

In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division

In the matter of:)
)
RALPH MILES, JR.) Chapter 7 Case
)
) Number 92-20115
Debtor)

ORDER ON OBJECTIONS TO ATTORNEY'S FEES

This matter comes before the Court on the Chapter 7 Trustee's objection to George E. Argo's application for attorney's fees, as well as Mr. Argo's objection to the Chapter 7 Trustee's application for attorney's fees. A hearing to consider both objections was held in Brunswick, Georgia, on June 6, 1995, after which the Court took the matter under advisement. For the reasons that follow, the Chapter 7 Trustee's objection will be sustained and Mr. Argo's objection will be overruled.

The facts are not in dispute. George E. Argo, Esq. represented the Debtor, Ralph Miles, Jr. in this Chapter 7 case. Mr. Argo's representation included defending Debtor in two adversary proceedings initiated against him: one a creditor's successful action to have a debt excepted from discharge under section 523(a) of the Bankruptcy Code, and

the other a successful action by the United States Trustee and Chapter 7 Trustee to have Debtor's discharge revoked for his willful failure to reveal assets in his bankruptcy schedules. Additionally, Mr. Argo represented Debtor in a motion for relief brought by one of Debtor's secured creditors. Mr. Argo is now before the Court seeking payment from the Chapter 7 bankruptcy estate of his attorney's fees, in the total amount of \$9,201.25, generated from defending Debtor in these matters.

The Chapter 7 Trustee objects to Mr. Argo's fee application on the ground that Mr. Argo's representation of Debtor conferred no benefit upon the estate, and therefore, his fees are not, under section 330(a) of the Code, properly paid out of the estate. The Trustee does not suggest in his objection that Mr. Argo's itemization of fees and expenses is inaccurate, excessive or otherwise defective. Rather, he simply objects to the bankruptcy estate being called upon to pay them when the Debtor was the only beneficiary of Mr. Argo's services.

Mr. Argo's objection to the Chapter 7 Trustee's fee application is based upon the premise that, if Mr. Argo's services are of no value to the estate, then the Trustee's services are likewise worthless.

Section 330(a)(1) of the Bankruptcy Code requires an attorney's services to

be both "actual" and "necessary" to the administration of the bankruptcy estate to be compensable from assets of the estate. 11 U.S.C. § 330(a)(1). *See also* Matter of Coastal Nursing Center, Inc., 162 B.R. 918, 919 (Bankr. S.D.Ga. 1993) (Davis, J.). A critical aspect of whether services are "necessary" under section 330(a)(1) is whether they rendered any benefit to the estate. *See e.g. Id.*; In re Lederman Enterprises, Inc., 997 F.2d 1321, 1322 (10th Cir. 1993); In re Alcala, 918 F.2d 99, 103 (9th Cir. 1990); In re Latham, 131 B.R. 238, 239 (Bankr. S.D.Fla. 1991); In re Dixon, 143 B.R. 671, 678 (Bankr. N.D.Tex. 1992); In re Jessee, 77 B.R. 59, 61 (Bankr. W.D.Va. 1987).¹ Because an attorney's representation of a Chapter 7 debtor in dischargeability actions and the like confers no benefit upon the estate, the fees incurred from such representation are not "necessary" under section 330(a)(1) and are not, as a result, compensable from assets of the estate. *See* Coastal Nursing Center, Inc.,

¹ Some parties read the term "benefit" to the estate, erroneously, to require some specific monetary recovery or other positive outcome. *See e.g.*, Lederman, 997 F.2d at 1323-24. I have attempted to articulate a more general concept of benefit as being sufficient for recovery of a fee:

In short, Lederman fails to recognize, as Schumann [Grant v. George Schumann Tire & Battery Co., 908 F.2d 874 (11th Cir. 1990)] does, that "necessary" services within the meaning of Section 330 is broader than merely those hours which confer an economic benefit on an estate and include those services which must be expended in order for a debtor to seek and obtain its proverbial "day in court."

Coastal Nursing Center, 162 B.R. at 920. Congress has since vindicated this court's position with its enactment of the Bankruptcy Reform Act of 1994, Section 330(a)(3)(C), as amended by the Act, now reads:

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--

* * *

(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;

* * *

162 B.R. at 919 ("[S]ervices which are performed for the benefit of the debtor to the exclusion of the estate are generally not considered necessary."); Alcala, 918 F.2d at 103 ("An attorney fee application in bankruptcy will be denied to the extent the services rendered were for the benefit of the debtor and did not benefit the estate.") (*quoting* In re Reed, 890 F.2d 104, 106 (8th Cir. 1989). *See also* Latham, 131 B.R. at 239; Jessee, 77 B.R. at 61; In re Chapel Gate Apartments, Ltd., 64 B.R. 569, 576 (Bankr. N.D.Tex. 1986). One court has summed up the distinction between those services of a Chapter 7 debtor's attorney that do benefit the estate, and therefore are compensable therefrom, and those that do not, as follows:

In Chapter 7 cases . . . the services which debtor's counsel performs which benefit the estate can be fairly clearly articulated. A Chapter 7 debtor's attorney is "entitled to compensation for analyzing the debtor's financial condition; rendering advice and assistance to the debtor in determining whether to file a petition in bankruptcy; the actual preparation and filing of the petition, schedules of assets and liabilities, and the statement of affairs; and representing the debtor at the Section 341 meeting of creditors." In re Holden, 101 B.R. 573, 576 (Bankr. N.D.Iowa 1989) . . . These are services which assist the Debtor in the performance of his duties under the Code and aid in the administration of the estate. In re Reed, 890 F.2d 104 (8th Cir. 1989) . . . By contrast, courts have rather uniformly denied debtors' attorneys' requests for the payment of fees out of the estate for representing debtor in dischargeability actions. *See e.g.*, In re Reed, 890 F.2d 104 (8th Cir. 1989); In re Holden, 101 B.R. 573 (Bankr. N.D.Iowa 1989).

In re Stromberg, 161 B.R. 510, 514-15 (Bankr. D.Colo. 1993).

In view of these authorities, it is clear that Mr. Argo is not entitled to compensation from the estate for his representation of Debtor in the two adversary proceedings and motion for relief previously described. These services were performed for the exclusive benefit of the Debtor and conferred no benefit upon the Chapter 7 bankruptcy estate. The court does not suggest, in reaching this conclusion, that Mr. Argo is not entitled to compensation for his work; it simply means that he is not entitled to compensation from the bankruptcy estate. The Debtor was clearly the beneficiary of Mr. Argo's labor and is the party to whom Mr. Argo should look for compensation. *See* Coastal Nursing Center, Inc., 162 B.R. at 921 (holding that Chapter 11 debtor's attorney could seek compensation only from a non-estate source where his services in representing Chapter 11 debtors clearly had not benefitted the estate).

In contrast, the Chapter 7 Trustee's services directly benefitted the estate. Were it not for the Trustee's services, ironically, there would likely be no assets within the estate to which Mr. Argo could even look for satisfaction of his fees. Mr. Argo's objection, then, has no basis in law or fact and is utterly frivolous. The Trustee's services patently benefitted this Chapter 7 estate, and accordingly, his fees will be awarded in full.

IT IS THEREFORE THE ORDER OF THIS COURT that the Chapter 7 Trustee's objection to Mr. Argo's fee application is hereby sustained;

IT IS THE FURTHER ORDER OF THIS COURT that Mr. Argo's objection to the Chapter 7 Trustee's fee application is overruled, and that the Trustee's fee application is hereby approved.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of June, 1995.