NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. CC-07-1328-MoDMk
HUNSDON CARY STEWART,	Bk. No. LA 06-12402-VK
Debtor.	
THE BANKRUPTCY LAW FIRM, PC,	**M E M O R A N D U M**[1]
Appellant.	

Argued by Telephone Conference and
Submitted on February 21, 2008

Filed - March 14, 2008

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

Honorable Victoria Kaufman, Bankruptcy Judge, Presiding

Before: MONTALI, DUNN and MARKELL, Bankruptcy Judges.

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[1] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

Kathleen P. March, Esq. ("March") and her law firm, appellant The Bankruptcy Law Firm, P.C. (the "March Firm"), represented debtor Hunsdon Cary Stewart ("Debtor") in his chapter 13 case.[2] To date, the bankruptcy court has awarded the March Firm a total of $40,537.67, but it has disallowed an additional $7,422.18. The bankruptcy court disallowed those fees because the revised fee application at issue did not conform to local requirements and this "significantly compromised" the court's "ability to assess the reasonableness of the fees billed." We AFFIRM.

I. FACTS

A. Background

Debtor's former wife, Roya Batmanghelich ("Creditor"), was awarded approximately $200,000 in 1995 in divorce proceedings. The March Firm unsuccessfully objected to the claim of Creditor on behalf of Debtor. The court overruled the objection on many grounds, characterizing it as an improper collateral attack on a state court judgment. We recently affirmed that decision in Stewart v. Batmanghelich (In re Stewart), BAP No. CC-07-1004-MoDBa (Decision Issued on January 14, 2008).

The March Firm also proposed various chapter 13 plans on behalf of Debtor. The excerpts of record do not contain any

[2] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037, as enacted and promulgated after the effective date of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23, because the case from which this appeal arises was filed after its effective date (generally October 17, 2005).

significant information about the first several plans, but the third amended chapter 13 plan was eventually confirmed.

B. The March Firm's Fee Applications

On November 14, 2006, the March Firm filed an application seeking $32,281.68 in fees and costs (the "First Application"). Creditor objected that the requested fees arose from "frivolous" motions and matters prosecuted by the March Firm, including the objection to Creditor's claim. Creditor also asserted that the March Firm had "overcharged" for specific items, including a four hour charge for a court appearance that lasted about one hour.

At a hearing on January 24, 2007, the bankruptcy court questioned what fees should be awarded for objecting to Creditor's claim:

> The Court believes that a lot of the arguments with respect to the objection of [sic] the claim were inappropriate or collateral attacks on the State Court judgment or Ms. March putting into pleadings statements of [Debtor] without evaluating their legitimacy, without evaluating whether they were foreclosed by collateral estoppel from the State Court litigation, with Ms. March not providing some of the minute orders of the State Court, specifically excluding them from her pleadings.

Transcript of Hearing (January 24, 2007) at 53:1-10.

The bankruptcy court also questioned the fees incurred in seeking confirmation of Debtor's proposed chapter 13 plans. The court was concerned that the March Firm took positions contrary to binding authority, stating "You have an ethical obligation to cite cases which are binding and contrary to your position and to try [to] distinguish them. . . ." Id. at 10:3-11:11.

On February 14, 2007, the bankruptcy court issued an order awarding the March Firm $8,835.50 and deferring consideration of the remaining $23,446.18 in the First Application until either confirmation of the Debtor's chapter 13 plan or conversion or dismissal of the case.

A hearing was set for May 31, 2007, on confirmation of the Debtor's third amended chapter 13 plan. Prior to that hearing the bankruptcy court issued a tentative ruling (a) listing various defects in the March Firm's second fee application (not at issue on this appeal), (b) suggesting that the same defects apply to the First Application, and (c) allowing the March Firm an opportunity to revise and correct both fee applications. The ten-page tentative ruling describes myriad defects, including the following:

> Applicant repeatedly . . . lists a number of services under one time period . . . [and] lumps multiple services together under a single entry.
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> Applicant's invoice . . . does not consistently indicate who is performing which item of service. [And another invoice] includes the codes "KPM" and "P," but fails to identify the paralegal who performed the services.
>
> Applicant states that one of its paralegals (whose name is not set forth) is a law school graduate. Applicant does not identify the law school which this paralegal attended, nor the year this paralegal graduated from that school.
>
> . . . the Second Application appears to seek compensation for services which are noncompensable, i.e., secretarial and word processing work.

At the hearing on May 31, 2007, the bankruptcy court confirmed Debtor's third amended chapter 13 plan. Turning to the fee applications, the bankruptcy court stated:

> . . . the Court's dilemma is that [the March Firm] needs to do a more detailed assessment of the first fee application. It's just too difficult to do in the form that it's in. Then it isn't a matter of just dinging somebody for not complying with the Rule. It's a matter of the Court being able to assess the fees charged, and the Court can't do that if they're mingled with all the other things and the Court can't, you know, figure out what was appropriately charged and what wasn't appropriately charged.

Transcript of Hearing on May 31, 2007 at 57:7-16.

The bankruptcy court specifically referred to the need to set forth "the qualifications of the people," avoid "lumping," and "break out the activity into categories of fee application, objection to claims, plan confirmation, so that the Court can better assess which fees should be allowed and which should not." Id. at 57:23-58:9. March responded:

> . . . I don't think this is actually lumping because usually when there's an entry with multiple things, it would be like prepare pleading, talk to client about the pleading, send it to the client, . . . do the declarations, revise them, get them signed. In other words, I itemize what I'm doing, but it's for a specific discrete task, and in addition, both fee applications do have an itemized . . . summary[.]

Id. at 58:12-19.

The bankruptcy court ultimately allowed most of the fees sought in the Second Application ($15,678.17 out of $16,328.17 requested) but it directed the March Firm to revise the First Application, stating "[i]t's a bit easier with the second [application than the first] because . . . there are less categories of activity . . . ." Id. at 58:4-5. March stated, "in the future . . . I will try to [] the letter [sic] to comply with the Local Rule, but the fact is I did spend 14 years [as a bankruptcy judge] reviewing fee applications, and there's hardly

a one of them that complies with the Local Rules to the letter . . . ." Id. at 55:18-22.

The March Firm filed a Revised First Application on June 28, 2007. Notwithstanding the court's prior directive to divide the invoices [i.e., time entries] by category, the March Firm did not do so, instead electing to simply state in the narrative how much time was spent on particular categories of tasks and not making any effort to identify what time entries corresponded with each such task. Moreover, even though the court warned the March Firm that the time entries contained "lumping" of tasks and thus impaired the court's ability to assess the reasonableness of the fees, the Revised First Application contained multiple entries of lumped time, such as an entry on September 26, 2006, charging 7.5 hours to

> complete the RESPONSE to Roya objection, with declarations of Stewart and March; email to Stewart for his review/correction/approval; set apt for Stewart to review/sign first amended plan to reduce IRS to what it filed as its POC, reduce Roya to what she filed as its POC, add attys fees to my firm above retainer, etc. will result overall in higher percent to unsecured creditors [sic]; check CD CA local rules re amendments to plans.[3]

The Revised First Application was replete with other such "lumped" time entries, including those for October 9, 2006 (grouping multiple tasks into one six-hour time entry), November 7, 2006 (4.17 hours of multiple tasks) and November 8, 2006 (seven hours of lumped tasks). Furthermore, even though the

[3] If the bankruptcy court wanted to adjust fees for researching local rules or for adding attorneys' fees, it would not have been able to segregate the time and amounts charged for those particular tasks; it could not know whether the time spent on those tasks was reasonable.

bankruptcy court had indicated that it would not allow fees for the performance of clerical or secretarial tasks, the Revised First Application contained entries in which paralegals performed and charged for such tasks (preparing service envelopes with service, preparing Fed Ex packages, etc.).

Upon reviewing the Revised First Application, the bankruptcy court issued a tentative ruling for a hearing scheduled for August 22, 2007, stating among other things:

> Because the Revised First Application does not conform to the requirements set forth in Local Bankruptcy Rule 2016-1 and in the "Guide to Applications for Professional Compensation" issued by the United States Trustee for the Central District of California [the "Fee Guide"], the Court's ability to assess the reasonableness of the fees billed has been significantly compromised. Consequently, the Court will apply a 20% reduction to the fees billed by Kathleen P. March for the period of time at issue in the Revised First Application. See In re Kopet, 2005 WL 4704993, *4 (Bankr. D. Idaho Oct. 13, 2005); . . . . This amounts to $5,788.84 of those fees. In addition, as discussed in more detail below, the Court will not approve $1,633.34 in "paralegal" fees, as the related services are secretarial and noncompensable. After taking such deductions into account, the Court will award $16,006.00 in fees sought in the Revised First Application.
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> . . . Applicant repeatedly . . . lists a number of services under one time period.
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> . . . Applicant repeatedly lumps multiple services together under a single time entry.
>
> While Applicant's amended invoices include the codes "KPM" and "P," they fail to identify which of Applicant's two alleged paralegals performed each of the services listed.
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> The Revised First Application does not provide the names of the individuals who are billed as paralegals [and] . . . does not identify which schools these individuals attended, nor the years these individuals graduated from their respective schools.

> "'Hours' should be calculated by tenths; no 'lumping.'" [Quoting Fee Guide § II.B.1.]
>
> . . . Services performed by a paralegal which are secretarial in nature (e.g., inputting date into chapter 13 plan form) are noncompensable.
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> Because the services described are secretarial and noncompensable, the Court will not allow the "paralegal" fees arising from the following time entries in the Revised First Application ($1,633.34 in the aggregate): 6/2/06 ($266.67); 6/6/06 ($50.00, $8.33, $100.00, $25.00); 6/7/06 ($29.17); 6/18/06 ($41.67, $50.00); 7/1/06 ($37.50)[;] 8/7/06 ($41.67); 9/27/06 ($125.00); 10/13/06 ($58.33); 10/29/06 ($400.00); and 11/9/2006 ($400.00).

After the August 22 hearing, the bankruptcy court issued a written order consistent with its tentative ruling on the Revised First Application. It granted the March Firm an additional $16,024.00 and disallowed $7,422.18, consisting of $5,788.84 of March's own fees and $1,633.34 of paralegal fees. The March Firm filed a timely notice of appeal.

II. ISSUE

Did the bankruptcy court abuse its discretion in reducing the fees of the March Firm by $7,422.18?

III. STANDARD OF REVIEW

We will not disturb a bankruptcy court's award of attorneys' fees absent an abuse of discretion or an erroneous application of the law. Law Offices of David A. Boone v. Derham-Burk (In re Eliapo), 468 F.3d 592, 596 (9th Cir. 2006); Smith v. Edward & Hale, Ltd. (In re Smith), 317 F.3d 918, 923 (9th Cir. 2002). We review factual findings made in the course of awarding compensation for clear error. See Friedman Enters. v. B.U.M. Int'l, Inc. (In re B.U.M. Int'l, Inc.), 229 F.3d 824, 830 (9th Cir. 2000).

IV. JURISDICTION

The bankruptcy court had jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(A). We have jurisdiction pursuant to 28 U.S.C. § 158.

V. DISCUSSION

A bankruptcy court may award "reasonable compensation" to counsel for a chapter 13 debtor "for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section." 11 U.S.C. § 330(a)(4)(B); Eliapo, 468 F.3d at 597. Section 330(a)(3) identifies the "other factors" to be considered by the court in determining whether to allow the fees:

> (3) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including --
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> (A) the time spent on such services;
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> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and
>
> (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3). The court may sua sponte award compensation that is less than the requested amount. 11 U.S.C.

§ 330(a)(2); Eliapo, 468 F.3d at 597.

The United States Bankruptcy Court for the Central District of California has adopted Local Rules governing the allowance of attorneys' fees. In particular, Appendix IV of the current Local Rules (revised as of January 2008) sets forth Guidelines for Allowance of Attorneys' Fees In Chapter 13 Cases. This appendix provides that attorneys for chapter 13 debtors can get a certain maximum amount of fees without filing a detailed application. If, however, counsel seeks additional fees or elects to be paid other than under the appendix's "no-look" guidelines, the "attorney shall file and serve an application for fees in accordance with 11 U.S.C. §§ 330 and 331, Rules 2016 and 2002 [] and Local Bankruptcy Rules 2016-1 and 3015-1, as well as the 'Guide To Applications For Professional Compensation' issued by the United States Trustee for the Central District of California ["Fee Guide"]."[4]

Local Bankruptcy Rule 2016-1 provides that time entries are "generally to be broken down in detail by the specific task performed. Lumping services together generally is not satisfactory." L.B.R. 2016-1(1)(E)(iii). Moreover, under L.B.R. 2016-1(1)(E)(iv), "[s]ummaries that list a number of services under only one time period will generally not be satisfactory." Similarly, the United State Trustee's Fee Guide requires time

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[4] Appendix IV was effective at the time Debtor filed his case and at the time the March Firm filed its fee application. The 2008 amendment to Appendix IV changed the maximum amount allowable under the "no-look" rules from $3,000 (or $3,500 if the debtor was self-employed) to $4,000 (or $4,500 if the debtor is engaged in a business).

entries to be divided into categories by project. Fee Guide at § II.D.

The March Firm argues on this appeal that the defects identified by the bankruptcy court either "did not exist, or were utterly trivial." We have reviewed the March Firm's time itemizations and we cannot agree. The bankruptcy court was clearly troubled by the March Firm's arguments and omissions in its objection to Creditor's claim, and perhaps other discrete tasks, but it is impossible to tell from many of the time entries how much time was spent on that matter and how much on other matters. On September 25, 2006, for example, March's time records reflect 3.0 hours on various tasks:

> receive email from Stewart, reply to it; check pacer to print all [Creditor] claims from pacer (only the one, not amended); read and analyze Objection of [Creditor], check pacer docket to be sure that is the ONLY objection to plan confirmation (it is the ONLY objection); do first draft of Stewart Response to Objection.

On November 7, 2006, the time records reflect 4.17 hours of March's time on the following:

> draft the Notice of Motion and Motion Objecting to [Creditor] POC, after analyze [Creditor's] 11/31/06 briefing; self calendar Motion for same day as plan confirmation hearing after checking [bankruptcy court's] calendar rules and local rules re service time; check research from Stewart of various issues; do more research to get better authorities to cite

Without revealing attorney-client communications or work product, the March Firm could have at least broken down these entries so that the bankruptcy court could tell how much time was spent on the objection to Creditor's claim and how much on each other matter. Entries such as "various issues" do not let the

bankruptcy court do this, nor does the failure to indicate after each task how much time on that task. We are not persuaded that the bankruptcy court erred in unilaterally reducing the fees attributable to March.[5]

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[5] March also argues on this appeal that her rates are reasonable because she is a former bankruptcy judge, is "triple certified," and the March Firm had to wait a long time to be paid (although, as the bankruptcy court pointed out, it is typical that fees cannot be paid until confirmation or dismissal). None of that is relevant to the lack of sufficient information for the bankruptcy court to be able to tell how much time was spent on objecting to Creditor's claim. In fact, it makes the failure of the March Firm to avoid or correct the noted defects all the more troublesome to us.

The March Firm also argues on this appeal that:

> Rather than having its fees cut, [it] would have been entitled to seek an enhanced fee, under the "lodestar" test, because (1) the Bankruptcy Court spent the case functioning as a second attorney for [Creditor], instead of carrying out the proper function of being an impartial decision maker, and (2) the Bankruptcy Court was so ignorant of Chapter 13 law, that it (inter alia) posted a written tentative ruling in this case . . . stating that debtor should amend his Chapter 13 plan to make it more than 5 years long, despite 11 USC § 1322(d)(2)(C) expressly forbidding Chapter 13 plans from being over 5 years long.

This argument ignores the bankruptcy court's "independent duty" to review fees and costs, even "in the absence of any formal objection . . ." In re Dorsett, 297 B.R. 620, 624 (Bankr. E.D. Cal. 2003). Moreover, the March Firm has not pointed to any specific instance of the bankruptcy court improperly acting as Creditor's "second attorney," and the comment about plans over 5 years is offensive in tone and irrelevant to the issues on this appeal. The bankruptcy court, to its credit, readily corrected its error, which was based on a quirk of the statute that provides for a period of not less than 5 years that also, under another provision, cannot be greater than 5 years.

In order to assess accurately the reasonableness of an attorney's fees and to apply correctly the factors set forth in section 330(a)(3), a bankruptcy court must be able to analyze the professional's bills and determine whether time spent on particular tasks is necessary or reasonable. Lumping of services (i.e., listing multiple activities in a single time entry), as in this case, impairs the ability of the bankruptcy court to perform this analysis. Therefore, lumping or clumping is universally discouraged by bankruptcy courts[6] because it permits an applicant to claim compensation for rather minor tasks which, if reported separately, might not be compensable. In other words, lumping prevents the bankruptcy court from determining whether individual tasks were expeditiously performed within a reasonable amount of

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[6]See, generally, 3 COLLIER ON BANKRUPTCY, ¶ 330.04[b] (Alan N. Resnick & Henry J. Sommer, eds., 15th ed. rev. 1999). A partial survey of recent bankruptcy court decisions shows the widespread disapproval of this billing practice. 1st Circuit: In re ACT Mfg., Inc., 281 B.R. 468, 483 (Bankr. D. Mass. 2002). 2d Circuit: In re Brous, 370 B.R. 563, 576 (Bankr. S.D.N.Y. 2007); In re Baker, 374 B.R. 489, 497 (Bankr. E.D.N.Y. 2007); Kelsey v. Great Lakes Higher Educ. Corp. (In re Kelsey), 272 B.R. 830, 834 (Bankr. D. Vt. 2002). 4th Circuit: In re Ward, 190 B.R. 242, 246-48 (Bankr. D. Md. 1995). 6th Circuit: In re Williams, 357 B.R. 434, 440 (6th Cir. BAP 2007) (lumping of tasks made time entries "highly suspect"). 7th Circuit: In re New Boston Coke Corp., 299 B.R. 432, 443 (Bankr. E.D. Mich. 2003); In re Adventist Living Centers, Inc., 137 B.R. 701, 705-06 (Bankr. N.D. Ill. 1991). 8th Circuit: In re NWFX, Inc., 267 B.R. 118, 230 (Bankr. W.D. Ark. 2001). 9th Circuit: In re Wanechek, 349 B.R. 836, 844 (Bankr. E.D. Wash. 2006); In re Jones, 356 B.R. 39, 46 (Bankr. D. Idaho 2005); Wepsic v. Josephson (In re Wepsic), 238 B.R. 845, 848 (Bankr. S.D. Cal. 1999). 10th Circuit: In re Recycling Industries, 243 B.R. 396, 406-07 (Bankr. D. Colo. 2000). 11th Circuit: In re Southern Diesel, Inc., 309 B.R. 810, 817-18 (Bankr. M.D. Ala. 2004).

time. In re Auto. Warranty Corp., 138 B.R. 72, 74 (Bankr. D. Colo. 1991).

Here, the bankruptcy court issued a tentative decision warning the March Firm that its time entries contained inappropriate lumping. The court also cautioned the firm that the time entries should be placed into project categories so that the court could better assess the reasonableness and necessity of the fees. The March Firm did not heed these admonitions when it filed its amended fee application. As a consequence, the bankruptcy court was unable to apply the factors of section 330(a)(3) and measure the reasonableness of the services effectively. The court therefore reduced the fees by twenty percent (or by $5,788.84). This reduction was not an abuse of discretion.

In addition, the bankruptcy court disallowed $1,633.34 in "paralegal" fees, as the services rendered were secretarial/clerical. Such services included the preparation of envelopes for service of pleadings and preparing Fed Ex packages. The March Firm argues that there is "nothing in the national rules or local rules . . . which precludes paying a reasonable amount for secretarial work . . . ." and that the bankruptcy court thus erred in disallowing these fees.

We are not persuaded. The Fee Guide (made applicable by Appendix 4 of the local rules) indicates that the following are not reimbursable actual and necessary expenses: "[n]ormal overhead expenses such as . . . secretarial work, word processing, office supplies, docketing time, tending photocopy or facsimile machines, 'opening file' administrative expenses, and

other similar internal operating or overhead expenses." Here, the bankruptcy court specifically identified and disallowed particular entries where the paralegals (based on the March Firm's own description) appear to have performed secretarial work. Clerical work is not compensable as it is "not in the nature of professional services and must be absorbed by the applicant's firm as an overhead expense." In re Dimas, 357 B.R. 563, 577 (Bankr. N.D. Cal. 2006), citing Missouri v. Jenkins, 491 U.S. 274, 288 n.10 (1989); Sousa v. Miguel, 32 F.3d 1370, 1374 (9th Cir. 1994).

VI. CONCLUSION

The March Firm has not established that the bankruptcy court abused its discretion in reducing the firm's fees. For the foregoing reasons, we AFFIRM.