



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

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: September 18, 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 REGARDING ATTORNEY'S FEES
IN TRUSTMARK NATIONAL BANK'S PROOF OF CLAIM**

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. On September 3, 2015, the Court entered an order (the "Order") (Dkt. 19) sustaining the Objection and granting Masters fourteen (14) days to submit documents necessary for the Court to determine the lodestar amount and thereafter allowing Fava fourteen (14) days to respond. Having fully considered the matter, 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 (the “Petition”) (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”) signed by 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 ground 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.

6. After the Court entered the Order sustaining the Objection, Masters submitted Trustmark National Bank’s Submission as Directed by Order (Dkt. 19) (the “Documentation”) (Dkt. 21) on September 4, 2015. The Documentation indicated that Masters’ hourly rate is

\$225.00 and the paralegal's hourly rate is \$100.00. The Documentation contained an itemization (the "Itemization") of the hours expended by Masters and the paralegal. Masters claimed that he expended a total of 13.5 hours, and the paralegal worked a total of 6.6 hours. Before the Debtor filed for bankruptcy on May 6, 2015, Masters worked 1.8 hours and the paralegal worked 4 hours. The Documentation provided that the total attorney's fees were \$3,697.50.¹ (Doc. at 3).

7. Fava filed the Debtor's Response Filed Pursuant to Court Order (Dkt. 23) on September 14, 2015. Fava argued that post-petition fees are not allowed on a proof of claim unless the debt is oversecured pursuant to 11 U.S.C. § 506(b). Therefore, he argued, any fees claimed in the POC must have been incurred prior to the filing of the Petition.

Discussion

Having issued the Order rejecting Masters' contention that attorney's fees in the amount of one-third of the total debt are presumed reasonable in this Case, the Court will now determine Masters' reasonable attorney's fees using the lodestar method and the reasonableness factors. 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), *superseded by statute*, 11 U.S.C. § 330. 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).

The Documentation provides that the hourly rate for Masters is \$225.00 and for the paralegal is \$100.00. (Doc. at 3). The Court concludes that these hourly rates are reasonable.

¹ \$3,697.50 = 13.5 attorney hours at \$225.00 an hour (\$3,037.50) + 6.6 paralegal hours at \$100.00 an hour (\$660.00).

However, Masters and the paralegal will not be entitled to payment from the estate for post-petition attorney's fees incurred after the date the Debtor filed for bankruptcy.

Section 506(b) allows post-petition attorney's fees, but only if the claimant is oversecured. *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989); *In re SI Restructuring, Inc.*, 542 F.3d 131, 137 (5th Cir. 2008). The accumulation of attorney's fees on an unsecured claim stops on the date the bankruptcy petition is filed. 4 COLLIER ON BANKRUPTCY § 506.04[1] (16th ed. 2015). The Debtor filed for bankruptcy on May 6, 2015, and, therefore, the POC can only include attorney's fees until that date.

The Itemization provides that Masters worked 1.8 hours and the paralegal worked 4 hours prior to May 6, 2015. (Doc. at 4). Therefore, at his hourly rate of \$225.00, his total fees were \$405.00. Additionally, at the paralegal's hourly rate of \$100.00, the paralegal's fees were \$400.00. Thus, the total fees under the lodestar method are \$805.00.

After a court sets attorney's fees under the lodestar method, it may make an adjustment based on the twelve reasonableness factors as set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-719 (5th Cir. 1974). After considering the reasonableness factors, the Court concludes that no adjustment to the lodestar amount is necessary.

IT IS, THEREFORE, ORDERED that the POC is hereby amended to allow attorney's fees of \$805.00.

##END OF ORDER##