

MAR 14 2008

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION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,)	
)	
Appellant.)	
)	

M E M O R A N D U M¹

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.

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.

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

11 I. FACTS

12 A. Background

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

21 The March Firm also proposed various chapter 13 plans on
22 behalf of Debtor. The excerpts of record do not contain any
23

24 ² Unless otherwise indicated, all chapter, section and rule
25 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
26 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037, as
27 enacted and promulgated after the effective date of The
28 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).

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

3 B. The March Firm's Fee Applications

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

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

15 The Court believes that a lot of the arguments
16 with respect to the objection of [sic] the claim
17 were inappropriate or collateral attacks on the
18 State Court judgment or Ms. March putting into
19 pleadings statements of [Debtor] without
20 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.

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

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

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

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

15 Applicant repeatedly . . . lists a number of
16 services under one time period . . . [and] lumps
multiple services together under a single entry.

17 Applicant's invoice . . . does not consistently
18 indicate who is performing which item of service.
19 [And another invoice] includes the codes "KPM" and
"P," but fails to identify the paralegal who
performed the services.

20 Applicant states that one of its paralegals (whose
21 name is not set forth) is a law school graduate.
22 Applicant does not identify the law school which
this paralegal attended, nor the year this
paralegal graduated from that school.

23 . . . the Second Application appears to seek
24 compensation for services which are
25 noncompensable, i.e., secretarial and word
processing work.

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

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

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

13 The bankruptcy court specifically referred to the need to
14 set forth "the qualifications of the people," avoid "lumping,"
15 and "break out the activity into categories of fee application,
16 objection to claims, plan confirmation, so that the Court can
17 better assess which fees should be allowed and which should not."

18 Id. at 57:23-58:9. March responded:

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

28 Id. at 58:12-19.

29 The bankruptcy court ultimately allowed most of the fees
30 sought in the Second Application (\$15,678.17 out of \$16,328.17
31 requested) but it directed the March Firm to revise the First
32 Application, stating "[i]t's a bit easier with the second
33 [application than the first] because . . . there are less
34 categories of activity" Id. at 58:4-5. March stated,
35 "in the future . . . I will try to [] the letter [sic] to comply
36 with the Local Rule, but the fact is I did spend 14 years [as a
37 bankruptcy judge] reviewing fee applications, and there's hardly
38

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

3 The March Firm filed a Revised First Application on June 28,
4 2007. Notwithstanding the court's prior directive to divide the
5 invoices [i.e., time entries] by category, the March Firm did not
6 do so, instead electing to simply state in the narrative how much
7 time was spent on particular categories of tasks and not making
8 any effort to identify what time entries corresponded with each
9 such task. Moreover, even though the court warned the March Firm
10 that the time entries contained "lumping" of tasks and thus
11 impaired the court's ability to assess the reasonableness of the
12 fees, the Revised First Application contained multiple entries of
13 lumped time, such as an entry on September 26, 2006, charging 7.5
14 hours to

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

24 The Revised First Application was replete with other such
25 "lumped" time entries, including those for October 9, 2006
26 (grouping multiple tasks into one six-hour time entry), November
27 7, 2006 (4.17 hours of multiple tasks) and November 8, 2006
28 (seven hours of lumped tasks). Furthermore, even though the

26 ³ If the bankruptcy court wanted to adjust fees for
27 researching local rules or for adding attorneys' fees, it would
28 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.

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

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

9 Because the Revised First Application does not
10 conform to the requirements set forth in Local
11 Bankruptcy Rule 2016-1 and in the "Guide to
12 Applications for Professional Compensation" issued
13 by the United States Trustee for the Central
14 District of California [the "Fee Guide"], the
15 Court's ability to assess the reasonableness of
16 the fees billed has been significantly
17 compromised. Consequently, the Court will apply a
18 20% reduction to the fees billed by Kathleen P.
19 March for the period of time at issue in the
20 Revised First Application. See In re Kopet, 2005
21 WL 4704993, *4 (Bankr. D. Idaho Oct. 13, 2005);
22 This amounts to \$5,788.84 of those fees.
23 In addition, as discussed in more detail below,
24 the Court will not approve \$1,633.34 in
25 "paralegal" fees, as the related services are
26 secretarial and noncompensable. After taking such
27 deductions into account, the Court will award
28 \$16,006.00 in fees sought in the Revised First
Application.

20 . . . Applicant repeatedly . . . lists a number
21 of services under one time period.

22 . . . Applicant repeatedly lumps multiple services
together under a single time entry.

23 While Applicant's amended invoices include the
24 codes "KPM" and "P," they fail to identify which
of Applicant's two alleged paralegals performed
25 each of the services listed.

26 The Revised First Application does not provide the
27 names of the individuals who are billed as
paralegals [and] . . . does not identify which
28 schools these individuals attended, nor the years
these individuals graduated from their respective
schools.

1 **IV. JURISDICTION**

2 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
3 §§ 1334 and 157(b) (2) (A). We have jurisdiction pursuant to 28
4 U.S.C. § 158.

5 **V. DISCUSSION**

6 A bankruptcy court may award "reasonable compensation" to
7 counsel for a chapter 13 debtor "for representing the interests
8 of the debtor in connection with the bankruptcy case based on a
9 consideration of the benefit and necessity of such services to
10 the debtor and the other factors set forth in this section." 11
11 U.S.C. § 330(a) (4) (B); Eliapo, 468 F.3d at 597. Section
12 330(a) (3) identifies the "other factors" to be considered by the
13 court in determining whether to allow the fees:

14 (3) In determining the amount of reasonable
15 compensation to be awarded, the court shall
16 consider the nature, the extent, and the value of
such services, taking into account all relevant
factors, including --

17 (A) the time spent on such services;

18 (B) the rates charged for such services;

19 (C) whether the services were necessary to
20 the administration of, or beneficial at the
time at which the service was rendered toward
the completion of, a case under this title;

21 (D) whether the services were performed
22 within a reasonable amount of time
commensurate with the complexity, importance,
23 and nature of the problem, issue, or task
addressed; and

24 (E) whether the compensation is reasonable
25 based on the customary compensation charged
by comparably skilled practitioners in cases
26 other than cases under this title.

27 11 U.S.C. § 330(a) (3). The court may sua sponte award
28 compensation that is less than the requested amount. 11 U.S.C.

1 § 330(a)(2); Eliapo, 468 F.3d at 597.

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

17 Local Bankruptcy Rule 2016-1 provides that time entries are
18 "generally to be broken down in detail by the specific task
19 performed. Lumping services together generally is not
20 satisfactory." L.B.R. 2016-1(1)(E)(iii). Moreover, under L.B.R.
21 2016-1(1)(E)(iv), "[s]ummaries that list a number of services
22 under only one time period will generally not be satisfactory."
23 Similarly, the United State Trustee's Fee Guide requires time

24
25 ⁴ Appendix IV was effective at the time Debtor filed his
26 case and at the time the March Firm filed its fee application.
27 The 2008 amendment to Appendix IV changed the maximum amount
28 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).

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

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

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

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

22 draft the Notice of Motion and Motion Objecting to
23 [Creditor] POC, after analyze [Creditor's]
24 11/31/06 briefing; self calendar Motion for same
25 day as plan confirmation hearing after checking
26 [bankruptcy court's] calendar rules and local
27 rules re service time; check research from Stewart
28 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

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

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

16 The March Firm also argues on this appeal that:

17 Rather than having its fees cut, [it] would
18 have been entitled to seek an enhanced fee, under
19 the "lodestar" test, because (1) the Bankruptcy
20 Court spent the case functioning as a second
21 attorney for [Creditor], instead of carrying out
22 the proper function of being an impartial decision
23 maker, and (2) the Bankruptcy Court was so
24 ignorant of Chapter 13 law, that it (inter alia)
25 posted a written tentative ruling in this case
26 . . . stating that debtor should amend his
27 Chapter 13 plan to make it more than 5 years long,
28 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.

1 In order to assess accurately the reasonableness of an
2 attorney's fees and to apply correctly the factors set forth in
3 section 330(a)(3), a bankruptcy court must be able to analyze the
4 professional's bills and determine whether time spent on
5 particular tasks is necessary or reasonable. Lumping of services
6 (i.e., listing multiple activities in a single time entry), as in
7 this case, impairs the ability of the bankruptcy court to perform
8 this analysis. Therefore, lumping or clumping is universally
9 discouraged by bankruptcy courts⁶ because it permits an applicant
10 to claim compensation for rather minor tasks which, if reported
11 separately, might not be compensable. In other words, lumping
12 prevents the bankruptcy court from determining whether individual
13 tasks were expeditiously performed within a reasonable amount of
14

15
16 ⁶See, generally, 3 COLLIER ON BANKRUPTCY, ¶ 330.04[b] (Alan N.
17 Resnick & Henry J. Sommer, eds., 15th ed. rev. 1999). A partial
18 survey of recent bankruptcy court decisions shows the widespread
19 disapproval of this billing practice. 1st Circuit: In re ACT
20 Mfg., Inc., 281 B.R. 468, 483 (Bankr. D. Mass. 2002). 2d
21 Circuit: In re Brous, 370 B.R. 563, 576 (Bankr. S.D.N.Y. 2007);
22 In re Baker, 374 B.R. 489, 497 (Bankr. E.D.N.Y. 2007); Kelsey v.
23 Great Lakes Higher Educ. Corp. (In re Kelsey), 272 B.R. 830, 834
24 (Bankr. D. Vt. 2002). 4th Circuit: In re Ward, 190 B.R. 242,
25 246-48 (Bankr. D. Md. 1995). 6th Circuit: In re Williams, 357
26 B.R. 434, 440 (6th Cir. BAP 2007) (lumping of tasks made time
27 entries "highly suspect"). 7th Circuit: In re New Boston Coke
28 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).

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

3 Here, the bankruptcy court issued a tentative decision
4 warning the March Firm that its time entries contained
5 inappropriate lumping. The court also cautioned the firm that
6 the time entries should be placed into project categories so that
7 the court could better assess the reasonableness and necessity of
8 the fees. The March Firm did not heed these admonitions when it
9 filed its amended fee application. As a consequence, the
10 bankruptcy court was unable to apply the factors of section
11 330(a)(3) and measure the reasonableness of the services
12 effectively. The court therefore reduced the fees by twenty
13 percent (or by \$5,788.84). This reduction was not an abuse of
14 discretion.

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

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

1 other similar internal operating or overhead expenses." Here,
2 the bankruptcy court specifically identified and disallowed
3 particular entries where the paralegals (based on the March
4 Firm's own description) appear to have performed secretarial
5 work. Clerical work is not compensable as it is "not in the
6 nature of professional services and must be absorbed by the
7 applicant's firm as an overhead expense." In re Dimas, 357 B.R.
8 563, 577 (Bankr. N.D. Cal. 2006), citing Missouri v. Jenkins, 491
9 U.S. 274, 288 n.10 (1989); Sousa v. Miguel, 32 F.3d 1370, 1374
10 (9th Cir. 1994).

11 **VI. CONCLUSION**

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