

Arrearage Cure Amount in Chapter 13 Includes Legal Fees Even if Claim Is Undersecured
Deutsche Bank Nat'l Trust Co. v. Tucker

__ F.3d __, 2010 WL 3565185, Case No. 09-5867 (6th Cir. September 15, 2010)

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The Sixth Circuit Court of Appeals has ruled that chapter 13 debtors are required to pay all fees required by the underlying loan documents in order to cure a default even if the total debt exceeds the value of the collateral.

The debtor had signed a promissory note secured by a mortgage in August 2004. She filed a chapter 13 bankruptcy in February 2008. Her bankruptcy schedules valued the real property securing the debt at \$88,000. Deutsche Bank filed a secured proof of claim for \$103,328.84, of which \$23,286.89 was arrearages required to be paid in order to cure the default. The underlying note and mortgage permitted the recovery of all the fees, including attorney fees. Attorney fees of \$4,660.42 were included as part of the arrearages. The reasonableness of the attorney fees was not in dispute.

The debtor objected to the proof of claim, arguing that the attorney fees portion of the portion of claim should be treated as unsecured since the total proof of claim exceeded the value of the collateral under 11 U.S.C. § 506(b). The debtor proposed to cure only \$18,626.47 in arrearage, excluding the attorney fees portion of the claim.

The court studied the interaction between § 506(b) and § 1322(e) and canons of statutory construction in adopting Deutsche Bank's argument. Focusing on the plain language of § 1322(e), the court concluded that the debtor was required to pay all arrearages, including attorney fees, in order to cure the default even though the debt was undersecured. The court rejected the debtor's argument that § 1322(e)'s legislative history indicated that a debtor need cure only the arrearage that was secured by the collateral. The court went on to note that other circuits, including the Bankruptcy Appellate Panel for the Second Circuit and the Third Circuit Court of Appeals, have confronted the same issue and reached the same conclusion.

The court's ruling resolves a conflict in treatment of undersecured mortgage arrearage claims among lower courts in the Sixth Circuit. Compare *In re Thompson*, 372 B.R. 860, 864 (Bankr. S.D. Ohio 2007) (holding that a Chapter 13 debtor who must pay all fees required by the underlying loan documents regardless of whether the debt is undersecured), with *In re Evans*, 336 B.R. 749 (Bankr. S.D. Ohio 2006) (holding that a Chapter 13 debtor need only cure the amount of the default that is secured as defined in 11 U.S.C. § 506(b)). As other Circuits encounter undersecured mortgage claims, the Sixth Circuit's statutory construction analysis of § 1322(e) will be persuasive to demonstrate that mortgage arrearages, including attorney fees in undersecured claims, must be resolved in order to cure a default.

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