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OF THE NINTH CIRCUIT

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

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In re:)	BAP No.	CC-10-1466-KiSaPa
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ONTSON FITZGERALD PLACIDE and)	Bk. No.	LA 10-36656 AA
LORI ANN PLACIDE,)		
)		
Debtors.)		
_____)		
)		
THE MARGULIES LAW FIRM, APLC,)		
)		
Appellant,)		
)		
v.)	O P I N I O N	
)		
ONTSON FITZGERALD PLACIDE;)		
LORI ANN PLACIDE,)		
)		
Appellees.)		
_____)		

Argued and Submitted on May 13, 2011,
at Pasadena, California

Filed - September 20, 2011
Ordered Published - October 5, 2011

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Alan M. Ahart, Bankruptcy Judge, Presiding

Appearances: Craig G. Margulies argued for appellant The
Margulies Law Firm, APLC;
Eric M. Sasahara argued for appellees Ontson
Fitzgerald Placide and Lori Ann Placide.

Before: KIRSCHER, SARGIS¹ and PAPPAS, Bankruptcy Judges.

¹ Hon. Ronald H. Sargis, Bankruptcy Judge for the Eastern
District of California, sitting by designation.

1 KIRSCHER, Bankruptcy Judge:

2
3 Appellant, The Margulies Law Firm, APLC (f/k/a Law Offices of
4 Craig G. Margulies, APLC) ("MLF"), appeals an order from the
5 bankruptcy court sustaining appellees' objection to MLF's claim
6 for prepetition attorney's fees and costs MLF incurred
7 representing appellees against chapter 7² debtor, Lamar Edison
8 ("Edison"). The bankruptcy court found that MLF's claim for
9 \$80,869.33 was unreasonable, and it disallowed the claim in its
10 entirety. We AFFIRM.

11 **I. FACTUAL AND PROCEDURAL BACKGROUND**

12 **A. Placides's suit against Edison.**

13 In 2004, appellees, Ontson F. Placide and Lori A. Placide
14 ("Placides"), entered into a contract with Edison for construction
15 and remodeling services on their home. The relationship soured,
16 and in February 2005 Placides sued Edison in state court for
17 breach of contract and various other claims. Before trial,
18 Placides entered into a stipulation with Edison, agreeing to
19 settle the matter for \$82,000, plus attorney's fees and costs
20 should any be incurred to enforce the stipulation. Edison soon
21 defaulted under the stipulation, which entitled Placides to a
22 judgment of \$82,000 plus attorney's fees and/or costs. Edison
23 filed a chapter 7 petition for relief on November 21, 2006, before
24 the judgment could be entered.

25 In February 2007, Placides retained MLF to file an adversary
26

27 ² Unless otherwise indicated, all chapter, section and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 proceeding against Edison. According to the terms of the
2 Engagement Letter, dated and signed by Placides on February 13,
3 2007, Placides agreed to pay all of MLF's fees and costs,
4 regardless of the outcome of the case. Craig Margulies
5 ("Margulies"), the firm's sole attorney, charged an hourly rate of
6 \$300. Payments were due upon receipt of invoice and, in the
7 absence of any written objection by Placides within seven days of
8 receipt, Placides were deemed to have accepted and acknowledged
9 the invoice as correct for the relevant period. The Engagement
10 Letter states that it consists of the "entire agreement" between
11 Placides and MLF.

12 In the adversary complaint filed on February 16, 2007,
13 Placides sought to except their debt from Edison's discharge under
14 sections 523(a)(2)(A), (a)(4), and (a)(6), and to deny Edison's
15 discharge pursuant to sections 727(a)(2), (a)(4)(A), (a)(5), and
16 (a)(7). In connection with their claims against Edison, Placides
17 also sued Edison's non-debtor spouse, Viola, in order to attempt
18 to recover an alleged fraudulent transfer of Edison's interest in
19 their marital residence, which Placides believed had significant
20 equity.³ As Edison's largest unsecured creditor (holding \$82,000
21 out of the \$85,128 of debt listed in Edison's Schedule F),
22 Placides stood to gain from any recovery by the estate of the
23 residence, subject to administrative costs and a \$6,000 priority
24 IRS claim.

25
26 ³ In a Joint Pre-Trial Stipulation filed in December 2007,
27 Edison and Viola, who were still married at the time of the
28 adversary proceeding, admitted at least \$300,000 in equity existed
in the residence, which was purchased in 1972 with community
funds. This stipulation was included as an exhibit to MLF's
opposition to Placides's objection to MLF's proof of claim.

1 Timothy Yoo, the chapter 7 trustee in Edison's case
2 ("Trustee"), was named as a co-plaintiff in the adversary
3 proceeding. Trustee later filed a First Amended Application to
4 employ MLF as his special bankruptcy counsel in the Edison/Viola
5 adversary proceeding. The application stated that because the
6 estate had no assets available for litigation expenses, Placides,
7 pursuant to the Engagement Letter with MLF, would be paying all
8 fees and costs incurred. The application also provided that MLF
9 would receive a 40% contingency fee on all sums recovered for the
10 estate. An order approving MLF's employment was entered on
11 December 6, 2007. Placides were served a copy of the employment
12 order.

13 A two-day trial against Edison and Viola took place on
14 February 7 and 8, 2008.⁴ The bankruptcy court entered a judgment
15 on May 9, 2008. Plaintiffs succeeded in denying Edison's
16 discharge under sections 727(a)(4)(A) and (D), including
17 Placides's debt of \$82,000. However, the court found that the
18 residence had been transmuted from community property to Viola's
19 separate property. Hence, the estate recovered nothing. Since
20 Edison was denied a discharge, Placides opted to not pursue their
21 nondischargeability claims against him.

22 For the suit against Edison and Viola, MLF's fees and costs
23 totaled \$124,161.80 (\$106,631.25 in fees and \$17,530.55 in costs).
24 The vast majority of the fees were incurred by February 2008,
25 which includes MLF's time billed for trial. Until January 2008,
26 Placides had made regular payments to MLF totaling approximately

27
28 ⁴ The presiding bankruptcy judge bifurcated the trial and
only the 727 action went forward.

1 \$39,000. After that, Placides's payments to MLF became sporadic.
2 Between March and July 2008, Placides made four \$5,000 payments by
3 check to MLF, but they later stopped payment on two of the checks.
4 All payments ceased after July 2008. Ultimately, Placides paid
5 MLF \$49,123.96.⁵ About 18 months later, in January 2010, MLF sent
6 Placides a final demand letter attempting to collect the
7 outstanding balance, to no avail. In May 2010, MLF sued Placides
8 in state court for the unpaid fees and costs. MLF incurred an
9 additional \$6,075.00 in attorney's fees and costs for prosecuting
10 the collection action. MLF's collection action was stayed once
11 Placides filed a chapter 13 petition for relief on June 29, 2010.

12 **B. MLF's proof of claim.**

13 MLF timely filed its proof of claim in Placides's bankruptcy
14 case for the unpaid attorney's fees and costs. MLF asserted an
15 unsecured claim for \$80,869.33 (\$65,061.80 in principal, plus
16 \$9,732.53 interest to date, plus \$6,075.00 in attorney's fees and
17 costs incurred for the collection action).

18 Placides objected to MLF's claim in its entirety as grossly
19 unreasonable under section 502(b)(4). Specifically, Placides
20 contended that MLF's total billed fees and costs of \$124,161.80
21 were grossly disproportionate to their potential \$82,000 recovery
22 from Edison, and MLF was not entitled to more than one third, or
23 \$27,000. As such, contended Placides, the \$49,000 already paid to
24 MLF was more than sufficient to satisfy its claim. While Placides
25 did not contest the enforceability of the Engagement Letter, they

26
27 ⁵ In their objection to MLF's proof of claim, Placides
28 asserted they paid MLF approximately \$60,000. Placides concede on
appeal that they paid only \$49,123.96.

1 claimed that Margulies orally represented to them that Trustee
2 would absorb one-half of MLF's attorney's fees and costs.
3 Placides also asserted that, just before trial, Margulies informed
4 them that trial could cost them up to approximately \$15,000, at
5 which point they agreed to proceed. Placides further argued that
6 MLF's collection action fees were not recoverable under California
7 law, and that MLF's interest figure was unsupported.

8 MLF opposed Placides's objection, arguing that its claim
9 should be allowed in its entirety. According to MLF, Placides
10 knew Edison's estate had no assets, which is why they pursued
11 Viola and the residence; it was the only way they could get paid.
12 Yet, despite the risks, Placides wished to continue. MLF rejected
13 Placides's allegation that Trustee was liable for half of the fees
14 and costs. Per the terms of the Engagement Letter, Placides knew
15 they were liable for all fees and costs whether or not the
16 residence became an asset of the estate. MLF further contended
17 that it properly scaled its fees; they were not extravagant given
18 the complexity of the adversary with two defendants and difficult
19 family law issues. Plus, MLF obtained a judgment for Placides.
20 Finally, MLF argued that it was entitled to attorney's fees
21 incurred in the collection action under CAL. CIV. CODE § 1717.

22 In response, Placides argued that their lack of objection to
23 MLF's fees and costs incurred in Edison's adversary, or the fact
24 that MLF succeeded in representing them, was irrelevant to the
25 issue of whether MLF's claim was unreasonable under section
26 502(b)(4). Placides admitted to accepting the risks of
27 litigation, but argued that this did not give MLF an unlimited
28 license to bill them with unreasonable attorney's fees and costs.

1 Placides further argued that, whether or not Trustee was to pay
2 half of the fees and costs, no reasonable party would agree to
3 bear all of the costs of litigation on behalf of two parties.

4 The bankruptcy court held a hearing on Placides's claim
5 objection on October 28, 2010. MLF argued that its hourly rate of
6 \$300, which it never raised during the 18 months it represented
7 Placides, was reasonable, and Placides never objected to any
8 invoices. MLF further noted that it would never have represented
9 Trustee and Edison's estate but for the fact that it was the
10 source of funds for Placides; the residence had over \$100,000⁶ in
11 equity, which MLF contended would have paid Placides's \$82,000
12 claim against Edison in full. The court inquired whether all or
13 only Edison's half of the equity was available, upon which MLF
14 responded that if the residence had been deemed community
15 property, all of the equity would have been available for Edison's
16 estate as he did not claim an exemption. MLF clarified that the
17 contingency arrangement was with Trustee only, if the residence
18 were recovered, but otherwise Placides agreed to pay, and were
19 responsible for, all attorney's fees and costs.

20 In the bankruptcy court's opinion, Placides's silence as to
21 MLF's fees was irrelevant to whether MLF's fees were reasonable
22 under section 502(b)(4):

23 That's the question. It's not what the Debtors did or
24 did not do. . . . [Y]ou are in a situation where under
25 502(b)(4), it's sort of -- it's almost like a strict
26 scrutiny standard It's almost like looking at
27 what an insider would charge the party, the client. So

26 ⁶ Of course, the Joint Pre-Trial Stipulation indicated that
27 \$300,000 of equity potentially existed, assuming plaintiffs were
28 successful in recovering the residence as part of Edison's estate.
See fn. 3.

1 that is your problem. That is your burden.

2 Hr'g Tr. (Oct. 28, 2010) at 7:15-21.

3 MLF then argued that the cases cited by Placides, where the
4 fees were found to be unreasonable, were cases in which debtor's
5 counsel was employed under sections 327 or 330, and counsel was
6 severely depleting estate funds, which was not the case here. The
7 bankruptcy court rejected this argument and sustained Placides's
8 objection to MLF's claim:

9 . . . [T]he difficulty you have here now is that the
10 only way you [were] ever going to recover anything close
11 to . . . the [\$]82,000, was to get that real property
12 brought back into the estate in some fashion, and sold
13 and enough paid off -- net . . . of all the expenses of
14 sale . . . and the priority claims ahead of your client,
15 including the trustee['s] expenses, as well as your
attorney's fees for the trustee Only if -- only
if all those things got paid, there was enough there to
pay those and your clients. That's the only way.
Otherwise, this was a losing proposition from the get
go, I'm afraid. That's your problem here. That's your
difficulty.

16 Id. at 8:18-9:8.

17 Because at most, if you didn't get that -- you got
18 really, at most, what you could otherwise get,
19 essentially. You objected to the discharge. Well, I
20 would say, okay, that's fine, you did it. But, it
21 doesn't result in any dollar recovery to your clients
22 whatsoever. Nothing. Zero. Where are they? They are
just kind of back where they started. So they still
have a claim that continues to exist against Mr. Edison.
But, they have not recovered anything. Nothing. No
dollars.

23 That is the problem. That is why you are going to lose
24 here this morning You have been paid the
[\$]49,000, it is at least [\$]49,000. . . . I think
under the facts, I think that is reasonable.

25 Id. at 9:10-10:1.

26

27 And you just can't sustain your burden here to show that
28 you are entitled to anything more, based on these facts.
Based on what the Debtors had -- the prospect of winning

1 it from the get go.

2 Id. at 10:15-18.

3

4 So, I am going to find that [the claim] is unreasonable
5 to the extent you want any more monies than what you're
6 [sic] firm has been paid, so I am going to sustain the
7 objection.

8 Id. at 12:1-3.

9 In response to the court's decision, MLF reiterated that the
10 equity in the residence was significant and would have paid
11 Placides in full. The court paused and asked where in the record
12 was the evidence to prove this fact. MLF responded that it was in
13 the complaint, which was attached as an exhibit to MLF's
14 opposition. The court rejected an allegation in a complaint as
15 evidence; it needed to know the value of the residence, the
16 existing liens, and the amount of administrative expenses
17 involved.

18 MLF then inquired if the court was holding that attorneys
19 should never be entitled to fees when representing creditors in
20 discharge actions because all that can be recovered is a judgment,
21 which the court valued as worthless and a "pyrrhic victory." The
22 court rejected MLF's assumption and expressed its understanding of
23 MLF's plight, but stated that attorneys in such actions must
24 assume the risk of not getting paid.

25 The bankruptcy court entered an order on November 5, 2010,
26 sustaining Placides's objection to MLF's claim for \$80,869.33 and
27 disallowing it in its entirety pursuant to section 502(b)(4).
28 This timely appeal followed.

II. JURISDICTION

The bankruptcy court had jurisdiction pursuant to 28 U.S.C.

1 §§ 1334 and 157(b)(2)(B). We have jurisdiction pursuant to
2 28 U.S.C. § 158.

3 III. ISSUES

4 1. Was the bankruptcy court correct to apply section 502(b)(4)
5 to MLF's claim and impose a reasonableness standard to its fees?

6 2. Did the bankruptcy court err by shifting the burden to MLF to
7 prove the validity of its claim?

8 3. Did the bankruptcy court abuse its discretion in disallowing
9 as unreasonable MLF's \$80,869.33 claim for prepetition attorney's
10 fees?

11 IV. STANDARDS OF REVIEW

12 The proper interpretations of statutes and rules are legal
13 questions that we review de novo. Heath v. Am. Express Travel
14 Related Servs. Co., Inc. (In re Heath), 331 B.R. 424, 428 (9th
15 Cir. BAP 2005). Whether compliance with a given statute or rule
16 has been established is generally a question of fact, which we
17 review for clear error. Id.

18 The bankruptcy court's allocation of the burden of proof is a
19 conclusion of law we review de novo. People's Ins. Co. of China
20 v. M/V Damodar Tanabe, 903 F.2d 675, 682 (9th Cir. 1990).

21 We review an order disallowing as unreasonable claims for
22 prepetition attorney's fees or insider payments under section
23 502(b)(4) for an abuse of discretion.⁷ To determine whether the
24 bankruptcy court abused its discretion, we conduct a two-step

25
26 ⁷ We, like the Panel in Segovia v. Bach Constr., Inc. (In re
27 Segovia), 2008 WL 8462967, at *4 n.16 (9th Cir. BAP Oct. 22,
28 2008), could not locate a standard of review for orders
disallowing as unreasonable claims for prepetition attorney's fees
or insider payments under section 502(b)(4). However, we agree
that an abuse of discretion standard would apply.

1 inquiry: (1) we review de novo whether the bankruptcy court
2 "identified the correct legal rule to apply to the relief
3 requested" and (2) if it did, whether the bankruptcy court's
4 application of the legal standard was illogical, implausible or
5 "without support in inferences that may be drawn from the facts in
6 the record." United States v. Hinkson, 585 F.3d 1247, 1261-62
7 (9th Cir. 2009) (en banc).

8 V. DISCUSSION

9 A. MLF's claim for prepetition attorney's fees was subject to 10 section 502(b)(4).

11 A proof of claim is deemed allowed and constitutes prima
12 facie evidence of the claim's validity and amount unless a party
13 in interest objects. Section 502(a); Lundell v. Anchor Constr.
14 Specialists, Inc. (In re Lundell), 223 F.3d 1035, 1039 (9th Cir.
15 2000); Rule 3001(f). Placides never disputed MLF's right to
16 attorney's fees and costs under the Engagement Letter. "Because a
17 pre-bankruptcy contractual obligation of a debtor to an attorney
18 is like any other contract claim against the estate, the attorney
19 can assert the claim in bankruptcy." Yermakov v. Fitzsimmons
20 (In re Yermakov), 718 F.2d 1465, 1470 (9th Cir. 1983). While
21 state law governs MLF's rights under the Engagement Letter,
22 bankruptcy law governs the allowance of MLF's claim against
23 Placides's estate. See Butner v. United States, 440 U.S. 48,
24 54-55 (1979).

25 MLF's claim for attorney's fees and costs may be allowed only
26 to the extent they are reasonable as determined under federal law.
27 Landsing Diversified Props.-II v. First Nat'l Bank & Trust Co. of
28 Tulsa (In re W. Real Estate Fund, Inc.), 922 F.2d 592, 597 (10th

1 Cir. 1991). Section 502(b)(4) provides that a prepetition claim
2 for services performed by an attorney or insider of the debtor
3 shall be disallowed to the extent the claim exceeds the reasonable
4 value of the services provided. Thus, "the excess amount of the
5 claim beyond such reasonable value fixed by the court is simply
6 disallowed and may not, therefore, share in the distribution of
7 the debtor's assets." 4 COLLIER ON BANKRUPTCY ¶ 502.03[5][c] (Alan N.
8 Resnick & Henry J. Sommer eds., 16th ed. 2009).

9 On appeal, MLF contends that a reasonableness standard does
10 not apply to its fees, but rather the contract amount controls.
11 Specifically, MLF argues that a reasonableness standard should not
12 apply because it provided services to Placides almost two years
13 prepetition, the services had nothing to do with Placides's
14 bankruptcy, and Placides represented that they had every intention
15 of paying. Like the bankruptcy court, we reject this argument.

16 Contrary to MLF's contention, section 502(b)(4) covers unpaid
17 claims for services of an attorney "whether or not the services
18 were rendered in contemplation of the filing of the petition or,
19 indeed, whether those services had even anything to do with
20 bankruptcy or the debtor's financial affairs." Id. at
21 ¶ 502.03[5][c][I]; In re Gutierrez, 309 B.R. 488, 493 (Bankr. W.D.
22 Tex. 2004) (a reasonableness standard under "[s]ection 502(b)(4)
23 applies to all claims for attorneys' fees owed by a debtor prior
24 to the filing of the case in which the claim is made, whether that
25 claim be for representing the debtor in a prior bankruptcy case,
26 or for representing the debtor in any other capacity (personal
27 injury, state court litigation, probate matters, tax advice, etc.
28 etc.") (emphasis in original); Sticka v. Geller (In re Stratton),

1 299 B.R. 616, 623 (Bankr. D. Or. 2003) (same). Thus, MLF's claim
2 for prepetition attorney's fees falls squarely under section
3 502(b)(4) and is subject to a reasonableness determination,
4 regardless of the amount to which MLF is entitled under the
5 Engagement Letter.

6 **B. The bankruptcy court properly shifted the burden of proof to**
7 **MLF.**

8 MLF contends that the bankruptcy court erred by improperly
9 shifting the burden to MLF to support the validity of its claim
10 because Placides merely lodged an objection without providing any
11 evidence to defeat it. We disagree.

12 To defeat a prima facie valid claim under section 502, "the
13 objector must come forward with sufficient evidence and 'show
14 facts tending to defeat the claim by probative force equal to that
15 of the allegations of the proofs of claim themselves.'" In re
16 Lundell, 223 F.3d at 1039 (quoting Wright v. Holm (In re Holm),
17 931 F.2d 620, 623 (9th Cir. 1991)). "'If the objector produces
18 sufficient evidence to negate one or more of the sworn facts in
19 the proof of claim, the burden reverts to the claimant to prove
20 the validity of the claim by a preponderance of the evidence.'" Id.
21 (citations omitted). "The ultimate burden of persuasion
22 remains at all times upon the claimant." Id.

23 Under section 502(b)(4), the claimant attorney or insider
24 bears the burden of proof on the question of reasonableness of
25 compensation for services. In re Siller, 427 B.R. 872, 881
26 (Bankr. E.D. Cal. 2010); In re Boulder Crossroads, LLC, 2010 WL
27 4924745, at *13 (Bankr. W.D. Tex. Dec. 1, 2010); Faulkner v.
28 Canada (In re Heritage Org., LLC), 2006 WL 6508182, at *8 (Bankr

1 N.D. Tex. Jan. 6, 2006) (citing cases). Mr. Placide, in his
2 declaration in support of Placides's objection to MLF's claim,
3 testified that Margulies had represented that the attorney's fees
4 and costs in Edison's adversary proceeding would be distributed
5 equally between Placides and Trustee. Trustee, as near as we can
6 tell, has not affirmed or disputed this fact. Further, Placides
7 put at issue the reasonableness of MLF's fees, which were
8 significantly in excess of the amount of Placides's maximum
9 possible recovery of \$82,000. These facts provided probative
10 evidence to negate the legal sufficiency of MLF's claim, or at
11 least sufficiently question the reasonableness of MLF's fees.
12 Accordingly, the bankruptcy court did not impermissibly shift the
13 burden of proof to MLF.

14 **C. Determination of Reasonableness of Attorney's Fees.**

15 The reasonableness of attorney's fees under section 502(b)(4)
16 is a question of federal law. Schoenmann v. Bach Constr., Inc.
17 (In re Segovia), 387 B.R. 773, 779 (Bankr. N.D. Cal. 2008), aff'd,
18 2008 WL 8462967, at *6 (9th Cir. BAP Oct. 22, 2008); In re W. Real
19 Estate Fund, 922 F.2d at 597; In re Siller, 427 B.R. at 880.
20 Bankruptcy courts have wide discretion in determining the
21 reasonableness of fees, and the appellate court will not overturn
22 the bankruptcy court's decision unless it abused its discretion.
23 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo), 468
24 F.3d 592, 596 (9th Cir. 2006).

25 In the Ninth Circuit, the primary method used to determine a
26 reasonable fee in bankruptcy cases is to calculate the lodestar.
27 In re Yermakov, 718 F.2d at 1471. A court computes the lodestar
28 by multiplying the number of hours reasonably expended by a

1 reasonable hourly rate. Id. However, the Ninth Circuit and this
2 Panel have made it clear that a court may depart from the lodestar
3 method where appropriate. See Unsecured Creditors' Comm. v. Puget
4 Sound Plywood, Inc., 924 F.2d 955, 960, 961 (9th Cir. 1991)
5 (lodestar approach not mandated in all cases and court may employ
6 alternative approaches where appropriate); Digesti & Peck v.
7 Kitchen Factors, Inc. (In re Kitchen Factors, Inc.), 143 B.R. 560,
8 562 (9th Cir. BAP 1992) (lodestar method is primary approach but
9 is not exclusive method).

10 In Kitchen Factors, the Panel held that a court may abandon
11 the lodestar approach in determining reasonable fees where the
12 "time spent by counsel is not helpful because it is grossly
13 disproportionate to the amounts at stake." 143 B.R. at 562.
14 "'Absent unusual circumstances, an attorney must scale his or her
15 fee at least to the reasonably expected recovery.'" Id. (quoting
16 Puget Sound Plywood, 924 F.2d at 961). "A claim for attorneys
17 fees is unreasonable under federal law to the extent the attorney
18 seeks fees that are disproportionate to the likely recovery."
19 Segovia, 387 B.R. at 779.

20 We recognize that Puget Sound Plywood and Kitchen Factors
21 were dealing with reasonableness of attorney's fees under section
22 330. We also recognize the difference between being an attorney
23 employed by the estate and being an attorney employed by a non-
24 debtor private client. Under the former, counsel is seeking
25 payment from the estate; under the latter, counsel is seeking
26 payment from a private client. If a private client wishes to
27 waste his own money pursuing litigation which may not be cost-
28 effective, that is his choice. See In re Kitchen Factors,

1 143 B.R. at 562-63. However, once that client files a bankruptcy
2 petition, counsel's claim for fees is limited to a reasonable
3 amount, in the same fashion as the claim for an estate
4 professional under section 330. Therefore, we believe the same
5 reasonableness standard set forth in section 330 should govern an
6 attorney's claim for fees under 502(b)(4). See In re Segovia,
7 387 B.R. at 779, aff'd, 2008 WL 8462967, at *6 (reasoning same);
8 In re Nelson, 206 B.R. 869, 882 (Bankr. N.D. Ohio 1997) (same).

9 Although not expressly stated, the bankruptcy court departed
10 from the lodestar method and employed a method more like the one
11 set forth in Puget Sound Plywood and Kitchen Factors. It focused
12 on the \$82,000 at stake for Placides and the approximate \$125,000-
13 plus MLF billed Placides in its effort to recover that \$82,000.
14 To the extent MLF argues that the bankruptcy court erred in
15 choosing an alternative method to determine the reasonableness of
16 its fee, we disagree. Because of the disproportionate nature of
17 MLF's fees to Placides's reasonably expected recovery, the court
18 was free to depart from lodestar and use an alternative method.
19 In re Kitchen Factors, 143 B.R. at 562; Puget Sound Plywood,
20 924 F.2d at 961.

21 In its reasonableness determination, the bankruptcy court
22 found that, prepetition, Placides paid MLF approximately \$49,000.
23 It further found that \$49,000 was the reasonable value of MLF's
24 services for representing Placides in pursuing their \$82,000 claim
25 against Edison, considering that Placides had no prospect of
26 recovering anything from Edison unless they could get the
27 residence into the estate, and, even then, insufficient equity
28 (net of costs) existed to pay Placides's \$82,000 claim in full.

1 The court considered Placides's preserved \$82,000 judgment against
2 Edison to be valueless because they had not recovered any money.
3 Ultimately, the court found MLF's claim for an additional
4 \$80,869.33 in prepetition attorney's fees and costs was
5 unreasonable, and it disallowed MLF's claim in its entirety.

6 MLF contends that its fees were reasonable and proper given
7 the complexity of the adversary, and that it exercised appropriate
8 billing judgment. MLF asserts that Placides wanted to proceed
9 against Edison and Viola because they had a significant chance, if
10 not 100%, of recovering on their \$82,000 claim if the estate
11 recovered the residence. Therefore, MLF contends that its claim
12 should be allowed in its entirety, particularly since Placides
13 never objected to MLF's fees throughout the course of the
14 litigation. In sum, MLF contends that the bankruptcy court erred
15 by awarding MLF only \$49,000, almost \$18,000 of which was
16 attributable to costs, for 375 hours of work that resulted in
17 success for Placides. MLF also contends that the bankruptcy court
18 did not know what amount Placides had paid to MLF, what amount
19 remained due, and what sums were only reimbursements for costs MLF
20 advanced on behalf of Placides; thus, it could not make a
21 reasonableness determination.

22 We reject MLF's contention that the bankruptcy court was
23 unable to make a reasonableness determination because it had
24 insufficient information about the accounting of the fees and
25 costs. At the hearing, the court correctly found that Placides
26 had paid MLF approximately \$49,000. MLF clearly stated in its
27 opposition to Placides's claim objection what amount remained
28 unpaid, and Margulies further stated at the hearing how the

1 \$49,000 was allocated between costs and fees. The record reflects
2 that the bankruptcy court knew exactly what amount had been paid,
3 how much was outstanding, and that it considered Margulies'
4 statement regarding the allocation of the \$49,000. As such, it
5 was able to make a reasonableness determination. It simply
6 rejected MLF's argument.

7 We also reject, as did the bankruptcy court, MLF's contention
8 that Placides's lack of prepetition objection to MLF's fees means
9 that its claim should be allowed in its entirety. As we stated
10 above, regardless of what MLF may be entitled to under the
11 Engagement Letter, its fees are subject to a reasonableness
12 determination under section 502(b)(4). In re W. Real Estate Fund,
13 Inc., 922 F.2d at 597; In re Segovia, 387 B.R. at 779, aff'd, 2008
14 WL 8462967; In re Siller, 427 B.R. at 880.

15 However, we disagree with the bankruptcy court that
16 Placides's suit against Edison and Viola was a "losing proposition
17 from the get go." In the Joint Pre-Trial Stipulation filed in
18 December 2007, Edison and Viola, who were still married at the
19 time, admitted at least \$300,000 in equity existed in the
20 residence, which was purchased in 1972 with community funds. The
21 only encumbrance on the residence was a mortgage for \$104,000.
22 Placides were Edison's largest unsecured creditor holding 96% of
23 the unsecured debt. Edison had a priority IRS tax claim for about
24 \$6,000. MLF included the Joint Pre-Trial Stipulation in its
25 opposition to Placides's claim objection.

26 Given the above facts, at the time Placides and Trustee filed
27 suit against Edison and Viola the case looked very promising. Had
28 the estate recovered the residence, Placides's claim for \$82,000

1 against Edison, plus any attorney's fees and costs preserved in
2 the judgment, likely would have been satisfied. Unfortunately,
3 MLF never articulated in its opposition brief how much equity was
4 in the residence, but stated merely that it had "significant"
5 equity. For reasons unknown, Margulies stated at the claim
6 objection hearing that the residence had only \$100,000 in equity.⁸
7 When asked where this evidence was in the record, Margulies
8 erroneously stated that it was in the adversary complaint, which
9 the court correctly rejected as evidence.

10 The bankruptcy court was faced with a factual issue of how
11 much equity existed in the residence, \$100,000 or \$300,000, in
12 determining the reasonableness of MLF's attorney's fees. Based on
13 the evidence presented to the bankruptcy court on this matter,
14 considering the reasonableness of the fees in connection with a
15 potential \$100,000 recovery by Placides was not clear error. Even
16 if Placides had been paid in full, MLF still failed to scale its
17 fees to something more in proportion with what Placides could
18 reasonably recover. In re Kitchen Factors, 143 B.R. at 562; Puget
19 Sound Plywood, 924 F.2d at 961. Therefore, the bankruptcy court
20 did not clearly err in finding that \$125,000-plus in attorney's
21 fees and costs incurred for a recovery that could never have been
22 more than \$82,000 was unreasonable, and that \$49,000 was a
23 reasonable fee.

24 VI. CONCLUSION

25 No one disputes the excellent work by MLF, and perhaps we

26
27 ⁸ Margulies asserted to the Panel at oral argument that
28 \$300,000 equity existed in the residence, and the evidence to
support this fact could be found in the Joint Pre-Trial
Stipulation.

1 each individually would have arrived at a different figure and
2 allowed MLF's claim in part. However, given the wide discretion
3 afforded bankruptcy courts in determining reasonableness of
4 prepetition attorney's fees under section 502(b)(4), we cannot say
5 that the court here abused its discretion in disallowing as
6 unreasonable MLF's claim for \$80,869.33. In re Eliapo, 468 F.3d
7 at 596. Accordingly, we AFFIRM.

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