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

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

IN RE:	§	
	§	
DELANEY FAMILY L.P.,	§	
	§	
and	§	
	§	
DELANEY VINEYARDS, INC.,	§	
	§	CASE NO. 02-46631-DML-11
Debtors.	§	(Jointly Administered)

MEMORANDUM OPINION

Before the court is Delaney Family L.P.'s ("Delaney Family") and Delaney Vineyards, Inc.'s ("Delaney Vineyards") (collectively, "Debtors") Amended Motion to Determine Allowed Amount of Claim by Merlot Monticello Partners, Inc. ("MMP") (the "Motion") filed June 5, 2003.[1] The Motion seeks determination of (1) the proper application in regard to MMP's claim of the September 2002 and May 2003 land sales proceeds; (2) the applicable interest rate accrued on MMP's claim; and (3) the amount of attorneys' fees and expenses, if any, which may be added to MMP's claim.

Debtors' Supplemental Brief Relating to Motion was filed June 9, 2003. Debtors' and MMP's Stipulation as to Debtors' Plan Confirmation and Debtors' Motion was also filed June 9, 2003. MMP's Brief in Support of Its Response was filed June 30, 2003. Debtors' Second Brief

[1] Debtors' original Motion was filed December 6, 2002, and MMP's Response was filed January 17, 2003. MMP's Amended Response was filed June 2, 2003.

Regarding the Debtors' Motion and MMP's Brief Addressing Post-Petition Interest were each filed June 17, 2003.[2]

On August 18, 2003, Kelly, Hart & Hallman ("KHH") and Josephine Garrett, P.C. ("Garrett") (collectively, "Applicants"), counsel for MMP, filed an Application for Allowance of Attorneys' Fees and Reimbursement of Expenses (the "Application"). On September 5, 2003, Debtors filed their Objection by the Reorganized Debtors to Application (the "Objection"). MMP's Response to the Objection (the "Response") was filed September 24, 2003. On October 1, 2003, this court held a hearing and heard testimony in connection with the Motion and the Application.

BACKGROUND

Debtors operate a winery business in Grapevine, Texas. Debtors' Grapevine facility is located on approximately 14.7 acres of land owned by Delaney Family. Delaney Family also owns an adjacent tract of land consisting of approximately 12.781 acres.

MMP is the owner and holder of two promissory notes executed by Delaney Family originally payable to Texas Bank. MMP purchased the two promissory notes from Texas Bank for full value[3] pursuant to two separate Assignments of Note, Liens and Other Documents dated August 9, 2002, and recorded August 13, 2002. When acquired by MMP, the notes were in default and had been accelerated by Texas Bank by notice dated March 26, 2002. On April 3, 2002, Texas Bank posted the real property for foreclosure as required by law and notified

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[2] At the conclusion of the July 7, 2003, hearing on Plan confirmation, the court called for final briefs on the unresolved interest rate issue addressed in the Motion.

[3] MMP paid for the notes with cash and its own promissory note payable to Texas Bank and bearing interest at prime plus one percent.

Debtors of a sale of the real property covered by the deeds of trust scheduled for May 7, 2002. The May 7 sale was subsequently passed pursuant to the terms of forbearance agreements entered into by Debtors, the guarantor (see below), and Texas Bank. MMP, following its purchase of the notes, posted the real property for foreclosure on the first Tuesday of September, 2002.

The first promissory note is in the original principal amount of $1,315,786 and was executed by Delaney Family on January 12, 2000. The second promissory note is in the original principal amount of $249,950 and was executed by Delaney Family on July 26, 2001. Payment of each note is secured by a first lien deed of trust against certain real property[4] owned by Delaney Family. Each note is guaranteed by Delaney Vineyards and/or Jerry Delaney, sole officer, shareholder, and director of Debtors, and contains provisions obligating the maker to pay costs and expenses, including attorneys' fees, in the event of default. Each note bears a ten percent (10%) per annum contract rate of interest. The default rate of interest for each note is eighteen percent (18%) per annum.

On August 30, 2002, Debtors each commenced a voluntary chapter 11 reorganization under 11 U.S.C. §§ 101-1330.[5] Joint administration of Debtors' cases was ordered by this court on September 4, 2002.

Pursuant to this court's order dated September 12, 2002, Debtors sold a parcel of real property and remitted the net proceeds of $653,511.24 to MMP ($184,511.24 on September 30,

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[4] The first lien deeds of trust extended to all, or virtually all, of the Delaney Family property described above.

[5] Hereafter, references to Title 11 will be to "Bankruptcy Code" or "Code."

2002) or to Texas Bank for MMP's benefit ($469,000.00 on October 1, 2002) to reduce the debt secured by the first lien deeds of trust.

Pursuant to this court's order entered February 21, 2003, Debtors sold a 3.5 acre parcel of real property. Of the net proceeds $450,000 were used to further reduce the debt secured by the first lien deeds of trust. Pursuant to paragraph six of the February 21, 2003, order, Debtors are currently holding in a separate account $353,319.29 of the net proceeds of the second sale.

Debtors' filed their Joint Plan of Reorganization (the "Plan") on October 25, 2002; Amended Joint Plan on December 4, 2002; and Second Amended Joint Plan on February 11, 2002. MMP's Objections to Confirmation of Debtors' Second Amended Joint Plan were filed January 6, 2003, and MMP's Supplemental Objections to Confirmation of Debtors' Second Amended Joint Plan, as Amended,[6] were filed June 2, 2003. The Plan provides for payment of the balance of MMP's claim from proceeds of additional sales of land within three years. MMP retains its liens pending payment.

This court's order confirming Debtors' Second Amended Joint Plan, as amended, was signed July 15, 2003, and entered July 16, 2003.[7] The court's oral findings of fact and conclusions of law at the conclusion of the Plan confirmation hearing included, *inter alia*, determinations that (1) the property which is MMP's collateral is worth approximately $4.8

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[6] Debtors' First Amendment was filed January 7, 2003.
Debtors' Second Amendment was filed January 7, 2003.
Debtors' Corrected First Amendment was filed January 13, 2003.
Debtors' Third Amendment was filed January 13, 2003.
Debtors' Fourth Amendment was filed January 21, 2003.
Debtors' Fifth Amendment was filed May 14, 2003.

[7] The Plan defines "Effective Date" as "eleven (11) days after the Confirmation Date . . . ."

million; (2) the debt against the property held by MMP would not under any circumstances exceed $625,000; and (3) MMP is oversecured by a ratio of nearly 8:1 and is in no danger of not being paid.

DISCUSSION

Debtors' Motion asks this court to determine the amount of MMP's allowed claim and seeks therefore a determination of (1) the proper application of the September 2002 and May 2003 land sales proceeds to principal or interest; (2) the applicable interest rate on the notes to be included in the allowed claim; and (3) the amount of attorneys' fees and expenses sought in the Application to be included in the allowed claim. The court will address each *seriatim*.

1. Application of Land Sales Proceeds

Debtors argue that the proceeds from sales of land in September 2002 and February 2003 must be applied to reduce the principal amount of the indebtedness to MMP. Debtors rely on *Financial Security Assurance, Inc. v. T-H New Orleans Ltd. Partnership (In re T-H New Orleans Ltd. Partnership)*, 116 F.3d 790 (5th Cir. 1997), and *Orix Credit Alliance, Inc. v. Delta Resources, Inc. (In re Delta Resources, Inc.)*, 54 F.3d 722 (11th Cir. 1995). In these cases the courts adopted the view that an oversecured creditor was entitled to interest under section 506(b) for the period between the petition and plan confirmation and that the interest was not payable until the later of plan confirmation or the effective date.

Neither of these cases is dispositive. In neither case was the collateral of the secured creditor sold, resulting in liened proceeds then being paid to the creditor. Leaving aside the numerous other differences between the case at bar and *Delta* and *T-H New Orleans*, this distinction alone is fatal to Debtors' argument. A secured creditor whose collateral is sold during

the case pursuant to section 363(f) of the Code may expect payment, including interest from the proceeds of sale. A creditor that credit bids its secured claim at a sale under section 363(k) certainly can include in its bid interest and costs. Yet, accepting Debtors' argument would require deferring payment of or credit for interest until confirmation of a plan–a patently absurd result.

Having disposed of Debtors' argument, the issue remains, where interest and costs are allowable to a creditor pursuant to section 506(b), how should payments against the creditor's debt be applied. The answer lies in the contract between the parties. Here, each of the promissory notes provides:

> All regularly scheduled payments of the indebtedness evidenced by this Note shall be applied first to any accrued, unpaid interest then due and payable hereunder and then to the principal amount then due and payable. All non-regularly scheduled payments and payments made after an Event of Default has occurred and is continuing shall be applied to such indebtedness (including collection costs) in such order and manner as the holder of this Note may from time to time determine in its sole discretion. Borrower agrees that all payments of any obligation due hereunder shall be final, and if any such payment is recovered in any bankruptcy, insolvency or similar proceedings instituted by or against Borrower, all obligations due hereunder shall be automatically reinstated in respect of the obligation as to which payment is so recovered.

Based on the foregoing, the court concludes that the proceeds of the land sales must be applied at MMP's discretion. This holding is subject, however, to the limitation that there were no costs or fees from collection due until allowed by the court. Put another way, MMP may

apply the funds received from the land sales first to interest accrued at the time of each payment. The balance of the payment must be applied in reduction of principal.[8]

2. Interest Rate

MMP argues the terms of the notes provide that the 18% default rate of interest should be applied postpetition and should accrue on the net balance of the unpaid principal.[9] MMP asserts that the 18% default interest rate began accruing when Texas Bank accelerated the defaulted notes–six months before Debtors' chapter 11 petitions were filed–and that Debtors paid Texas Bank the default rate prepetition. Thus, MMP argues that Debtors cannot claim to have been "ambushed" by MMP charging the default rate. Although the default rate is substantially greater than the contract rate and the prime interest rate currently in effect, MMP argues that any analysis of Debtors' claims of alleged inequities regarding the spread between the default rate and a lower market rate must also consider Debtors' unwillingness to avail themselves of lower market rates. MMP further argues it is most significant that no junior creditor will be harmed by payment of the default rate of interest to MMP.

Debtors assert that the correct interest rate payable under the circumstances of this case is the contract rate of 10% per annum, not the default rate of 18% per annum. Debtors insist that a balancing of the equities in this case weighs in favor of the 10% non-default contract rate. Debtors claim the spread between the actual rate charged to MMP by Texas Bank at the time the

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[8] The court's holding in this regard is limited to the facts before it. The orders directing disbursement of sale proceeds or other orders of the court may, in appropriate cases, affect whether principal or some other element of a secured creditor's claim is affected by the given disbursement.

[9] The notes provide that "[a]ll past due principal and matured interest, at [MMP's] option, shall bear interest at the Maximum Rate." "Maximum Rate" is defined by the notes to "mean[] eighteen percent (18%) per annum."

cases were filed, *i.e.*, approximately 5% to 6%,[10] and the 10% non-default contract rate is significant. Debtors argue the even greater spread between the 5% to 6% actually charged to MMP and the 18% default rate requested by MMP is inequitable and enforcing the default rate would thus constitute an unjustified windfall for MMP. Debtors point out they have been charged interest at the rate of 18% since April 2002. Debtors ask that the rate of interest charged postpetition be reduced to the current market rate of interest or the non-default contract rate of 10% per annum.

As a preliminary matter, the court notes the parties do not dispute that MMP, an oversecured creditor, has a right to recover postpetition interest pursuant to section 506(b) of the Code. Rather, the parties disagree about the rate of postpetition interest to be applied, and the court limits its discussion to that narrow issue.

Where, as in this case, MMP's claim arises from a contract, the contract provides the rate of interest applicable postpetition. *See In re Cummins Utility, L.P.*, 279 B.R. 195, 201 (Bankr. N.D. Tex. 2002) (secured creditors "should receive interest at the default rate unless application of a lower rate is found proper upon a balancing of the equities") (citing *Southland Corp. v. Toronto-Dominion (In re Southland Corp.)*, 160 F.3d 1054, 1060 (5th Cir. 1998). *See also In re Terry Ltd. P'ship*, 27 F.3d 241, 243 (7th Cir. 1994) (concluding that a presumption in favor of the default contract rate is subject to rebuttal based upon equitable considerations).

In balancing the equities in this matter, the court has taken into account, *inter alia*, (1) whether the default rate will harm other creditors; (2) whether the difference between the default rate and the non-default rate is punitively great; (3) whether MMP has "ambushed" Debtors with

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[10] See note 3 *supra*.

its request to seek the default rate; and (4) other facts and circumstances of the case. *See In re Cummins, L.P.*, 279 B.R. at 202.

First, and most importantly, no junior creditor will be harmed by payment of the 18% default rate of interest because the Plan contemplates 100% payment to junior creditors. S*ee In re Southland Corp.*, 160 F.3d at 1060 (finding "especially significant" that no junior creditors would be harmed if default interest awarded). Second, default interest began accruing six months before Debtors' bankruptcy filings; therefore, Debtors cannot claim they were surprised by MMP's decision to charge the default rate. *Id.* (finding bankruptcy court's decision to award default interest supported by fact that debtor was not "ambushed" by creditor's claim for default interest). Third, although the eight percent spread between the contract rate and the default rate is relatively large, the court notes the default rate is fully enforceable under Texas law and, when taking into consideration that other creditors will not be harmed, the spread is not unconscionable or punitively great. *Cf. Cunningham v. Am. Automatic Sprinkler (In re Trinity Meadows Raceway)*, 252 B.R. 660, 669 (Bankr. N.D. Tex. 2000) (disallowing 10% default postpetition spread when other creditors would be harmed but allowing 18% default rate up to the date of the Order for Relief). Fourth, by seeking the default rate, MMP is not seeking "the bonus of a higher rate," because the default rate was the applicable rate when MMP acquired the notes and thus was the contemplated return on MMP's investment. *Cf. In re Cummins, L.P.*, 279 B.R. at 202 (finding equities militated against charging higher default rate when creditor did not charge default interest for more than a year outside bankruptcy while restructuring was in progress). Fifth, Debtors' claim that awarding the default rate would provide MMP with a windfall is balanced by the equal and opposite benefit which would be realized by Debtors should the non-

default rate be awarded. Debtors were, in fact, in default, and relieving them of the burden of their bargain would not serve the ends of equity. For the foregoing reasons, the court concludes that a balancing of the equities in this case favors the presumption in favor of the default contract rate. *See In re Southland Corp.*, 160 F.3d at 1060. The court holds therefore that postpetition interest accrued under section 506(b) shall be at the default contract rate of 18% up to and including July 26, 2003.[11]

3. Attorneys' Fees

Pursuant to section 506(b) of the Code,[12] Applicants seek fees in the amount of $121,247.50 and expenses in the amount of $8,648.14 based on 519.30 hours of services rendered on behalf of MMP from August 30, 2002, through July 31, 2003. Applicants also seek an additional $1,500 for preparation and presentation of the Application.

Debtors object to Applicants' fees as being unreasonable, duplicative, and/or unnecessary, especially given MMP's oversecured status and the significant equity cushion enjoyed by MMP. Debtors contend the provisions of the loan documents that give MMP the right to be reimbursed for collection activities related to the indebtedness secured by Debtors' property do not give MMP the right to be reimbursed for any and every activity MMP might have undertaken in this matter. Debtors assert MMP's retention of both KHH and Garret was

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[11] The interest rate postconfirmation on MMP's claim was fixed in the order confirming Debtors' Plan.

[12] Section 506 provides in relevant part:

> (b) To the extent that an allowed secured claim is secured by property the value of which . . . is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

Code § 506(b).

unreasonable, unnecessary, and duplicative, and Debtors should not be forced to bear the costs of multiple bankruptcy counsel. Debtors also contend the fees of certain other retained professionals, *e.g*, appraisers and consultants, were unnecessary and duplicative.

Applicants insist the fees and expenses sought are reasonable. Applicants argue the 519.30 hours expended in this matter were necessary. The time was spent on, *inter alia*, reviewing Debtors' disclosure statement, Plan, amendments to the Plan, alternatives to the Plan, and other relevant economic issues, as well as undertaking preconfirmation discovery, attending hearings and meetings, contesting employment of special counsel, researching defense of possible tortious interference claims, meeting and preparing retained experts and witnesses, and investigating allowance/disallowance of acquired claims.

As a threshold matter, the court notes that because section 506(b) of the Code refers to interest and "reasonable fees, costs, or charges" which may be added to an "allowed secured claim," section 506(b) relates only to postpetition accretions. *See Cummins*, 279 B.R. 201. Thus, to the extent that KHH's and Garrett's Application seeks fees and expenses for the prepetition period, such fees and costs shall be disallowed.

The court also notes "the standard for allowance of interest, fees and expenses under section 506(b) is established by federal law . . . ." *Id. See also Blackburn-Bliss Trust v. Hudson Shipbuilders, Inc. (In re Hudson Shipbuilders, Inc.)*, 794 F.2d 1051, 1056-57 (5th Cir. 1986) (". . . Congress intended that federal law should govern the enforceability of attorneys' fee provisions in bankruptcy.").

In this case, each promissory note executed by Delaney Family provides as follows:

> In the event that [Texas] Bank, after the occurrence of an Event of Default hereunder, consults an attorney regarding the enforcement of any of its rights under this Note or if this Note is placed in the hands of an attorney for collection or if suit be brought to enforce this Note, Borrower promises to pay all costs thereof, including reasonable attorneys' fees. Such costs and attorneys' fees shall include, without limitation, costs and reasonable attorneys' fees incurred by [Texas] Bank in any appellate proceedings or in any proceedings under any present or future federal bankruptcy act, state receivership law or probate.

The court thus finds that the plain language of each note provides, and the parties do not dispute, that MMP is entitled to recover reasonable attorneys' fees and costs in connection with enforcement of its rights and collection on the notes under which Debtors defaulted. The parties disagree, however, on what constitutes reasonable and necessary fees incurred by MMP to enforce its rights or collect on the notes.

In determining whether the fees MMP incurred to enforce its rights under the notes were reasonable under section 506(b), this court must consider several factors. *Cummins*, 279 B.R. at 204. *Cf. In re Gwyn*, 150 B.R. 150, 156 (Bankr. M.D.N.C. 1993) (obviating necessity of considering reasonableness factors when attorneys' services fell outside underlying agreement). The court must also bear in mind that Debtors' estate "must be administered as efficiently and economically as possible, and that sometimes bankruptcy attorneys perform dual functions which might lead to an award of duplicative fees if overlooked." *In re Hudson Shipbuilders, Inc.*, 794 F.2d at 1058. Thus, not only must the court determine the nature, extent, and value of the services rendered with reference to invoices submitted, the court must also determine whether the services performed were duplicative or unnecessary. *Id.*

In the case *sub judice*, the court has conducted a comprehensive review of the billing statements provided by KHH and Garrett in support of the Application. Although the court is not prepared to challenge Applicants' hourly rates which are consistent with those charged by other firms for services in bankruptcy cases, the court questions whether significant portions of the fees incurred by MMP were necessary to protect its interests, especially given MMP's status as an oversecured creditor. Indeed, because MMP could have had little doubt about its prospects for repayment under the notes, the court finds that action by MMP necessary to protect its interests should have been minimal. *See In re Gwyn*, 150 B.R. at 155 (finding that contract provisions concerning reimbursement of attorneys' fees under section 506(b) must be "strictly construed" because one purpose of section 506(b) is to protect estate assets from excessive fees by oversecured creditors' attorneys "exhibiting excessive caution, overzealous advocacy and hyperactive legal efforts"). That MMP may have adopted a strategy that included goals beyond the payment of its debt and that certain costs may have been "necessary" to the pursuit of that strategy does not mean that Code section 506(b) and the terms of the notes require Debtors to cover the cost of that strategy. The court must, instead, analyze the amounts chargeable under section 506(b) in terms of what costs a similarly situated secured creditor concerned only with payment in full within a reasonable time would incur.[13] From that perspective, MMP's expenditures far exceeded what was reasonable in a case like the instant one where the creditor's security dramatically exceeded its claim.

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[13] The court notes that the fees sought by MMP exceed 20% of its claim at confirmation and are almost 10% of the claim at the time of its acquisition.

Thus, the court finds that Applicants' tactic of acquiring certain unsecured claims to vote as a class to block confirmation of Debtors' Plan and for leverage to seek different treatment of MMP's secured claim was unreasonable and unnecessary. Although MMP claims such actions were undertaken to protect its oversecured claim, MMP's strategy to acquire other unsecured claims was neither necessary to secure enforcement of its rights under the notes nor necessary to insure collection of the indebtedness embraced by the notes. *See In re Dix*, 140 B.R. 997, 999 (Bankr. S.D. Cal. 1992) (finding that bankruptcy courts must consider the circumstances of each case to determine "whether the creditor could have reasonably believed that its actions were necessary to protect its interests in the debtor's property"). Rather, the court suggests that MMP had only to rely on the provisions of section 1129 of the Code, applicable to MMP as a secured creditor, to protect itself under the circumstances of this case. A secured creditor is not justified in incurring excessive professional fees due to a lack of faith that the statutory scheme of the Bankruptcy Code will provide the full return to which that creditor is entitled.

MMP contends that employment of co-counsel was necessary given the "legal and strategic concerns needed to be addressed" in this case. As justification, MMP points to (1) the "unusual treatment" of MMP's claim; (2) the level of debt due MMP; (3) the fact there was no creditors' committee; and (4) the fact there were no other creditors opposing the Plan. Although Debtors do not question either the ability or professionalism of Applicants, Debtors argue the employment of "two sets of bankruptcy counsel" resulted in significant duplication of effort and services for which MMP should not be reimbursed. Debtors note the relative straightforwardness of the case, each Applicant's skill, experience, and knowledge of bankruptcy law, and MMP's substantially oversecured status.

While this court believes there is nothing wrong *per se* with MMP's decision to employ co-counsel in this case, that does not mean that MMP is entitled to assess against Debtors the cost of multiple competent counsel. *See In re Beyer*, 169 B.R. 652, 656 (Bankr. W.D. Tenn. 1994) (finding avoidance of double compensation for duplication of services of particular concern). Here, although Applicants assert that a "high degree of skill was required to perform properly the services rendered," Applicants also acknowledge that the "questions involved in this case have not been particularly difficult for experienced practitioners." In reviewing the Application together with the billing statements of KHH and Garrett submitted in support of the Application, the court finds that MMP's employment of co-counsel in this case resulted in significant, unnecessary duplication of time and effort and, consistent with the court's findings *supra*, the case did not warrant, on the basis of its status as a secured creditor, the professional attention MMP employed. Accordingly, although the court sympathizes with MMP's desire to ensure the most zealous possible representation, the court must nevertheless, "with an eye towards the overarching policy of avoiding the waste of the debtor's estate," *id.* at 658, disallow a substantial portion of the fees incurred by MMP.

During the course of this proceeding, MMP claims fees and expenses relative to, *inter alia*, (1) defense of potential tortious interference claims; (2) Debtors' application to employ special counsel; (3) two appraisals of the property securing the notes; (4) time expended by legal assistants and paralegals; and (5) consulting counsel's review of Applicants' billing statements for duplication.

After careful consideration–and given Debtors' indication that a successful outcome of its tortious interference claims would be utilized as an offset against the debt owed by Debtors to

MMP–the court agrees that MMP's research and defense of Debtors' tortious interference claims and Debtors' employment of special counsel therefor were related to MMP's enforcement of its rights under the notes or collection of the funds owing pursuant to the notes and that payment of some fees and expenses directed for this purpose is appropriate in this case.[14]

The court disagrees, however, that MMP's charges for legal assistants and paralegals are reasonable and will therefore adjust downward the amount allowed under the Application for these fees. Further, the court disallows in its entirety the fees and expenses sought in connection with the second appraiser of the land oversecuring MMP's claim. The court also concludes, and Applicants' Response does not dispute, that MMP's employment of consulting counsel to review attorney billings was unreasonable and unnecessary and must be disallowed.

Finally, Applicants seek fees in the amount of $1,500 as and for preparation and presentation of the Application. Consistent with the total fees allowed, the court allows one-third of the requested amount.

The court does not intend to suggest that Applicants did not perform well the tasks assigned by MMP. Rather, the court believes MMP must take into account the nature of the case and the economies necessitated by bankruptcy in hiring professionals and directing their work. Should MMP fail to exercise reasonable discretion as a secured creditor in the use of professionals, Debtors' estates and Debtors themselves should not suffer. The court approves KHH's and Garrett's Application for fees and expenses in the amount of $38,500, plus interest at

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[14] This conclusion is offset to some extent by the court's recognition that MMP was viewed by Debtors, with justification, as other than an ordinary secured creditor. Based on the record of this chapter 11 case, the court would find that Debtors' suspicions concerning MMP's motives were warranted and that MMP might have saved considerable costs in this case had it been prepared early in the case to limit its goals to satisfaction of its debt.

the rate prescribed by the Plan, from July 27, 2003, said amount being in the court's judgment the maximum reasonable and necessary fees and expenses allowable under all the circumstances of this case.

CONCLUSION

1. Allocation of postpetition net land sales proceeds may, at MMP's election, first be to unpaid interest and then to principal.
2. Accrued postpetition interest shall bear the default contract rate of eighteen percent (18%) per annum up to and including July 26, 2003.
3. Applicants' fees and expenses shall be allowed in the total amount of $38,500, plus interest from July 27, 2003, at the rate established by the confirmed Plan.

Counsel for MMP is directed to prepare and submit to the court an order consistent with this memorandum opinion. Such order shall be served on counsel for Debtors.

Signed this 10 day of December, 2003.

DENNIS MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE