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NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No. NV-14-1532-DJuKi
)	
HORIZON RIDGE MEDICAL & CORPORATE CENTER, LLC,)	Bk. No. S-12-13906-BTB
)	
Debtor.)	
_____)	
BANK OF AMERICA, N.A.,)	
)	
Appellant,)	
)	
v.)	M E M O R A N D U M ¹
)	
HORIZON RIDGE MEDICAL & CORPORATE CENTER, LLC;)	
GORDON SILVER,)	
)	
Appellees.)	
_____)	

Argued and Submitted on February 18, 2016
at Las Vegas, Nevada

Filed - February 23, 2016

Appeal from the United States Bankruptcy Court
for the District of Nevada

Honorable Bruce T. Beesley,² Bankruptcy Judge, Presiding

Appearances: Matthew A. Olins of Duane Morris LLP argued for
Appellant; Gerald M. Gordon of Garman Turner
Gordon LLP argued for Appellees.

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 8024-1.

² Hon. Linda Riegler and Hon. Lloyd King, Bankruptcy Judges,
also presided over portions of the underlying bankruptcy case.

1 Before: DUNN, JURY and KIRSCHER, Bankruptcy Judges.
2

3 This appeal follows a bitter dispute between chapter 11³
4 debtor Horizon Ridge Medical & Corporate Center, LLC ("Horizon
5 Ridge"), and its major creditor Bank of America, N.A. (the
6 "Bank"). Horizon Ridge filed its bankruptcy case in an apparent
7 effort to resolve a relatively minor disagreement with the Bank
8 over tenant improvement deposits, but the case quickly spiraled
9 out of control. Counsel for Horizon Ridge allowed the
10 exclusivity period to expire, and the Bank proposed a plan of
11 liquidation. Horizon Ridge engaged Gordon Silver as substitute
12 counsel and countered with a reorganization plan of its own.

13 Ultimately, the bankruptcy court confirmed the Bank's plan,
14 which required the Bank to assume the obligation of paying
15 allowed administrative expenses. Gordon Silver applied for and
16 received final approval of its fees and costs in the amount of
17 \$512,741.30. The Bank appeals. We AFFIRM.

18 **I. FACTUAL BACKGROUND**

19 **A. Events prior to Gordon Silver's involvement**

20 From its inception, the underlying chapter 11 case has been
21 essentially a two-party dispute between Horizon Ridge and the
22 Bank. Horizon Ridge was the owner and operator of the Horizon
23 Ridge Medical & Corporate Center (the "Medical Center") in
24 Henderson, Nevada. Dr. Rick Abelson held a 90% managing
25

26 ³ Unless otherwise indicated, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.
28 All "Rule" references are to the Federal Rules of Bankruptcy
Procedure.

1 membership interest in Horizon Ridge, and Chandrakant Patel held
2 the remaining 10% interest. The Medical Center was Horizon
3 Ridge's only substantial asset. In 2012, Horizon Ridge had a
4 total of four creditors: three unsecured creditors, whose claims
5 totaled no more than \$9,000, and the Bank, which held a claim in
6 the amount of approximately \$4 million, secured by a deed of
7 trust on the Medical Center.

8 Apparently, a relatively minor⁴ dispute arose between
9 Horizon Ridge and the Bank concerning tenant improvement
10 deposits. Dr. Abelson met with an attorney to discuss Horizon
11 Ridge's options. Horizon Ridge hired the attorney and his firm,
12 and in a move the bankruptcy court later labeled "improvident,"
13 the firm filed a chapter 11 petition in behalf of Horizon Ridge.
14 By all accounts, counsel's performance was abysmal. According to
15 Dr. Abelson, the firm misled him as to the progress of the case;
16 failed to discuss with him the significance of the § 1121(b)
17 exclusivity period or the need to propose a reorganization plan
18 before it expired; sent an inexperienced attorney unfamiliar with
19 the case to appear in court; and refused to return Dr. Abelson's
20 increasingly distressed phone calls.⁵

21 Meanwhile, after Horizon Ridge's exclusivity period expired
22 with no plan having been proposed, the Bank promptly filed its
23 own chapter 11 plan, proposing to liquidate substantially all of
24

25 ⁴ The bankruptcy court noted that the amount in controversy
26 was "less than \$200,000." Gordon Silver represented in its brief
on appeal that it was less than \$90,000.

27 ⁵ In the bankruptcy court's more pithy description, the
28 attorneys "didn't have any idea what the devil they were doing."

1 Horizon Ridge's assets, consisting primarily of the Medical
2 Center (the "Liquidation Plan"). The Liquidation Plan proposed
3 to sell the Medical Center, with the proceeds to be applied to
4 the Bank's allowed secured claim and any surplus to be
5 distributed to Dr. Abelson and Mr. Patel, whose membership
6 interests in Horizon Ridge would be extinguished. The
7 administrator of the Liquidation Plan would be required to pay
8 all allowed administrative expense claims, as well as all allowed
9 unsecured claims, in full, regardless of the amount generated by
10 the sale of the Medical Center. Together with the Liquidation
11 Plan, the Bank filed a motion requesting entry of an order
12 confirming that no disclosure statement would be required for the
13 Liquidation Plan, as each interested party's acceptance or
14 rejection was implied as a matter of law without the need to
15 vote.⁶

16 This motion was set for hearing on September 26, 2012,
17 together with the following motions made by Horizon Ridge: (1) a
18 motion to value the Medical Center and "strip" the Bank's lien;
19 (2) a motion to dismiss the case; and (3) an objection to the
20 Bank's secured claim. In the latter two motions, Horizon Ridge
21 argued that the Bank was not the proper party in interest to
22 assert its secured claim. The day before the September 26
23 hearing, Horizon Ridge filed its own plan of reorganization and
24

25
26 ⁶ We exercise our discretion to take judicial notice of
27 documents filed in the Debtor's bankruptcy case. See Fear v.
28 United States Trustee (In re Ruiz), 541 B.R. 892, 894 n.3 (9th
Cir. BAP 2015); Atwood v. Chase Manhattan Mortg. Co.
(In re Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

1 disclosure statement, both of which were set for hearing on
2 October 31. At the September 26 hearing, the bankruptcy court
3 denied all of Horizon Ridge's motions and granted the Bank's
4 motion. The bankruptcy court also scheduled a confirmation
5 hearing on the Liquidation Plan for November 14, 2012, just two
6 weeks after the scheduled initial hearing on Horizon Ridge's plan
7 and disclosure statement.

8 **B. Events following retention of Gordon Silver**

9 Following the September 26 hearing, Dr. Abelson sought
10 substitute counsel for Horizon Ridge to salvage the situation.
11 Ultimately, he selected Gordon Silver, whom he paid a \$40,000
12 retainer out of his personal bank account. Shortly after being
13 retained, Gordon Silver filed an application to approve its
14 employment, along with an amended plan of reorganization (the
15 "Reorganization Plan") and accompanying disclosure statement.
16 The Reorganization Plan proposed to pay holders of priority
17 claims, in full, no sooner than 90 days after the effective date
18 of the plan. General unsecured creditors would also receive
19 payment in full, but the payments would be distributed in
20 installments over a period of six months. As for the Bank's
21 secured claim, Horizon Ridge proposed to make interest-only
22 payments for three years, followed by four years of principal and
23 interest payments, amortized over a thirty-year period, with a
24 substantial balloon payment coming due at the end of the seventh
25 year.

26 The Bank objected to Gordon Silver's employment application.
27 It argued that Dr. Abelson's payment of the \$40,000 retainer,
28 together with the provisions of the Reorganization Plan - which

1 the Bank viewed as unreasonably indulgent toward equity holders
2 and hostile toward the Bank - demonstrated that Gordon Silver was
3 not disinterested and represented an interest adverse to the
4 estate, namely Dr. Abelson himself. After hearing, the
5 bankruptcy court approved Gordon Silver's employment. To address
6 the Bank's concern about the potentially conflicting interests of
7 the bankruptcy estate and Dr. Abelson, the bankruptcy court
8 ordered Dr. Abelson to retain independent counsel. Dr. Abelson
9 did so, and attorney Dorothy Bunce eventually docketed a notice
10 of appearance on his behalf.

11 Over the Bank's opposition, the bankruptcy court granted
12 conditional approval of Horizon Ridge's disclosure statement and
13 rescheduled the hearing on confirmation of the Liquidation Plan
14 to take place simultaneously with a newly scheduled confirmation
15 hearing for the Reorganization Plan. This hearing was postponed
16 several times over the course of the next year, as the parties
17 litigated a series of related issues, including:

18 (1) After an evidentiary hearing on valuation of the
19 Medical Center, the bankruptcy court entered an order determining
20 its value to be \$3,975,000.

21 (2) After a hearing on Horizon Ridge's objection to the
22 Bank's secured claim, the bankruptcy court disallowed the claim
23 to the extent of an asserted prepayment premium of \$192,176.20.
24 The bankruptcy court further disallowed the portion of the claim
25 asserting postpetition interest in the amount of \$578,036.18 on
26 the grounds that the Bank's claim was undersecured, based on the
27 determined value of the Medical Center. Otherwise, the
28 bankruptcy court allowed the Bank's claim as a secured claim in

1 the amount of \$3,975,000 (i.e., the value of the Medical Center)
2 and as an unsecured claim in the amount of \$369,314.52.

3 The day before the final evidentiary hearing concerning
4 confirmation of the competing plans (the "Confirmation Hearing"),
5 Horizon Ridge filed a second amended plan of reorganization (the
6 "Amended Reorganization Plan"). The Amended Reorganization Plan
7 made two significant changes to the original Reorganization Plan.
8 First, it bifurcated the Bank's claim into a secured and an
9 unsecured claim, with the unsecured claim placed in a class by
10 itself, separate from the unsecured claims of other creditors.
11 The Amended Reorganization Plan proposed to pay both of the
12 Bank's claims on the same seven-year timetable as previously
13 proposed. Second, the Amended Reorganization Plan included a
14 guaranty by Dr. Abelson and Mr. Patel of the monthly payments on
15 the Bank's claims during that seven-year period. Guaranty
16 payments were made contingent on a request from Horizon Ridge,
17 and they did not include a guaranty of the final balloon payment
18 as contemplated by the Amended Reorganization Plan.

19 **C. Confirmation**

20 The Confirmation Hearing took place on September 16 and 17,
21 2013. Following argument at a separate hearing, the bankruptcy
22 court entered two orders, one denying confirmation of the Amended
23 Reorganization Plan and a second order confirming the Liquidation
24 Plan.

25 **1. Denial of confirmation of the Amended Reorganization**
26 **Plan**

27 The bankruptcy court's first reason for denying confirmation
28 of the Amended Reorganization Plan was the inadequacy of the

1 disclosure statement. Because nearly a year had passed between
2 the conditional approval of the disclosure statement and the
3 Confirmation Hearing, the disclosure statement was out of date
4 with respect to its statements regarding the Medical Center's
5 occupancy rate, and it failed to provide accurate information
6 concerning the projected future occupancy rate. For the same
7 reason, the disclosure statement grossly underreported the amount
8 of administrative claims: the disclosure statement stated that
9 administrative claims were \$29,000; by the time of the
10 Confirmation Hearing, the amount had increased to \$350,000.
11 Finally, because the disclosure statement was drafted with the
12 original Reorganization Plan in mind, it did not reveal that,
13 under the Amended Reorganization Plan, the Bank held by far the
14 largest unsecured claim.

15 Second, the bankruptcy court found that the Amended
16 Reorganization Plan was not proposed in good faith. The court
17 noted that, prior to the creation under the Amended
18 Reorganization Plan of a separate class for the Bank's unsecured
19 claim, this claim would have had to be classified with the other,
20 much smaller, unsecured claims. In that event, no impaired class
21 of claims would have voted to accept the plan, making
22 confirmation impossible under § 1129(a)(10). The Amended
23 Reorganization Plan was designed to circumvent this problem by
24 segregating the Bank's large unsecured claim into its own class.
25 This allowed the other unsecured creditors - whose claims were
26 impaired only by virtue of the proposed delayed payment - to
27 constitute an accepting impaired class. The bankruptcy court
28 found this "gerrymandering" indicative of bad faith, citing Beal

1 Bank USA v. Windmill Durango Office, LLC (In re Windmill Durango
2 Office, LLC), 481 B.R. 51, 68 (9th Cir. BAP 2012). See also
3 Village Green I, GP v. Fed. Nat'l Mtg. Ass'n (In re Village Green
4 I, GP), ___ F.3d ___, 2016 WL 325163 at *2 (6th Cir. Jan. 27,
5 2016) (impairment of minor claims in form of 60-day delay in
6 payment was "an artifice to circumvent the purposes of
7 § 1129(a)(10)" and required denial of confirmation due to bad
8 faith). Also indicative of bad faith, the court found, was the
9 "allocation of substantially all the risk of failure" of the
10 Amended Reorganization Plan to the Bank.

11 Third, the court found that the Amended Reorganization Plan
12 was not in the best interests of creditors, because it proposed
13 to pay the Bank's secured claim over a seven-year period with
14 5% interest. The court found that this was less than what the
15 Bank would receive on account of its secured claim in the event
16 of liquidation.

17 Fourth, the court found that the Amended Reorganization Plan
18 was not feasible, and that the risk of future liquidation or
19 reorganization was unacceptably high. In particular, the court
20 found it unlikely that Horizon Ridge would be able to make the
21 balloon payment at the end of the seven-year period. Given the
22 "perilous" nature of Horizon Ridge's prospective occupancy rates
23 for the years to come, the court found even the periodic payments
24 during the seven-year period would likely be infeasible.

25 Finally, the bankruptcy court found that the Amended
26 Reorganization Plan was not fair and equitable. The court found
27 that the cash payments to the Bank contemplated by the Amended
28 Reorganization Plan would not equal the present value of the

1 Medical Center. Moreover, the court found that the Amended
2 Reorganization Plan ran afoul of the absolute priority rule,
3 which precludes equity holders from retaining their equity unless
4 all creditors are paid in full. And since Dr. Abelson and
5 Mr. Patel would provide only a contingent guaranty, the court
6 found this provision insufficient to trigger the new value
7 exception to the absolute priority rule.

8 **2. Confirmation of the Liquidation Plan**

9 Although the class of equity holders was deemed to have
10 rejected the Liquidation Plan, the bankruptcy court determined
11 that it could be confirmed under the "cramdown" provision of
12 § 1129(b)(1). The court rejected Horizon Ridge's arguments that
13 the Liquidation Plan was insufficiently specific as to the nature
14 of the proposed liquidation sale, the assets to be sold and the
15 identity of the plan administrator. Horizon Ridge also objected
16 on the ground that the Liquidation Plan failed to provide for
17 assumption or rejection of the leases of the Medical Center's
18 tenants, but the court concluded that this failure was not fatal
19 under applicable law, as the leases would ride through the
20 confirmation process.

21 On three points, however, the bankruptcy court made
22 confirmation conditional on amendments to the Liquidation Plan.
23 First, the court required the Bank to amend the plan to provide
24 for payment in full of unsecured claims on the effective date of
25 the plan, rather than the closing date of the proposed
26 liquidation sale. Second, the court required the Bank to remove
27 a paragraph providing for exculpation of the Bank, as such
28 provisions "cannot be permitted to stand" under Ninth Circuit

1 law. Finally, the court took issue with a provision in the
2 Liquidation Plan that would have permitted the plan administrator
3 to review and approve administrative claims. This "attempt[] to
4 overreach and have [the] Plan Administrator assume the court's
5 duties under the code" would also have to be removed. The Bank
6 complied with the court's requirements by filing an amended
7 Liquidation Plan.

8 **D. Postconfirmation events and Gordon Silver's fees**

9 After the Liquidation Plan was confirmed, the litigation
10 between the Bank and Horizon Ridge continued. Horizon Ridge
11 opposed the Bank's proposed procedures for conducting the
12 liquidation sale contemplated by the Liquidation Plan. The sale
13 itself apparently was contentious as well, with two entities,
14 including one newly organized by Dr. Abelson, bidding cash
15 against the Bank's escalating credit bids. The Bank's winning
16 credit bid of \$4,420,000 exceeded the previously determined value
17 of Horizon Ridge's assets. Horizon Ridge appealed a total of
18 five orders of the bankruptcy court relating to confirmation and
19 the sale. Though Horizon Ridge sought stays pending appeal,
20 these were denied. The five appeals have been dismissed.

21 On July 14, 2014, nearly two years after its employment had
22 been approved, Gordon Silver filed a final application for
23 payment of its fees and expenses ("Fee Application"). The Fee
24 Application sought final approval of payment to Gordon Silver in
25 the total amount of \$512,741.30. The Bank objected to the Fee
26 Application, renewing its argument that Gordon Silver had been
27 working solely for the benefit of Dr. Abelson and Mr. Patel,
28 rather than the estate. The Bank did not object to the

1 reasonably of any particular entry in Gordon Silver's billing
2 itemization.

3 The bankruptcy court held two hearings on the Fee
4 Application. At the first of these hearings (the "First Fee
5 Hearing"), the court heard argument from Gordon Silver and the
6 Bank's counsel. Gordon Silver argued that the Bank was obligated
7 by its own Liquidation Plan to pay administrative expenses and
8 that Gordon Silver's rates and billing were reasonable. At this
9 point, the bankruptcy court commented that reasonableness of
10 rates was not at issue:

11 THE COURT: Well, I don't think [the Bank's attorney]
12 Mr. Weiss's objection is that your rates were
13 unreasonable. I think Mr. Weiss's objection was that
14 you did a lot of work that benefitted -- potentially
15 benefitted the principal of the debtor as opposed to
16 the debtor itself.

17 MS. KOZLOWSKI: Fair enough. And really that comes
18 down to the reasonableness, reasonably likely to
19 benefit the estate prong.

20 After argument and colloquy, primarily related to this issue, the
21 bankruptcy court concluded the hearing and scheduled an
22 additional hearing (the "Second Fee Hearing"), at which the court
23 would announce its decision.

24 At the Second Fee Hearing, the bankruptcy court stated on
25 the record that it would approve Gordon Silver's fees in full.
26 The court elaborated:

27 . . . I think it's unfortunate that we had what started
28 out as an under \$200,000 fight but has led to I think
in excess of a million and a half dollars in attorneys'
fees. But both parties have to participate in the
fight. If the bank pushes back, the debtor gets to
push back. . . .

. . . .

1 I was a little surprised . . . [that the Bank] bid
2 actual money for -- at the time of the sale and overbid
3 certain other bids, which would have [paid the Bank's
4 allowed claims] in full.

5 But I don't think there is anything wrong with the fees
6 of Gordon Silver. I think the fees -- as I understand
7 it, the fees of the bank are in excess of a million
8 dollars. . . .

9 The work that was done by both sides was good. I think
10 it's unfortunate that the parties were not able to
11 resolve this at some lesser sum. But as I indicated,
12 the debtor is allowed to pursue their positions, the
13 bank is allowed to pursue their positions, and in this
14 case it led to a great deal of money being expended.

15 I am going to approve Gordon Silver's fees in total.
16 The general objection was that they weren't reasonable.
17 I think in the context of the case, they were
18 reasonable.

19 Following the Fee Hearing, the bankruptcy court entered an
20 order granting the Fee Application ("Fee Order"). In the Fee
21 Order, the bankruptcy court noted that it had "considered the
22 oral argument presented [at the First Fee Hearing]" and "stated
23 its findings of fact and conclusions of law on the record at [the
24 Second Fee Hearing]." The court ordered that the Fee Application
25 was approved and that Gordon Silver's fees were incurred for
26 services "necessary and beneficial to the estate."

27 This timely appeal of the Fee Order followed.

28 **II. JURISDICTION**

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

III. ISSUES

1. Whether the bankruptcy court identified and applied the
correct legal standard to its ruling on the Fee Application.

2. Whether the bankruptcy court's findings of fact in

1 connection with the Fee Order were clearly erroneous.

2 **IV. STANDARDS OF REVIEW**

3 We review an award of professional compensation for abuse of
4 discretion. Smith v. Edwards & Hale (In re Smith), 317 F.3d 918,
5 923 (9th Cir. 2002). A bankruptcy court abuses its discretion
6 only if it applies an incorrect legal standard or misapplies the
7 correct legal standard, or if its factual findings are illogical,
8 implausible or unsupported by evidence in the record.

9 TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832 (9th
10 Cir. 2011); United States v. Hinkson, 585 F.3d 1247, 1262 (9th
11 Cir. 2009) (en banc). We may affirm the decision of the
12 bankruptcy court on any basis supported by the record. See
13 ASARCO, LLC v. Union Pac. R.R. Co., 765 F.3d 999, 1004 (9th Cir.
14 2014); Shanks v. Dressel, 540 F.3d 1082, 1086 (9th Cir. 2008).

15 **V. DISCUSSION**

16 **A. What is the proper legal standard?**

17 Before we can determine whether the bankruptcy court applied
18 the proper legal standard in evaluating the Fee Application, we
19 must determine what that standard is.

20 Compensation of professionals is governed by §§ 327 and 330.
21 Section 327 provides for "reasonable compensation for actual,
22 necessary services" and "reimbursement for actual, necessary
23 expenses." Section 330(a)(3), in turn, requires the bankruptcy
24 court to consider "all relevant factors" in determining
25 reasonableness of compensation, including the following:

- 26 (A) the time spent on such services;
- 27 (B) the rates charged for such services;
- 28 (C) whether the services were necessary to the

1 administration of, or beneficial at the time at which
2 the service was rendered toward the completion of, a
3 case under this title;

3 (D) whether the services were performed within a
4 reasonable amount of time commensurate with the
5 complexity, importance, and nature of the problem,
6 issue, or task addressed; and

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

8 11 U.S.C. § 330(a)(3)(A)-(E). Expressly excluded from
9 compensation are services that are not "reasonably likely to
10 benefit the debtor's estate" or "necessary to the administration
11 of the case." 11 U.S.C. § 330(a)(4)(A). See also Ferrette &
12 Slater v. United States Trustee (In re Garcia), 335 B.R. 717,
13 723-24 (9th Cir. BAP 2005). Professional services need not
14 result in an actual material benefit to the estate in order to be
15 compensable. In re Garcia, 335 B.R. at 724. "Instead, a
16 professional need demonstrate only that the services were
17 reasonably likely to benefit the estate at the time rendered."
18 Id.

19 A professional requesting compensation must exercise
20 "reasonable billing judgment" in incurring its fees. Leichty v.
21 United States Trustee (In re Strand), 375 F.3d 854, 860 (9th Cir.
22 2004) (quoting Roberts, Sheritan & Kotel, P.C. v. Bergen Brunswick
23 Drug Co. (In re MEDNET, MPC Corp.), 251 B.R. 103, 108 (9th Cir.
24 BAP 2000)). Reasonable billing judgment includes consideration
25 of these questions:

26 (a) Is the burden of the probable cost of legal
27 services disproportionately large in relation to the
28 size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the

1 services are not rendered?

2 (c) To what extent may the estate benefit if the
3 services are rendered and what is the likelihood of the
4 disputed issues being resolved successfully?

5 In re Garcia, 335 B.R. at 724; In re MEDNET, 251 B.R. at 108.

6 Some bankruptcy courts have denied compensation to attorneys
7 for chapter 11 debtors based on a finding that the attorneys'
8 services primarily benefitted debtors personally or their
9 principals rather than the estate. See, e.g., In re Love,
10 163 B.R. 164, 174-76 (Bankr. D. Mont. 1993) (attorney's services
11 benefitting individual chapter 11 debtor, including defense of
12 debtor's family members and insiders in adversary proceedings,
13 were not compensable); In re Grabill Corp., 110 B.R. 356, 359-60
14 (Bankr. N.D. Ill. 1990) (after appointment of chapter 11 interim
15 trustee, debtor's counsel's efforts to oppose expansion of
16 trustee's powers benefitted only prepetition management and were
17 not compensable); In re Kendavis Inds. Intern., Inc., 91 B.R.
18 742, 748-51 (Bankr. N.D. Tex. 1988) (compensation reduced for
19 attorneys' services in proposing a plan "inexplicably generous to
20 stockholders" where "substantial documentary evidence" showed
21 that attorneys in fact represented equity holders).

22 We agree that debtors' attorneys may not be compensated by
23 the estate for services rendered entirely for the benefit of
24 principals or other non-debtor parties, because such services are
25 not "reasonably likely to benefit the debtor's estate."

26 11 U.S.C. § 330(a)(4). In exercising "reasonable billing
27 judgment," the first question an attorney must consider is
28 whether "the burden of the probable cost of legal services [is]
disproportionately large in relation to the size of the estate

1 and maximum probable recovery." In re Garcia, 335 B.R. at 724.
2 Because the attorney is employed by the estate, it necessarily
3 follows that the attorney must consider the "burden" and the
4 "maximum probable recovery" **to the estate.**

5 **B. Did the bankruptcy court apply the correct standard?**

6 The Bank argues that the bankruptcy court failed to apply
7 the proper legal standard in its findings and conclusions made in
8 connection with the Fee Order. More specifically, the Bank
9 argues that, although the court stated at the Second Fee Hearing
10 that Gordon Silver's fees were "reasonable," it "did not consider
11 the identity of Gordon Silver's true client."

12 Although it is true that the bankruptcy court did not frame
13 its oral findings and conclusions in terms of "the identity of
14 Gordon Silver's true client," a review of the transcript of the
15 First Fee Hearing leaves no doubt that the court "consider[ed]"
16 the issue of whose interests were furthered by Gordon Silver's
17 services. During Gordon Silver's oral argument, the bankruptcy
18 court specifically redirected the discussion to that very issue,
19 which discussion dominated most of the 22-minute hearing. As
20 noted above, the "true client" issue is part of the broader
21 question of whether services are "reasonably likely to benefit
22 the debtor's estate." By making findings and conclusions in
23 Gordon Silver's favor following extensive briefing and oral
24 argument primarily devoted to that issue, the bankruptcy court
25 made it clear that it had considered and rejected the Bank's
26 argument. The bankruptcy court's comments that "if the bank
27 pushes back, **the debtor** gets to push back" and that "**the debtor**
28 is allowed to pursue [its] positions" further demonstrate that

1 the court found Gordon Silver's litigation activities to have
2 been conducted on behalf of the debtor, Horizon Ridge, rather
3 than Dr. Abelson and Mr. Patel.

4 The language of the Fee Order itself provides additional
5 support for this conclusion. In the Fee Order, the bankruptcy
6 court stated that its decision followed consideration of the oral
7 argument presented at the First Fee Hearing. The Fee Order went
8 on to recite that Gordon Silver's services were "necessary and
9 beneficial to the estate."

10 We conclude that the bankruptcy court applied the proper
11 legal standard.

12 **C. Did the bankruptcy court clearly err in its findings?**

13 Having concluded that the bankruptcy court applied the
14 correct standard, we must affirm unless we conclude its findings
15 "were illogical, implausible or without support in inferences
16 that may be drawn from facts in the record." Hinkson, 585 F.3d
17 at 1262. On this record, we cannot so conclude.

18 The Bank concedes that Gordon Silver's efforts were
19 reasonably likely to benefit the estate from the commencement of
20 its employment to the moment the bankruptcy court determined that
21 the value of the Medical Center was less than the amount of the
22 Bank's allowed claims. After that point, the Bank argues, it was
23 established conclusively that equity holders had no legitimate
24 interest in continuing the fight. Thus, to extend this
25 reasoning, since the unsecured creditors expressed no preference
26 between the Liquidation Plan and the Reorganization Plan, the
27 only interested party left standing was the Bank, whose interests
28 became paramount. By this logic, anything Gordon Silver did that

1 was adversarial toward the Bank was necessarily not in the best
2 interests of the estate. The bankruptcy court was not required
3 to accept this narrow definition of the estate's interests.

4 As the bankruptcy court noted at the Second Fee Hearing,
5 both the Bank and Horizon Ridge vigorously pursued their
6 respective litigation positions at enormous expense rather than
7 "resolv[ing] this at some lesser sum." Although the Bank
8 prevailed both at the Confirmation Hearing and in most of the
9 postconfirmation disputes, it does not follow that the bankruptcy
10 court clearly erred in finding that Gordon Silver's fees were
11 reasonable "in the context of the case." Granted, Gordon Silver
12 billed a large proportion of its fees in connection with its
13 efforts to confirm a plan that ultimately was found to be
14 unconfirmable and not proposed in good faith. Nevertheless,
15 nothing in the record compelled the bankruptcy court to find that
16 the project was hopeless or that Gordon Silver's services were
17 not reasonably likely to confer a benefit on the estate, whether
18 in the form of a confirmable plan or a consensual resolution
19 between the Bank and Horizon Ridge.

20 Indeed, as the bankruptcy court commented at the First Fee
21 Hearing, the sale price of the Medical Center was significantly
22 higher than its value as previously determined by the court.
23 This fact lends support to the proposition that, at the time
24 Gordon Silver rendered its services, it was not unreasonable to
25 expect that Horizon Ridge could propose a confirmable
26 reorganization plan or achieve a consensual resolution.
27 Notwithstanding the fact that these happy outcomes did not occur,
28 there was sufficient evidence in the record before the bankruptcy

1 court to support the finding that the services were "reasonably
2 likely to benefit the estate at the time rendered."

3 In re Garcia, 335 B.R. at 724.

4 **VI. CONCLUSION**

5 Based upon the foregoing, we conclude that the bankruptcy
6 court did not abuse its discretion in approving the Fee
7 Application. We AFFIRM.

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