UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA

FILED
U.S. Bankruptcy Court
WDNC Charlotte, NC
July 22 2003
Geraldine Treutelaar
Crockett, Clerk
/jra

In Re:	)	Case No. 98-40827
	)	Chapter 7
JONATHAN ERIC KLINE, and	)	
LINDA MCNEILL KLINE,	)	
	)	
Debtors.	)	JUDGMENT ENTERED ON JUL 22 2003
	)	
	)	

ORDER DETERMINING FINAL ATTORNEY'S FEE FOR ATTORNEY FOR TRUSTEE AND REQUIRING MODIFICATION OF DISTRIBUTION AND FINAL REPORT

This matter is before the court on the Trustee's Final Report and Accounting, and more specifically, the Application For Compensation As Attorneys For Trustee included therein. The court has concluded that the fees and expenses for the attorneys for the Trustee should be limited to a sum that permits the Trustee to distribute to creditors 100% of their allowed claims plus interest where appropriate.

Procedural Background

1. This is a Chapter 7 bankruptcy case filed in December 1998. The Chapter 7 Trustee was approved to retain himself and his law firm as attorneys for the Trustee, and engaged in an adversary proceeding to avoid the lien of a secured creditor that had filed its deed of trust on the debtors' residence in the wrong county. The Trustee was successful in that litigation, then sold the house for the benefit of the estate and generated substantial funds for distribution to creditors. The Trustee submitted an application

for attorneys fees that showed time and expenses totaling over $43,000. Because payment of that amount of attorneys fees (in addition to the Trustee's commission) would have exhausted all of the available funds, the Trustee reduced his claim for attorneys fees to $30,000 making $11,000 available for distribution to creditors-for a payout of about 65% of those claims.

2. The Trustee's attorneys fee application and his proposed distribution were noticed to creditors, and no objections were received. After reviewing the Trustee's proposals, the court on its own initiative entered an Order Regarding Trustee's Final Report. In that order the court stated concerns about the proposed distribution and gave the Trustee and interested parties an opportunity to respond to those concerns. The Trustee responded in defense of his firms fee request; and one creditor responded that the fee request was excessive. In that context, the matter is before the court for determination of the appropriate fee for the Trustee/attorney.

3. The court has concluded that the fee requested by the Trustee is excessive for the work required in this matter. The court's fundamental impression from reviewing the Trustee/attorney's detailed time records is simply that the matter was "overdone." The matter litigated by the Trustee's attorney here was the avoidance of a real estate lien where the deed of trust had been filed in the wrong county. While the results of

that litigation were quite favorable, the fact is that the matter was straight-forward and uncomplicated legally and procedurally, and should have been prosecuted far more efficiently than it was. It should not have required $43,000 (or $30,000) of attorney time to avoid the lien of a creditor who had filed its deed of trust in the wrong county and to obtain priority over other creditors whose secured claims were dependent thereon. From its review of this matter the court has concluded as follows: that a fee in the range of $20,000 is a reasonable attorneys fee in this matter; that a fee in that range should permit the payment of all allowed claims in full with interest where appropriate; and that the fairest determination here should be for the trustee to calculate the amount thus to be distributed to creditors and to submit an Amended Final Report which proposes a distribution for the attorney for the Trustee consistent with this Order.

Discussion

4. The Bankruptcy Code provides for awarding attorneys fees for "reasonable compensation for actual, necessary services rendered...." 11 U.S.C. § 330(a)(1)(A). The Code further states the general standards for that determination in § 330(3)(A):

> In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including -
>
> (A) the time spent on such services;
> (B) the rates charged for such services;

> (C) whether the serviced were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem issue, or task addressed; and
> (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

5. The Code (and this court) has rejected the notion of "economy," that attorneys fees in bankruptcy cases should be less than in other comparable work. But, the Code continues to require that compensable work be "efficient." That is demonstrated by the Code's inclusion of the concepts of "value," "time spent," necessity, and benefit in the reasonable fee determination.

6. Here it appears that the Trustee's efforts as attorney were overdone given the nature of the matter involved. Again, the context of the Trustee's attorney's efforts was avoidance of a secured creditor's lien because its deed of trust was filed in the wrong county. The excessiveness of the effort is demonstrated by a number of facts drawn from the fee application:

(a) The Trustee himself devoted 13.4 hours over two months in drafting the Complaint to initiate the adversary proceeding.

(b) The Trustee seeks compensation for efforts that began four months prior to the filing of the Complaint and continue for about ten months after obtaining summary judgment.

(c) The adversary proceeding was prosecuted for over three years, but there was little discovery (interrogatories and document requests only) and the case was ultimately determined on summary judgment.

(d) There is an undue amount of time devoted to intra-office conferences and review and revision. The most common time entry appears to be "review and revise."

(e) Rather than obtaining efficiencies by using lower priced associates and paralegals to complete tasks, the Trustee's methods of operating seem to duplicate efforts in many instances. Instead of the associates and paralegals in the Trustee's office accomplishing a task, often their work consists of taking preliminary actions, preparation of a memorandum of what they did, review of the memo by the Trustee and finally an intra-office meeting to discuss the memo. This duplicative pattern is repeated throughout the fee application.

(f) Over 50 hours were devoted to "research" of various issues, although the primary legal issue presented was fairly basic--the effect of a deed of trust filed in the wrong county.

(g) Over 25 hours were spent in title searches, although the subject of the research was simply to find what encumbrances existed on one residential lot.

(h) There are a number of time entries in connection with the adversary proceeding that deal with matters that are in the nature

of Trustee work covered by the Trustee's commission, rather than work meriting an additional attorneys fee. Examples are entries for claims review, dealing with insurance matters, dealing with the debtors regarding their rental of the residence, and dealing with the realtor regarding sale of the property.

7. The Response filed by creditor Branch Bank & Trust noted a number of examples of excessive or unnecessary time spent on this matter, including: various intra-office conferences and research regarding such elementary matters as recordation and mortgage priority, application of the automatic stay to a mortgage holder, and automatic stay issues.

8. The Trustee filed a lengthy Response in support of his fee claim. The court is not persuaded by the Trustee's Response, and believes that it is as overstated as the litigation was overdone. The Trustee begins with the assertion that: "However, a substantial asset was recovered by the Trustee solely because this Trustee has an extraordinary and thorough procedure for asset recovery that he follows in cases where he is appointed to serve as Trustee." Trustee Resp.¶ 4. The Trustee further asserts that: "In this case were it not for the Trustee's extraordinary and thorough procedures, the money recovered in this case would clearly never have been located." Trustee Resp. ¶ 8. The court cannot accept the Trustee's exalted opinion of his own work. It is not "extraordinary" for the Trustee to discover matters that are part

of the public registry! Nor is it especially "thorough" to discover a subordination agreement between creditors of record. The Trustee's discovery of the fact that a creditor had filed its deed of trust in the wrong county resulted from a routine title search (and would have also been disclosed by a cursory review of the file stamp on the creditor's documentation of its secured claim!). The litigation that was spawned by that discovery was not major litigation by any measure--it involved elementary legal principles, the facts were largely uncontested and readily derived from public records and other documents, it proceeded with little discovery or other developmental effort, and was ultimately decided by summary judgment.

9. The balance of the Trustee's Response is similarly self-promotional and not particularly helpful in providing any justification for the "time spent" in his effort here. The court will not attempt to reject each assertion specifically, but is simply not persuaded by the Response.

10. The Trustee asserts that the value of the estate here was diminished by damages caused by the debtors and by their failure to pay over $8000 in rent. That, of course, is ultimately the responsibility of the Trustee. The Trustee, as landlord, was the party in control of the property and permitted the debtors to remain in the residence for many months while in default on their

rent obligations and apparently without inspecting the condition of the property.

11. The fundamental concern of the court in this case is that full compensation for the "extraordinary and thorough procedures" that the Trustee employed to recover the asset here would exhaust the asset recovered with no one but the Trustee benefitting from the effort. The Trustee in this case is an experienced and good Trustee. He obtained a good result in this case. But, the work and the result are far from remarkable (much less "extraordinary"). The court is convinced that the reasonable attorneys fee for this litigation is in the range of $20,000. That conclusion is based upon the facts that the case involved little legal or factual complexity; that the case was complicated at all only by the existence of multiple parties; that the case was prosecuted with a minimum of discovery; that it was concluded by summary judgment short of the necessity of a trial or trial preparation; that the result was favorable; and that the potential recovery was known from the outset to be a maximum of $60,000.

12. The court does not deem this Order to impose any outdated notions of "economy" on the Trustee. See para. 5, infra. Rather, the Code requires that the "reasonable fee" be determined by considering the "value of such services, taking into account all relevant factors, including--" "whether the services were necessary...or beneficial", and "whether the services were

performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed". 11 U.S.C. s 330(a)(3). The Code thus requires that Trustees take into account the fact that the reason justifying their actions is recovery of assets for creditors and the economic realities of their actions. While that is true in any area of litigation, it is certainly true where, as here, the Trustee is his own attorney. Where the Trustee loses focus on those requirements, or rejects them as a matter of course, then the court must act to insure that the Trustee's attorneys fee is reasonable pursuant to Section 330.

13. The problem presented by this case has not arisen often in this District, and this case appears to be something of an aberration. But, here the Trustee seems to have lost focus on the purpose of his efforts and ignored the economic realities of this litigation: The Trustee valued the debtors' residence at about $60,000, so the maximum potential recovery for the Trustee was $60,000, and that was known from the outset of the litigation. In pursuing that recovery, the Trustee generated over $40,000 in attorney time. So, about two-thirds of the maximum potential recovery for creditors was subject to the Trustee's own attorneys fee claim. Even after reducing his fee claim to $30,000, the Trustee seeks half of the maximum possible recovery for himself. Of course, the actual recovery was something less than $45,000.

So, the Trustee's actual proposal was that two-thirds of the recovery be paid to him. In dollar figures, the Trustee proposed to pay himself $30,000 in attorneys fees and the creditors less than $15,000. When the Trustee's commission is added, the ultimate distribution proposed by the Trustee was to pay himself a total of $36,072 and to pay $13,307 to all of the creditors. There may be circumstances where such a distribution is appropriate, but this case is not one of them, for the reasons noted above.

14. The court has concluded that the "reasonable fee" for this case is in the range of $20,000. Payment of such a fee to the Trustee would likely result in sufficient funds being available to pay creditors the full amount of their allowed claims. Because the case has proceeded for over four years, the court believes the creditors should be paid interest on their claims. Therefore, the court believes that the fair and most expeditious procedure would be for the Trustee to calculate the amount required to pay all allowed claims in full and then to resubmit an Amended Final Report and proposed distribution.

15. The Honorable Marvin R. Wooten presided over the court's Shelby Division during the pendency of this case, but was on leave when the Final Report was presented. Consequently, the undersigned has reviewed this Order with Judge Wooten and is authorized to represent that Judge Wooten agrees with it.

It is therefore ORDERED that:

1. The Trustee's Final Report is rejected as proposed; and

2. The Trustee is directed to calculate the amounts necessary to pay all allowed claims in full with interest; and to then prepare an Amended Final Report which distributes those amounts to creditors, and which includes a proposed distribution for the attorney for the Trustee consistent with this Order.

(Dated as of date entered)

George R. Hodges
United States Bankruptcy Judge