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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U. S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
FEB 11 2002
TAWANA C. MARSHALL, CLERK
By _____
Deputy

IN RE:	§	
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COLORADO PLACE LIMITED PARTNERSHIP,	§	CASE NO. 01-34326-SAF-7
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D E B T O R.	§	

MEMORANDUM OPINION AND ORDER

Sorenson & Hach, P.C., has applied for the allowance of final compensation and reimbursement of expenses as counsel for Colorado Place Limited Partnership, while it was a debtor in possession under Chapter 11 of the Bankruptcy Code. John H. Litzler, the Chapter 7 trustee of the Colorado Place bankruptcy estate, GMAC Commercial Mortgage Corporation, Management Solutions, Inc., and the United States Trustee oppose the application. The court conducted an evidentiary hearing on the application on January 28, 2002.

The determination of compensation and reimbursement of expenses under §330(a) for professional persons employed under §327(a) constitute core matters over which this court has jurisdiction to enter a final order. 28 U.S.C. §§157(b)(2)(A), (O), and 1334. This memorandum opinion contains the court's

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findings of fact and conclusions of law as required by Bankruptcy Rules 7052 and 9014.

To determine reasonable compensation under §330(a) for the professional services rendered, the court must determine the "nature and extent of the services supplied by" the professional persons. 11 U.S.C. §330(a)(3); In re First Colonial Corporation of America, 544 F.2d 1291, 1299 (5th Cir. 1977). The court must also assess the value of those services in relation to the customary fee and quality of the legal work. These two factors comprise the components for the lodestar calculation. See Cobb v. Miller, 818 F.2d 1227, 1231 (5th Cir. 1987). Generally, the lodestar is calculated by multiplying the number of hours reasonably expended by reasonable hourly rates. Hensley v. Eckerhart, 461 U.S. 424, 434 (1983). The court may then adjust the compensation based on the factors of §§330(a)(3) and (4) and the Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974), factors. Blanchard v. Bergeron, 489 U.S. 87, 91-92, 94-95 (1989). The Johnson factors may be relevant for adjusting the lodestar calculation but no one factor can substitute for the lodestar. Id. Rather, the lodestar shall be presumed to establish a reasonable fee with adjustments made when required by specific evidence. Pennsylvania v. Delaware Valley Citizens Council for Clean Air, 478 U.S. 546, 563-65 (1986).

Each applicant has the burden to show that its requested

compensation is reasonable and was necessary for the proper administration of the estate. In re Beverly Manufacturing Corp., 841 F.2d 365, 371 (11th Cir. 1988). To assist the court in determining the reasonableness of the requested fees, the applicant is ethically obligated to exercise reasonable billing judgment. It must make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary. Hensley, 461 U.S. at 434.

Sorenson requests compensation of $21,238.00 in attorneys fees and reimbursement of $964.02 in expenses. Sorenson holds $25,000 in his trust account. The trustee and GMAC contend that Sorenson's work did not benefit the bankruptcy estate. The United States Trustee observes that Sorenson's hourly rate of $240 is incommensurate with his experience representing debtors in possession. In addition, all three objecting parties argue that Sorenson must return the $25,000 to the bankruptcy estate.

Colorado Place filed its petition for relief under Chapter 11 of the Bankruptcy Code on May 25, 2001. Sorenson prepared and filed an original creditor mailing matrix with the petition. The matrix failed to list GMAC, the secured creditor on the debtor's sole asset, its apartment complex. As a result, GMAC had no notice of the commencement of the bankruptcy case.

The debtor did not timely file its bankruptcy schedules and statement of financial affairs. Instead, on June 11, 2001, the

due date for filing the schedules, Sorenson filed a motion to extend the deadline for filing the schedules. He requested an extension until June 21, 2001. But, Sorenson drafted the motion using the 20 day objection provisions of L.B.R. 9007.1. Consequently, the motion was held for objections, rather than being submitted to the court for adjudication. On June 21, 2001, Sorenson filed a second motion to extend the filing deadlines, requesting until July 1, 2001, again using the 20 day objection provisions. The schedules could not be filed because of the condition of the debtor's books and records. Sorenson bears no responsibility for that. But, his method of requesting the extensions, coupled with his failure to provide notice to GMAC, meant that GMAC had no notice of the case throughout that entire period.

Yet, during that period, the debtor operated its business using GMAC's cash collateral without either its knowledge or its consent. Sorenson did not attend to that violation of the Bankruptcy Code.

At the meeting of creditors on July 5, 2001, the United States Trustee continued the meeting until August 2, 2001, as the debtor had not yet filed schedules and the statement of financial affairs. At this point, GMAC still had no notice of the filing of the case.

Finally, on July 10, 2001, the debtor filed its schedules

and statement of financial affairs, scheduling GMAC as a secured creditor. On July 11, 2001, Sorenson amended the mailing matrix to add GMAC.

On or around July 10, 2001, Sorenson attempted to contact GMAC. The debtors had obtained an offer to purchase the property. The buyer proposed to assume the GMAC mortgage and pay cash to the estate for the benefit of unsecured creditors. On July 10, 2001, Sorenson filed a motion to sell the apartment complex with a request for an emergency hearing. He served the motion on GMAC, but at an incorrect address.

The court held a hearing on the motion to sell on shortened notice on July 20, 2001. Sorenson represented that he served GMAC and described his efforts to contact GMAC regarding the sale. After considering evidence, the court granted the motion.

On July 25, 2001, GMAC filed its notice of appearance in the case and promptly on July 26 and July 27, 2001, filed motions to prohibit use of cash collateral, to set aside the sale order, and to appoint a real estate management company. The debtor countered with its motions to value the property, to amend the contract for sale, and to employ a management company and an accountant. The debtor conceded that it lacked equity in the property. Sorenson had no basis to pursue the sale at that time because of the GMAC opposition.

The court converted the case to a case under Chapter 7 on

August 15, 2001.

Without notice of the bankruptcy case to GMAC from May 25, 2001, to July 11, 2001, substantial portions of Sorenson's work provided no benefit to the bankruptcy estate. Without notice to GMAC and without authority to use cash collateral, most of Sorenson's work during this time period concerning the management and operations of the debtor's business provided no benefit to the estate. To the contrary, the debtor operated in violation of substantive provisions of the Bankruptcy Code that were designed to protect the secured creditor, and in this case, the most significant creditor.

Sorenson spent approximately 14 hours working on the schedules and statement of financial affairs. That is excessive work for a single asset real estate case. Sorenson is not responsible for the conditions of the debtor's books and records. He did not have the ability to update the records. The client had to produce the information. If the client's books needed work, then Sorenson's task was to obtain court approval for the retention of accountants to perform that work. Sorenson did not obtain that relief. In fact, he did not even seek authority to retain an accountant until August 1, 2001. Sorenson did file time extension motions, but he did so in a manner that delayed review and prevented GMAC from participating in the process. While he testified that his omission of GMAC from the mailing

matrix was an inadvertent error, the effect precluded GMAC participation. The whole exercise was useless. That, in turn, made the meeting of creditors useless, while rendering conferences concerning operations of no benefit to the estate.

Sorenson spent considerable time from May 25, 2001, to July 11, 2001, addressing management issues. But, Sorenson failed to present a motion to retain a professional property management company until August 1, 2001. That failure left the trustee with litigation over an administrative expense claim of nearly $70,000 for property management. Although Sorenson worked with the debtor concerning the debtor's operations, he never attended to the cash collateral requirements of the Code.

For these matters, from May 25, 2001, through July 25, 2001, the court disallows 31.7 hours. That also includes non-billable time concerning obtaining employment and vague descriptions, such as "research duty to disclose" and discuss "issues and priorities." In addition, the court disallows a description of $105 for "letter and potential witness," which is vague and suggests no activity that benefitted the estate.

By July 26 and July 27, 2001, Sorenson knew that GMAC opposed the proposed sale, would not consent to the assumption of the mortgage, and was seeking to place its designated management company on the premises. By August 13, 2001, the debtor conceded that it could not continue in Chapter 11 and on August 15, 2001,

the court entered an order converting the case to Chapter 7. Sorenson's pursuit of a doomed sale effort after July 26 did not benefit the estate nor did any of his work in August or September. Therefore, the court disallows the hours charged after July 25, 2001.

However, from his first meeting with the client on May 24, 2001, through July 25, 2001, Sorenson did pursue work that did benefit the estate and that had to be addressed. This work included addressing health, safety, and municipal code issues at the property, as well as communicating with creditors other than GMAC. In addition, Sorenson worked to pursue and present to the court a sale of the property. By mid-July he had corrected the GMAC omission and attempted to contact GMAC to discuss and to negotiate the proposed sale. Sorenson worked diligently on the sale. The court concludes that those efforts should be reasonably compensated, until Sorenson learned that GMAC would not agree to the sale.

For these activities, Sorenson incurred 47.7 hours of work from the initial meeting with the client through July 25, 2001. Because of the service error of the sales motion, however, that time must be discounted. Proper service would have brought the GMAC objection to the sale to the debtor's attention earlier than July 26, 2001, which would have necessarily resulted in less beneficial or billable time on the project by Sorenson. The

court, therefore, discounts that time by 10%. This discount fairly addresses the time at the hearing on the sale motion discussing GMAC's lack of an appearance, as well as the time Sorenson spent after the hearing preparing to implement the sales order. The court, therefore, finds reasonable time on the case by Sorenson of 42.93 hours.

The application includes charges of $120 for paralegal work. Considering the problems with the matrix, the delay in filing the schedules, and the service error on GMAC, the court finds no value to those services, and disallows them.

Turning to the hourly rate component of the lodestar analysis, although Sorenson has practiced law since 1976, this case constitutes his first representation of a debtor in possession under Chapter 11. He concedes that he made several mistakes due to his inexperience representing debtors in possession. The court has analyzed the impact of those mistakes. Sorenson typically charges his clients $240 per hour. But, that rate does not reflect the prevailing community rate for similarly experienced attorneys representing debtors in possession. The first time representation of a debtor in possession does not support a $240 hourly rate in the community. Taking judicial notice of fee applications filed in Chapter 11 cases from Metroplex law firms in the past year, the court would be hard pressed to award an hourly rate above $175. Therefore, the court

applies that rate.

Based on the lodestar analysis, the court finds reasonable compensation to be $7,512.75. No other Johnson factor requires an adjustment to the lodestar.

With regard to expenses, Sorenson paid the $830 filing fee. His application includes bank charges, which are not reimbursable as necessary expenses. The application also includes miscellaneous charges, which, without explanation, fail to establish that they were actual and necessary. The court finds that he reasonably incurred copying costs of $15.80, and delivery and certification costs of $54. Expenses charged after the July invoices were unnecessary. Therefore, the court finds actual and necessary expenses to be $899.80.

The court awards compensation of $7,512.75 and reimbursement of expenses of $899.80, for a total of $8,412.55.

Sorenson holds $25,000 in his firm's trust account. Sorenson's monthly invoices reflect that he has drawn on that account. He filed a motion to draw on the retainer on October 10, 2001, but the United States Trustee objected. Consequently, Sorenson could not draw on the trust account without an order of this court. L.B.R. 2016.1. Sorenson testified that he has not drawn on the account, that the $25,000 remains in the trust account, and that the invoices filed with the court are incorrect. Sorenson testified that the report of retainer draws

on the invoices occurred because of his firm's software application. Blaming software does not excuse filing misleading papers with a United States Court.

In any event, Sorenson may not retain the $25,000. On June 11, 2001, Sorenson filed a disclosure under Bankruptcy Rule 2016(b) stating that the firm had received a pre-petition retainer of $25,000. Sorenson testified that the principal of the debtor provided the funds for the retainer. According to the debtor's bank records, it appears that the debtor deposited $25,000 on May 23, 2001. The debtor wrote a $25,000 check to Sorenson on May 23, 2001, which had not been withdrawn from the debtor's account by May 25, 2001. The debtor filed its bankruptcy petition on May 25, 2001, making the funds in its bank account property of the bankruptcy estate. The Sorenson law firm deposited the $25,000 check from Colorado Place, according to the deposit slip, on May 25, 2001. The check was not honored.

The debtor, thereafter, post-petition, without order of this court, transferred $25,000 to the Sorenson firm, which was deposited into the firm's trust account. Sorenson did not file an amended Rule 2016(b) statement.

The $25,000 transferred from Colorado Place to Sorenson, and held in the Sorenson trust account, constitutes property of the bankruptcy estate, and must be returned to the bankruptcy estate. GMAC's claims to those funds must be determined between the

trustee and GMAC.

Based on the foregoing,

IT IS ORDERED that Sorenson & Hach, P.C., shall turn over to John H. Litzler, the trustee of the bankruptcy estate of Colorado Place Limited Partnership, $25,000.

IT IS FURTHER ORDERED that Sorenson & Hach, P.C., is awarded final compensation and reimbursement of expenses under 11 U.S.C. §330(a) of $8,412.55, to be paid as a Chapter 11 administrative expense.

Signed this 7th day of February, 2002.

Steven A. Felsenthal
United States Bankruptcy Judge