

UNPUBLISHED OPINION

171

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

* * * * *

IN RE: UNPUBLISHED OPINION) Bankruptcy No. 83A-00256

JERALYNN WRIGHT, dba)
UNIVERSITY VILLA APARTMENTS,

Debtor.)

* * * * *

MEMORANDUM OPINION

* * * * *

APPEARANCES: Roger Segal, Salt Lake City, Utah, for debtor; David Leta, Salt Lake City, Utah, for creditor Walter Heller Western Incorporated; James Swindler, Salt Lake City, Utah, for creditor Prudential Federal Savings; Richard Casper, Salt Lake City, Utah, for creditor First Security Bank; Anna Drake, Trustee, Salt Lake City, Utah, for herself as trustee.

BACKGROUND

This matter is before the Court on the application of Hansen, Jones, Maycock & Leta, attorneys for Walter E. Heller Western Incorporated ("Heller"), a secured creditor herein, for allowance of an administrative claim for attorneys' fees. Applicant contends that its services on behalf of Heller made a substantial contribution to this Chapter 11 case and therefore, entitles it to payment of an administrative expense pursuant to 11 U.S.C. §503(b)(3)(D) and (4).

Jeralynn Wright, dba University Villa Apartments, filed a petition under Chapter 11 of the Bankruptcy Code on January 27, 1983. The debtor is an individual and the record owner of a property known as University Villa Apartments ("Villa"), located in Provo, Utah. The property is primarily student residential housing consisting of approximately 124 separate two and three bedroom rental units. There are twelve separate buildings.

A Second Amended Plan of Reorganization, prepared and filed by Heller, was confirmed by the court on September 19, 1984. The plan is a liquidating plan within the meaning of 11 U.S.C. §1129. It provides for the appointment of a trustee who would be required, under certain terms and conditions, to sell the property in a net amount to satisfy all claims against the Villa. Subsequent to the confirmation, there were substantial negotiations by the debtor and the secured creditors including Heller, respecting various proposed sales of the Villa. A public auction, conducted by the trustee, finally resulted in the sale of the Villa.

DISCUSSION

The basis for Heller's application is that its services are compensable under Section 503 of the Bankruptcy Code for having made a "substantial contribution" to this Chapter 11 case. The relevant portions of Section 503 provide:

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under Section 502(f) of this title, including--

(3) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by--

(D) a creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under Section 1102 of this title, in making a substantial contribution in a case under Chapter 9 or 11 of this title;

(4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant;

The term "substantial contribution" is susceptible to a wide variety of interpretations, but the legislative history offers some guidance.

The phrase "substantial contribution in the case" is derived from Bankruptcy Act §§ 242 and 243. It does not require a contribution that leads to confirmation of a plan, for in many cases, it will be a substantial contribution if the person involved uncovers facts that would lead to a denial of confirmation, such as fraud in connection with the case.

S. Rep. No. 95-989, 95th Cong., 2d Sess. 66-67 (1978). See generally, In re Jensen-Farley Pictures, Inc., 47 B.R. 557, 565-69 (Bkrtcy. D. Utah 1985).

There appears to be two prerequisites for creditors' actions to be considered a "substantial contribution" to a Chapter 11 case. First, the action must be taken with the intent of benefiting the estate generally and not an individual creditor and, second, there must be an actual benefit realized by the estate. See 1 W. Norton, NORTON BANKRUPTCY LAW AND PRACTICE §12.32, at Pt. 12-pg. 49 (1981). The principal test is "the benefit to the debtor's estate, the creditors, and, to the extent relevant, the stockholders." 3 COLLIER ON BANKRUPTCY ¶503.04, at 503-38 (15 th ed. 1984).

Case law under the Code is consistent with the views expressed in the treatises. In In re Richton International Corp., 15 B.R. 854 (Bkrtcy. S.D.N.Y. 1981), the court authorized allowances of compensation to counsel for seven bank creditors of the debtor for legal services rendered, which made substantial contributions to the case. The court stated that "[s]ervices which substantially contribute to a case are those which foster and enhance, rather than retard or interrupt the progress of reorganization. . . . Those services which are provided solely for the client-as-creditor, such as services rendered in prosecuting a creditor's claims, are not compensable." Id. at 856. Likewise, in In re J.V. Knitting Service, Inc., 22 B.R. 543, 545 (Bkrtcy. S.D. Fla. 1982), the court found that a creditor's claim for an administrative expense in defeating the debtor's counterclaim "was for the individual benefit of the creditor rather than for the collective benefit of all creditors," and denied the request. And, in In re Calumet Realty, Co., 34 B.R. 922 (Bkrtcy.

E.D. Pa. 1983), the court found that the creditor's efforts, which were primarily for its own benefit, and conferred only an indirect benefit to the estate, did not constitute a substantial contribution to the case within the meaning of Section 503(b)(3)(D). See also, In re Puerto Rican Food Corp., 41 B.R. 565, 574 (Bkrtcy. E.D.N.Y. 1984). With the foregoing principles in mind, the Court turns to the application of Hansen, Jones, Maycock & Leta.

An application for compensation should contain a concise but sufficiently detailed summary of the work performed by each attorney by date and the time expended, preferably prepared from accurate contemporaneous time records. The summary will form much of the basis of the court's determination of both the applicant's contribution to the case and the reasonableness of the fee claimed. See In re Jensen-Farley, supra, 47 B.R. at 581-82. At the hearing in this matter, the Court addressed counsel regarding the sufficiency of the application and the services rendered as follows:

The Court: Do you believe your application together with the supplement, adequately sets forth the time and the work from which the court can conclude that the work was a substantial contribution to the estate as required by the cases and the Code?

Mr. Leta: I believe so, your Honor. The Court, I would ask, should also take judicial notice of the file in this case from which the Court can determine the other contributions that were made. The Court can note who the plan proponent was, the Court can note what efforts were made at obtaining confirmation of this plan and that, in fact, a successful plan was confirmed by the court. Those facts which are of record in addition to the time shown in the application justify the conclusion that there

has been a substantial contribution made by this creditor to the estate.

(transcript of hearing, November 13, 1984.)

After carefully examining the summary of services rendered and time expended and the statements of counsel, as well as the file in this case, the Court concludes that most of the services are not compensable as an administrative expense under Section 503 of the Code.¹ There shall be allowed as an administrative expense compensation for the following services rendered by Hansen, Jones, Maycock & Leta, which the Court finds to have made a substantial contribution in this case:

<u>David E. Leta</u>		<u>Hours</u>
6/21/83	Prepare Plan of Reorganization and Disclosure Statement in case	.4
6/22/83	Prepare draft of Plan; review file prepare instructions for Harrison; letter to client; letter to counsel	3.3
7/4/83	Work on and draft Disclosure Statement and Plan of Reorganization	5.3
7/5/83	Work on final additions to Plan of Reorganization	.8
7/7/83	Revise and edit draft of Plan	1.5

1

Unlike the attorneys in In re Richton International Corp., supra, 15 B.R. at 856, Hansen, Jones, Maycock & Leta has failed to exclude from its application those services which served only its client's interest.

'14/83	Conference with Swindler to review proposed Plan and make modification thereto	3.7
8/31/83	Telephone conference with Segal; Revise stipulation letter to; hearing on approval of Disclosure Statement and conference with counsel; research file re: unsecured creditors; prepare letter to committee	2.8
9/21/83	Prepare Order Limiting Notice; revise Disclosure Statement and Plan; letter to Segal; prepare Order; letter to Irvine; letter to potential successors; related pleadings	2.2
10/17/83	Conference with Matsumori and appraiser re: confirmation hearing; telephone conference with Segal; telephone conference with Hillman	.7
10/18/83	Telephone conference with Segal re: plan	.4
10/20/83	Telephone conference with Dast; conference with Segal and Allen re: continuance	.9
12/27/83	Telephone conference with Court and affected counsel re: continuance of hearing of confirmation of plan; letter to client; letter to brokers re: Villa; prepare notice of continuance of hearing	.7
2/15/84	Telephone conference with Segal; hearing on continuance of confirmation hearing and on approval of sale to Horrick	1.5
4/3/84	Telephone conference with Segal; telephone conference with Court personnel re: hearing	.3

8/8/85	Revise Plan of Reorganization; telephone conference with Woodger; telephone conference with Segal; telephone conference with Swindler; telephone conference with Felt; revise Plan re: Segal	2.2
8/9/84	Revised plan; prepare stipulation for debtor, prepare consent form; prepare letter to creditors; prepare motion to modify plan; prepare notice of hearing; conference with Segal and Wright to dismiss agreements; modify agreements; attend hearing before Judge Allen and move for continuance	3.5
8/10/85	Telephone conference with Swindler re: plan modification; revise pleadings; prepare order and letter to Allen	1.9
9/7/84	Revise letter; motion and order re: plan	<u>.3</u>
		32.4

32.4 hours at \$110.00/hr. = \$3,564.00

Jane F. Harrison

6/23/83	Revise Disclosure Statement and Plan of Reorganization	2.8
6/27/83	Review Disclosure Statement	<u>1.3</u>
		4.1

4.1 hours at \$75.00/hr. = \$307.50

Cary D. Jones

8/20/84	Telephone conference with Swindler re: plan	.4
---------	--	----

8/22/84	Telephone conference with Swindler, Segal and Leta re: confirmation of plan	.6 1.0
---------	---	-----------

1 hour at \$110.00/hr. = \$110.00

Mary Ellen Hatch

8/31/83	Revise matrix	1.3
---------	---------------	-----

1.3 hours at \$30.00/hr. = \$39.00

Marlene Lewis

7/12/83	Prepare exhibit for Disclosure Statement	.8
7/13/83	Hearing on Disclosure Statement for mailing, file	.6
7/14/83	Calls to Paramount Title, file search, Disclosure Statement	.2
7/19/83	Attend to Disclosure Statement and Plan; copy of plan/transmit	1.3
7/20/83	Have notice prepared for mailing; mail out notice	2.3
8/16/83	Draft letter to BYU Registrar	.3
8/17/83	Redraft letter to BYU Registrar; first returned notices; draft letter to Segal and Swindler	.4
9/23/83	Prepare plan and information for distribution	3.7
10/12/83	Review USBC ballot file; calls to creditors re: ballots	1.0
10/17/83	To USBC for review of ballot file; telephone conference with creditors re: acceptance of plan; prepare proof of claim	2.0

4/3/84	Telephone conference with counsel re: continued hearing	.5
4/4/84	Draft notice of continued hearing; prepare notice for distribution	.8
5/18/84	Prepare notice of continued hearing on confirmation and distribute, prepare affidavit of service	.5
8/10/84	Coordinate preparation and distribution of proposal to modify plan and accompanying documents to creditors	2.3
8/22/84	Check Bankruptcy Court files for objections to proposed plan modification	.2
8/28/84	Prepare stipulation and plan for filing; send copies to Drake; find information for Leta re: new plan and review Bankruptcy Court files re: confirmation on first plan	<u>1.9</u>
		18.8

18.8 hours at \$30.00/hr. = \$564.00

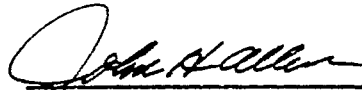
CONCLUSION

The question of entitlement to attorneys' fees under Section 503(b) requires the Court to carefully examine the services rendered to determine whether they satisfy the statutory standard of "substantial contribution." In this case, Hansen, Jones, Maycock & Leta was actively involved and performed a variety of services on behalf of their client, Walter E. Heller Western Incorporated. Those efforts served the interests of their client admirably but with the

exception of the services enumerated above, did not benefit the estate or creditors generally, and did not amount to a "substantial contribution" within the meaning of Section 503(b)(3)(D).

ACCORDINGLY, the court shall allow as an administrative expense the sum of \$6,037.11, \$4,584.50 for services rendered and \$1,452.61 for costs incurred. Applicant shall prepare and submit an appropriate order within ten (10) days.

DATED this 5 day of November, 1985.



JOHN H. ALLEN
UNITED STATES BANKRUPTCY JUDGE