

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 04-34674

BRENDA G. BAKER

Debtor

**MEMORANDUM ON OBJECTION
TO INCREASED MORTGAGE PAYMENT**

APPEARANCES: GAIL F. WORTLEY, ESQ.
3715 Powers Street
Knoxville, Tennessee 37917
Attorney for Debtor

WILSON & ASSOCIATES, PLLC
Julie G. Moss, Esq.
109 Northshore Drive
Suite 302
Knoxville, Tennessee 37919
Attorneys for Countrywide Home Loans

GWENDOLYN M. KERNEY, ESQ.
Post Office Box 228
Knoxville, Tennessee 37901-0227
Chapter 13 Trustee

**RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE**

This contested matter is before the court upon the Objection to Increased Mortgage Payment (Objection) filed by the Debtor on November 2, 2004, asking the court to disallow the increased mortgage payment of \$662.60 requested by Countrywide Home Loans (Countrywide) and to allow the \$643.32 payment set forth in the Debtor's Second Amended Chapter 13 Plan.

The evidentiary hearing on this matter was held on February 2, 2005. The record before the court consists of the Stipulations filed by the parties on December 29, 2004, including four stipulated exhibits, three additional exhibits introduced into evidence at the hearing, and the testimony of Angelica Williams, an Assistant Manager in Countrywide's Bankruptcy Department.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2) (B) (West 1993).

I

The Debtor filed the Voluntary Petition commencing her Chapter 13 bankruptcy case on September 2, 2004, within which she listed a mortgage debt owed to Countrywide in the amount of \$50,000.00, secured by a Deed of Trust on real property located at 310 McGinley Street, Maryville, Tennessee, which the Debtor valued at \$80,000.00. At the time of her bankruptcy filing, the Debtor's required monthly payment to Countrywide was \$586.26, consisting of \$543.43 in principal and interest and \$42.83 for escrow. Based upon this monthly payment, the Debtor's original Chapter 13 Plan, filed on September 2, 2004, proposed a monthly maintenance payment of \$587.00 and evidenced arrearages of \$3,075.00, to be paid at \$60.00 per month at 0% interest.

On October 12, 2004, Countrywide filed its proof of claim in the amount of \$50,889.73, which included an arrearage claim in the amount of \$4,615.71. *See* STIP. EX. 2. The arrearage claim includes the following pre-petition charges: (1) seven payments due from March 2004 through

September 2004, totaling \$3,904.01; (2) an escrow shortage of \$954.96; (3) foreclosure fees and costs of \$625.00; (4) property inspections of \$348.00; (5) previous bankruptcy fees and costs of \$240.00; (6) post-petition, pre-confirmation attorney's fees of \$275.00; and (7) a credit in the amount of \$1,631.26 for the suspense account.

Countrywide also sent a letter to the Chapter 13 Trustee on October 12, 2004, advising her that the Debtor's post-petition mortgage payment had increased to \$662.60 "due to escrow changes" effective October 1, 2004. Following this notice, the Debtor filed her Objection. Additionally, the Debtor filed an Amended Plan on November 2, 2004, again proposing a maintenance payment of \$587.00, but increasing the arrearage claim to \$4,615.71, as reflected on Countrywide's proof of claim, to be paid at \$80.00 per month plus 0% interest.

On November 1, 2004, Countrywide prepared an Escrow Account Review (Account Review), showing a breakdown of the principal, interest, and escrow on the Debtor's account and how it arrived at the proposed payment when it analyzed the account on September 29, 2004. *See* STIP. EX. 4. This document lists the Debtor's pre-petition monthly payment in the amount of \$586.26, as well as the proposed monthly payment of \$662.60. The proposed payment consists of principal and interest in the amount of \$543.43, an increased escrow of \$85.67, a reserve requirement of \$14.22, and an escrow shortage payment of \$19.28, which is being challenged by the Debtor. The Account Review also reflects that, as of September 29, 2004, the Debtor's annual property taxes, which will be due on October 1, 2005, are \$279.00, and the property insurance is \$749.00, due on August 25, 2005.¹ Based upon those annual amounts, the Account Review shows a total monthly escrow

¹ Ms. Williams testified that Countrywide paid the Debtor's property taxes on September 15, 2004, in the amount of \$317.00. Accordingly, the Debtor's escrow account must reflect the increase in her property taxes from \$279.00 to \$317.00.

requirement for taxes and insurance of \$85.67. The Account Review further evidences a negative escrow balance in the amount of \$1,271.96.

On December 22, 2004, the Debtor filed her Second Amended Chapter 13 Plan, in which she proposes a monthly maintenance payment of \$643.32, which reflects the increased escrow payment and the reserve requirement. She again proposes to pay the \$4,615.71 arrearage claim in monthly installments of \$80.00 plus 0% interest. *See* STIP. EX. 2. To date, the Debtor's Plan has not been confirmed.²

II

By her Objection, the Debtor argues that the \$19.28 escrow shortage Countrywide seeks to add into its monthly payment should be disallowed because it has already requested an escrow shortage in the arrearage claim that is to be paid at a rate of \$80.00 per month pursuant to the Debtor's Second Amended Chapter 13 Plan. In response, Countrywide argues that the \$954.96 escrow shortage included in its arrearage claim does not include the post-petition disbursement it made on September 15, 2004, in the amount of \$317.00 for the Debtor's property taxes. Countrywide argues that it needs the additional \$19.28 to recover that post-petition shortage that was not reflected in its Proof of Claim.

There is no dispute that Countrywide has included an escrow shortage in the amount of \$954.96 in its arrearage claim. The issue before the court is whether the \$19.28 Countrywide seeks to add into its maintenance payment is to additionally cure that escrow shortage, whereby

² On October 29, 2004, the Chapter 13 Trustee filed an Objection to Confirmation based upon feasibility and disposable income. Her objection was continued pending the outcome of the Debtor's Objection.

Countrywide will be “double-dipping.” In support of its proposed payment, Countrywide offered the testimony of Ms. Williams, who explained that despite the fact that the Proof of Claim was not filed until October 12, 2004, it only included escrow shortages incurred through September 2, 2004, the date upon which the Debtor commenced her Chapter 13 bankruptcy case. Thereafter, on September 15, 2004, Countrywide disbursed \$317.00 in payment of the Debtor’s annual property taxes. This amount is reflected in the negative escrow balance of \$1,271.96 shown on the Account Review, which leaves the pre-petition escrow shortage of \$954.96.

Ms. Williams explained that when Countrywide analyzed the Debtor’s account on September 29, 2004, it separated the pre-petition shortages from the post-petition shortages, wherein it arrived at the \$954.96 evidenced in its arrearage claim. In order to recover the post-petition shortage of \$317.00, it requires additional funds so that when it is again time to make disbursements for the Debtor’s insurance and taxes, the escrow account will not have a negative balance. This is in addition to the reserve requirement that it has now placed upon the Debtor’s account.³ The court finds that the escrow shortages provided for in Countrywide’s arrearage claim do not include this \$317.00 negative escrow balance.

The Debtor’s annual taxes are \$317.00 and her annual insurance premium is \$749.00, which results in a monthly escrow payment of \$88.83. According to the Account Review, the Debtor must also meet an annual reserve requirement of \$170.65, resulting in the requested \$14.22 per month. Therefore, in order to fully maintain her escrow account, the Debtor must add these figures, totaling \$103.05, to her principal and interest payment of \$543.43, resulting in a minimum monthly payment

³ Ms. Williams testified that although Countrywide is entitled to require a reserve, it normally does not do so unless the account has gone into default. She acknowledged that Countrywide does enforce this requirement on all debtors in bankruptcy.

of \$646.48. However, because her escrow account has a negative balance as a result of the post-petition disbursement for her property taxes, payment of this new escrow amount will still result in a negative escrow balance once the insurance and taxes are again paid in August and September 2005.

In order to recoup the amounts that it disbursed on the Debtor's behalf, it will be necessary for Countrywide to also collect the additional \$19.28 per month for a period of twelve months.⁴ This twelve-month period will begin with the month that the Chapter 13 Trustee makes her first payment of \$665.76 to Countrywide pursuant to this Memorandum. At the end of the twelve-month period, the Debtor's monthly payment, inclusive of principal, interest, escrow, and reserve, will be reduced to \$646.48 unless an increase or decrease in insurance and taxes requires a further escrow adjustment. The court expects Countrywide to again analyze the Debtor's escrow account at the end of the twelve months and annually throughout the life of the Debtor's Chapter 13 case and to promptly document and notify the Debtor and Chapter 13 Trustee of any change in the Debtor's monthly maintenance payment.

An order consistent with this Memorandum will be entered.

FILED: February 22, 2005

BY THE COURT

s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

⁴ The court notes that \$19.28 multiplied by twelve equals \$231.36. In her testimony, Ms. Williams pointed out that the lowest possible balance for the Debtor's escrow account was \$231.33, which the court deduces was the Debtor's actual negative escrow balance after Countrywide received \$42.83 into the Debtor's escrow balance in the months of October and November 2004. This is also supported by Trial Exhibit 2, which evidences these post-petition payments. In arriving at the \$19.28 requirement, Countrywide obviously divided \$231.33 by twelve and rounded the figure from \$19.2775 to \$19.28.

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 04-34674

BRENDA G. BAKER

Debtor

ORDER

For the reasons set forth in the Memorandum on Objection to Increased Mortgage Payment filed this date, the court directs the following:

1. The Debtor's Objection to Increased Mortgage Payment filed on November 2, 2004, is SUSTAINED to the extent set forth in this Order.

2. Countrywide Home Loans shall be paid the maintenance payment on its loan secured by the Debtor's principal residence located at 310 McGinley Street, Maryville, Tennessee, at the rate of \$665.76 monthly for twelve months. At the end of twelve months, the maintenance payment shall be reduced to \$646.48.

3. Any adjustment to the Debtor's escrow account at the end of the twelve-month period referenced in paragraph two of this Order attributable to an increase in insurance or taxes shall be documented upon notice to the Debtor and Chapter 13 Trustee.

SO ORDERED.

ENTER: February 22, 2005

BY THE COURT

s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE