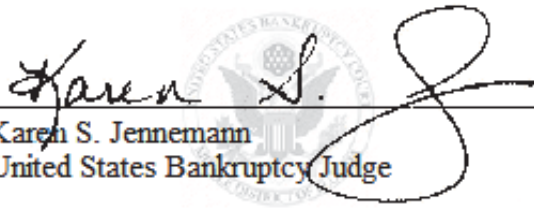


ORDERED.

Dated: September 09, 2020



Karen S. Jennemann
United States Bankruptcy Judge

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

In re)	
)	
Greater Blessed Assurance Apostolic)	Case No. 6:20-bk-0148-KSJ
Temple, Inc.)	Chapter 11
Debtor.)	
_____)	

PRELIMINARY ORDER PARTIALLY SUSTAINING AND PARTIALLY OVERRULING DEBTOR'S THIRD AMENDED OBJECTION TO CLAIM 4-3 OF THIRD WORLD MISSIONS, INC.

Debtor, a non-profit charity, objects (the "Objection") to Claim 4-3 of its primary secured creditor, Third World Missions, Inc. ("Third World").¹ When the Debtor stopped making regular payments, Third World filed a state court foreclosure action in 2016, and, after many years of litigation, a Final Judgment of Foreclosure (the "Final Judgment") was entered.² Third World contends Claim 4-3³ is accurate and opposes the Objection.⁴ The Objection is partially sustained.

¹ Doc. No. 100. After Debtor filed the Objection, Third Word filed an amendment to the claim, Claim 4-3.

² Doc. No. 112, Exh 5. The Final Judgment of Foreclosure was entered on December 10, 2019. Debtor has appealed the Final Judgment to the Florida Fifth District Court of Appeals. Stay relief was granted to allow the parties to continue with this appeal to conclusion. Doc. No. 62.

³ Doc. No. 112, Exh. 6.

⁴ Doc. No. 117. A trial on the Objection was held on August 11, 2020. The parties agreed that this ruling is needed to allow the Debtor to proceed to confirmation but is subject to any modification of the Final Judgment as later decided by the appellate court.

Third World's Claim 4-3⁵ is for \$568,706.92. Most of this amount was awarded in the Final Judgment of Foreclosure of \$468,438.31, which included a principal balance of \$421,836.81, interest of \$142,092.98 (through December 10, 2019), late charges of \$2,566.52, and filing fees of \$1,942. Interest on the Final Judgment amount (\$468,438.31) was to accrue at 6.89% starting on December 11, 2019. Attorneys' fees were awarded, but no amount was assessed. So, the approximate \$100,000 difference between the Final Judgment amount (\$468,438.31) and the Proof of Claim amount (\$568,706.92) is attributable to interest accruing post-judgment and unassessed attorneys' fees.

This order does three things: (1) to calculate post-judgment interest due to Third World, (2) to quantify attorney's fees and collection costs incurred by Third World up to the date the Debtor filed this Chapter 11 case, January 10, 2020 (the "Petition Date"), and (3) to quantify attorneys' fees and costs incurred by Third World *after* the Petition Date, which might be secured depending on the value of the underlying real property.⁶ These amounts are requested in Claim 4-3 but are critical for the Debtor to confirm its Plan of Reorganization.⁷

The purpose of this order, however, is *not* to substitute my opinion for that of the Florida Fifth District Court of Appeals in resolving the issues pending before it. To the extent the appellate court modifies the Final Judgment or finds Third World not entitled to amounts awarded in the Final Judgment, this Court will conform any *final* order on the Debtor's Objection. The appellate court remains free to resolve the more legal substantive issues pending before it; the Bankruptcy

⁵ Doc. No. 112, Exh. 6.

⁶ Section 506(b) of the Bankruptcy Code authorizes a creditor to recover fees, costs, and other expenses if the creditor holds an over-secured claim. *See PNC Bank, N.A. v. MDR, LLC*, Case No. 5:14-cv-573-Oc-32PRL, 2015 WL 13260292, *1 (M.D. Fla. April 6, 2015); *In re Jimenez*, 472 B.R. 106, 110 (Bankr. M.D. Fla. 2012); *In re Pak*, 252 B.R. 215, 219 (Bankr. M.D. Fla. 2000). *See also In re Electric Machinery Enterprises, Inc.*, 371 B.R. 549, 550-51 (Bankr. M.D. Fla. 2007) (discussing four reasons why courts have held that unsecured creditors are not entitled to fees and costs).

⁷ A confirmation hearing is set for September 28, 2020.

Court will establish only those items **not** addressed by the Final Judgment, i.e., assessment of attorneys' fees and the calculation of interest, which are essential to allow the Debtor to confirm a Plan of Reorganization.

Post-Judgment Interest

On the post-judgment interest rate of 6.89% and its post-judgment calculation, Debtor contends the wrong interest rate was used in the Final Judgment. The Court overrules this objection finding final judgments issued by Florida State Courts between October 1, 2019 and January 1, 2020 carry an accruing per annum interest rate of 6.89%.⁸ The trial court used the correct post-judgment interest rate, which continues to accrue at a per diem rate of \$88.43. As of the Petition Date, the post-judgment interest totaled \$2,652.90 (30 days x \$88.43) and will continue to accrue at \$88.43 per day thereafter.

Attorney Fees and Collection Costs *Before* the Petition Date

Shane M. Smith, P.A. ("SMS") represented Third World in collection efforts against the Debtor prior to the Petition Date. Third World provided SMS' billing records⁹ which reflect it spent 163.6 hours for a total request of \$41,199.00 in attorneys' fee up to the Petition Date. This is a blended hourly billing rate of \$251.83. Third World also requests SMS' collection costs of \$5,440.85 incurred prior to the Petition Date.

Third World is entitled to reasonable attorneys' fees and costs for the work SMS performed. The lodestar analysis helps courts sort reasonable from unreasonable fees by initially

⁸ Doc. No. 112, Exh.7. Section 55.03[1], Florida Statutes, governs the interest rates of judgments: "On December 1, March 1, June 1, and September 1 of each year, the Chief Financial Officer shall set the rate of interest that shall be payable on judgments or decrees for the calendar quarter beginning January 1 and adjust the rate quarterly on April 1, July 1, and October 1 by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months, then adding 400 basis points to the averaged federal discount rate. The Chief Financial Officer shall inform the clerk of the courts and chief judge for each judicial circuit of the rate that has been established for the upcoming quarter. The interest rate established by the Chief Financial Officer shall take effect on the first day of each following calendar quarter...." For the October 1, 2019 quarter, the Chief Financial Officer set the interest rate at 6.89%.

⁹ Doc. No. 112, Exh.8.

multiplying the attorney's reasonable hourly rate by the number of hours reasonably expended.¹⁰

A bankruptcy court can adjust and explain the lodestar calculation, upward or downward, after considering the twelve (12) factors laid out in *Johnson v. Georgia Highway Express, Inc.*¹¹

Here, the Court finds the blended hourly billing rate of \$251.83 reasonable and consistent with the local hourly billing rate. The hours expended by SMS (163.6), however, need a downward adjustment. SMS' billing records include several time entries with no detail or explanation of the service rendered. For example, Mr. Disston has multiple time entries with either "Misc" "Communication" or "Meeting" to describe the work done, but no further explanation.¹² "A starting point for an evaluation of the reasonableness of the fees is an explanation that discloses what was done, when it was done, by whom it was done, and how long it took ...Time entries must be both detailed and specific...A lack of detail justified reduction or denial of compensation."¹³ "Adequate time records are essential to the court in carrying out its duty to determine how much work was productive or necessary, and how much work required treatment by experienced attorneys."¹⁴

SMS' billing records prevent the Court from understanding what SMS actually did when either "Misc" "Communication" or "Meeting" are used describe the work done, which accounts for 16.7 of the hours sought. After removing these vague time entries, applying the loadstar analysis and considering the *Johnson* factors, the Court finds that 146.9 hours were reasonably

¹⁰ *Grant v. George Schumann Tire & Battery Co.*, 908 F.2d 874, 879 (11th Cir. 1990).

¹¹ 488 F.2d 714 (5th Cir. 1974) (abrogated on other grounds by *Blanchard v. Bergeron*, 489 U.S. 87, 92, 109 S. Ct. 939, 944, 103 L. Ed. 2d 67 (1989)). The twelve factors are: (1) The time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the 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.

¹² Doc. No. 112, Exh.8.

¹³ *In re Castorena*, 270 B.R. 504, 515 (Bank. D. Idaho 2001).

¹⁴ *In re Sapolin Paints, Inc.*, 38 B.R. 807, 810 (Bankr. E.D.N.Y. 1984).

spent before the Petition Date, and \$36,993.83 of fees (\$251.83 x 146.9 hrs.) are allowed. This amount appears appropriate for work performed over a three-year period in a hotly contested commercial foreclosure case.

As to the \$5,440.85 of requested costs incurred by Third World prior to the Petition Date, SMS' billing records disclose \$2,100.00 of this cost is for a \$50 monthly expense described as "Monthly research, copying documents and regular postage. These costs are in addition to professional services." No additional detail is given. General firm overhead expenses are not recoverable as costs.¹⁵ Having deducted the overhead expenses, Third World is entitled to collection costs of \$3,340.85.

Attorney Fees and Collection Costs After the Petition Date

Two separate law firms—SMS and Coastal Law Group ("CLG")—represented Third World either on the pending appeal or in this bankruptcy case *after* the Petition Date. In sum, Third World is requesting over \$40,000 of attorneys' fees and almost \$17,000 of costs for work incurred over a relatively short six-month period.

SMS' billing records¹⁶ reflect it spent 65.9 hours for a total request of \$22,587.50 in attorneys' fee from the Petition Date up through July 13, 2020. This is a blended hourly billing rate of \$342.75. SMS requests costs of \$16,454.50 from the Petition Date through July 13, 2020.

CLG's billing records¹⁷ reflect it spent 73.8 hours for a total request of \$17,749.00 in attorneys' fee from the Petition Date up through July 13, 2020. This is a blended hourly billing rate of \$240.50. CLG's costs from the Petition Date through July 13, 2020 total \$301.00.¹⁸

¹⁵ See *In re Bilgutay*, 108 B.R. 333, 339 (Bankr. M.D. Fla. 1989)(firm overhead expenses not allowed as costs unless they are specifically described to take them outside the sphere of overhead); See also *In re Bicoastal Corp.*, 131 B.R. 499 (Bankr. M.D. Fla. 1991)(general overhead expenses not allowed as costs).

¹⁶ Doc. No. 112, Exh. 9.

¹⁷ Doc. No. 112, Exh. 10.

¹⁸ Doc. No. 112, Exh. 11.

The Court looked closely at this dual retention and found work duplicated between the firms. Here are just a few illustrative examples:

- On January 23, 2020, SMS billed 0.5 for “Reviewed 6 documents filed in bankruptcy case,” and CLG billed 0.8 for “Review and analysis of additional filings and information”
- On March 25, 2020, CLG billed 0.8 for “Review and analysis of Amended Petition, Amended Statement of Corporate Ownership, Amended Schedules, Amended Statement of Financial Affairs and other miscellaneous filings; follow up instructions to staff,” and on March 26, 2020 SMS billed 1.5 for “Briefly reviewed numerous filings from OC in bankruptcy action”¹⁹
- On Jun 17, 2020, CLG billed 0.2 for “Review and analysis of Motion for Protective Order,” and SMS billed 0.3 for “Reviewed Filing in bkr case”

CLG and SMS both billed for reviewing the same pleadings filed in the bankruptcy case. “[C]ompensation will not be awarded for ‘unnecessary duplication of services.’”²⁰ Both firms lumped time together or gave vague descriptions of the work performed. “Lumping is ‘universally disapproved.’... The problem with lumping is that it hinders courts from determining reasonableness, which is why it goes hand in hand with the principal that a vague or inadequate record will warrant adjustments to the award.”²¹

SMS also continued to use “Misc” “Communication” “Meeting” or similar vague descriptions to describe work performed, accounting for at least 23.2 of the hours sought for services performed after the Petition Date. Here, the Court has taken the duplication of services,

¹⁹ Although not defined, the Court infers “OC” is an abbreviation for “opposing counsel”.

²⁰ *In re First State Bancorporation*, No. 7–11–11916 JA, 2014 WL 1203141, at *4 (Bankr. D.N.M. Mar. 24, 2014). See also *In re Brous*, 370 B.R. 563, 573 (Bankr. S.D.N.Y. 2007) (“The estate did not require two sets of lawyers overseeing [a] transaction...The fees pertaining to these duplicative (and sometimes vaguely described) services will be disallowed, subject to two exceptions.”).

²¹ *In re Unnerstall*, Case No. 6:17–bk–00336–KSJ, 2018 WL 1989936, at *6 (Bankr. M.D. Fla. April 25, 2018)(quoting *In re Parker*, No. 12–03128–8–SWH, 2015 WL 5095948, at *7 (Bankr. E.D.N.C. Aug. 27, 2015)).

lumping of time and vague descriptions of the work performed into consideration to arrive at an attorney fee award.

On SMS attorneys' post-petition fees, the Court finds the blended hourly billing rate of \$342.75 reasonable and consistent with the local hourly billing rate.²² And after applying the loadstar analysis and considering the *Johnson* factors, the Court finds that 32.7 hours were reasonably spent by SMS from the Petition Date through July 13, 2020. Fees of \$11,207.93 (\$342.75 x 32.7 hours) are allowed.

SMS' requested costs (\$16,454.50) are disallowed in full. The majority of these costs appear to be duplicative requests for payment of billing invoices from CLG or unallowable overhead expenses.²³

On CLG attorneys' post-petition fees, the Court finds the blended hourly billing rate of \$240.50 reasonable and consistent with the local hourly billing rate. And after applying the loadstar analysis and considering the *Johnson* factors, the Court finds that 56.8 hours were reasonably spent by CLG from the Petition Date through July 13, 2020. Attorneys' fees of \$13,660.40 of fees (\$240.50 x 56.8 hrs.) are allowed. Third World is entitled to reimbursement for CLG appropriate collection costs of \$301.00, which consists of bankruptcy court filing fees and court call appearance fees.

Conclusion

Third World's Claim 4-3 is allowed for \$511,425.89, which consists of the Final Judgment amount \$468,438.31, interest on the Judgment amount at 6.89% from December 11, 2019 through the Petition Date totaling \$2,652.90, allowed attorneys' fees through the Petition Date of

²² Although this blended rate differs from the blended rate for services provides before the Petition Date, the rate is still consistent with the local hourly billing rate.

²³ Doc. No. 112, Exh. 9, pg. 9.

\$36,993.83, and allowed collection costs through the Petition Date of \$3,340.85. Interest on the Judgment will continue to accrue at 6.89% or \$88.44 per diem until paid in full. To the extent Third World holds an over-secured under 11 U.S.C. § 506(b), Third World may have attorney fees totaling \$24,868.33 and costs totaling \$301.00 through July 13, 2020.

Accordingly, it is:

ORDERED:

1. Debtor's Objection (Doc. No. 100) to Third World's Claim 4-3 is partially sustained and partially overruled.
2. Claim 4-3 is allowed for \$511,425.89.
3. Third World is allowed interest on the Judgment amount at 6.89% from December 11, 2019 through the Petition Date totaling \$2,652.90.
4. Post-judgment interest will continue to accrue after January 10, 2020 at a per diem rate of \$88.44.
5. Third World is awarded attorneys' fees of \$36,993.83 and collection costs of \$3,340.85, as of January 10, 2020.
6. If applicable, Third World is awarded attorneys' fees of \$24,868.33 and collection costs of \$301.00, incurred on January 11, 2020 through July 13, 2020.
7. The Court reserves the right to modify this order consistent with a final ruling made by the Fifth District Court of Appeals in the appeal pending between the Debtor and Third World.

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Attorney David Marshall Brown is directed to serve a copy of this order on interested parties who do not receive service by CM/ECF and file a proof of service within 3 days of entry of the order.