



A handwritten signature in blue ink that reads "Neil P. Olack".

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: September 3, 2015

The Order of the Court is set forth below. The docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE:

TIMOTHY BRIDE,

DEBTOR.

CASE NO. 15-11632-NPO

CHAPTER 13

**ORDER SUSTAINING OBJECTION TO
CLAIM FILED BY TRUSTMARK NATIONAL BANK**

This matter came before the Court for hearing on August 27, 2015 (the "Hearing") on the Objection to Claim Filed by Trustmark National Bank (claim no. 2) (the "Objection") (Dkt. 13) filed by the debtor, Timothy Bride (the "Debtor"), and Trustmark National Bank's Response to Notice of Objection to Claim (the "Response") (Dkt. 16), filed by Trustmark National Bank ("Trustmark") in the above-referenced chapter 13 case (the "Case"). At the Hearing, William L. Fava ("Fava") represented the Debtor, and Jonathan S. Masters ("Masters") represented Trustmark. Having considered the pleadings, the Court finds as follows:

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B).

Facts

1. On May 6, 2015, the Debtor filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code (Dkt. 1).

2. On May 12, 2015, Trustmark filed a proof of claim for \$7,994.63 (the “POC”). The POC was for a Promissory Note (the “Note”) issued to the Debtor on October 9, 2014. Trustmark included a “Statement of Itemized Charges/Interest” (the “Statement”) in the POC. Trustmark claimed that in addition to the principal amount of the Note, interest, and court costs, the “Attorney’s fees per contract” were \$1,918.00.

3. On July 8, 2015, the Debtor filed the Objection on the grounds that there was no proof that the attorney’s fees were reasonable (Dkt. 13).

4. Trustmark filed the Response on July 27, 2015. Masters argued that he is entitled to presumed attorney’s fees in the amount of one-third of Trustmark’s total claim.

5. At the Hearing, Masters argued that controlling Mississippi authority allowed for attorney’s fees of one-third of the debt. Fava countered by arguing that the \$1,918.00 claim for attorney’s fees should not be allowed because there was no proof attached to the POC regarding how these fees were calculated. He further disagreed with Masters’ assertion that a one-third presumption applies.

Discussion

6. The Note provides that Trustmark “may hire or pay someone else to help collect this Note if I do not pay. I will pay lender that amount.” (POC, Ex. B). Therefore, Trustmark had a contractual right to hire an attorney to collect the amount due and charge the Debtor for the attorney’s fees. The only question, then, is whether \$1,918.00 was a reasonable fee.

7. The Fifth Circuit Court of Appeals has held that “state law controls both the award of and the reasonableness of a fees award where state law supplies the rule of decision.” *Mathis v. Exxon Corp.*, 302 F.3d 448, 461 (5th Cir. 2002); *Northwinds Abatement Inc. v. Emp’rs Ins. of Wasau*, 258 F.3d 345, 353 (5th Cir. 2001).

8. Attorney’s fees incurred by Masters on behalf of Trustmark must be reasonable pursuant to Rule 1.5 of the Mississippi Rules of Professional Conduct. A lawyer may not charge or collect “an unreasonable fee or an unreasonable amount for expenses.” MISSISSIPPI RULES OF PROFESSIONAL CONDUCT R. 1.5. At the Hearing, Masters stated that he attached an itemized statement to his Response. No such itemization, however, can be found on the docket in the Case. Therefore, this Court has no basis for determining whether \$1,918.00 is a reasonable fee, except for the “Affidavit of Attorney’s Fees, Costs, and Expenses” (the “Affidavit”) Masters attached to the Response, discussed herein.

9. Citing *DynaSteel Corp. v. Aztec Indus., Inc.*, 611 So. 2d 977, 986 (Miss. 1992), Masters argued that attorney’s fees in the amount of one-third of the total debt is reasonable in this Case. In *DynaSteel*, the Mississippi Supreme Court held that the one-third presumption applies to “collection matters,” and more specifically, to one-third of the judgment obtained. *Id.* The Mississippi Supreme Court held that this presumption is reasonable because a collection judgment often proves difficult and problematic. *Id.* In *DynaSteel*, the attorney spent considerable time negotiating with the debtor in an attempt to obtain payment and eventually obtained a default judgment. *Id.* at 979. Thus, because the attorney obtained a judgment, the Mississippi Supreme Court held that one-third of the debt amount was presumed reasonable. *Id.*

10. Masters contends that because the amount of the debt in this Case was \$5,756.18 as of February 27, 2015, his fee of \$1,918.00, which is one-third of that amount, is reasonable.

(Resp. Ex. C). Although Masters is correct regarding the presumption that an award of attorney's fees in the amount of one-third of the amount of indebtedness is reasonable in collection matters, this presumption is rebuttable. *Id.* at 987; *Par Indus., Inc. v. Target Container Co.*, 708 So. 2d 44, 54 (1998). Further, the cases applying the one-third presumption involved attorneys who took the collection matter to judgment.

11. In *Young v. Huron Smith Oil Co., Inc.*, 564 So. 2d 36 (Miss. 1990), the Mississippi Supreme Court determined that it should not adhere to the standard one-third presumption based on the facts of the case. The trial court granted summary judgment to the plaintiff in an action for collection on a delinquent account. *Id.* at 37. The Mississippi Supreme Court noted that the one-third presumption is applied in cases where a full trial was held. *Id.* at 40. In *Young*, summary judgment was without a trial, and the Supreme Court held that one-third of the amount of indebtedness was unreasonable. *Id.* Here, Masters did not obtain a judgment against the Debtor, let alone take the collection matter to a full trial. The Clerk of Washington County's entry of default on May 4, 2015 is attached to the Response, but no default judgment has been entered. Therefore, the one-third presumption should not apply in this case.

12. Alternatively, Masters asked the Court to determine reasonable attorney's fees using the lodestar method. Courts compute the lodestar amount by multiplying the number of hours performed by attorneys and paraprofessionals by the prevailing hourly rates of each. *Am. Benefit Life Ins. Co. v. Baddock (In re First Colonial Corp. of Am.)*, 544 F.2d 1291, 1298-1300 (5th Cir. 1977). After making the calculation, courts may adjust the initial lodestar amount based on the reasonableness factors. *Id.* The party seeking payment of fees bears the burden of submitting sufficient documentation to establish the number of compensable hours. *La. Power & Light Co. v. Kellstrom*, 50 F.3d 319, 324 (5th Cir. 1995).

13. Masters has provided no information regarding his hourly rate, hours worked on the case, or tasks completed. The Affidavit was attached to his Response, but, it merely recites his belief that \$1,918.00 is a fair fee for the work he performed. Additionally, the Statement attached to Trustmark's POC simply states that the attorney's fees were \$1,918.00. At the Hearing, Masters stated that he spent 6.6 hours working on this case, but has provided no documentation. Because Masters did not provide his hourly rate or an itemization regarding the time he spent collecting the Note, the Court is unable to make a determination under the lodestar method. Accordingly, Masters has fourteen (14) days from the date of this Order to submit an affidavit containing the information necessary for the Court to determine the reasonableness of the attorney's fees under the lodestar method. Fava has fourteen (14) days from the date the affidavit is filed in which to submit a response.

IT IS, THEREFORE, ORDERED that the Objection is hereby sustained.

IT IS FURTHER ORDERED that Masters shall have fourteen (14) days from the date of this Order to submit the required documentation, and Fava shall have fourteen (14) days to submit a response.

##END OF ORDER##