow account balance as shown in the last entry in Part 5, Column O.
>
> This calculation should result in the amount necessary to cure any prepetition default on the note or mortgage that arises from the failure of the borrower to satisfy the amounts required under the Real Estate Settlement Practices Act (RESPA). The amount necessary to cure should include 1/6 of the anticipated annual charges against the escrow account or 2 months of the monthly pro rata installments due by the borrower as calculated under RESPA guidelines. The amount of the projected escrow shortage should be consistent with the escrow account statement attached to the Proof of Claim, as required by Rule 3001(c)(2)(C).

According to page 7 of the Benner Report (*supra*, at note 1):

> "For purposes of the escrow account analysis, any escrow deficiency or projected shortage should be included as part of the creditor's prepetition arrearage. The instructions for the current Form 410A make this clear by stating that 'a claimant should assume that the escrow deficiency and shortage will be paid through a plan of reorganization and provide for a credit of a like amount when calculating postpetition escrow installment payments.'
>
> Thus, the Mortgage Proof of Claim Attachment form anticipates that the servicer will include any projected escrow shortage, based on the escrow analysis done as of the petition."

The instructions to Official Form 410A provide that when calculating the post-petition mortgage payment in Part 4, the claimant take into consideration and assume that the escrow deficiency and the escrow shortage will be paid through the plan.

> Therefore, a claimant should assume that the escrow deficiency and shortage will be paid through a plan of reorganization and provide for a credit of a like amount when calculating postpetition escrow installment payments.

The rule requiring the projected escrow shortage in existence at the time the case is filed be included in the prepetition arrearage claim reflects the intent of the Rules Committee. Specifically, the intent is to give the debtor a longer period of time to cure the escrow shortage (up to 60 months) instead of the typical 12-month period provided for by RESPA and Regulation X. Spreading the escrow shortage over a longer period of time necessarily reduces the monthly payment for repaying the shortage. See John Rao, "Mortgage Proof of Claim Attachment – Rule 3001(c)(2)(C) and Official Form 410A":

> Thus, prepetition escrow account deficiencies, representing amounts disbursed by the servicer for taxes, insurance, and other escrow items when there were insufficient funds in the debtor's escrow account, are paid as part of the mortgage holder's arrearage claim during the longer cure period under the plan rather than in the shorter one-year period following the case filing as part of debtor's escrow portion of the postpetition mortgage maintenance payments.

The U.S. Bankruptcy Court for Eastern District of California recently discussed the requirements for Official Form 410A: As discussed in Collier on Bankruptcy, Sixteenth Edition, ¶ 3001.03 (emphasis added), the required Official Form 410A:

> [2] Content of Attachment A
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> Attachment A, which is denominated as Official Form 410A, is to be filed by a creditor if the creditor claims a security interest in a chapter 7 or chapter 13 debtor's principal residence. The form was substantially revised by amendments made in 2015, and requires the claimant to provide a loan history for the mortgage account.
>
> . . .
>
> Part 3 **requires a calculation of the amount necessary to cure any prepetition default as of the petition date**. The creditor must provide an itemization of the prepetition arrearage (less any funds held by the creditor) by stating

> the principal and interest due, prepetition fees due, **escrow deficiency for funds advanced, and projected escrow shortage**. The result of this calculation should be **the total amount needed to cure the entire prepetition arrearage**.
>
> The actual, accurate escrow shortage has to be properly computed for the pre-petition amount, not merely a "projected shortage of an escrow cushion"…[3]
>
> (emphasis original)

There are no exceptions listed in Rule 3001, the case law, or the instructions to Form 410A for the situation when the loan is current with respect to regular payments. Some debtor attorneys have argued that if a loan is current with respect to regular payments at the time a bankruptcy case is filed, it is impossible for an escrow shortage to exist, forgetting that it is not uncommon for there to be an escrow shortage outside of bankruptcy when a loan is current.

In general, an escrow shortage may arise if:

- The borrower is delinquent on regular payments
- The actual disbursements in the prior escrow computation period exceeded the amount of anticipated disbursements
- Anticipated disbursements for the upcoming year are higher than the previous escrow computation period

As expected, a combination of two or more of the above will increase the size of the escrow shortage.

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[3] *In re Garcia*, 603 B.R. 640, 645 (Bankr. E.D. Cal. 2019)(quoting Collier on Bankruptcy, Sixteenth Edition, ¶ 3001.03).

THE CHAPTER 13 CASE

Margaret Thomas (herein, "the Debtor") filed for relief under Chapter 13 on August 27, 2019. Her case, Case No. 19-32401, was filed in the U.S. Bankruptcy Court for the Middle District of Alabama (herein, "the Court").

At the time the case was filed, Nationstar Mortgage, LLC d/b/a/ Mr. Cooper (herein, "Mr. Cooper") serviced the mortgage against the Debtor's principal residence in Montgomery, Alabama. Mr. Cooper was represented in the Debtor's case by the attorneys of McCalla Raymer Leibert Pierce (herein, "MRLP") and specifically, Jack Duncan ("Duncan") and Michael McCormick ("McCormick").

The Debtor's Plan indicated the case would be for 60 months and further provided that the Debtor would make the post-petition mortgage payments directly to Mr. Cooper. The Plan did not provide for any prepetition arrears to Mr. Cooper.

Mr. Cooper filed claim number 10 (herein, "the Claim") on or about October 23, 2019 asserting a total balance of $87,199.76. The Claim included $649.76 in prepetition arrears in box 9 of Form 410, and Part 3 of Form 410A. The breakdown of the prepetition arrears was as follows:

Part 3: Arrearage as of Date of the Petition

Principal & Interest due:	$0.00
Prepetition fees due:	$35.00
Escrow deficiency for funds advanced:	$244.41
Projected escrow shortage:	$370.35
Less funds on hand:	$0.00
Total prepetition arrearage:	$649.76

THE OBJECTION TO CLAIM

On October 28, 2019, the Debtor filed her initial objection to the Claim (herein, "the Objection to Claim"). In the Objection to Claim, the Debtor objected "to the escrow shortage of $649.76 being paid through the Chapter 13 trustee as the creditor can adjust post-petition payment amounts in order to remedy any escrow imbalance and such claim can be dealt with outside the claims process." As explained previously, the escrow shortage was only $370.35 of the total $649.76 arrearage claim. The total prepetition arrearage also included $35.00 in prepetition fees and $244.41 for an escrow deficiency.

The Court also failed to understand that the escrow shortage comprised only a portion of the total arrears. In its order scheduling an evidentiary hearing on the Objection to Claim, the Court stated: "[t]he Court has reviewed the proof of claim of Nationstar and notes that the instructions permit an 'escrow shortage.' However, calling an amount, in this case $649.76, an 'escrow shortage' does not necessarily make it so."

The second problem with the Objection to Claim was the Debtor's argument "that such claim can be dealt with outside the claims process." To begin with, it is difficult to understand why the Debtor's own attorney would request that the escrow shortage be paid over the typical 12 months outside of the plan, as opposed to over 60 months, as intended by the Rules Committee. Since paying the escrow shortage over 12 months would require a higher monthly payment for the shortage spread than 60 months, this request by Debtor's counsel arguably poses ethical concerns (e.g., duty of loyalty to the client). Moreover, just as creditors cannot dictate to debtors or their attorneys which Code sections or bankruptcy rules should be followed or ignored, debtors should not be able to dictate to mortgage

servicers which Code sections or procedural rules applicable to creditors in a bankruptcy case that can be ignored or not followed.

Burden of Proof

Mr. Cooper timely filed the Claim and complied with Rule 3001 by providing the documentation required by Rule 3001(c) (i.e., note, security instrument, escrow analysis, Official Form 410A). Therefore, the Claim enjoyed the presumption of prima facie validity pursuant to Rule 3001(f).[4] Merely asking questions or raising general denials does not overcome that presumption.[5]

As explained by the Eleventh Circuit in the case of *Walston v. PYOD, LLC (In re Walston),* 606 Fed. Appx. 543, 545-46 (11th Cir. 2015), when a party in interest files an objection to claim, courts should utilize the following framework for evaluating the proof of claim:

> When a proof of claim contains all the information required under Rule 3001, it "constitute[s] prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). The burden then shifts to the objecting party to "'come forward with enough substantiations to overcome the claimant's prima facie case.'" *Benjamin v. Diamond (In re Mobile Steel Co.),* 563 F.2d 692, 701 (5th Cir.1977) (quoting 3A *Collier on Bankruptcy* ¶ 63.06 (14th ed.1976)). If the objecting party overcomes the prima facie case, then the burden of proof falls to the party that would bear the burden outside of bankruptcy. *Raleigh v. Ill. Dep't of Revenue,* 530 U.S. 15, 20, 120 S.Ct. 1951, 147 L.Ed.2d 13 (2000); 9 *Collier on Bankruptcy* ¶ 3001.09[2] (16th ed.2015).

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[4] *In re Holm,* 931 F.2d 620, 623 (9th Cir. 1991)(quoting 3 Lawrence P. King, Collier on Bankruptcy, ¶ 502.02, at 502-22 (15th ed. 1991); *In re Barron*, 325 B.R. 17, 20 (Bankr. M.D. Ala. 2005)(Williams, J.)("A properly filed proof of claim constitutes prima facie evidence of both the validity and amount of the claim.")(citing Fed. R. Bankr. P. 3001(f)).

[5] See *Allegheny Intern, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992); *In re LJL Truck Ctr., Inc., 299 B.R. 663, 666* (Bankr.M.D.Ga.2003*)*(Walker, B.J.)("The objecting party bears the burden of rebutting the presumption through 'facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim'"); *Barron*, 325 B.R. at 20 ("the objecting party has the burden of producing evidence sufficient to meet the evidentiary weight accorded to the claim under the Rules.")(citing *In re Allegheny Int'l, Inc.*, 954 F.2d 167 (3rd Cir. 1992)).

The Evidentiary Hearing

The Debtor did not provide any evidence to overcome the presumption under Rule 3001(f) in the Objection to Claim or at the evidentiary hearing held on February 5, 2020. In fact, Debtor did not dispute the numbers contained in the Claim. Instead, the argument by Debtor's counsel at the evidentiary hearing consisted of seeking to have the Court change or ignore the requirements for handling the escrow deficiency and escrow shortage (even though there were additional amounts in the Claim that would still need to be paid). Therefore, in the opinion of MRLP, the Objection to Claim should have been quickly overruled.[6] Instead, however, the Court placed the burden on Mr. Cooper to "prove the validity of its claim."

In addition to walking the Court through and showing the calculations for determining the escrow shortage and other amounts included in arrearage portion of the Claim (i.e., Part 3 of Form 410A), Mr. Cooper's attorneys discussed the development of the case law, bankruptcy rules and forms applicable to proofs of claims and the calculation of the escrow amounts to be included in a proof of claim.

Importantly, counsel for Mr. Cooper requested that the Court not deviate from the bankruptcy rules, forms and case law governing the preparation of proofs of claim, including the proper calculation of the escrow amounts to be included in a proof of claim. This argument included arguing for overruling the prevailing case law in the Middle

[6] *Nelson v, Nationstar Mortg. LLC (In re Nelson)*, 607 B.R. 685, 704 (Bankr. N.D. Ala. 2019)(Jessup, J.)("Challenges to the validity of a proof of claim without competent supporting evidence and legal authority does not rebut the prima facie presumption of Bankruptcy Rule 3001.").

District since it was inconsistent with the federal bankruptcy rules and forms, as well as case law in the rest of the country.

Further, the attorneys from MRLP requested that the Court not allow the Debtor to dictate which rules of bankruptcy procedure Mr. Cooper (or its predecessors and successors) could follow or ignore.

Again, were the Court to grant the relief requested in the Objection, the effect would have been to pull the escrow shortage out of the Claim (even though there would still be additional amounts that need to be claimed) and raise the Debtor's post-petition mortgage payments for the period from September 1, 2019 through August 31, 2020. Obviously, this would frustrate the intent of the Rules Committee (as well as Congress and the Supreme Court of the United States).

Duncan argued the case persuasively on behalf of Mr. Cooper at the evidentiary hearing. The Court admitted the expert testimony of McCormick (without any objection from Debtor's counsel or Trustee's counsel) regarding the calculations in the Claim (including the escrow shortage) and the history and development of the case law, rules and forms governing the preparation of proofs of claim, and the proper handling of escrow shortages in Chapter 13.

After hearing the presentation and arguments of counsel, the Court took the matter under advisement.

Prevailing Case Law in the Middle District of Alabama

Working against Mr. Cooper in this case was an anomalous decision by retired bankruptcy judge Dwight Williams that has been relied upon by debtor's attorneys in the Middle District of Alabama.

In *In re Gonzales*, 2010 WL 1490057 (Bankr. M.D. Ala. 2010), Judge Williams ruled that it was improper for the creditor to include the escrow shortage at the time the case was filed into the proof of claim. But reliance on *Gonzales* is problematic for a number of reasons.

Granted, Official Form 410A was not adopted until 2015, and the instructions to the form clarify that the escrow shortage is to be included as part of the arrears. Nevertheless, at the time the *Gonzales* case was decided, several courts had already ruled that the escrow shortage should be included in the proof of claim.[7] The *Gonzales* opinion does not mention either of these cases, or otherwise cite to any case law as the basis for its decision. One would think that if the court was aware of the *Campbell* and *Rodriguez* decisions, the court would attempt to distinguish the case before it from those cases, or at least discuss them. The Margaret Thomas case was also distinguishable from *Gonzales* because in *Gonzales* the loan was contractually current and other than attorney fees for preparing the claim, the arrearage claim was made up entirely of the escrow shortage. Once again, in the Margaret Thomas case, the arrears included fees and costs, an escrow account deficiency, and the escrow shortage. Finally, the *Gonzales* decision cited to a local rule dealing with escrow after the confirmation of a case. But the escrow shortage in question was the escrow shortage that existed at the time the case was filed (i.e., pre-confirmation).

The *Gonzales* decision has not been cited to in any opinion on Westlaw or Lexis.

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[7] See, e.g., *Campbell v. Countrywide Home Loans, Inc.,* 545 F. 3d 348 (5th Cir. 2008); *In re Rodriguez,* 391 B.R. 723, 731–32 (Bankr.D.N.J.2008).

THE MOTION FOR RELIEF FROM THE AUTOMATIC STAY

On February 18, 2020, just a few weeks after the evidentiary hearing on the Objection to Claim, Mr. Cooper filed a motion for relief from the automatic stay. Mr. Cooper filed an amended motion for relief from the automatic stay later on February 18, 2020. In its amended motion for relief from the automatic stay, Mr. Cooper alleged the Debtor was delinquent on post-petition mortgage payments.

On May 18, 2020, the Court entered an order conditionally denying the motion for relief from the automatic stay (herein, "the Consent Order"). Paragraph 2 of the Consent Order provided that the post-petition delinquency included the post-petition mortgage payments from November, 2019, through and including March, 2020 (i.e., the Debtor had failed to make the first 5 post-petition mortgage payments). It logically follows that since Mr. Cooper did not receive all of the post-petition mortgage payments during the first year of the case, Mr. Cooper also did not receive all 12 escrow payments as anticipated in the escrow analysis attached to the Claim. It should therefore come as no surprise that since the Debtor failed to remit five (5) monthly escrow deposits of $92.58 each (i.e., a total of $462.90), the expected ending balance for the escrow account at the end of the escrow period (August 31, 2020) would be less than expected, thus resulting in a post-petition escrow shortage.

THE TRANSFER OF CLAIM

On March 13, 2020, servicing of the Debtor's mortgage transferred from Mr. Cooper to Select Portfolio Servicing (herein, "SPS").

THE NOTICE OF MORTGAGE PAYMENT CHANGE

As previously stated, the escrow shortage included in the Claim was the projected escrow shortage in existence on the day the case was filed, pursuant to the requirement under Rule 3001 that an escrow analysis be performed as of the petition date. In other words, the escrow analysis performed was for escrow computation period beginning the month after the filing of this case (September 1, 2019 through August 31, 2020). See page 6 of the Benner Report (*supra*, at note 1): "In the Chapter 13 context, this means that the beginning date of the new escrow account computation year should correspond to the date the first postpetition mortgage payment is due."

On June 19, 2020, SPS filed a Notice of Mortgage Payment Change (herein, "the PCN") pursuant to Fed. R. Bankr. P. 3002.1 (herein, "Rule 3002.1"). Again, both Rule 3002.1 and Official Form 410S1 contemplate that the post-petition mortgage payment will change periodically throughout a chapter 13 case as a result of an escrow analysis being performed subsequent to the initial escrow analysis at the beginning of the case. See page 6 of the Benner Report (*supra*, at note 1): "Mortgage lenders or their servicers perform an escrow account analysis at the time an account is established and annually thereafter."

The escrow analysis performed May 21, 2020 was performed pursuant to and consistent with Regulation X. More specifically 12 CFR § 1024.17(e)(1), entitled "Transfer of servicing" provides in relevant part:

> (ii) Where the new servicer retains the monthly payments and accounting method used by the transferor servicer, then the new servicer may continue to use the escrow account computation year established by the transferor servicer or may choose to establish a different computation year using a short-year statement. At the completion of the escrow account computation year or any short year, the new servicer shall perform an escrow analysis **and provide the borrower**

> **with an annual escrow account statement**. (emphasis added).

24 CFR § 1024.17(f)(3)(ii) provides in relevant part:

> **(ii)** If an escrow account analysis discloses a shortage that is greater than or equal to one month's escrow account payment, then the servicer has two possible courses of action:
> **(A)** The servicer may allow a shortage to exist and do nothing to change it; or
> **(B)** The servicer may require the borrower to repay the shortage in equal monthly payments over at least a 12-month period.

SPS elected to spread the post-petition escrow shortage over 48 months, even though it could have done so over 12 months.

24 CFR § 1024.17(f)(5) provides in relevant part:

> **(5)** Notice of shortage or deficiency in escrow account. The servicer shall notify the borrower at least once during the escrow account computation year if there is a shortage or deficiency in the escrow account. The notice may be part of the annual escrow account statement or it may be a separate document.

The existence of an escrow shortage to be included in the proof of claim and the existence of a separate escrow shortage subsequent thereto after a post-petition escrow analysis has been performed is nothing unusual in chapter 13. But unlike the requirement to place the escrow shortage at the time the case is filed into the claim, a servicer is entitled to raise the post-petition mortgage payment for a post-petition escrow shortage.[8]

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[8] See *Hosley v. Wells Fargo Bank Minnesota*, 2008 WL 5169553 (N.D.N.Y. 2008)(““[Wells Fargo] is entitled, as a matter of law, to calculate and collect the shortage contribution as part of the post-petition monthly escrow deposit....”)(citing *In re Cole*, 202 B.R. 375 (Bankr.E.D.Pa.1996)(mortgagee may seek escrow deficits); *In re Rodriguez*, 391 B.R. at 729 (“Debtors...fail to explain satisfactorily why such rights afforded lenders under RESPA should be abrogated in the context of a Chapter 13 bankruptcy proceeding. Debtors' required shortage contribution is a charge authorized by and calculated in accordance with RESPA, as well as the underlying loan agreement; as such, any modification of such rights would contravene the

To emphasize, the projected escrow shortage included on the escrow analysis dated May 21, 2020 was a post-petition shortage for the escrow computation period from September 1, 2020 through August 31, 2021 (i.e., the second post-petition year of the case). This shortage was separate and apart from the projected escrow shortage included on the Claim (i.e., for the first post-petition year of this case). In fact, the escrow analysis dated May 21, 2020 took into account the amounts for escrow included in the Claim (i.e., it is assumed the prepetition escrow shortage will be paid through the plan), and had these amounts not been included in the Claim, the amount of the post-petition escrow shortage would have been even higher (since the starting balance for the escrow account for the new escrow analysis would be even lower). As stated in the escrow analysis dated May 21, 2020, the monthly payment effective September 1, 2020 would be:

Principal & Interest:	$678.52
Regular Escrow Payment:	$102.63
Shortage Spread:	$12.07
	$793.22

The regular escrow payment of $102.63 represented the monthly amount needed to fund the anticipated disbursement of $1,231.59 for hazard insurance during the escrow computation period from September 1, 2020 through August 31, 2021 (i.e., the second post-petition year of the case). The monthly shortage spread of $12.07 represented the amount necessary to repay the projected escrow shortage of $579.33 over a period of forty-eight (48) months (even though RESPA permits the Respondent to recoup over 12 months, which would mean an even higher payment).

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prohibition against modifying the rights of a holder of a claim secured by a security interest in a debtor's principal residence, found in 11 U.S.C. § 1322(b)(2).").

A review of the escrow analysis performed on May 21, 2020 also revealed the actual amount disbursed for hazard insurance during the first year of the case was $1,231.59, compared to the $1,110.99 projected in the initial escrow analysis (performed on September 25, 2019 for the Claim), a difference of $120.60. It should therefore come as no surprise that since the amount disbursed for hazard insurance was higher than anticipated (and the amount projected to be disbursed for next year would also be higher), the result would be a possible escrow shortage.

Since an order of confirmation had not been entered in this case as of May 21, 2020, the Trustee had not made any disbursements on the Claim.

THE SUPPLEMENTAL OBJECTION TO CLAIM

Failing to grasp that the escrow shortage in the May 21, 2020 escrow analysis was a post-petition escrow shortage that was separate and distinct from the escrow shortage in the Claim (largely because the Debtor had failed to make post-petition mortgage payments), the Debtor filed a supplemental objection to claim. Specifically, the Debtor alleged:

> This annual escrow analysis supports the Debtor's argument that the inclusion of the escrow shortage as "arrears" is improper and can be addressed outside the bankruptcy claims process. In fact, that is exactly what the Creditor is attempting by raising the debtor's mortgage payment based upon the current escrow shortage at the time of the Creditor's Annual Escrow Disclosure Statement. It then follows that the Debtor's Objection to Claim No. 10 should now be sustained based upon the fact that the Creditor no longer needs to cure the Debtor's escrow shortage within the Chapter 13 plan. In the alternative, the Debtor requests the Creditor amend its' Proof of Claim to comply with its' Annual Escrow Disclosure Statement.

Again, it is difficult to comprehend why the Debtor was seeking to have her post-petition mortgage payment for the first year of the case increased to deal with the escrow shortage when the Debtor had already shown difficulty in making the post-petition mortgage payments of $771.10 per month.

After the filing of the supplemental objection and SPS' response thereto, the Court scheduled a status conference on the Objection to Claim. The parties reiterated their factual and legal arguments, after which the Court again took the matter under advisement.

THE RULING

On October 14, 2020, the Court held another status conference, this time for the purpose of announcing its ruling on the Objection to Claim. The Court began by stating that it found the existence of an escrow shortage even though there was no default in payments to be "anomalous" (even though Judge Sawyer had acknowledged during the evidentiary hearing in February that he had experienced escrow shortages with his own mortgage even though he was current with payments). Nevertheless, the Court indicated it had reviewed the pleadings, Official Forms 410 and 410A (as well as the instructions thereto) and relevant case law (in particular, *Deguiseppi, supra* at note 2) and that it found no reason to deviate from the requirement that the escrow shortage in existence at the time the case was filed be paid through the Claim.

Interestingly, after announcing its ruling, Debtor's counsel made another request for a reduction in the post-petition mortgage payment in the second year of the case, still failing to understand that the escrow shortage on the PCN was separate and distinct from the escrow shortage included in the Claim (and largely the result of the Debtor's failure to make post-petition mortgage payments).

CONCLUSION

Although the Court declined to issue a detailed memorandum and opinion, the attorneys of MRLP believe the ruling in this case overrules *Gonzales* and we will make such an argument in future cases. In addition, this case in insightful for understanding the difference in the treatment of pre-petition escrow shortages in Chapter 13, versus post-petition escrow shortages.