

IN THE UNITED STATES BANKRUPTCY COURT

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FOR THE DISTRICT OF UTAH

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In re) Bankruptcy Case No. 80C-01019
)
BEKINS BAR-V RANCH CORP.,)
)
Debtor.) ORDER ON FEE APPLICATION OF
) ATKIN, WRIGHT & MILES

On August 3, 1982, a hearing was held on the fee application of Atkin, Wright & Miles. At that hearing, the Court expressed several concerns which will not be repeated here over Mr. Wright's fee application. On August 23, Mr. Wright submitted an amended fee application. On September 2, Stanley Huth filed an objection to the application. Having considered both the application and the objection, the Court finds that the application should be approved, subject to the following modifications and conditions.

First, the amended application fails to explain the \$992.82 balance shown as owing on June 10, 1980. Without an itemization of the services performed, the required findings under Section 330 of the Code cannot be made and this amount cannot be awarded.

Second, the application's entry for January 25, 1981 shows 28.57 hours spent by one attorney in preparation of a brief. Allowance for only eight hours will be made.

Third, the application requests fees greater in amount than the fees originally requested but notice was not given to creditors of the new amounts requested, as required by Interim

Rule 2002(b). The applicant, however, may obtain an order approving the application, as modified above, upon certification that all creditors have been given proper notice of the application and an opportunity to object and that no objections have been filed. See Interim Rule 2002(b).

Although Mr. Huth contends that the application should be denied as to services in the Huth lawsuit because the suit is still on appeal, because the cross appeal was unjustified, because the automatic stay would have prevented the foreclosure action, and because Mr. Miles spent time at the trial unnecessarily, the Court finds that the suit was brought to vindicate a good faith claim of the debtor and its success or failure on appeal will not prevent an award of fees; that Mr. Huth has not shown that the cross appeal was unjustified; that even if the stay prevented foreclosure, the amount of the claim would have had to have been fixed in any event; and that Mr. Miles' presence at the trial was not unnecessary because, as shown in the application, "Miles, a CPA . . . utilized his accounting knowledge in the trial."

Finally, although Mr. Huth argues that the application should be denied as to services in the Beryl suit because the debtor lost, the Court finds that the suit was brought to vindicate a good faith claim of the debtor and its success or failure will not prevent an award of fees.

DATED this 13 day of January, 1983.

BY THE COURT:



GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE