



IT IS ORDERED as set forth below:

Date: November 29, 2011

**W. Homer Drake
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBER
	:	
ANTHONY B. FREEMAN	:	BANKRUPTCY CASE
	:	NO. 09-12732-WHD
	:	
Debtor.	:	
	:	
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 11 OF THE
	:	BANKRUPTCY CODE

ORDER

Before the Court is the Application for Compensation filed by BER LAW, P.C. (hereinafter the "Firm"), as counsel for Anthony B. Freeman (hereinafter the "Debtor"). In the Application, the Firm seeks approval of \$42,348.04 in fees and expenses. Debtor responded to the Application, essentially arguing that the amount billed by the Firm was not reasonable. This is a core proceeding, pursuant to 28 U.S.C. § 157(b)(2)(B), over which this

Court has subject matter jurisdiction. *See* 28 U.S.C. § 1334.

BACKGROUND

Debtor filed a voluntary petition for bankruptcy relief under Chapter 11 on August 3, 2009. From the schedules and statement of financial affairs, it appears that Debtor once owned two limited liability companies, one of which operated a car care center, but that he sold the two companies in 2006. When he filed the petition, Debtor was a salaried employee of Kaiser Permanente and also derived income from one piece of rental property.

Prior to filing his petition, Debtor retained the Firm to represent him in the bankruptcy case. Debtor paid a retainer of \$5,000 and agreed that the Firm would be compensated at an hourly rate, ranging from \$175 to \$295 per hour, for attorneys' time, and an unstated amount for paralegal or secretarial work. Furthermore, Debtor testified that, prior to his signing the employment agreement, the Firm had orally stated that attorneys' fees would range from \$15,000 to \$20,000. Over twenty-two months' time, ten different attorneys worked on the case, billing a total of 198.7 hours. According to the Application, Beth Rogers, a partner, and Hope Jackson and Christopher Yates, associates, billed the majority of this time. Between them, seven other associates billed the remaining 38.7 hours. It appears that at least two of the associates who worked on the case, Hope Jackson and Ryan Finch, left the Firm during the pendency of the case. Mr. Finch appears to have worked on Debtor's case for only a little over one month.

From the docket, the case appears to have been largely successful. The Firm obtained

a confirmed Chapter 11 plan for Debtor, which required: 1) counseling Debtor; 2) preparing and filing the petition, schedules, and statement of financial affairs; 3) attending the creditors' meeting and various hearings; 4) filing a motion to extend the automatic stay, as Debtor had a prior case dismissed within the year and the automatic stay would have expired, pursuant to section 362(c)(3); 5) successfully defending Debtor against a complaint objecting to his discharge; and 6) obtaining approval of Debtor's disclosure statement and plan. The Firm also obtained orders stripping wholly unsecured liens from Debtor's real property and attempted to negotiate a repayment plan with Debtor's student loan creditor. The Firm spent additional time obtaining two extensions of the exclusivity period, correcting errors made with regard to Debtor's operating reports, and addressing objections to Debtor's exemptions and the United States Trustee's motion to dismiss the case. As in any bankruptcy case, the Firm was obligated to and did communicate with Debtor on a regular basis.

In the Application, the Firm seeks \$41,857 in fees and \$491 for reimbursement of expenses. According to the Application, the hourly rates billed ranged between \$175 to \$350, depending on the attorney. The Application came before the Court on July 8, 2011, at which point Debtor objected to the amount claimed due. Debtor's main objection is that the amount of the Firm's fees far exceeded the original estimate of \$15,000 to \$20,000. Debtor contends that the Firm used junior associates with little experience, which, according to Debtor, increased the amount of time spent beyond that which was necessary. Debtor also

objects to the fact that the Firm billed the estate for correcting errors made by the attorneys.¹

CONCLUSIONS OF LAW

The issue before the Court is whether the Firm's fees are appropriate under the Bankruptcy Code. A professional employed by the estate may apply for compensation, including expenses. *See* 11 U.S.C. § 330; FED. R. BANKR. P. 2016. Section 330(a) provides:

(a)(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award . . .

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses . . .

(4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for

(i) unnecessary duplication of services; or

(ii) services that were not -

(I) reasonably likely to benefit the debtor's estate; or

(II) necessary to the administration of the case.

11 U.S.C. § 330(a). Accordingly, the Court may award reasonable compensation for actual and necessary expenses. The burden is on the attorney seeking professional compensation to prove that the fee requested is reasonable. *See In re Dabney*, 417 B.R. 826, 834 (Bankr. N.D. Ga. 2009) (Bonapfel, J.) (citing *In re Paul*, 100 B.R. 38, 41 (Bankr. D. Colo. 1989)).

The Court employs a three-step process to determine whether an attorney is entitled to compensation under section 330(a). *In re Health Science Products, Inc.*, 191 B.R. 895

¹ Debtor filed a post-hearing brief in which he advances additional arguments. The Court has considered only the evidence presented by Debtor at the hearing on the Application, as well as any facts evident from the billing invoices and the docket.

(Bankr. N.D.Ala. 1995)(citing *In re Beverly Mfg. Corp.*, 841 F.2d 365 (11th Cir. 1988)); *Grant v. George Schumann Tire & Battery Co.*, 908 F.2d 874 (11th Cir. 1990); *see also In the Matter of Conkle*, 2005 WL 6490598, *3 (Bankr. N.D.Ga. 2005)(Drake, J.). First, the Court considers the nature and extent of the services rendered by the attorney. *In re Health Science Products, Inc.*, 191 B.R. at 910 n.20. The attorney must provide this information within the application for compensation, including the number of hours worked and a description of the way in which the hours were spent. *Id.*; *see also* FED. R. BANKR. P. 2016(a). If any issues of fact exist as to the actual services provided, the court must hold an evidentiary hearing. *Id.*

Second, the Court must determine the value of the services, or, in other words, the "reasonableness and necessity of the hours claimed and the hourly rate requested." *Id.* To determine the reasonableness and necessity of the hours, the Court relies upon the lodestar approach, under which a court multiplies "reasonable hourly rates by the number of hours reasonably expended." *In re Villa Capri of Georgia Associates, L.P.*, 141 B.R. 257 (Bankr. N.D. Ga. 1992) (citing *Hensley v. Eckerhart*, 461 U.S. 424 (1983)); *see also Norman v. Housing Auth. of City of Montgomery, et al.*, 836 F.2d 1292 (11th Cir. 1988)(adopting lodestar approach in determining statutory fees); *Grant v. George Schumann Tire & Battery Co.*, 908 F.2d 874 (11th Cir.1990)(applying the lodestar approach in determining appropriate fees in a bankruptcy case).

To determine whether the hourly rates and number of hours expended are reasonable, the court must take "into account all relevant factors, including -

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services 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;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3). The Court must "also consider whether the bankruptcy assets were administered as economically as possible and whether any of the services rendered were duplicative or non-legal. *Grant v. George Schumann Tire & Battery Co.*, 908 F.2d 874, 878 (11th Cir. 1990).

Third, the Court "must briefly explain the findings and reasons upon which the award is based" *In the Matter of Conkle*, 2005 WL 6490598, *3 (quoting *In re Health Science Products, Inc.*, 191 B.R. at 910 n.20). Indeed, this explanation ensures that the fee review is meaningful. *Id.*

In this case, the Firm presented itemized billing statements, documenting the amount of time spent and appropriate descriptions of how the time was spent. There appears to be no question as to whether the services were actually rendered. Thus, no further evidence is required as to the nature and extent of the services.

Debtor does object to the reasonableness of the fee. The Court, therefore, must determine the reasonableness and necessity of both the amount of hours claimed and the

rates charged. The Firm presented billing invoices with the time billed and hourly rates for multiple attorneys. According to Exhibit B to the Application, ten attorneys worked on the case for a total of 198.7 hours, with hourly rates of \$175, \$185, \$190, \$245, \$295, and \$350, over a twenty-two month period.

As to the reasonableness of the hourly rate, Debtor did not present any evidence to suggest that the hourly rates were excessive for the type of services performed or the experience level of the attorneys. Beth Rogers, the named partner with the Firm, has over fourteen years of experience in many areas of bankruptcy practice. The hourly rate billed by the associates of the Firm appears to the Court, based on its own knowledge of customary hourly rates, to be appropriate.

As to the reasonableness of the amount of time spent and the necessity of certain tasks, the Court finds that small adjustments to the fees charged should be made to address Debtor's concern that the Firm allowed inexperienced, junior associates to work on his case, resulting in an increase in hours due to their lack of knowledge and experience. On the whole, it appears that the Firm always ensured that junior associates were monitored by a partner or senior associate and that the Firm did not charge for two attorneys' time when a supervising attorney attended a hearing. Nonetheless, after viewing the record, hearing the testimony of the parties, and parsing the billing invoices, the Court does not believe that the entire time spent was reasonable and necessary.

The Firm spent 198.7 hours, billing over \$41,000 dollars on a fairly routine, individual Chapter 11 case. The case was made somewhat more difficult by inexperience,

errors, and, possibly, a lack of familiarity with the case, due to what appears to have been frequent turnover of associates working on the case. Five categories of time billed appear objectionable to the Court.

First, the Firm's delay in preparing a disclosure statement and plan required the Firm to file two motions to extend the exclusivity period. The Firm's failure to meet the last deadline, as extended by the Court following the second motion to extend, caused the United States Trustee to file a motion to dismiss. Had the Firm acted more promptly in filing a plan and disclosure statement, the Firm would not have been required to file the second motion to extend exclusivity or to respond to the motion to dismiss. The Court will discount the time billed on these matters by \$1,255.

Second, the Firm filed a motion and a complaint to strip what appears to be the same liens. The Firm prepared and submitted the same consent order on the motion and the complaint. Indeed, the resolution of the complaint and the motion differed only in that a supplemental order was entered on the complaint to address an additional creditor not addressed by the consent order entered on the motion. This task could have been accomplished by filing either a motion or a complaint, but did not require the filing of both. Thus, the Court will discount the time spent on this task by \$748.

Third, the Firm billed Debtor for the time spent correcting administrative mistakes. For example, the Firm corrected numerous monthly operating reports, which had previously been reviewed by multiple attorneys. The Firm presented no evidence to suggest that Debtor was responsible for the errors, or any reason why the attorneys failed to discover the errors

during their multiple reviews of the faulty operating reports. As the time spent reviewing and filing corrected reports did not fully benefit the estate, the Court will discount the time spent by \$1,556.

Fourth, it appears that a significant amount of the time billed by Mr. Finch during the one month in which he worked for the Firm was duplicated by other associates after he left the Firm. As compensating the Firm for duplicative services would not be appropriate, the fees requested will be reduced by \$1,182.

Finally, the billing records reflect that the associates spent time performing non-legal tasks, such as researching creditor addresses and updating the creditors' matrix when mail sent to creditors was returned to the Firm. The estate should not be charged an attorney's hourly rate for services that could have easily been performed by a secretary or assistant. Consequently, the Court will discount the fees requested by \$1,209 to account for non-legal services performed by associates.

The Court, having considered the testimony and the time records, concludes that the fee requested should be reduced by \$5,950 as outlined above. The Court's conclusion is further supported by the factors set out in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). Although the issues in the case were not extraordinarily difficult or novel, the services were necessary and appropriate in the course of filing and obtaining confirmation of a Chapter 11 plan. Further, the time spent by the attorneys in travel and work excluded other employment opportunities. The Firm obtained a desirable result, as it succeeded in stripping over \$900,000 in liens from the Debtor's real property and obtained

a confirmed plan, which, if performed, will result in the Debtor's discharge. With the slight adjustments made by the Court, the fees are reasonable and shall be awarded to the Firm.

CONCLUSION

For the reasons stated above, the attorneys' fees are allowed in the amount of \$35,907, plus expenses of \$491.04. The Firm may apply any retainer towards payment of the services and expenses.

END OF DOCUMENT