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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	CASE NO. 00-75939
Darnell Lee Carter,	CHAPTER 13
Debtor.	JUDGE MASSEY

ORDER DENYING AMENDED APPLICATION FOR COMPENSATION

On March 3, 2006, Dwight Bowen, counsel for Debtor Darnell Lee Carter, filed an application for compensation in this case in which he sought approval of compensation in the amount of $7,160.00, in addition to $2,500.00 paid by Debtor just prior to the commencement of this case. The application describes services performed by Mr. Bowen from the date of filing through February 2006 on various matters. Subsequently, he amended the application to reduce his request for additional compensation to $6,900.00, reducing his total request to $9,400.00. Debtor opposes the application.

The Court held a hearing on Mr. Bowen's application on March 29, 2006, which was continued to April 12, 2006. At the March 29 hearing, the Court raised the question of whether Mr. Bowen had a fee agreement with Mr. Carter, the absence of which would be adverse to any claim for additional compensation. At the April 12 hearing, Mr. Bowen conceded that he had no written contract with Debtor and had not sent interim statements to Debtor concerning work that he was doing on Debtor's behalf for which he now seeks compensation.

This case was filed on December 14, 2000. Six days later, Mr. Bowen filed a Motion for Approval of Retainer in Non-Routine Chapter 13 Case, in which he sought approval for accepting

$2,500 as retainer in the case, which was more than the Court's General Order No. 4, in effect at that time, permitted in a Chapter 13 case without court approval. Mr. Bowen also mentioned the possibility of additional fees in his disclosure statement filed pursuant to Bankruptcy Rule 2016(b). The certificate of service attached to the Motion for Approval of Retainer did not show service on Mr. Carter. As indicated on the docket, the Court scheduled a hearing on Mr. Bowen's motion for January 17, 2001. The Court's records reflect that a consent order was to be presented with regard to that motion (presumably bearing the consent of Debtor and the Trustee).

Upon review of the record in this case, the Court concludes that Mr. Bowen is not entitled to additional compensation even if he had a fee agreement with Mr. Carter calling for further payments, the services rendered were necessary and the fees sought are reasonable. As I stated at the April 12 hearing, the work done by Mr. Bowen on Mr. Carter's behalf appears to have been quite valuable to Mr. Carter, who by the time this case was filed had turned the silk purse of winning a lottery into a sow's ear of debt that might have consumed his lucky fortune.

In resisting the application, Mr. Carter has stated that he made payments to Mr. Bowen over and above the initial retainer, and he suggests that somehow he should get that money back. Mr. Bowen's response to that contention on its face appears to completely rebut Mr. Carter's contention. Mr. Bowen shows that he paid the funds in question to the Trustee and to a creditor on Mr. Carter's behalf shortly after he received those funds. If Mr. Carter believes that any money in this case has been misapplied or misappropriated, he may file whatever papers on that subject he desires, but he would be well advised to consult with the Trustee as the Court has suggested, as well as with an attorney. The Court need not address his allegations, which seem at this stage to be without any merit, in order to rule on Mr. Bowen's application.

On April 14, 2001, the Court entered an Order confirming Debtor's plan, as amended. Although Mr. Bowen anticipated earning additional fees for services beyond the usual work performed by an attorney for a Chapter 13 debtor in a routine case, the amended plan that he filed on behalf of Mr. Carter did not take into account such fees.

Paragraph 3 of the initial plan, filed on December 14, 2000, provided that "the Chapter 13 Trustee is authorized to pay as an administrative expense of this case, debtor's attorney's fee as follows: (a) upon confirmation of the plan a total fee of $1,500.00, less attorney's fees previously received totaling $2,500.00, (sic) leaving a balance of $0.00 . . . ." (The $1,500 figure was presumably a typo. This provision anticipated the entry of an order on Mr. Bowen's motion to approve a retainer of $2,500, which was never formally granted but would have been approved.) The plan did not provide for additional fees. Paragraph 4 of the plan, entitled "Priority Claims," provided that "payment shall be paid to priority creditors, whose claims have been filed and allowed, in such amounts as the plan provides, or as altered at the 341 meeting, as approved by the Court at the confirmation hearing." Priority claims include those for attorney's fees for services rendered to the debtor in the course of the case. The plan was amended twice prior to the entry of the Confirmation Order, and neither amendment altered the terms of payment of Debtor's attorney or the provision for payment of priority expenses.

The plan payments were $370 per month. The sum of all payments made by Mr. Carter under his plan was sufficient to pay the Trustee's commissions, arrearages on claims secured by Debtor's residence, a claim secured by an automobile, a priority tax claim and sixty percent of unsecured claims. The Trustee made the disbursements to creditors as the confirmed plan

dictated, leaving nothing left over to pay additional legal fees, as to which the plan stated that nothing was to be paid.

Mr. Bowen's attempt to collect additional attorney's fees is barred by the confirmation of Debtor's plan for two reasons discussed in some detail below. First, the plan fixed the amount of his fees, and the confirmation order is res judicata on that issue. Second, Mr. Bowen's claim is one for payment of an administrative expense under the plan and as such is limited to the funds available to pay such expenses. The claim, if allowed, could not be paid because it was not asserted until after the Trustee had disbursed all payments in accordance with the plan. Hence, the claim, if allowed, would be discharged.

Section 1327(a) of the Bankruptcy Code provides that "[t]he provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan." 11 U.S.C. § 1317(a). Thus, "[a] Chapter 13 plan of confirmation has res judicata effect unless it is subsequently modified by a bankruptcy court order. *See* 11 U.S.C. §§ 1327, 1329." *In re Davis,* 314 F.3d 567, 570 (11th Cir. 2002). Provisions related to compensation of the debtor's attorney are covered by the res judicata effect of the confirmation order. As the Bankruptcy Court opined in *In re Young,* 285 B.R. 168 (Bankr.D.Md. 2002):

> In addition, the confirmation of the plan, in which a specific amount of disbursement to counsel for the debtor as attorney's fees was required, acted as a final adjudication of the matters set forth in the plan. 11 U.S.C. § 1327(a) ("The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan"); *In re Hallmark*, 225 B.R. 192 (Bankr.C.D.Ca.1998) (ruling that despite subsequent application and approval of attorney's fees by debtor's counsel, he was not entitled to distributions under the plan where terms of plan provided that payment of attorneys' fees would be $0.00). *See also In re Varat Enterprises, Inc.*, 81 F.3d 1310 (4th

> Cir.1996) (holding in chapter 11 case that order confirming plan was res judicata on the issue of attorney's fees provided for in the debtor's plan).

Id. at 174 -175. *Accord In re Lasica,* 294 B.R. 718, 721 (Bankr.N.D.Ill. 2003) ("Orders confirming bankruptcy reorganization plans are binding on both debtors and creditors, and the Seventh Circuit has long recognized the sanctity of confirmation orders." (Citations omitted)). Mr. Carter's amended plan could have provided for payment of attorney's fees in excess of the retainer, but it did not do so. To preserve Mr. Bowen's chance of collecting additional fees, the plan would have had to specify a higher monthly payment in order to have been feasible or it would have had to reflect an agreement between Debtor and Mr. Bowen that additional fees awarded would constitute a postpetition debt not provided for in the plan. Therefore, the Order confirming Debtor's plan fixed $2,500 as the maximum amount of compensation that Mr. Bowen could receive.

Section 1328(c) of the Bankruptcy Code provides that a "discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts *provided for by the plan* or disallowed under section 502 of this title" with two exceptions not relevant here. 11 U.S.C. § 1328(c). (Emphasis added.) The term "debt" is defined in section 101(12) as "liability on a claim." The term "claim" means "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." Mr. Bowen asserts a right to payment for services he rendered postpetition to Debtor in his capacity as Debtor's bankruptcy attorney. Such attorney's fees are expenses of administration. Mr. Carter's plan dealt with Mr. Bowen's claim because it provided for payment of allowed priority claims, which include expenses of administration. If the

Court were to grant Mr. Bowen's application, his claim for additional compensation would constitute an "unsecured debt provided for by the plan" within the meaning of section 1328(c) of the Bankruptcy Code. It could not be paid because the Trustee has no funds to pay it. Therefore, the unpaid claim is discharged pursuant to section 1328(c) and the Order of discharge entered in this case on April 1, 2006.

For these reasons, it is

ORDERED that Dwight Bowen's amended application for compensation is DENIED.

Dated: April 13, 2006.

JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE