

# In the United States Bankruptcy Court

## for the Northern District of Iowa

### Western Division

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MICHAEL G. JELLINGS and  
MARGARET R. JELLINGS

Bankruptcy No. 94-51864XS

*Debtor(s).*

Chapter 12

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### **ORDER RE: SECTION 506b MOTION OF HERITAGE BANK N.A.**

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Heritage Bank, N.A. (HERITAGE) has filed a motion requesting that its attorneys' fees and costs be determined to be part of its secured claim. Debtors Michael G. and Margaret R. Jellings object. Hearing on the motion was held July 5, 1995, in Sioux City. John R. Mugan, Esq. appeared for Heritage. Donald H. Molstad, Esq. appeared for Jellings.

Heritage asks that \$5,279.98 be added to its secured claim under 11 U.S.C. § 506(b). This figure comprises the following: \$120.00 for real estate title abstracting fees; \$388.00 for legal fees of the law firm Mack, Hansen, Gadd & Armstrong for work on a mortgage foreclosure action; \$4,213.28 as the legal fees of Klass, Hanks, Stoos, Stoik, Mugan & Villone for representation of Heritage in bankruptcy court; and \$558.70 for court reporting costs for depositions of the debtors taken during the bankruptcy proceeding.

Debtors object to the fees and expenses relating to the bankruptcy, contending they are unreasonable based on Heritage's secured position in the case and debtors' treatment of the claim in the plan. Debtors point out that at all times, Heritage's claim was to be paid in full, and there was never any question that Heritage's claim was fully secured. Debtors' argue that the only change to the bank's treatment from the initial plan to the one confirmed was the reduction of the term of repayment and an increase of one-half of one percent in the interest rate. Debtors argue that because such changes could have been brought about by phone calls between counsel, the depositions and other efforts of bank's counsel were unnecessary and of no benefit to the debtors or to the bank.

Section 506(b) of the Bankruptcy Code (Title 11, United States Code) provides in part that

[t]o the extent that an allowed secured claim is secured by property the value of which . . . is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

The debtors' note to Heritage provides for costs of collection (Exhibit A). The mortgage secured by the note states:

Mortgagors shall pay on demand all costs and expenses incurred by Mortgagee in enforcing or protecting its rights and remedies hereunder, including, but not limited to, reasonable attorneys' fees and legal expenses.

(Exhibit B, 18). Debtors' contention that Heritage's status as a fully secured creditor was never in doubt does not square with the facts. Jellings filed their chapter 12 case on November 16, 1994. Debtors' first plan (docket no. 5), filed November 29, 1994, proposed to pay bank \$64,680.48 plus interest at 9 percent. Heritage would be paid \$605.89 per month until fully paid. Assuming blended monthly payments of principal and interest, the claim would have been paid over about 20 years. Although the plan provided for Heritage's retention of its lien, the plan did not state that Heritage's claim was fully secured. Debtors' liquidation analysis indicated their belief that the real estate securing bank's claim had a value of \$65,000.00. Indeed, the plan treated the second mortgage holder as totally unsecured. Heritage objected to the term of repayment, to the interest rate, to the feasibility of debtors' plan to repay, and to the amount being repaid. Heritage later filed a proof of secured claim in the amount of \$65,450.85, an amount more than the value ascribed to the property by the debtors. Therefore, at the outset of the case, it was not unreasonable for Heritage to be concerned about the debtors' treatment of its claim and about the debtors' ability to pay the claim over 20 years, or the protection of bank's lien during that period.

It was not until January 24, 1995, that debtors recognized the value of the property as \$116,000.00, and it was not until debtors filed a modification of the proposed plan on February 23, 1995, that the repayment period was reduced to four years. Since the latter date, Heritage's bankruptcy counsel has spent only .3 hours or \$33.00 in billable time on the case.

Considering the initial treatment of Heritage's secured claim, the court does not find the legal expenses generally unreasonable. The court considers Exhibit D and finds reasonable the charges by the attorneys retained to foreclose the bank's mortgage. The court will disallow some time based on two entries. On January 6, 1995, attorney Stoik had a phone conversation with one of the attorneys who had been retained by Heritage to commence foreclosure. Stoik also gave attention to a letter received from that attorney. There is too little substantiation as to why such a conversation was necessary or what was discussed. The court will not allow .55 hours. On January 13, 1995, attorney Stoik spent .50 hours reviewing the court's order from the initial confirmation hearing (docket no. 20). This is excessive for an attorney who attended the hearing. The court will disallow .25 hours. In sum, the court finds that \$5,191.98 of Heritage's legal fees and expenses are reasonable and will be allowed as part of its secured claim. Accordingly,

IT IS ORDERED that \$5,191.98 is allowed as a component of the secured claim of Heritage Bank, N.A. Judgment shall enter accordingly.

SO ORDERED THIS 18th DAY OF JULY 1995.

William L. Edmonds  
Chief Bankruptcy Judge

I certify that on I mailed a copy of this order and a judgment by U.S. mail to: Don Molstad, Carol Dunbar, A. J. Stoik, Jeff Mohrhauser, W. J. Giles, III and U.S. Trustee.