

July 3, 2002

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Re: ***PNC Bank, N.A. v. Jones***
C.A. No. 00L-11-022

Dear Counsel:

This is a mortgage foreclosure action brought by PNC against Alfred L. Jones, Jr. and Janet L. Jones. The defendants divorced, and, through a marital property division, the property encumbered by the mortgage was conveyed to Janet Jones. On August 3, 2001, Mr. Jones paid \$9,030.70 to plaintiff, and he was subsequently dismissed from the suit.

The only issue concerns the amount of attorneys fees that can be collected. From the \$9,030.70 payment, \$2,142.50 was allocated toward legal expenses. The principal balance, after bringing the account current last August, was \$8,784.09. Mrs. Jones contends the principal amount should be lower as too much money was credited for fees. In addition, plaintiff seeks \$3,014 more for services.

The mortgage provides for:

“(c) the payment of all of Mortgagee’s costs of collection, including costs of suit and, if permitted by law, reasonable attorney’s fees and expenses to the maximum extent permitted by law, if suit is filed . . .”

The mortgage was signed on May 20, 1994.

During argument, a question was raised whether 10 *Del.C.* § 3912 provided for the collection of 5% or 20% of principal and interest amounts due. The statute was amended with an effective date of June 26, 1991. Even if obligations were incurred before the amendment date, the higher rate would still apply. *See First Federal Savings Bank v. CPM Energy Systems Corp.*, Del. Super., C.A.No. 88C-MY-299-1CV, Toliver, J. (Op. and Order)

(April 29, 1999).

However, the Court must still determine whether the requested amount is reasonable. The factors referenced under Rule of Professional Conduct 1.5 are helpful in this regard.

Considering these points and the arguments of counsel, I have reviewed the docket, file, and Mr. Weaver's affidavit. The foreclosure was essentially uncontested. Novel, complex or difficult questions were not presented. Although the note which secured the mortgage was lost, the contents could nonetheless be proved by secondary evidence. D.R.E. 1004(1). From the testimony, I find that the bank had a fixed fee agreement of \$650 plus costs for an uncontested foreclosure. While the case was almost routine, the animosity between the Jones' unduly prolonged commendable efforts to resolve it sooner.

I have compared the time spent, effort and result with the nature of the case, the litigants and what services were reasonably expected and necessary. After weighing the various factors, a fee of \$2,142.50 is reasonable for the whole case.¹ In other words, between 17-18 hours of services at the rate of \$125 per hour were reasonably required to conclude the matter. Plaintiff's allocation of that amount last August was justified but no additional fees should be awarded.

Consequently, judgment is entered against Janet L. Jones in the principal amount of \$8,784.09, together with pre and post judgment interest at the contract rate of .1075% per annum and costs.

IT IS SO ORDERED.

Very truly yours,

RFS/cv

cc: Prothonotary

¹ As the arguments focused on the August allocation, the 20% rate could have produced a larger figure.