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

In the matter of: )  
)  
TED WILLIAMS LUPICA ) Chapter 7 Case  
PAULINE LUPICA ) Number 91-40227  
)  
*Debtors* )

**ORDER ON APPLICATION FOR ATTORNEY'S FEES**

This matter comes before the Court on its own motion to review the application for attorney's fees of R. Wade Gustin. A hearing to consider Mr. Gustin's application was held in Savannah, Georgia, on November 28, 1995, after which the Court took the matter under advisement. For the reasons that follow, Mr. Gustin's application will be allowed subject to the modification by this Court for actual time expended and benefit conferred upon the estate.

The facts are not in dispute. R. Wade Gustin, Esq. represented the Debtors, Ted and Pauline Lupica, during the pendency of this Chapter 7 case. Mr. Gustin has detailed his time expenditures in his application for attorney's fees and reimbursement of expenses. At the time of hearing to review the application, this Court noted that Section 330(a)(1) no

longer permits the compensation of a debtor's attorney from the Chapter 7 estate. Mr. Gastin argued that the recent amendments to the Bankruptcy Code did not apply to this case and subsequently briefed the issue.

Prior to the Code amendments of 1994, Section 330(a) which governs compensation of officers stated as follows:

(a) After notice to any parties in interest and to the United States trustee and a hearing, and subject to sections 326, 328, and 329 of this title, the court may award to a trustee, to an examiner, to a professional person employed under section 327 or 1103 of this title *or to the debtor's attorney--*

(1) reasonable compensation . . .

Since the enactment of the 1994 Code amendments, section 330(a) remains unchanged except no longer includes the phrase, "or to the debtor's attorney." Mr. Gastin argues that recent changes in section 330(a) are inapplicable to cases filed before October 22, 1994. In pertinent part, Section 702 of the Bankruptcy Reform Act of 1994 provides as follows:

(a) Effective Date.--Except as provided in subsection (b), this Act shall take effect on the date of enactment of this Act.

(b) Application of Amendments.--(1) Except as provided in paragraph (2), the amendments made by this act *shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act.*

Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, §702, 108 Stat. 4106 (Oct. 22, 1994)(emphasis supplied). The language of the Act clearly supports Mr. Gastin's position and, therefore, his claim will be allowed to the extent that it meets the requirements of section 330.

For an attorney's services to be compensable from assets of the estate, Section 330(a)(1) of the Bankruptcy Code requires that the services be both "actual" and "necessary" to the administration of the bankruptcy estate. 11 U.S.C. §330(a)(1). When determining "actual" expenses, Section 330(a) requires a lodestar determination - a multiplication of the reasonable hourly rate by the number of hours reasonably expended. *See Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988). Counsel cannot be compensated for expenditures of time which are excessive or unreasonable. *See In re Casco Fashions, Inc.*, 490 F.2d 1197, 1204 (2d Cir.1973)(fees will not be awarded "if a court finds that [the] proceeding was filed without any reasonable prospect of success").

Whether services are "necessary" under section 330(a)(1) includes a determination of whether they rendered any benefit to the estate. *See Matter of Coastal Nursing Center, Inc.*, 162 B.R. 918, 919 (Bankr. S.D.Ga. 1993) (Davis, J.) ("[s]ervices which are performed for the benefit of the debtor to the exclusion of the estate are generally not considered necessary."); *In re Lederman Enterprises, Inc.*, 997 F.2d 1321, 1322 (10th

Cir. 1993); In re Alcala, 918 F.2d 99, 103 (9th Cir. 1990)("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 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); 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). Moreover, it is the well established precedent in this district that the court "has at all times the right and duty to regulate the identity of and compensation of professionals who render services to a debtor in this court." In re Dees Logging, Inc., 158 B.R. 302, 304 (Bankr.S.D.Ga. 1993). The burden of showing that the applicant is entitled to the fee is on the applicant. See In re Rheuban, 121 B.R. 368, 385 (Bankr.C.D.Cal. 1990), *rev'd on other grounds*.

In view of these authorities, it is clear that Mr. Gastin is not entitled to compensation for the following services:

Date	Amount Disallowed	Reason
03/12/92	.10	Excessive Time
04/12/92	.30	Excessive Time
04/23/92	.40	Personal to Debtor
05/14/92	.50	Personal to Debtor
08/28/92	.65	Personal to Debtor
09/14/92	2.00	Personal to Debtor
06/26/92	.30	Personal to Debtor
07/20/92	.30	Personal to Debtor
07/22/92	.80	Personal to Debtor
07/31/92	.20	Personal to Debtor
08/14/92	.80	Personal to Debtor
08/24/92	.60	Personal to Debtor
09/21/92	3.20	Personal to Debtor

Date	Amount Disallowed	Reason
11/20/92	1.45	Personal to Debtor
01/05/93	3.70	Personal to Debtor
03/30/94	1.00	Personal to Debtor
04/21/94	.70	Personal to Debtor
10/11/95	2.00	Excessive
<b>TOTAL</b>	<b>19.00</b>	

The Total Reduction equals \$125.00/hour x 19.00 hours or \$2,375.00. Mr. Gastin's application requests a total compensation in the amount of \$6,550.00 for attorney's fees and \$123.66 in expenses, less \$750.00 previously paid, for a total of \$5,923.66. His application is approved for the amount requested minus \$2,375.00 which equals \$3,548.66.

These above mentioned services were either excessive, performed for the exclusive benefit of the Debtors and conferred no benefit upon the Chapter 7 bankruptcy estate, or involved services which benefitted both the Debtors personally and aided the Trustee in his administration of the case. In those instances, I have allocated the time to the greatest extent possible as deduced from the record. I do not suggest, in reaching this conclusion, that Mr. Gastin is not entitled to compensation for his work; it simply means that he is not entitled to compensation from the bankruptcy estate. Debtors were clearly the beneficiary of Mr. Gastin's labor and are the party to whom Mr. Gastin 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).

IT IS THE ORDER OF THIS COURT that Mr. Gastin's application for attorneys' fees be allowed in the amount of \$3,548.66.

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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This \_\_\_\_ day of January, 1996.