

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

IN RE:	§	
	§	
MICHAEL KERMIT TENNISON AND	§	CASE NO. 00-50748-13
KATHLEEN CLARK TENNISON,	§	
	§	
Debtors.	§	

**MEMORANDUM OPINION**

Chase Manhattan Mortgage Corporation (Chase) seeks recovery of \$833.84 in fees and expenses incurred in connection with its motion seeking relief from stay concerning real property (with improvements) located in Lubbock County, Texas. The court was advised that Chase and the Debtors had reached an agreement regarding all issues on the stay motion, including Chase's request for fees and expenses. The Chapter 13 Trustee, Robert Wilson, objects to the agreement because the agreed-upon fees and expenses 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 August 1, 2000. It is their third bankruptcy filing within the past eight and a half years. They filed a prior Chapter 13 case on March 10, 1992, and received their discharge on May 8, 1997. Their second Chapter 13 case, filed January 5, 1998, was dismissed April 20, 2000, upon motion filed by the Chapter 13 Trustee. The Debtors have not obtained confirmation of their Chapter 13 plan in this case.

Chase filed its stay motion on August 1, 2000, asserting cause exists justifying relief as the

Debtors' bankruptcy was filed in bad faith and the arrearage on the note held by Chase exceeds \$25,682.72.

The note, apparently assumed by the Debtors and now held by Chase, provides with respect to attorney's fees, as follows:

If this note is placed in the hands of an attorney for collection, or is collected through the Probate Court or the Bankruptcy Court or through other legal proceeding, the undersigned promise(s) to pay, as attorney's fees, an additional amount equal to ten per centum (10%) of the amount then owing on this note.

Exh. A. The deed of trust contains a similar provision but is limited to recovery of "reasonable attorney's fees". Exh. B. Chase'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 \$1,065.99, consisting of fees of \$928.75 and expenses of \$137.24. By agreement with Barrett Burke, Chase was charged \$833.84 for fees and expenses incurred on the motion. Chase therefore seeks recovery of fees of \$750.00 and expenses of \$83.84. The Debtors do not oppose payment of these fees. The Chapter 13 Trustee objects because such fees and expenses exceed the \$375.00 traditionally allowed creditors' 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 Bankruptcy Rules for the Northern District of Texas.<sup>1</sup>

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 questions whether a formal fee application is 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 Chase 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 (5<sup>th</sup> Cir. 1980); *In the Matter of Lawler*, 807 F.2d 1207 (5<sup>th</sup> Cir. 1987).<sup>2</sup>

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<sup>1</sup>Local 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.

<sup>2</sup>The 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.

It is undisputed that equity exists in the property subject of the motion. As this case concerns a pre-confirmation motion, Chase'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 (11<sup>th</sup> Cir. 2000); *see also In the Matter of T-H New Orleans Limited Partnership*, 116 F.3d 790 (5<sup>th</sup> 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*. Chase 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 (5<sup>th</sup> 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 (5<sup>th</sup> Cir. 1977).

*Id.* at 108.

The billing statement submitted by Barrett Burke reflects that the rates for attorneys is 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, the lodestar calculation yields fees of \$928.75. The effective rate is somewhat lower given the actual fees sought to be reimbursed in this case. 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.

This stay motion, while not complex, is also not a routine, cookie-cutter motion given the bad faith allegations arising from the Debtors' multiple filings. In reviewing the time expended, the entries described at A.2, A.4, and A.8 are excessive. (A copy of Exhibit C, Barrett Burke's billing statement, is attached to this Memorandum Opinion.) The court notes further 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. But the Debtors do not oppose the requested fees and therefore the court assumes the Debtors consider the fees reasonable. Under the circumstances of this case, the court finds that the requested fees and expenses are excessive, but that fees and expenses of \$750.00 are reasonable and should be allowed.

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 January 31, 2001.

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Robert L. Jones  
UNITED STATES BANKRUPTCY JUDGE