

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re:)
)
LEWIS S. LAURIA, III) Case No. 00-10550-SSM
) Chapter 7
Debtor)

MEMORANDUM OPINION

A hearing was held in open court on March 19, 2002, on the application of John D. Sawyer, Esquire, for approval and payment of compensation as counsel for the debtor both prior to and subsequent to the conversion of this case from chapter 13 to chapter 7. The applicant was present in person. The United States Trustee, who opposed payment of post-confirmation fees, was present by counsel.¹ The court ruled from the bench that the fees would be allowed as requested. Upon further review of the application and the case file after the hearing, however, the court concludes that only a portion of the requested compensation should be allowed. The purpose of this memorandum opinion is to briefly set forth the reasons for the court's ruling.

Background

Lewis S. Lauria, III, a self-employed building contractor ("the debtor") filed a voluntary chapter 13 petition in this court on February 14, 2000. He was represented by John D. Sawyer, who filed a disclosure of compensation under Rule 2016, Federal Rules of Bankruptcy Procedure, reflecting that he had agreed to accept \$1,500.00 for representing the

¹ The United States Trustee's objection is actually set forth in his objection to the chapter 7 trustee's final report and application for compensation.

debtor, with all of that sum having been paid prior to the filing of the statement. The legal services included in the agreed fee were as follows:

- Analysis of the debtor's financial situation, and rendering advice and assistance to the debtor in determining whether to file a bankruptcy petition.
- Preparation and filing of any petition, schedule, statement of affairs, and other documents required by the court.
- Representation of the debtor at the meeting of creditors, confirmation hearing and any adjourned hearings thereof.

Representation with respect to adversary proceedings and contested matters was excluded from the \$1,500.00 fee and would be billed at \$150.00 per hour.

Mr. Sawyer filed three chapter 13 plans for the debtor, none of which were confirmed. He also defended two relief from stay motions. On October 18, 2000, in the face of an objection to confirmation by the second deed of trust holder against the debtor's property, he filed on the debtor's behalf a notice of conversion to chapter 7. Ann E. Schmitt was subsequently appointed as trustee. While not entirely clear from the limited record at the hearing, it appears that prior to conversion the debtor had located a purchaser for his home. The trustee, in any event, promptly moved to sell the property, which resulted in net proceeds of \$44,282.39 being paid into the estate. Mr. Sawyer made two court appearances post-confirmation at which the automatic stay was continued in effect pending the trustee's sale of the property. The debtor then filed objections to 6 proofs of claim. One of these was withdrawn after the creditor filed a response. The other five were sustained in whole or in part.

The present application was filed on February 6, 2001, seeking compensation, net of payments already received,² of \$6,285.42. Attached to the application is a billing statement reflecting 55.9 hours of attorney time, for which Mr. Sawyer seeks compensation at the rate of \$150.00 per hour, together with \$104.42 in reimbursable costs. The services for which compensation is sought may be summarized as follows:

Through 1st confirmation hearing exclusive of lift stay	20.40 hrs
Key Bank relief from stay	2.75 hrs
After 1st confirmation hearing exclusive of lift stay	8.60 hrs
Eastern Savings Bank relief from stay	9.00 hrs
Post-conversion: claims objection	3.25 hrs
Post-conversion: Eastern Savings Bank relief from stay	2.50 hrs
Post-conversion: sale of property	1.90 hrs
Post-conversion: revise schedules, attend 341 meeting	6.50 hrs
Post-conversion: other	1.00 hrs

Discussion

A.

_____ Different standards apply with respect to approval and payment for the services performed while the case was in chapter 13 and after it was converted to chapter 7. As counsel for the chapter 13 debtor, Mr. Sawyer may be awarded compensation from the bankruptcy estate “for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the

² The application reflects that Mr. Sawyer received, in addition to the \$1,500.00 stated in the Rule 2016 statement, an additional \$200.00 in October 2000 and \$500.00 in February 2001.

debtor.” § 330(a)(4)(B), Bankruptcy Code. In determining the amount of compensation, the court is required to consider “the nature, the extent, and the value of such services, taking into account all relevant factors.” § 330(a)(3), Bankruptcy Code. Among the factors which must be considered are the following:

- (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; 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.

§ 330(a)(3)(A) through (E), Bankruptcy Code. After conversion of the case to chapter 7, however, debtor’s counsel may not be compensated from the estate for services that primarily benefit the debtor, but only for those that were necessary to the administration of the case or beneficial toward the completion of the case. *In re Taylor*, 250 B.R. 869, 872 (E.D. Va. 2000) (Brinkema, J.) (holding that debtor’s attorney in a chapter 7 case may be awarded compensation under § 330, but noting that “it is still within the province of the bankruptcy court to determine which of the requested fees were for services provided to the bankruptcy estate and to award only those fees.”).

B.

With respect to the fees requested through the date of the first confirmation hearing, the court notes that debtor's counsel seeks compensation for 20.4 hours exclusive of the 2.75 hours devoted to the defense and settlement of the Key Bank motion for relief from the automatic stay. This would equate to \$3,060.00. Under the plain terms of the fee agreement set forth in the Rule 2016 statement, however, counsel is entitled to no more than \$1,500.00 in compensation for services rendered through the confirmation hearing. The 11.5 hours devoted to the pre-conversion defense of the two relief from stay motions is properly compensable, and the court finds that \$150.00 per hour is a reasonable rate. The Rule 2016 statement does not specifically address the drafting of amended plans after the initial plan is denied confirmation. Here, confirmation was denied not because of any inadequacy in the drafting of the plan by counsel but because the debtor had not filed Federal income tax returns for 1996 through 1998 or Virginia income tax returns for 1996 through 1999. Under the circumstances, it does not seem fair to construe the fee agreement so as to require debtor's counsel to prepare and file amended plans without additional compensation when the necessity for doing so was the fault of the client. Accordingly, the court concludes that compensation for the 8.6 hours (net of time devoted to the Eastern Savings Bank relief from stay motion) following the initial denial of confirmation should be allowed at the rate of \$150.00 per hour. Finally, the court concludes that the \$67.26 in costs incurred pre-conversion³ are reasonable and should be

³ This includes the \$16.00 cost of recording the homestead deed, which is listed under the time entries rather than the expense entries.

reimbursed. Accordingly, the total amount to be approved in chapter 13 compensation and expenses is as follows:

Through 1st confirmation hearing	\$1,500.00
Key Bank relief from stay	\$412.50
Eastern Saving Bank relief from stay	\$1,350.00
Following 1st confirmation hearing	\$1,290.00
Costs	<u>\$67.26</u>
Subtotal	\$4,619.76
Payments received from debtor	<u>(2,200.00)</u>
Payable from estate	\$2,419.76

C.

As noted, once the case was converted to chapter 7, debtor's counsel could only be compensated from the bankruptcy estate for work that was necessary to the administration of the case or beneficial toward its completion. The court finds that the time expended prosecuting the objections to claim and defending the Eastern Savings Bank relief from stay motion satisfy this test. The court also finds that the reasonable time expended in amending the schedules following conversion and in attending the meeting of creditors in the converted case should also qualify. The court has some concern with whether the full 6.5 hours was really necessary; however, the court will give counsel the benefit of the doubt. The court agrees with the United States Trustee, however, that as a matter of policy, debtor's counsel should not be compensated for performing duties not constituting the practice of law that fall within the trustee's bailiwick. This would include the various communications and negotiations involved in bringing about the sale of the property. The postage and copying

costs in the amount of \$33.16, which appear to have been incurred in connection with the claims objections, will be approved. Accordingly, the court will award compensation to debtor's counsel for post-conversion services in the following amount:

Eastern Savings Bank relief from stay	\$375.00
Claims objections	\$487.50
Revise schedules and appear at 341 meeting	\$975.00
Costs	<u>\$33.16</u>
Total	\$1,870.66

D.

A separate order will be entered consistent with this opinion approving the payment of \$2,419.76 in compensation and reimbursement as administrative expenses of the chapter 13 case and \$1,870.66 in compensation and reimbursement as administrative expenses of the chapter 7 case, for a total payment of \$4,290.42.

Date: March 20, 2002
Alexandria, Virginia

/s/ Stephen S. Mitchell
Stephen S. Mitchell
United States Bankruptcy Judge

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