

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

BILLINGS MANN and CHERYL MANN,)
)
Plaintiffs,)
) C.A. No. 00-192T
v.)
) Judge Torres
CHASE MANHATTAN MORTGAGE CORP.,)
)
Defendant.)

Affidavit of Deborah Baker

I, Deborah Baker, being first duly sworn on oath, depose and state as follows:

1. I have personal knowledge of the facts set forth in this Affidavit and, if called upon as a witness, could competently testify to the following facts.

2. I am employed by Chase Manhattan Mortgage Corporation ("CMMC") as the Default Resolution Liaison Officer. In this capacity, I have knowledge of CMMC's policies and procedures regarding the assessment and collection of property inspection fees after a borrower files a Chapter 13 petition, which are set forth in this affidavit. Further, I have reviewed the records prepared and maintained by CMMC in the ordinary course of business concerning the mortgage loan of Billing Mann and Cheryl Mann, which is currently serviced by CMMC.

3. After a borrower defaults on his or her mortgage, it is CMMC's policy to send a form letter to the borrower on the 32nd day of delinquency advising the borrower, among other things, that CMMC will perform inspections of the mortgaged property to protect CMMC's interest in that property, and that CMMC will charge the borrower for those inspections. That form letter provides in relevant part:

While the loan remains in default, we are required to perform certain tasks to protect our interest in the property. One of the tasks that we may be required to perform is to visit your property. This is done to determine the property condition, as well as to discuss your plans for paying this loan on

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time. Whatever costs are incurred by Chase Manhattan Mortgage Corporation will be added to the amount you now owe.

A true and correct copy of the form letter CMMC used in December 1998 is attached hereto as Exhibit 1.

4. Until the borrower's default is cured, CMMC, through a third-party vendor, conducts monthly inspections of the mortgaged property, and charges the defaulting borrower a property inspection fee. The property inspection fees are added to the borrower's monthly mortgage statement and are reflected as amounts due and owing CMMC.

5. In the ordinary course of business, CMMC sends monthly mortgage statements to borrowers which reflect the amounts owed to CMMC. After CMMC receives notice of a borrower's Chapter 13 filing, CMMC stops sending regular monthly mortgage statements to that borrower. Instead, CMMC provides the debtor a Bankruptcy Account Statement, which is generated after CMMC receives a payment from the debtor for purposes of providing the debtor with a record of the payments he or she has made to CMMC. Although CMMC continues to inspect the debtor's property after the Chapter 13 petition is filed, the property inspection fees assessed to the debtor's account are not reflected on the Bankruptcy Account Statement. The assessment of post-petition property inspection fees to the debtor's account is for CMMC's internal record keeping only, and the debtor does not receive any documents from CMMC reflecting that post-petition property inspection fees are owed to CMMC while the debtor remains in Chapter 13.

6. If a Chapter 13 debtor successfully completes his/her Chapter 13 plan, CMMC's policy is to waive the post-petition property inspection fees. In other words, CMMC does not collect those fees. In fact, even if the debtor defaults on his or her regular monthly mortgage

payments after discharge, the "assessed" post-petition property inspection fees are still not collected from the borrower.

7. In December 1998, plaintiffs defaulted on their note. On the 32nd day after plaintiffs defaulted, CMMC sent plaintiffs a notice advising them that as a result of their default, CMMC would: (1) conduct property inspections; and (2) charge the inspection fees to the plaintiffs' account. A true and correct copy of the form of letter sent to plaintiffs is attached hereto as Exhibit A.

8. On April 5, 1999, CMMC sent plaintiffs a notice that their account had been referred to foreclosure counsel for collection.

9. CMMC received notice of the filing of plaintiffs' Chapter 13 petition on April 30, 1999. After CMMC received that notice, it stopped sending regular monthly mortgage statements to plaintiffs, and instead provided plaintiffs with a Bankruptcy Account Statement reflecting payments received by CMMC. CMMC continued to inspect the mortgaged property after it received notice of plaintiffs' Chapter 13 filing, and assessed the resulting property inspection fees to plaintiffs' account. However, in accordance with its policy, CMMC did not include those post-petition property inspection fees on the Bankruptcy Account Statements, nor did it send any documents to plaintiffs reflecting that post-petition property inspection fees were due and owing to CMMC.

10. A true and correct copy of a list of the dates upon which CMMC posted property inspection fees to the Manns' account as of July, 2000 is attached hereto as Exhibit 2.

11. CMMC has not directed its counsel to take any affirmative action to collect the post-petition property inspection fees from plaintiffs, and plaintiffs have never paid any of those fees subsequent to the date CMMC received notice of their Chapter 13 filing.

FURTHER AFFLIANT SAYETH NOT.

Deborah Baker
Deborah Baker

SUBSCRIBED AND SWORN
to before me this 14th day
of December, 2000.

Karen M. Kitchell
Notary Public

182732.1

KAREN M. KITCHELL
NOTARY PUBLIC-STATE OF OHIO
MY COMMISSION EXPIRES JAN. 13, 2001

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TO:

Max Gardner

FAX NO.:

704-487-0619

FROM:

John Rao

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NUMBER OF PAGES TO FOLLOW:

COMMENTS:

Here is the affidavit from Chris

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