


ORDERED.

Dated: August 29, 2019



Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	
)	
HAROLD L HILLEY,)	Case No. 6:17-bk-02389-KSJ
)	Chapter 13
Debtor.)	
_____)	

**ORDER DENYING MOTION BY
TODD M. HOEPKER, P.A. TO ADJUDICATE CHARGING LIEN**

This case came before the Court on August 6, 2019 to consider the Motion by Todd M. Hoepker, P.A. to Adjudicate Charging Lien (Doc. No. 178)(the “Motion”) and the Response to the Motion filed by Nicole Hobbs-Hilley (Doc. No. 183). For the reasons stated below, the Motion is denied.

Todd M. Hoepker, P.A. is a Florida law firm and Todd M. Hoepker is an attorney admitted to practice in Florida (collectively “TMH”). Nicole Hobbs-Hilley is the former spouse of the Debtor, and a creditor in this bankruptcy case. In June 2017, Ms. Hobbs-Hilley retained TMH to represent her in this bankruptcy case¹ and a related adversary proceeding.² The parties signed a

¹ TMH filed a Notice of Appearance on behalf of Ms. Hobbs-Hilley (Doc. No. 13).
² The adversary proceeding is *Hobbs-Hilley v. Hilley*, Adv. Case No. 6:17-ap-00089-KSJ.

representation agreement that provided TMH may impose a charging lien on any funds obtained or property received as a result of the legal services provided to Ms. Hobbs-Hilley.³ Mr. Hoepker's hourly rate is \$425.⁴

TMH then prepared and filed a proof of claim in this case on behalf of Ms. Hobbs-Hilley.⁵ By the proof of claim, Ms. Hobbs-Hilley alleged that the Debtor owed her \$186,466.19 under the parties' Final Judgment and Decree of Divorce.⁶ TMH also initiated an adversary proceeding on behalf of Ms. Hobbs-Hilley.⁷ By the complaint, Ms. Hobbs-Hilley alleged that the amounts owed to her were not dischargeable, and based on the Debtor's alleged false oaths, the Debtor should be denied a discharge.⁸

TMH proceeded to represent Ms. Hobbs-Hilley interests by attending two hearings in the adversary proceeding,⁹ and negotiating with the trustee and Debtor's counsel. Except for filing the complaint, proof of claim, a notice of appearance,¹⁰ a motion to continue hearing,¹¹ and attending two hearings, the record does not reflect any other services provided by TMH. At some point, Ms. Hobbs-Hilley emailed TMH that "if he could not get the case settled within \$2,000 more billable hours he needed to withdrawal [sic] from the case."¹² TMH, however, continued to represent Ms. Hobbs-Hilley interests and send her invoices.¹³ After representing Ms. Hobbs-Hilley for approximately eight months, TMH requested to withdraw as her counsel, and this Court granted

³ Doc. No. 178, ¶ 7. TMH did not provide the Court with a copy of the representation agreement. Ms. Hobbs-Hilley, however, does not dispute that she signed the representation agreement or that the agreement allowed TMH to impose a charging lien on any funds or property received as a result of TMH's legal services.

⁴ Doc. No. 178, FN 1.

⁵ Claim No. 11-1.

⁶ Claim No. 11-1.

⁷ *Hobbs-Hilley v. Hilley*, Adv. Case No. 6:17-ap-00089-KSJ, Doc. No. 1.

⁸ *Hobbs-Hilley v. Hilley*, Adv. Case No. 6:17-ap-00089-KSJ, Doc. No. 1.

⁹ TMH appeared at pretrial conferences held on October 5, 2017 and January 17, 2019 in *Hobbs-Hilley v. Hilley*, Adv. Case No. 6:17-ap-00089-KSJ. Doc. No. 7 and 13.

¹⁰ Doc. No. 13.

¹¹ *Hobbs-Hilley v. Hilley*, Adv. Case No. 6:17-ap-00089-KSJ, Doc. No. 11.

¹² Doc. No. 183, ¶ 2.

¹³ Doc. No. 183, ¶ 4.

the request on March 7, 2018.¹⁴ Ms. Hobbs-Hilley paid TMH approximately \$13,000 for the services rendered.

Ms. Hobbs-Hilley did not retain new counsel and began appearing *pro se* in this case and the related adversary proceeding. On July 2, 2018, the Debtor and Ms. Hobbs-Hilley resolved some of their issues and filed a settlement agreement.¹⁵ The settlement agreement provided, in part, that the Debtor would transfer his ownership interest of two condominiums in Florida (the “Florida Condos”)¹⁶ to Ms. Hobbs-Hilley that the parties owned together. The Court entered an order, as amended, approving the settlement agreement.¹⁷ On July 26, 2018, TMH filed a Notice of Charging Lien in the bankruptcy case and adversary proceeding alleging that Ms. Hobbs-Hilley owed TMH \$2,780.05 plus 18% interest for unpaid attorney’s fees and expenses (the “Charging Lien”).¹⁸

On October 1, 2018, Ms. Hobbs-Hilley filed an amended proof of claim alleging that the Debtor now owed her \$84,754.52 under the parties’ Final Judgment and Decree of Divorce.¹⁹ The Debtor objected to the amended proof of claim.²⁰ The Court resolved the remaining issues between the Debtor and Ms. Hobbs-Hilley, after a trial, by entering an order providing Ms. Hobbs-Hilley with a \$14,747.90 unsecured claim in the Debtor’s bankruptcy case.²¹ The Debtor then confirmed a Chapter 13 plan that provided Ms. Hobbs-Hilley and other creditors holding unsecured claims

¹⁴ Doc. No. 33; *Hobbs-Hilley v. Hilley*, Adv. Case No. 6:17-ap-00089-KSJ, Doc. No. 22.

¹⁵ Doc. No. 87.

¹⁶The condominium addresses are 800 N. Atlantic Ave. Unit 504, Daytona Beach, FL 32114 and 800 N. Atlantic Ave. Unit 410, Daytona Beach, FL 32114.

¹⁷ Doc. No. 104.

¹⁸ Doc. No. 99; *Hobbs-Hilley v. Hilley*, Adv. Case No. 6:17-ap-00089-KSJ, Doc. No. 34.

¹⁹ Claim No. 11-2.

²⁰ Doc. No. 129.

²¹ Doc. No. 147.

would receive payments, if any, based on a pro-rata distribution.²² The Chapter 13 Trustee estimates that Ms. Hobbs-Hilley may receive distributions totaling approximately \$1,300.

By the Motion, TMH requests that this Court adjudicate the Charging Lien in the amount of \$2,780.05 plus 18% interest and find that the Charging Lien attaches to the Florida Condos and any distributions Ms. Hobbs-Hilley may receive in this case. Ms. Hobbs-Hilley opposes adjudication of the Charging Lien. Ms. Hobbs-Hilley argues that TMH did not participate in the negotiation of the settlement agreement or transfer of the Florida Condos, and based on the invoices and inadequate services provided by TMH, she should not have to pay any other fees to TMH.

The attorney's charging lien is an equitable remedy recognized by courts used to protect attorneys from clients "who would enjoy the fruits of the attorney's labor but attempt to avoid fair payment for the labor."²³ Charging liens derive from state law, and as a result, courts apply state law to determine their applicability.²⁴ Under Florida law, a charging lien may be imposed if an attorney demonstrates "(1) a contact between attorney and client; (2) an expressed or implied understanding that payment is either contingent upon recovery or will be paid from the recovery; (3) an attempt by the client to avoid paying or a dispute as to the amount of the fee; and (4) a timely notice of a request for a lien."²⁵ Charging liens, however, only encumber the proceeds from the lawsuit, or *the amount the attorney actually recovered for the client*.²⁶ "It is not enough to support

²² Doc. No. 175.

²³ *In re Summit View, LLC*, No. 8:11-cv-724-T-24, 2011 WL 3268367, *4 (M.D. Fla. Aug. 1, 2011)(citing *Weed v. Washington*, 242 F.3d 1320,1323 (11th Cir. 2001); *In re Estate of Warner*, 160 Fla. 460 (Fla. 1948)).

²⁴ *Summit View*, No. 8:11-cv-724-T-24, 2011 WL 3268367 at *4; See also *Shepard v. Florida Power Corp.*, No. 8:09-CV-2398-T-27TGW, 2011 WL 2144769, *2 (M.D. Fla. May 12, 2011)("Federal courts, although they recognize no common-law lien in favor of attorneys, give effect to the laws of the states in which they are held").

²⁵ *In re Washington*, 242 F.3d 1320, 1323 (11th Cir. 2011)(citing *Sinclair, Louis, Siegel, Heath, Nussbaum & Zaverchnik, P.A. v. Baucom*, 428 So.2d 1383, 1384 (Fla. 1983); See also *Summit View*, No. 8:11-cv-724-T-24, 2011 WL 3268367 at *4.

²⁶ *Summit View*, No. 8:11-cv-724-T-24, 2011 WL 3268367 at *4

the imposition of a charging lien that an attorney has provided his services, the services must, in addition, produce a positive judgment or settlement for the client, since the lien will attach only to the tangible fruits of the services.”²⁷

Here, TMH did not meet its burden. TMH has not demonstrated that the legal services provided to Ms. Hobbs-Hilley produced or contributed to the settlement or distribution. TMH withdrew from representing Ms. Hobbs-Hilley months prior to the settlement, and TMH did not participate in the negotiations that resulted in the settlement. After settlement, Ms. Hobbs-Hilley amended the proof of claim filed by TMH, and later defended the amended claim, *pro se*, at trial. The distribution to be made to Ms. Hilley-Hobbs is based on this Court’s order as to the amended proof of claim, not the claim filed by TMH. And TMH has already received approximately \$13,000 from Ms. Hobbs-Hilley for services provided. TMH did not provide the Court with billing records, but having considered the record, any additional demand for payment over the \$13,000 received appears to be excessive under the circumstances. Accordingly, it is

ORDERED:

1. The Motion (Doc. No. 178) is denied.
2. The Notices of Charging Lien filed in this case (Doc. No. 99) and the related adversary proceeding, *Hobbs-Hilley v. Hilley*, Adv. Case No. 6:17-ap-00089-KSJ (Doc. No. 34) are stricken.
3. Ms. Hobbs-Hilley does not owe Todd M. Hoepker, P.A. any additional fees or costs for services rendered in this case or the related adversary proceeding.

²⁷ *Montpellier Farm, Ltd. v. Crane Environmental, Inc.*, No. 07-2285-CIV, 2009 WL 722238, (S.D. Fla. Mar. 18, 2009)(quoting *Correa v. Christensen*, 780 So.2d 220, 220 (Fla. 5th DCA 2001)). In *Montpellier Farm*, the court held that Plaintiff’s former counsel was not entitled to a charging lien because his work did not result in or contribute to the settlement.

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The Clerk is directed to serve a copy of this order on all interested parties.