

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re

Case No. 6:06-bk-00620-KSJ
Chapter 13

SUSAN WACZEWSKI

Debtor.

MEMORANDUM OPINION ALLOWING
APPLICATIONS FOR COMPENSATION FOR
CHAPTER 7 TRUSTEE'S ATTORNEY

This case came on for consideration on the Application (the "Application") (Doc. No. 210) and Amended Application for Compensation for John H. Meininger III, Trustee's Attorney (the "Amended Application") (Doc. No. 259) (jointly, the "Applications"), and on the debtor's Objection thereto (Doc. No. 260). After reviewing the pleadings and considering the position of interested parties, the Court allows the Applications in full in the amount sought, \$22,310.00 in fees and \$26.87 in costs, but allocates \$17,048.20 of the total fee amount to the Chapter 13 estate of Susan Waczewski and the remaining fee amount of \$5,261.80 and all \$26.87 in costs to the Chapter 7 estate of Jose Waczewski in Case No. 6:99-bk-8433-KSJ, for the reasons discussed below.

In the Applications, the Chapter 7 Trustee, Leigh R. Meininger (the "Applicant"), seeks approval of attorney's fees totaling \$22,310.00 and costs of \$26.87. In support, he has attached two exhibits to the Amended Application, Exhibit A, which consists of billing records detailing time spent between October 4, 2002 and April 3, 2006, and Exhibit B, which consists of billing records detailing time spent between September 12, 2006 and October 18, 2006. The debtor objects to the amounts sought by the Applicant on several grounds.

First, the debtor argues that the Applicant should not be compensated for the time spent preparing the Amended Application (Doc. No. 259). Second, that no compensation should be awarded in connection with work performed relating to appeals of certain orders filed by the debtors because "[a]ll of the time spent by the [A]pplicant as attorney for the trustee in handling [these] appeals was unreasonable in that the Trustee could have avoided the same by abandoning the case after he received the funds from the first settlement..." Third, that all fees requested

for time expended subsequent to Mrs. Waczewski converting her Chapter 7 case to a case under Chapter 13 should be denied. Lastly, in the event the Court does not deny the fees requested in the Applications, that the fees be apportioned between Mrs. Waczewski's estate and her husband's estate in his separate, Chapter 7 case.

As to the debtor's first argument, the Court holds that the Applicant is entitled to be compensated for the 1.6 hours spent in preparing the Amended Application, as detailed on Exhibit B. Bankruptcy Code¹ Section 330(a)(6) explicitly contemplates that the preparation of fee applications is compensable, and a majority of courts routinely allow such compensation where reasonable. In re On Tour, LLC., 276 B.R. 407 (Bankr. D. Md. 2002) (noting that the majority position of allowing such compensation is now contained in Bankruptcy Code Section 330(a)(6)); In re ACT Mfg., Inc., 281 B.R. 468, 485 (Bankr.D.Mass.2002) (time spent preparing fee applications is compensable as long as the time is reasonable); In re Nucorp Energy, Inc., 764 F.2d 655 (9th Cir. 1985) (holding that bankruptcy counsel is entitled to reasonable compensation for the time and effort spent in preparing fee applications.

Here, the Amended Application properly details, in a summary fashion totaling a little over four pages, the history of legal work completed by, or on behalf of, the Applicant, since the Waczewski's filed their initial joint Chapter 7 bankruptcy case seven years ago. The remaining portion of the Amended Application briefly recites and applies the twelve factors that courts in the Eleventh Circuit must consider when evaluating the reasonableness of fees for services rendered, pursuant to Grant v. George Schumann Tire & Battery Co., 908 F.2d 874, 877 (11th Cir. 1990), and includes the two exhibits—billing records detailing time spent between October 4, 2002 and April 3, 2006 (Exhibit A) and between September 12, 2006 and October 18, 2006 (Exhibit B). Such detail is required by Bankruptcy Rule 2016² and is necessary for the Court to evaluate the reasonableness of the request. Therefore, the Court

¹ Unless otherwise stated, all references to the Bankruptcy Code herein refer to Title 11 of the United States Code.

² Bankruptcy Rule 2016 provides in relevant part as follows:

- (a) Application for Compensation or Reimbursement.** An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested...

finds that the 1.6 hours expended in compiling the fee application is reasonable and fully compensable.

The debtor's second argument, that the estate would be better off if the trustee had, essentially, not responded to the debtor's appeals of the second compromise and simply abandoned the case after receiving the funds from the first settlement, is incredible and unmerited. The Applicant was both entitled to, and obligated to, respond to the debtor's repeated attacks on the second compromise, and the Court finds that the time expended in doing so was more than reasonable, if not understated. The debtor also maintains that "the [A]pplicant's participation as attorney for himself created a conflict of interest in that he stood to earn more by creating more litigation with the debtors—to the direct disadvantage of the creditors." However, this position also cannot be sustained. The Applicant did not create or otherwise initiate frivolous litigation with the debtors in order to rack up fees at the estate's expense. Rather, he simply responded to the Waczewski's ongoing appeals in relation to the approval of the second compromise.

In connection with the debtor's third argument, that all fees requested for time expended subsequent to the conversion of her Chapter 7 case to a case under Chapter 13 should be denied because the Chapter 7 trustee was discharged upon conversion, the Court has closely examined the billing records attached as Exhibits A and B to the Amended Application. Mrs. Waczewski's Chapter 7 case was converted to a case under Chapter 13 on March 31, 2006. As illustrated by Exhibit A, in the four days from the date of conversion and April 3, 2006, when the last billing entry occurred, the Applicant spent 42 minutes reviewing memorandum opinions and related orders in the Waczewski's Chapter 7 case, Case No. 6:99-bk-8433-KSJ, pertaining to the various motions to set aside the second compromise and granting the Mrs. Waczewski's motion to convert to a Chapter 13 case, for a total cost to the estate of \$210. Appropriately, no further services were rendered by the trustee or his counsel on the estate's behalf in Mrs. Waczewski's Chapter 7 case. Rather, Exhibit A simply reflects that the Applicant kept current as to the status of the case by reviewing court opinions and orders. The Court finds this action and the associated charges on Exhibit A to be reasonable and necessary for Meininger's administration of the Chapter 7 case and will allow them in the amount requested, despite the fact that they occurred either on the date of conversion or in the two or three days thereafter.

The Applicant also seeks compensation for other amounts incurred after Mrs. Waczewski

converted to Chapter 13. In Exhibit B, the Applicant seeks supplemental amounts for time expended between September 12, 2006 and October 18, 2006. During this time, a total of 15.8 hours was spent amounting to \$3,950 in related fees. The Court already has determined, above, that 1.6 of the 15.8 hours, resulting in fees of \$400, is reasonable and will be allowed for filing the Applications. Upon review of the remaining 14.2 hours and associated fees totaling \$3,550, the vast majority of the time was incurred in connection with preparing responses to, and attending hearings on, the Motions for Sanctions filed in Mrs. Waczewski's Chapter 13 case (Doc. No. 250 in Case No. 6:06-bk-00620-KSJ) and in Mr. Waczewski's Chapter 7 case (Doc. No. 212 in Case No. 6:99-bk-8433-KSJ) and the Motion to Set Aside Order Approving the Second Compromise filed in Mr. Waczewski's Chapter 7 case. (Doc. No. 217 in Case No. 6:99-bk-8433). Both Susan and Jose Waczewski filed these nearly identical motions challenging the Chapter 7 trustee's actions and seeking sanctions. Clearly, the trustee needed counsel to reply and to defend him against the debtors' allegations. Therefore, the supplemental compensation and expenses detailed in Exhibit B will not be denied simply because they were incurred after Mrs. Waczewski converted her Chapter 7 case to a case under Chapter 13.

However, the Court agrees with the debtor's argument that the fees should be apportioned between Mrs. Waczewski's estate and her husband's estate in his separate, Chapter 7 case. As the Eleventh Circuit Court of Appeal directed in Council for Periodical Distributors Associations v. Evans, 827 F.2d 1483, 1487 (11th Cir. 1987), trial courts have significant discretion on "when to apportion fees" and on "how to divide liability for fees." The Appellate Court then lists a number of methods to consider in apportioning fees, including dividing fees between parties based on the percentage of damages awarded.

In connection with the amounts sought by the Applicant on Exhibit A, totaling \$18,360, the trustee, with the assistance of counsel, recovered the total amount of \$20,000 from the settlement of litigation brought jointly by Mr. and Mrs. Waczewski. The primary claims were asserted by Susan Waczewski, and the settlement proceeds were divided between the two estates at a ratio of 87 percent paid to the estate of Susan Waczewski and 13 percent paid to the estate of Jose Waczewski. The allocation percentages were suggested by both

debtors and accepted by the Court as reflected in a separate order.³

Because it is difficult, if not impossible, to divide the fees incurred by the Chapter 7 trustee in connection with the settlement of this joint litigation involving both estates, the Court finds that the fees sought in Exhibit A to the Applications should be divided between the two estates in the same percentages that the settlement funds were divided—87 percent to Susan and 13 percent to Jose. As such, Susan Waczewski is responsible for payment of fees of \$15,973.20 ($\$18,360.00 \times 87\% = \$15,973.20$). The estate of Jose Waczewski is responsible for payment of the balance—\$2,386.80 ($\$18,360.00 \times 13\%$).

In connection with the amounts sought in Exhibit B, the Court can and will apportion the fees and costs between the two estates as some of the amounts, 8.6 hours, were incurred in connection with the Applicant's work relating to preparing the Application and responding to the Motions for Sanctions filed by both Mr. and Mrs. Waczewski in their separate cases (Doc. No. 250 in Case No. 6:06-bk-00620-KSJ; Doc. No. 212 in Case No. 6:99-bk-8433-KSJ) while other of the Applicant's work, amounting to 7.2 hours, related to the Motion to Set Aside Order Approving the Second Compromise filed only in Mr. Waczewski's Chapter 7 case (Doc. No. 217 in Case No. 6:99-bk-8433). As such, the Court will split the 8.8 hours between the two estates equally, and charge the remaining 7 hours to Mr. Waczewski's estate. Therefore, for Exhibit B, Mrs. Waczewski's estate is responsible for \$1,075 ($4.3 \times \$250.00/\text{hr}$) and Mr. Waczewski's estate is responsible for \$2,875 ($7.2 + 4.3 \times \$250.00/\text{hr}$). In addition, the total costs, \$26.87, are awarded from Jose's estate, as they appear to relate to copies and postage charges incurred in connection with the Chapter 7 trustee's Response (Doc. No. 220 in Case No. 6:99-bk-8433) to the Motion to Set Aside Order Approving the Second Compromise filed in Mr. Waczewski's Chapter 7 case (Doc. No. 217 in Case No. 6:99-bk-8433). Finally, the Court finds that all of the fees sought by the Chapter 7 trustee as detailed in Exhibits A and B are fair and reasonable. When determining the reasonableness of attorney's fees, courts are instructed to: 1) determine the nature and extent of the services rendered; 2) determine the value of those services; and, 3) consider the twelve factors articulated by the Fifth Circuit in Johnson v.

Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). Grant v. George Schumann Tire & Battery Co., 908 F.2d 874, 877 (11th Cir. 1990). The Johnson factors are as follows:

- (1) the time and labor required,
- (2) the novelty and difficulty of the question,
- (3) the skill requisite to perform the legal services properly,
- (4) the preclusion of other employment by the attorney due to acceptance of this case,
- (5) the customary fee,
- (6) whether the fee is fixed or contingent,
- (7) time limitations imposed by the client or the circumstances,
- (8) the amount involved and the results obtained,
- (9) the experience, reputation and ability of the attorneys,
- (10) the undesirability of the case,
- (11) the nature and length of the professional relationship with the client, and
- (12) awards in similar cases.

The Applications describe the complexity of the legal work completed in connection with the related cases of Susan and Jose Waczewski. The Court finds that 77 hours were expended in the two cases from October 4, 2002 through October 18, 2006, and also that the hourly rates are reasonable. Given the unique arguments raised by the debtors throughout these cases and the ancillary appeals, the legal work was time-consuming, complex, and difficult. If anything, the Court would find that the Applications are modest and likely understated given the amount of legal work observed by the Court during the course of these proceedings.

Accordingly, the Applications are allowed in full, with \$17,048.20 in fees allocated to the estate of Susan Waczewski and the remaining fee amount of \$5,261.80 and all \$26.87 in costs to the estate of Jose

³ See Memorandum Opinion Partially Granting and Partially Denying Motion by Debtor for Sanctions Against Chapter 7 Trustee and Chapter 7 Counsel (Doc. No. 265), In re Susan Waczewski, Case No. 6:06-bk-00620-KSJ.

Waczewski. Separate orders shall be entered in the related cases consistent with this Memorandum Opinion.

DONE AND ORDERED in Orlando, Florida, this 27th day of October, 2006.

/s/ Karen S. Jennemann
KAREN S. JENNEMANN
United States Bankruptcy Judge