

**Dated: May 01, 2023**  
**The following is ORDERED:**



A handwritten signature in black ink, appearing to read "M. Ruthie Hagan".

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**M. Ruthie Hagan**  
**UNITED STATES BANKRUPTCY JUDGE**

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**UNITED STATES BANKRUPTCY COURT**  
**WESTERN DISTRICT OF TENNESSEE**  
**WESTERN DIVISION**

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In re:

**Gregory Nelson,**

Debtor.

Case. No. 19-23459

Chapter 13

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**Gregory Nelson**  
Plaintiff,

v.

**PHH Mortgage Corporation,**  
Defendant.

Adv. Proc. No. 21-00076

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**MEMORANDUM OPINION AND ORDER ON DEFENDANT’S MOTION FOR  
JUDGMENT ON THE PLEADINGS**

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This matter came before the Court upon PHH Mortgage Corporation’s (“Defendant”) Motion for Judgment on the Pleadings and Incorporated Memorandum of Law in Support and Motion to Dismiss (hereinafter Motion for Judgment on the Pleadings) [Adv. Proc. DE 32] filed January 13, 2022, and Gregory Nelson’s (“Plaintiff” or “Debtor”) Response filed January 18, 2022

[Adv. Proc. DE 38]. A hearing was held on March 29, 2023, and upon reviewing the supporting documentation and hearing arguments of counsel and Plaintiff, the Court took the matter under advisement.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A)(B) and (K); accordingly, this Court has the statutory and constitutional authority to hear and determine these proceedings subject to the statutory appellate provisions of 28 U.S.C. § 158(a)(1) and Part VIII (“Bankruptcy Appeals”) of the Federal Rules of Bankruptcy Procedure. Regardless of whether specifically referred to in this decision, the Court has examined the submitted materials, considered the statements of counsel and Plaintiff, and reviewed the entire record of the cause. Based upon that review, and for the following reasons, Defendant’s Motion for Judgment on the Pleadings is hereby **GRANTED**.

**BACKGROUND FACTS AND PROCEDURAL HISTORY**

Plaintiff, as Debtor, filed his underlying bankruptcy case under Chapter 13 of the United States Bankruptcy Code on May 1, 2019. On July 10, 2019, Defendant, as servicer of the loan securing a mortgage on Plaintiff’s principal residence, filed Proof of Claim No. 4 in the amount of \$77,609.91 with an arrearage of \$28,042.22. Plaintiff then filed an Objection to Allowance of Claim [Bankr. DE 25] on August 21, 2019, on the grounds that both the amount of the claim and the amount of the arrearage were incorrect. This Court held a hearing on October 1, 2019, and sustained Plaintiff’s Objection to Allowance of Claim; a corresponding order reflecting that disposition was entered on October 9, 2019. On January 31, 2020, Defendant filed a Motion to Set Aside and Reconsider the Order on Debtor’s Objection to Claim No. 4 [Bankr. DE 38], and Debtor filed a Response in opposition. [Bankr. DE 41] After a series of continuances that delayed a hearing

for six months, the matter was finally heard on July 21, 2020, and the Court granted Defendant's motion.

On August 18, 2020, Defendant then filed a follow-up Response to Plaintiff's Objection to Allowance of Claim [Bankr. DE 54] that reasserted the total debt and pre-petition arrearage amounts as stated in its original Proof of Claim. Further, the Response stated that Plaintiff (i.e., Debtor) provided no basis and/or support for the objection and that grounds for reducing the mortgage arrearage lacked a foundation. Once again, a series of continuances delayed a hearing on the original Objection to Allowance of Claim until March 2, 2021, whereupon the parties announced a consent order resolving the objection.

An Agreed Order Granting Debtor's Objection to Allowance of Claim 4 by Claimant PHH Mortgage Corporation (hereinafter "Agreed Order") [Bankr. DE 90] was entered on March 15, 2021. The terms of that order stated that Defendant would file an amended proof of claim reflecting a principal balance of \$60,301.36 and an arrearage of \$3,604.81 "at the time of filing of this case," i.e., pre-petition. On April 28, 2021, Defendant filed its amended Proof of Claim 4-2 listing the *total debt* as \$61,774.32 and an arrearage of \$8,383.39 in apparent violation of the terms of the Agreed Order. As a result, Plaintiff filed his Verified Objection to Allowance of Claim [Bankr. DE 95] on June 28, 2021, on the grounds that the amendment reflected secured claim and arrearage amounts different from those stated in the parties' Agreed Order. The instant adversary proceeding soon followed.

Filed on July 13, 2021, Plaintiff's Complaint for Contempt of Court and Request for Sanctions [Adv. Proc. DE 1] based on the facts listed above alleges that Defendant engaged in a willful, wanton, and reckless manner in violating orders of this Court by failing to amend its Proof of Claim to list the agreed-upon principal and arrearage amounts pursuant to the parties' Agreed

Order. Further, the complaint asks this Court to require Defendant file an “appropriate” amended proof of claim, bring Defendant before the Court, *scire facias*, to show cause why it should not be held in contempt, punish and fine Defendant accordingly, and for court costs and attorney fees.

In its Answer [Adv. Proc. DE 11] filed on September 13, 2021, Defendant denied any mischaracterization of the parties’ Agreed Order or any inconsistency between that document and Defendant’s Amended Proof of Claim; it also denied that it was in violation of any orders of this Court. Further, Defendant’s answer asserted ten separate affirmative defenses to Plaintiff’s complaint and reserved the right to raise additional defenses as the case progresses.

The Adversary Proceeding remained stagnant for a period prompting Defendant to file its Motion for Judgment on the Pleadings which the Court delayed setting for hearing while the parties attempted mediation. In that Motion, Defendant states that “[t]he resolution of Plaintiff’s Complaint turns on a single issue of law: does the March 15, 2021 agreed order between [the parties] providing for an amended proof of claim with ‘an arrears claim of \$3,604.81 at the time of the filing of this case’ prohibit [Defendant] from making a claim for arrearage that accrued after the time of the filing of this case?” Def.’s Mot. for J. on the Pleadings 1-2. Defendant supports its argument in the negative by providing a full breakdown of the Amended Proof of Claim, reflecting a principal balance of \$60,301.36 with a total debt of \$61,774.32 and \$3,412.01 of principal and interest due with a total arrearage of \$8,383.39, along with a number of other figures discussed in-depth *infra*. Although these amounts differ from the terms of the Agreed Order, Defendant argues the Amended Proof of Claim is not in violation of its terms because the Amended Proof of Claim also included amounts that accrued post-petition (per local practice as it relates to GAP payments) to which Defendant is entitled. According to Defendant, “[a] plain reading of the unambiguous terms of the [Agreed Order] does not prohibit [Defendant] from claiming post-petition arrearage.”

*Id.* at 6. As such, Defendant maintains that Plaintiff not only “fails to allege facts that would support a finding of contempt,” but “fails to state a claim upon which relief may be granted.” *Id.* at 2, 8.

In his Response, Plaintiff maintains his stance that Defendant failed to comply with the terms of the parties’ Agreed Order and that his counsel, when he had it, attempted to resolve the issue with Defendant’s counsel to no avail. As a result of the Amended Proof of Claim, which reflects higher principal and arrearage amounts than the parties agreed to because it includes post-petition accruals, Plaintiff “has continued to pay a higher plan payment than would be required” and the higher payments “have significantly been to the detriment of [Plaintiff’s] . . . financial, physical and mental state.” Pl.’s Resp. to Mot. for J. on the Pleadings ¶ 2. Plaintiff then describes difficulties he encountered in a previous bankruptcy case, which the Court will not discuss here as it does not bear on the instant proceeding, before requesting that this Court deny Defendant’s Motion.

At a hearing held on March 29, 2023, the Court heard arguments from counsel regarding Defendant’s Motion for Judgment on the Pleadings and Plaintiff’s Response. The Court took the matter under advisement for further consideration and now addresses the issue before the Court in this Opinion and Order.

## **LAW AND ANALYSIS**

### **1. Judgment on the Pleadings Standard**

Rule 12(c) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7012, states: “After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.” FED. R. CIV. P. 12(c). According to the Sixth Circuit, Rule 12(c) “us[es] the same standard as

applies to a review of a motion to dismiss under Rule 12(b)(6).” *JPMorgan Chase Bank, N.A. v. Winget*, 510 F.3d 577, 581 (6th Cir. 2007) (citing *Roger Miller Music, Inc. v. Sony/ATV Publ’g, LLC*, 477 F.3d 383, 389 (6th Cir. 2007)). As such, “all well-pleaded material allegations of the pleadings of the [non-moving] party must be taken as true, and the motion may be granted only if the moving party is nevertheless clearly entitled to judgment.” *Id.* (citing *Southern Ohio Bank v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 479 F.2d 478, 480 (6th Cir. 1973)). However, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

## 2. Contempt of Court Standard

Contempt is a serious measure of last resort which must be exercised with caution, using “the least possible power adequate to the end proposed.” *Gascho v. Glob. Fitness Holdings, LLC*, 875 F.3d 795, 799 (6th Cir. 2017) (citations omitted). The party seeking sanctions for civil contempt must establish by clear and convincing evidence that the adverse party “knowingly ‘violated a definite and specific order of the court.’” *Id.* at 800 (citing *NLRB v. Cincinnati Bronze, Inc.*, 829 F.2d 585, 591 (6th Cir. 1987)). This requirement “guards against arbitrary exercises of the contempt power” which “cannot be based on ‘a decree too vague to be understood,’ but is instead reserved for those who ‘fully understand’ the meaning of a court order and yet ‘choose to ignore its mandate.’” *Id.* (citing *Int’l Longshoremen’s Ass’n v. Philadelphia Marine Trade Ass’n*, 389 U.S. 64, 76 (1967)). When a court is tasked with deciding whether an order is “‘definite and specific,’” it “‘must construe any ambiguity in favor of the party charged with contempt.’” *Id.* (citing *Grace v. Ctr. for Auto Safety*, 72 F.3d 1236, 1241 (6th Cir. 1996)).

## ANALYSIS

Because the standard for judgment on the pleadings is similar to that of a motion to dismiss, the Court's starting point is to accept as true all well-pleaded material allegations in Plaintiff's complaint. The Court may then grant Defendant's Motion for Judgment on the Pleadings only if it determines that Defendant, in light of all of the evidence, is nevertheless entitled to judgment.

The essence of Plaintiff's complaint is that Defendant amended its Proof of Claim No. 4 to reflect principal and arrearage amounts that are inconsistent with the terms of the parties' Agreed Order. Those terms required Defendant to amend the claim to reflect a principal balance of \$60,301.36 and an arrearage of \$3,604.81 "at the time of filing of this case." However, Defendant's amendment listed a *total debt* of \$61,774.32 and an arrearage of \$8,383.39 in purported violation of the terms of the parties' agreement. Further, Plaintiff alleges that attempts to resolve the issue with Defendant's counsel were unsuccessful and that Defendant "acted willfully and wantonly and with reckless disregard to violating the Court order" by failing to adhere to the terms of the Agreed Order. Pl.'s Compl. for Contempt of Ct. and Request for Sanctions ¶ 5.

A deeper dive into what appears to be an "open and shut" case in Plaintiff's favor reveals that it is anything but. To be sure, Defendant's Amended Proof of Claim *does* reflect values inconsistent with the parties' Agreed Order on its face; however, as Defendant states in its Motion for Judgment on the Pleadings, "[a] simple reading of the Amended Proof of Claim when paired with basic arithmetic results in one conclusion—[Defendant] complied with the [Agreed] Order when it filed its Amended Proof of Claim." Def.'s Mot. for J. on the Pleadings 5.

### **1. Principal Balance**

The Court begins with "Part 2: Total Debt Calculation" in the "Mortgage Proof of Claim Attachment" at the top of page 3 of Defendant's Motion for Judgment on the Pleadings. That

column lists a number of values, two of which are “principal balance” at the top and “total debt” at the bottom. *Id.* at 3. Based on the figures provided for these two categories, it appears that Defendant *did* comply with the terms of the Agreed Order by listing a principal balance of \$60,301.36 as required. *Id.* Therefore, it would seem that Plaintiff objects to Defendant listing a total debt of \$61,774.32. Examination of the intervening values reveals how Defendant arrived at its calculations.

To demonstrate, the remaining values are as follows: interest due (\$2,110.57), fees and costs due (\$2,287.58), escrow deficiency for funds advanced (\$1,496.80), less total funds on hand (\$354.53), and less credit to comply with Agreed Order entered 3-15-21 as Doc 90 (\$4,067.46). *Id.* The Mortgage Proof of Claim Attachment denotes two of these values - less total funds on hand and less credit to comply with Agreed Order entered 3-15-21 as Doc 90 - in parentheses to reflect that they are to be applied as credits in favor of Plaintiff; the remainder of the values are to be applied as debits. *Id.* Therefore, one begins with the \$60,301.36 principal balance and adds \$2,110.57 for interest due, adds \$2,287.58 for fees and costs due, and adds \$1,496.80 for escrow deficiency for funds advanced to arrive at a figure of 66,196.31. One must then subtract \$354.53 for total funds on hand and \$4,067.46 for credit to comply with Agreed Order, leaving a total debt of \$61,774.32.

To object to this figure on the basis that it fails to comply with the terms of the parties’ Agreed Order is to object to Defendant receiving funds to which it is entitled. This position has no basis in law, and Plaintiff does not cite to any authority that supports it. Never mind the fact that Defendant *did* comply with the terms of the Agreed Order, plainly and on its face, by listing the principal balance as \$60,301.36. As previously stated, Plaintiff seemingly objects to what Defendant listed as the total debt, a figure admittedly higher than the principal balance because the



two represent something entirely different. If Plaintiff intended that he only be responsible for a total debt of \$60,301.36, then he should have entered an agreed order that said as much. As it stands, the terms of the Agreed Order between the parties in this case made no such provisions, and it cannot be maintained that Defendant violated a Court order in that regard.

## **2. Arrearage**

Next, the Court looks to “Part 3: Arrearage as of Date of the Petition” of the same Mortgage Proof of Claim Attachment. This column also lists a number of values, the most important of which is “total arrears” listed at \$8,383.39. *Id.* While this figure seems to be in direct contravention of the terms of the Agreed Order, utilizing “basic arithmetic,” as called for by Defendant, reveals how it arrived at this number. The total debt is effectively the sum—and difference—of all figures listed in Part 3. It begins with principal and interest due (\$3,412.01) followed by pre-petition fees due (\$2,287.58), escrow deficiency for funds advanced (\$1,496.80), projected escrow shortage (\$830.41), less funds on hand (\$354.53), and less credit to comply with Agreed Order entered 3-15-21 as Doc 90 (\$4,067.46). *Id.* Once again, Defendant denotes the latter two categories with parentheses to reflect that they are meant to be applied as credits in Plaintiff’s favor, while the former three categories are to be applied as debits.

For example, add \$3,412.01, \$2,287.58, \$1,496.80, and \$830.41 together and the sum is \$8,026.80, then subtract \$354.53 and \$4,067.46 and the difference is \$3,604.81. This number represents the arrearage amount per the terms of the parties’ Agreed Order because it represents the arrearage owed “at the time of the filing of this case,” as the Agreed Order explicitly requires it to be. The reason the total arrears as listed in the Mortgage Proof of Claim Attachment is significantly higher than the terms of the Agreed Order is because the total arrears amount includes post-petition accruals. These values are described in detail as “Post Petition GAP Pmts per plan

(May–June 2019 at \$764.24 each),” “Post Petition Fee per PPFN filed 11-13-19 as Doc 37,” and “Post Petition GAP Pmts per Order entered 10-23-20 as Doc 72 (Sept–Nov 2020 at \$916.70 each),” listing values of \$1,528.48, \$500.00, and \$2,750.10, respectively. *Id.* Adding these amounts to the pre-petition arrearage of \$3,604.81 brings the total arrearage to \$8,383.39.

The Court reiterates, to object to this figure on the basis that it fails to comply with the terms of the parties’ Agreed Order is to object to Defendant receiving funds to which it is entitled. As before, this position enjoys no precedent and Plaintiff does not cite any to support it. In calculating these values, it becomes clear that Defendant’s Amended Proof of Claim complied with the terms of the Agreed Order. As explained above, when totaling these amounts, it is evident that the higher arrearage figure of \$8,383.39 includes both pre- and post-petition accruals. The terms of the Agreed Order explicitly state that the arrearage was to be amended to reflect a balance of \$3,604.81 “at the time of filing of this case.” The total arrearage deviates from this number only when the post-petition arrearage is factored in. Notably, the Agreed Order does not prohibit Defendant from claiming this accrual, nor can Plaintiff maintain as much. Therefore, the Court finds that Defendant complied with the terms of the Agreed Order.

### **3. Contempt**

Having found that Defendant’s Amended Proof of Claim complied with the Court’s order with respect to both the principal balance and arrearage amounts, the Court need not reach the issue of contempt. As expressed above, contempt imposes a burden upon Plaintiff, in this instance, to establish by clear and convincing evidence that Defendant “knowingly ‘violated a definite and specific order of the court.’” *Gascho*, 875 F.3d at 800 (citing *Cincinnati Bronze, Inc.*, 829 F.2d at 591). The Court finds Plaintiff has failed to carry his burden; the Court’s refusal to invoke this “serious measure of last resort” is, therefore, appropriate.

**CONCLUSION**

For the reasons stated herein, Defendant PHH Mortgage Corporation's Motion for Judgment on the Pleadings is hereby **GRANTED**, and Plaintiff's Complaint for Contempt of Court and Request for Sanctions is hereby **DISMISSED**.

IT IS SO ORDERED.

The Bankruptcy Court Clerk shall serve a copy of this Opinion and Order on the following interested parties:

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