

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CASE NO. 08-50283
)	
DENISE L. RAFUSE,)	CHAPTER 13
)	
DEBTOR.)	JUDGE MARILYN SHEA-STONUM
)	
)	MEMORANDUM OF OPINON ON
)	OBJECTION TO CLAIM AND ORDER
)	ALLOWING SECURED CLAIM IN THE
)	AMOUNT OF \$1124.49 PLUS ACCRUED
)	INTEREST

This matter is before the Court on an objection to claim, filed by Denise L. Rafuse (the "Debtor"). This case is referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984 and is determined to be a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B), over which this Court has jurisdiction pursuant to 28 U.S.C. §§ 1334(b), 157(a) and (b).

The Debtor filed her voluntary petition for relief under chapter 13 of the Bankruptcy Code on January 30, 2008. On June 11, 2008, Oak Knolls Condominium Association (the "Association") filed proof of claim #15, stating a claim in the amount of \$2977.97 secured by a lien on Debtor's real estate located at 6330 Greenwood Parkway, #401, Northfield, Ohio. The documentation attached to the proof of claim indicates that the claim is based on unpaid maintenance fees for the Debtor's condominium and related charges, including \$1210 in attorney fees. Attached to the proof of claim is a copy of the lien filed on Debtor's real property, which states that the amount of the lien is "\$1124.49 plus interest at 8% per annum from the 21st day of September 2007 and any unpaid assessment accruing hereinafter until this lien is satisfied." Proof of Claim #15, Ex. A.

Debtor objected to the claim [docket #35], stating that the attorney fees were not allowed under Ohio law. The Association filed a response [docket #37] and Debtor filed a reply [docket #40]. The Court held a hearing on July 30, 2009, at which counsel for the Debtor and the Association both appeared. The Court instructed the parties to file post-hearing briefs [docket #41 & #42], after which the Court took this matter under advisement.

The Court must first address an issue not raised by the parties. As stated in *W. Chateau Condo. Unit Owners' Assoc. V. Zanders*, a condominium association's lien may include only amounts stated in the lien and not after-accumulated debts. 2004 Ohio 1450 (Ohio 8th App. 2004). In that case, the court indicated that the certificate of the lien would not give adequate notice of any amounts other than those specifically stated in the recorded certificate. The facts of this case do not vary on that point and consequently, the Association's lien is not valid for any amount beyond that stated on the certificate of lien, which is \$1124.49 plus 8% interest. Although another bankruptcy court allowed such a "continuing lien" in *In re Barcelli* (270 B.R. 837 (Bankr. S.D. Ohio 2001)), the Court is not persuaded by that case. *Barcelli* was decided before *W. Chateau Condo Unit Owners Assoc.* and relied primarily on case law interpreting a similar New York statute. As an Ohio appellate court has now addressed this question of state law, the *Barcelli* decision is not now persuasive.

The lien certificate filed by the Association is dated October 2, 2007. From the account

statement submitted together with the Association's proof of claim, it does not appear that any attorney fees were outstanding on the account on that date.¹ Consequently, no attorney fees were included in the \$1124.49 amount stated in the lien certificate. The remaining dispute between the parties, regarding whether attorney fees would properly be included in the amount of the lien, is therefore moot.

It is therefore ordered that claim #15, filed by the Association, is a secured claim in the amount of "\$1124.49 plus interest at 8% per annum from the 21st day of September 2007," as described in the certificate of lien. Additional amounts owed to the Association shall be treated as unsecured and paid accordingly.

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cc (*via* electronic mail):
David A Mucklow, Debtor's counsel
Keith Rucinski, Chapter 13 Trustee
Darcy Mehling Good, Creditor's Counsel
Office of the United States Trustee

cc (*via* regular US mail):

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¹ It appears that the earliest unpaid attorney fee is a \$210 charge to Debtor's account on October 8, 2007. In the account statement provided by the Association, this fee is attributed to the cost associated with filing the October 2, 2007 lien that is the basis of this dispute.