

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

IN RE:)
)
WADE FRANKLIN KEY, JR.,) CHAPTER 13 BANKRUPTCY
) CASE NO. 95-40981
)
DEBTOR)

ORDER

Debtor's attorney in this Chapter 13 case is R. Wade Gastin. When Mr. Gastin prepared Debtor's bankruptcy petition for filing, he erroneously designated the case as one under Chapter 7. The case was intended to be filed as a Chapter 13 case.

When Mr. Gastin discovered the error, he filed a Motion to Amend Chapter 7 Petition to Chapter 13 Petition. The motion detailed the foregoing events. To accompany the motion, Mr. Gastin filed a new Chapter 13 petition page. On June 2, 1995, the Court entered an order granting the motion and designating the case as one which was to be treated as filed originally as a Chapter 13 case rather than as a Chapter 7 case. The case has thereafter proceeded to confirmation as a Chapter 13 case. The confirmation hearing was held on October 3, 1995.

Mr. Gastin paid the filing fee of One Hundred Sixty Dollars (\$160.00) out of funds advanced by his office when the case was incorrectly filed as a Chapter 7 case. At the confirmation

hearing, Mr. Gastin stated that if he had realized that the case was to be filed under Chapter 13 he would have requested that the filing fees be paid by Debtor in installments as is routinely permitted in Chapter 13 cases.

As a result of the above misunderstanding, Mr. Gastin has filed an administrative claim in this case. Mr. Gastin by his claim has petitioned the Court to reimburse One Hundred and Thirty Dollars (\$130.00) of those funds advanced as a filing fee. The additional Thirty Dollars (\$30.00) was required to be paid in advance by a Chapter 13 debtor. Mr. Gastin proposed by his claim that he be reimbursed this amount ahead of all other creditors in the same manner as the filing fee in the case would routinely be paid to the Clerk of the Bankruptcy Court by the Chapter 13 Trustee.

The Chapter 13 Trustee opposed this treatment. The Chapter 13 Trustee asserts that the \$130.00 in question is in the nature of a loan and should be treated as a general unsecured claim. This case proposes to pay 100% of all creditor's claims with interest.

Mr. Gastin cannot stand in the shoes of the Clerk of the Bankruptcy Court in requesting reimbursement of the filing fee. The only possibility for reimbursing the filing fee on a basis other than as an unsecured claim is to construe the filing fee as an actual and necessary expense which may be reimbursed along with other actual and necessary expenses incurred in the course of representation of the debtor.

Section 330 of the Bankruptcy Code governs the compensation

of officers of the bankruptcy estate, and provides in pertinent part:

(a) (1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103 --

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

11 U.S.C. § 330(a) (1) (West 1995).

The question is whether a filing fee advanced by the attorney for the debtor is an actual and necessary expense,¹ or whether such an advance is in the nature of a general unsecured loan. The Court has reviewed the applicable case law, and agrees with the overwhelming weight of authority that filing fees are actual, necessary expenses under section 330(a) (1) (B) where the attorney pays the filing fees as part of his or her client representation. Fanelli v. Hensley (Matter of Triangle Chemicals, Inc.), 697 F.2d 1280 (5th Cir. 1983); In re Heck's Properties, Inc., 151 B.R. 739 (S.D. W.Va. 1992); In re Poseidon Pools of America, Inc., 180 B.R. 718 (Bankr. E.D.N.Y. 1995); In re Saturley, 131 B.R. 509 (Bankr. D. Me. 1991); In re Automotive Warranty Corp., 138 B.R. 72 (Bankr. D. Co. 1991); In re Churchfield Management & Investment Corp., 98 B.R. 838 (Bankr. E.D. Ill. 1989); In re National Paragon Corp., 68 B.R. 337

¹ 11 U.S.C. § 330(a) (1) (B).

(Bankr. E.D. Pa. 1986), rev'd on other grounds, 76 B.R. 73 (E.D. Pa. 1987); contra, In re George Worthington Co., 76 B.R. 605 (Bankr. N.D. Oh. 1987).

"'Expenses' is a broad category which includes costs for photocopying, long distance telephone calls, facsimiles, postage, filing fees, travel, computer research and the like." In re Jefsaba, Inc., 172 B.R. 786, 802 (Bankr. E.D. Pa. 1994). Filing fees have long been recognized as necessary expenses. See Matter of Connecticut Motor Lines, Inc., 336 F.2d 96, 108 (3rd Cir. 1964) (noting that section 64 of the Bankruptcy Act called for reimbursement of filing fees "paid by creditors in involuntary cases or by persons other than the bankrupts in voluntary cases" as priority debts along with costs of preserving the estate and the referees' salary). In order to be reimbursable, the expenses must be both actual and necessary. 11 U.S.C. § 330(a)(1)(B).

In the matter before the Court, the expense Mr. Gastin seeks reimbursement for is the filing fee advanced by his office when the case was erroneously filed as a Chapter 7 case. The fact that a debtor may pay the filing fee in installments under Chapter 13 does not alter the fact that the expense was actually incurred in the course of Mr. Gastin's representation of Debtor and believed to be necessary at the time the filing fees were paid. The filing fees advanced by Mr. Gastin did not originate from a retainer, but came instead from funds which could not conceivably be designated as property of the estate. Compare In re Dees Logging, Inc., 158 B.R. 302 (Bankr. S.D. Ga.

1993) (finding that where filing fees are paid out of a retainer, the fees were paid from property of the estate and were not expenses incurred by counsel under section 330).

Mr Gastin is entitled to be reimbursed under section 330(a)(1)(B) in the amount of \$130.00 for the filing fees paid in this case. The Chapter 13 trustee is directed to increase the amount of attorney's fees allowed to Mr. Gastin in this case by the sum of \$130.00. The adjusted amount for attorney's fees will be paid in accordance with the trustee's usual procedure for paying attorney's fees except that the initial payment of attorney's fees shall be in the amount of \$530.00 rather than the usual \$400.00. This will leave Mr. Gastin with a balance to be paid along with other creditors in the same amount as would be routinely paid in a Chapter 13 case. There is no disadvantage to the creditors in this case by this treatment because, if Mr. Gastin had not paid the fee by mistake, the sum of \$130.00 would be paid to the Clerk of the Bankruptcy Court, rather than Mr. Gastin, as a first priority expense of administration.

SO ORDERED this 11th day of October, 1995.

JAMES D. WALKER, JR., Judge
United States Bankruptcy Court