ORDERED.

Dated: July 20, 2021

Caryl E. Delano
Chief United States Bankruptcy Judge

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

In re:

Benjamin H. Yormak,

Debtor.
_____/

Case No. 2:15-bk-04241-FMD
Chapter 7

ORDER SUSTAINING DEBTOR'S
OBJECTION TO CLAIMANT'S BILL OF COSTS
[Doc. Nos. 892 and 896]

THIS CASE came before the Court without a hearing to consider the *Bill of Costs* filed by Steven R. Yormak ("Claimant"),[1] Debtor's *Objection to Claimant's Bill of Costs* (the "Objection"),[2] and Claimant's response to Debtor's Objection.[3]

[1] Doc. No. 892.
[2] Doc. No. 896.
[3] Doc. No. 900.

I. BACKGROUND

Claimant is a Canadian attorney who has never been licensed to practice law in the State of Florida. Debtor, who is Claimant's son, is a Florida attorney. On April 24, 2015, Debtor filed a petition under Chapter 13 of the Bankruptcy Code, and on September 1, 2016, the Chapter 13 case was converted to a case under Chapter 7. On December 29, 2016, Claimant filed Claim No. 4-2 (the "Claim") in an amount exceeding $1,095,275.00. The Claim was based on "services performed" under Consulting Agreements with Debtor. Debtor objected to the Claim, asserting that the Consulting Agreements were unenforceable because they provided for Claimant's unlicensed practice of law (the "UPL Issue").

During the six years that Debtor's objection to the Claim has been pending in the Bankruptcy Court, the parties have filed a combined thirteen motions for summary judgment.[4] The Court ruled in Claimant's favor on two of his summary judgment motions, finding (a) the Claim was not barred by a pre-bankruptcy settlement agreement with Debtor,[5] and (b) services performed by Claimant for clients seeking Social Security disability benefits did not constitute the unlicensed practice of law.[6]

[4] Doc. Nos. 70, 77, 94, 290, 328, 329, 418, 428, 465, 493, 575, 798, and 818.
[5] *See* Doc. No. 88.
[6] *See* Doc. No. 586.

Ultimately, however, on February 3, 2021, after years of litigation and appeals, the Court entered an order on the parties' final motions for summary judgment on the UPL Issue (the "SJ Order"). In the SJ Order, the Court denied Claimant's motion for summary judgment, granted Debtor's cross-motion for summary judgment, and disallowed Claimant's Claim, finding (a) that the Consulting Agreements were unenforceable as providing for the unlicensed practice of law, and (b) that Claimant's activities under the Consulting Agreements constituted the unlicensed practice of law.[7]

On May 12, 2021, Claimant filed a Bill of Costs, in which he states that judgment was entered against Debtor on "April 22, 2016 (ECF #88) and June 6, 2019 (ECF #586)"—referring to the dates and docket numbers of the two summary judgment rulings described above. Claimant appears to assert that because he prevailed in these two summary judgment rulings, he is entitled to the costs he incurred for hearing transcripts, matters related to depositions, and copies of papers obtained for use in the case. Claimant requests the Clerk to tax these costs in the total amount of $11,377.50.

[7] Doc. No. 851. Claimant timely filed a motion for reconsideration of the SJ Order (Doc. No. 853), which the Court denied (Doc. No. 859). Claimant then timely filed a notice of appeal of the SJ Order and the Court's order denying reconsideration (Doc. No. 863), which is now pending in the District Court. Later, Claimant filed a *Motion to Stay and/or Abate Bankruptcy Proceedings Pursuant to Bankruptcy Rule 8007* (Doc. No. 888) (the "Stay Motion"). The Court granted the Stay Motion in part, ruling that Claimant may participate and be heard on the pending matters in the Chapter 7 case, including his Bill of Costs, as though his Claim had not been disallowed (Doc. No. 914).

II. ANALYSIS

Under Fed. R. Bankr. P. 7054(b)(1), courts "may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides."[8] The first inquiry for the court under Rule 7054(b)(1) is: "Who is the 'prevailing party?'" As the bankruptcy appellate panel explained in *In re Borges*:[9]

> The Borgeses are correct that they prevailed on certain claims. But just because a party can be said to have prevailed on a claim does not necessarily make it ***the*** prevailing party. The Borgeses suggest that the bankruptcy court's reliance upon *Barber* for the rule that "there can only be one prevailing party" is misplaced because it dealt with Rule 54(d), not Rule 7054. We find the bankruptcy court's reliance on *Barber* proper in this case because both rules use the definite article "the" in referring to "the prevailing party" and the operative term, "the prevailing party," is singular. The plain language of Rule 7054 unambiguously limits the number of prevailing parties in a given case to one party.[10]

In *Borges*, the bankruptcy appellate panel noted that multiple issues and claims were tried in the bankruptcy court, but the bankruptcy court had looked at the case as a whole and determined that the Borgeses were not the prevailing party under Rule 7054.[11] The *Borges* decision is consistent with Florida law, under which the prevailing party for purposes of attorney's fees is the party that prevailed on the significant issues in the litigation.[12] In addition, where one party has prevailed in a

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[8] Fed. R. Bankr. P. 7054(b)(1).
[9] 2014 WL 1364956 (10th Cir. B.A.P. Apr. 8, 2014).
[10] *In re Borges*, 2014 WL 1364956, at *4 (citing *Barber v. T.D. Williamson, Inc.*, 254 F.3d 1223 (10th Cir. 2001) (emphasis in original).
[11] *In re Borges*, 2014 WL 1364956, at *5.
[12] *In re Basil Street Partners, LLC*, 2013 WL 4461566, at *3 (Bankr. M.D. Fla. Aug. 19, 2013) (citing *Moritz v. Hoyt Enterprises, Inc.*, 604 So. 2d 807, 810 (Fla. 1992)).

dispute, under Rule 7054, courts do not apportion the costs of successful and unsuccessful claims between the parties.[13]

Here, "it is clear" that Debtor is *the* prevailing party because under the SJ Order, Debtor prevailed on the significant issue in the litigation, his objection to Claimant's Claim was sustained, and the Claim was disallowed in its entirety.[14] In other words, there can only be one prevailing party, and it was not Claimant. As in *Borges*, because Claimant is not the prevailing party, the Court may not allow costs to him.

Accordingly, it is

ORDERED that Debtor's *Objection to Claimant's Bill of Costs* (Doc. No. 896) is SUSTAINED and the costs identified by Claimant in his Bill of Costs (Doc. No. 892) are not taxable under Fed. R. Bankr. P. 7054.

The Clerk's office is directed to serve a copy of this Order on interested parties via CM/ECF.

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[13] *In re Patel*, 559 B.R. 534, 538 (Bankr. D.N.M. 2016)("[G]enerally, courts may not differentiate between the costs associated with successful and unsuccessful claims, as doing so would require them to 'employ the benefit of hindsight in determining whether [the requested] costs are reasonably necessary to the litigation of the case.'') (quoting *In re Williams Securities Litigation-WCG Subclass*, 558 F.3d 1144, 1148 (10th Cir. 2009)).

[14] *In re O'Callaghan*, 304 B.R. 887, 891 (Bankr. M.D. Fla. 2003).