

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
SOUTHERN DISTRICT OF GEORGIA
Statesboro Division

IN RE:)	Chapter 7 Case
)	Number <u>92-60260</u>
KENDALL ARLEN TURNER)	
LADONNA SMITH TURNER)	
)	
Debtors)	
_____)	
ANNE MOORE, CHAPTER 7 TRUSTEE)	FILED
)	at 9 O'clock & 59 min. A.M.
)	Date: 3-31-95
vs.)	
)	
J. MICHAEL HALL)	

ORDER

Came on for hearing the objection of Anne Moore, Chapter 7 Trustee, to the proof of claim filed by J. Michael Hall for an asserted administrative expense of \$1,250.00 for attorney services provided by Mr. Hall to the above-named debtors. The trustee's objection asserts that because the services did not benefit the estate they are not compensable as an administrative expense of the estate. Mr. Hall claims that 11 U.S.C. § 503(b)(2) grants administrative status to the attorney's fees for which he is requesting payment under § 330(a), and that as payment under § 330 has not yet been awarded the objection to claim is premature. The

parties argued their respective positions at hearing and submitted supplemental briefs, on consideration of which I make the following findings of fact and conclusions of law sustaining the trustee's objection in part.

This bankruptcy case is a converted Chapter 7 case initiated May 20, 1992 under Chapter 13 of Title 11 United States Code¹. The case was converted by order entered November 30, 1992 and new schedules were prepared and filed by Mr. Hall on the debtors' behalf on December 16, 1992. Pursuant to § 348(a)² a converted case relates back from the date of conversion to the original date of filing so that a converted case is considered filed on the date of original filing, not the date of conversion. Under § 348, this case, although converted, is considered to have a filing or petition date of May 20, 1992.

In claiming attorney fees provided to the debtors, Mr.

¹All references to the Bankruptcy Code are prior to changes made by the Bankruptcy Reform Act of 1994 as this case was commenced prior to the effective date of that Act. See Bankruptcy Reform Act of 1994, Pub.L.No. 103-394, § 702, 108 Stat. 4106, _____ (1994).

²11 U.S.C. § 348(a) provides,

Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of filing of the petition, the commencement of the case, or the order for relief.

Hall filed simultaneously a proof of claim and an application for compensation. The application for compensation includes a breakdown of time totaling 24.6 hours provided by Mr. Hall from May 15, 1992 through October 4, 1993, but Hall has reduced his bill from \$2,460.00 to \$1,250.00. The proof of claim asserts a \$1,250.00 administrative expense to which the trustee has objected. The filing and allowance of claims are governed by §§ 501 and 502. Under § 502³, a proof of claim is deemed allowed unless objected to, and upon objection a claim is allowed in the amount determined as of the date of filing the petition. Section 348 provides with regard to claims in converted cases accruing in the gap period between the original filing and conversion that,

[a] claim against the estate or the debtor that arises after the order for relief but before conversion in a case that is converted under section 1112, 1307, or 1208 of this title,

³11 U.S.C. § 502 provides, in relevant part:

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

(b) Except as provided in subsections (e) (2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, **the court, after notice and a hearing, shall determine the amount of such claim as of the date of the filing of the petition,** and shall allow such claim in lawful currency of the United States in such amount, (emphasis added)

other than a claim specified in section 503(b) of this title, shall be treated for all purposes as if such claim had arisen immediately before the date of the filing of the petition.

11 U.S.C. § 348(d).

Under this subsection those attorney's fees for which Mr. Hall seeks payment as an administrative expense which were provided prior to conversion⁴ are to be treated as a pre-petition claim. Upon the filing of this case under Chapter 13 Mr. Hall filed his statement pursuant to 11 U.S.C. §329⁵ and Federal Rule of Bankruptcy Procedure

⁴The breakdown reflects that 8.1 of the itemized 24.6 hours were for pre-conversion services.

⁵11 U.S.C. §329 provides:

(a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

(b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to--

(1) the estate, if the property transferred--

(A) would have been property of the estate; or

(B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or

(2) the entity that made such payment.

2016(b)⁶. Mr. Hall's statement dated May 12, 1992 and filed May 20, 1992 states:

Pursuant to 11 U.S.C. sec. 329 and Rule of Bankruptcy Procedure 2016(b), the undersigned, attorney for the debtors in this case, makes this statement setting forth the compensation paid or agreed to be paid to the undersigned for services rendered or to be rendered in contemplation of and in connection with the case by the undersigned, and the source of such compensation.

(1) Prior to the filing of this disclosure statement, the debtor in this case has paid to the undersigned the sum of \$0.00.

(2) In addition, the debtor has agreed to pay the following: \$750.00 dollars
THE SOURCE OF TO BE PAID SUM WILL BE: Debtor's earnings.

(3) The undersigned has not shared or agreed to share any portion of such compensation with any other person who is not a

⁶Rule 2016(b) provides:

(b) **Disclosure of Compensation Paid or Promised to Attorney for Debtor.** Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 15 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 15 days after any payment or agreement not previously disclosed.

member or regular associate of the undersigned's law firm.

(4) The undersigned has not received any other payment in this case, and has no other agreement, except as set out herein.

It was established at hearing that Hall has been paid \$300.00 for pre-conversion attorney services rendered from disbursements by the Chapter 13 trustee. Disbursement by the Chapter 13 trustee to Mr. Hall was pursuant to court order dated November 25, 1992 which provided in part:

IT IS THEREFORE THE ORDER OF THIS COURT that:
1) Order for Relief under Chapter 7 of Title 11 of the United States Code is granted.
2) After deducting the costs of administration, including attorney's fees not to exceed \$300.00, the Trustee shall pay . . . unless a party in interest files a written objection within ten (10) days from the date of this Order.

Mr. Hall did not object. In a Chapter 13 case converted to Chapter 7 before confirmation this standard order awards \$300.00 as attorneys fees for representation of the debtor in the failed Chapter 13 case. Under this order Mr. Hall was paid in full for the value of his preconversion services. The order is final and may not be circumvented by a post conversion fee application seeking a higher award for preconversion services. To the extent that the proof of claim seeks payment for services provided to the debtor post-conversion, the claim is post-petition and is disallowed as a claim under § 502(b). A proof of claim is an inappropriate vehicle for obtaining compensation for the post-petition post-conversion

services.

Remaining is the application for compensation, filed November 1, 1993 pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 2016(a)⁷ and seeking compensation under § 330.⁸

⁷FRBP 2016 provides in relevant part,

(a) APPLICATION FOR COMPENSATION OR REIMBURSEMENT.

An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. An application for compensation shall include a statement as to what payments have theretofore been made or promised, whether any compensation previously received has been shared and whether an agreement or understanding exists between the applicant and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with the case, and the particulars of any sharing of compensation or agreement or understanding therefor, except that details of any agreement by the applicant for the sharing of compensation as a member or regular associate of a firm of lawyers or accountants shall not be required. The requirements of this subdivision shall apply to an application for compensation for services rendered by an attorney or accountant even though the application is filed by a creditor or other entity. Unless the case is a chapter 9 municipality case, the applicant shall transmit to the United States trustee a copy of the application.

Ordinarily, an application such as Hall has filed is held for consideration at the final hearing in a Chapter 7 case. In this case, however, I will consider the application at this earlier stage as a matter of expediency and because both parties have argued and briefed their respective positions with regard to payment for the attorney services as an administrative expense of the Chapter 7 estate.

⁸11 U.S.C. § 330 provides:

The test for whether the services were "actual and necessary" under § 330 is whether the services benefitted the estate. See In re: Diamond Manufacturing Co., Inc., Ch. 7 Case No. 85-40555, slip op. at 4-6 (Bankr. S.D. Ga. March 4, 1994), citing In re Saunders, 124 B.R. 234, 238 (Bankr. W.D. Tex. 1991) and In re Amberg, 148 B.R. 376, 378 (Bankr. W.D. Conn. 1992); accord In re Lederman Enterprises, Inc., 997 F.2d 1321, 1323 (10th Cir. 1993).

The estate should not pay for services rendered by a debtor's attorney which are duplicative of services rendered by the attorney for the trustee or which are of benefit to the debtor only. [Cit. omitted] Nevertheless, a debtor's attorney is entitled to compensation from a Chapter 7 estate for those services rendered after conversion from a Chapter 11 which aided the debtor in carrying out his legal duties prescribed by 11 U.S.C. § 521 and Federal Rule of Bankruptcy Procedure 4002. [Cit. omitted] Such services include aiding the debtor in preparation and filing of the required schedules and statements and representing the

(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 the debtor's attorney --

(1) reasonable compensation for actual, necessary services rendered by such trustee, examiner, professional person, or attorney, as the case may be, and by any paraprofessional persons employed by such trustee, professional person, or attorney, as the case may be, based on the nature, the extent, and the value of such services, the time spent on such services, and the cost of comparable services other than in a case under this title; and

(2) reimbursement for actual,

debtor through the § 341 meeting of creditors.
[Cit. omitted]

Diamond, supra, slip op. at 5-6.

In this case, Mr. Hall's time breakdown shows that immediately following conversion he spent 3.4 hours meeting with the debtors, preparing and filing their schedules, and attending the § 341 meeting. I find that these services aided the debtors in fulfilling their duties under § 521 and FRBP 4002. The trustee argues against payment of these 3.4 hours on the basis that FRBP 1019⁹, providing that on conversion from Chapter 13 the lists, inventories, and schedules are deemed to be filed in the Chapter 7 case, obviates any need for preparing and filing new schedules. The new schedules filed in this case, though, reflect changes in the

⁹FRBP 1019 provides, in relevant part,

When a chapter 11, chapter 12, or chapter 13 case has been converted or reconverted to a chapter 7 case:

(1) Filing of Lists,
Inventories, Schedules,
Statements.

(A) Lists,
inventories,
schedules, and
statements of
financial
affairs
theretofore
filed shall be
deemed to be
filed in the
chapter 7 case,
unless the court
directs
otherwise.

debtors' personal property, unsecured priority and non-priority claims, income, and expenditures. A need existed to prepare and file new schedules notwithstanding FRBP 1019 and were ordered by this court by order filed November 30, 1992 which states

[t]he debtor(s) through counsel having announced at hearing their desire to convert this case to a case under Chapter 7, pursuant to 11 U.S.C. §1307(a) this proceeding is ORDERED converted to a proceeding under Chapter 7 of Title 11 U.S. Code. This case having been converted, debtors are hereby ORDERED to file a Statement of Affairs, Schedules, Summary Sheet, and Statement of Intentions within fifteen (15) days of this order. If not filed by the date indicated, or request for hearing filed, the case shall be referred to the United States Trustee for appropriate action.

These services were a benefit to the estate.

An analysis under § 330 requires a lodestar determination -- a multiplication of the attorney's reasonable hourly rate by the number of hours reasonably expended. Norman v. Housing Authority of City of Montgomery, 836 F.2d 1292, 1299 (11th Cir., 1988). Under the lodestar analysis these 3.4 hours were reasonably expended, and Mr. Hall is entitled to compensation at the reasonable rate of \$100.00 an hour for a total of \$340.00 payable as an administrative priority pursuant to § 503(b)(2)¹⁰.

¹⁰11 U.S.C. § 503(b)(2) provides,

(b) After notice and a hearing, there shall be allowed administrative expenses, . . . including--

(2)
compen

Mr. Hall has failed to show any evidence that the services provided by him beyond attending the § 341 meeting were of any benefit to the estate. In fact, the trustee asserts to the contrary that much of that time was spent in an attempt to thwart the administration of the estate and aid the debtor in withholding his interest in an inheritance from the estate. Mr. Hall's breakdown reflects conversations with an attorney, Bill Callaway, regarding "estate matters," time spent on a motion to dismiss the case, and the trustee's fraudulent transfer action. Bill Callaway represents the debtor Kendall Arlen Turner with regard to the inheritance the debtor became entitled to receive due to the deaths of two relatives, one in July and one in August of 1992. Turner executed a renunciation of his interest in the inheritance in September of 1992, which renunciation was the subject of the preferential

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transfer action¹¹ referred to in Hall's time breakdown. Hall filed a motion to dismiss the case on the debtors' behalf, which was withdrawn after objection thereto was made by both the case trustee and the United States trustee, such objections being based on the failure to report, account for, or turn over this asset to the estate. The trustee asserts that these services are not compensable under § 330 as they not only did not benefit the estate but they actually hindered its administration. No evidence has been introduced to support this allegation, but regardless of whether they hindered estate administration, Mr. Hall has not shown that these services were of any benefit to the estate. Mr. Hall rendered these services to and for the benefit of the debtors only, and it is not the responsibility of the estate to bear the cost of these services.

The breakdown also refers to time spent negotiating and following up on reaffirmation agreements, counseling the debtors regarding stay relief following conversion and communications concerning the debtors' delinquencies to creditors. Mr. Hall has not shown any benefit to the estate of these services, which appear to me to have benefited the debtors only. Under Diamond, supra, these services are not compensable by the estate under § 330(a) as necessary expenses.

It is therefore ORDERED that the trustee's objection to

¹¹The trustee ultimately recovered some \$21,000 of the inheritance for distribution to creditors.

the claim of J. Michael Hall is SUSTAINED in part;

further ORDERED that the application of J. Michael Hall for payment of his services as an administrative expense is APPROVED in the amount of \$340.00.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 30th day of March, 1995.