

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

IN RE: §
§
MIGUEL SANCHEZ GARZA AND § CASE NO. 00-50205-13
CHRISTINA FRANCO GARZA, §
§
Debtors. §

MEMORANDUM OPINION

Armstrong & Associates (Armstrong) seeks recovery of \$915.72 in fees and expenses incurred in connection with its motion seeking relief from stay concerning real property (with improvements) located in Lubbock County, Texas. Armstrong and the Debtors advised the court that an agreement had been reached on all issues raised by the stay motion save for Armstrong's request for reimbursement of attorney's fees and expenses. The Debtors contend the requested fees are too high. The Chapter 13 Trustee, Robert Wilson, objects to the requested fees and expenses because they exceed the standard fees and expenses traditionally allowed creditors' counsel on stay motions.

This court has jurisdiction of this matter under 28 U.S.C. § 1334(a) and 28 U.S.C. § 157(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(1) and (b)(2). This memorandum opinion contains the court's findings of fact and conclusions of law. FED. R. BANKR. P. 7052 and FED. R. BANKR. P. 9014.

The Debtors filed this Chapter 13 case on February 28, 2000. On October 2, 2000, Armstrong filed its stay motion alleging the Debtors had defaulted on their post-petition payments due under the note secured by the real property and were three payments in arrears through the September, 2000, payment. The Debtors' Chapter 13 Plan was confirmed November 21, 2000.

The note signed by the Debtors and now held by Armstrong provides that Armstrong may recover “reasonable and customary attorney’s fees for enforcing” the note. Exh. A. The deed of trust that was offered and admitted into evidence is not legible, but the court assumes it contains a similar provision. See Exh. B. Armstrong’s counsel, Barrett, Burke, Wilson, Castle, Daffin & Frappier, L.L.P. (Barrett Burke), submitted a billing statement which contains a narrative of the work performed, the attorney or paralegal performing the work, the time expended for each entry, and the resulting fee for each entry. The billing statement reflects total fees and expenses of \$1,786.97, consisting of fees of \$1,621.25 and expenses of \$165.72.¹ Apparently, by agreement with Barrett Burke, Armstrong was charged \$915.72 for fees and expenses incurred on the motion. Armstrong therefore seeks recovery of fees of \$750.00 and expenses of \$165.72. The Debtors contend the requested fees are excessive, but would agree to total fees and expenses of \$475.00. The Chapter 13 Trustee objects because such fees and expenses exceed the \$375.00 traditionally allowed creditor’s counsel on stay motions. This standard fee is derived from the Standing Trustee’s Guidelines for Compensation in Chapter 13 Cases dated October 12, 1998, which states that the “trustee will not object to creditors’ attorney’s fees of \$375.00 including expenses for the bringing of an action to lift stay in the event of a post-petition default by the debtor.” Such guidelines are included as an Appendix to the Chapter 13 Trustee’s Guidelines dated October 13, 1998, which were promulgated in accordance with Rule 2015.5 of the Local

¹The billing statement reflects \$700.00 in fees for travel time and travel costs for counsel attending the hearing on the stay motion in Lubbock. It is not reasonable to charge such fees and expenses to the Debtors as Armstrong could have retained competent counsel in Lubbock, Texas, to prosecute the stay motion thereby insuring such additional fees and expenses were not incurred. The court recognizes, however, that circumstances may exist in which counsel can prorate charges to several clients on out-of-town matters thereby keeping the fees and expenses on any one matter within the range of what the court would consider reasonable.

Bankruptcy Rules for the Northern District of Texas.²

As a result of the Trustee's guidelines and the practice that has developed in this court, the sum of \$375.00 has, in effect, been presumed reasonable without further scrutiny. This does not necessarily mean, however, that fees and expenses exceeding \$375.00 are deemed unreasonable. The Chapter 13 Trustee also raised the question whether a formal fee application was required given the requested fees and expenses exceed the amount presumed reasonable. The billing statement submitted by Barrett Burke provides the court with sufficient information to determine whether the fees and expenses requested here are reasonable. The filing of a formal fee application in this case is unnecessary as it would simply serve to drive-up the costs as Armstrong may well be entitled to recover the fees incurred in preparation of the fee application. *See In the Matter of Braswell Motor Freight Lines, Inc.*, 630 F.2d 348, 350 (5th Cir. 1980); *In the Matter of Lawler*, 807 F.2d 1207 (5th Cir. 1987).³

The parties agree that equity exists in the property and thus have no dispute concerning

²Local Bankruptcy Rule 2015.5 grants the Trustee authority to promulgate certain guidelines and states:

The standing chapter 13 trustee may from time to time publish and file with the clerk 'trustee guidelines' on matters such as valuation of consumer goods, capitalization rates, amount and rate of payment of debtors' attorney fees, and other issues pertaining to confirmation or modification of a chapter 13 plan. Any chapter 13 plan or modification conforming to such trustee guidelines will be deemed to have the trustee's recommendation, unless otherwise expressly stated by the trustee.

The Standing Trustee's Guidelines for Compensation in Chapter 13 Bankruptcy Cases state they are issued pursuant to 98-4 paragraph 10. *See* Northern District of Texas General Order 98-4.

³The court would note, however, that the creditor has the burden to establish that the requested fees and expenses are reasonable. To meet this burden, the creditor must provide information that is sufficient to allow the court, as well as the trustee, debtor, and other parties in interest, to evaluate and analyze the reasonableness of the fees. In most cases, the filing of a full-blown fee application is needed and expected by the court. *See In re Anderson Grain Corp.*, 222 B.R. 528, 531 (Bankr. N.D. Tex. 1998). It is simply unnecessary, burdensome, and not cost effective to require a full-blown fee application on a request for reimbursement of fees by a creditor on a simple stay motion.

whether Armstrong is entitled to recovery of fees and expenses. As this case concerns a pre-confirmation motion arising from a post-filing, pre-confirmation default, Armstrong's entitlement to fees and expenses is governed by § 506(b) of the Bankruptcy Code. *See Telfair v. First Union Mortgage Corp.*, 216 F.3d 1333, 1338 (11th Cir. 2000); *see also In the Matter of T-H New Orleans Limited Partnership*, 116 F.3d 790 (5th Cir. 1997). Section 506(b) of the Bankruptcy Code states as follows:

to the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, 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.

Holders of over-secured claims are entitled, under § 506(b), to any interest, fees, or costs provided for in the underlying debt instruments. *See Telfair v. First Union Mortgage Corp.*; *see also In the Matter of T-H New Orleans Limited Partnership*. Armstrong is entitled to recover reasonable attorney's fees under § 506(b), *see In re Trinity Meadows Raceway, Inc.*, 252 B.R. 660, 669 (Bankr. N.D. Tex. 2000); *In re Tierra Petroleum, Inc.*, 173 B.R. 106, 108 (Bankr. E.D. Tex. 1994), and "[i]t is incumbent on this court to determine whether the requested fees are reasonable". *In re Tierra Petroleum, Inc.*, 173 B.R. at 108. The court in *Tierra Petroleum* stated that:

[i]n determining the reasonableness of attorneys' fees, this court is required to apply the lodestar method. *Matter of Lawler*, 807 F.2d 1207 (5th Cir. 1987). First, the court calculates the lodestar, determined by multiplying the hours spend on a case times a reasonable hourly rate for each attorney involved; then, the court adjusts the lodestar by considering subjective factors. *Id.* The twelve *First Colonial* factors should be considered when making adjustments to the lodestar. *Matter of First Colonial Corp. of America*, 544 F.2d 1291 (5th Cir. 1977).

Id. at 108.

The billing statement submitted by Barrett Burke reflects that the rates for attorneys are

either \$175.00 or \$225.00 an hour, depending on the attorney performing the work, and \$65.00 an hour for paralegal work. Using these rates and excluding travel time and expenses, the lodestar calculation yields fees of \$921.25. The effective rate is somewhat lower given Armstrong seeks recovery of \$750.00 in fees. Despite this, the court finds that a \$225.00 billing rate is excessive for a relatively simple stay motion prosecuted before this court. The \$175.00 rate is reasonable but is certainly towards the high end of what the court typically sees for competent counsel appearing before the court.

The stay motion in this case is a simple, straightforward motion triggered by the Debtors' post-filing default. In reviewing the time expended, the entries described at A.1, A.2, A.4, A.7, A.9, and A.11 are excessive. (A copy of Exhibit C, Barrett Burke's billing statement, is attached to this Memorandum Opinion.) In addition, counsel's preparation of the billing statement, referenced at A.11, is work that could and should have been performed by a non-lawyer; the attorney's work should be limited to a brief review of the billing statement. A review of Barrett Burke's billing statements in this case and other cases before the court reveals that Barrett Burke appears to charge a minimum of fifteen minutes on any entry. The court believes this practice results in time charges that exceed the actual time expended. *See* Guidelines for Compensation and Expenses Reimbursement of Professionals adopted by General Order 00-7, entered December 21, 2000, at II.B. Finally, the court notes that neither the motion nor the billing statement reflects an attempted conference with Debtors' counsel upon filing the motion as is required by the Local Rules. L.B.R. 4001.1(a). Had this been done, it may have served to minimize the fees. Given the circumstances of this case, the court finds that the requested fees and expenses are excessive. However, the court further finds that after adjustments are made for the rate charged and time expended, fees of \$550.00 are reasonable. In addition, the court will

allow the requested expenses of \$165.72.

The court will enter an appropriate order in accordance with this Memorandum Opinion and will direct the parties to submit to the court, within fifteen days of entry of the order, an order reflecting their agreement on the stay motion, including the fees and expenses approved herein.

Signed February 2, 2001.

Robert L. Jones
UNITED STATES BANKRUPTCY JUDGE