

Cases placed on the “Call” docket for examination of Debtor’s attorney’s fees where the proposed Chapter 13 Plan only provides for the payment of attorney’s fees and unsecured creditors.

The Court’s basic inquiry in these cases concerns the appropriateness/applicability of the “no-look” fee when the Debtor’s attorney can reasonably anticipate that there will be little, if any, activity, after the original plan is confirmed.

Case 1

18-10125. Cheryl Denise Lynch. [Judge confirmed the Plan thereby approving in full the fees as set forth therein that had been voluntarily reduced by the Debtor’s attorney]

Hearing Date: 7/19/18 Beaumont Docket

Issue: Was the Debtor’s attorney entitled to \$3,735.00 attorney’s fees [\$3,235.00 for the basic case (voluntarily reduced from the \$3,500.00 “no-look” fee) plus \$500.00 for stay litigation as set forth in LBR 2016(h)] where the proposed Chapter 13 Plan only proposed to pay the unpaid balance of these attorney’s fees and a dividend to the unsecured creditors?

Facts: The Debtor filed a Chapter 13 Plan that proposed to pay 42 monthly plan payments to the Trustee who, after Trustee’s fees, would in turn disburse such to the attorney to pay the balance of her attorney’s fees with the balance of the plan payments being disbursed to the unsecured creditors. Under the Plan, the Debtor assumed her lease to her apartment and her lease on her vehicle thereby paying these monthly lease payments direct. There would be an approximate 6% dividend disbursed to the unsecured creditors. The Debtor filed an Amended Plan thereby surrendering some property to a creditor that she was a co-debtor on the underlying debt but she was not in possession of the property. None of the remaining terms of the Plan changed. At the hearing, the attorney emphasized that the Debtor had previously received a Chapter 7 discharge and was accordingly ineligible for another Chapter 7 discharge; the attorney’s voluntary reduction of the amount of the requested attorney’s fees from the “no-look” fee; and the attorney’s intent to object to a claim that had been discharged in the previous Chapter 7. The attorney declined to submit a formal fee application.

Ruling: The Judge confirmed the proposed plan as filed with no additional adjustment to the attorney’s fees requested.

Case 2

18-10172. Patricia A. Summers. [Judge confirmed the Plan thereby reducing the requested “no-look” attorney’s fees to \$2,800.00]

Issue: Was the Debtor’s attorney entitled to the full \$4,000.00 “no-look” fee (\$3,500.00 for the basic case plus \$500.00 for stay litigation) as authorized under LBR 2016(h) where the proposed original Chapter 13 Plan only proposed to pay the unpaid balance of these attorney’s fees and a dividend to the unsecured creditors?

Facts: The Debtor filed a Chapter 13 Plan that proposed to pay 36 monthly plan payments to the Trustee who, after Trustee’s fees, would in turn disburse such to the attorney to pay the balance of his “no-look” attorney’s fees with the balance of the plan payments being disbursed to the unsecured creditors. The

Debtor would assume her lease to her apartment and her lease on her vehicle thereby paying these monthly lease payments direct. There would be an approximate 20% dividend to the unsecured creditors. At the hearing, the attorney emphasized that the Debtor had previously received a Chapter 7 discharge and was accordingly ineligible for another Chapter 7 discharge; and the size of the dividend being paid to the unsecured creditors. The attorney could not give any additional information to the Court to justify the amount of fees requested under the no-look fee. The attorney declined to submit a formal fee application.

Ruling: The Judge confirmed the proposed plan but took the amount of the attorney's fees to be awarded to the Debtor's attorney under advisement. The Judge rejected the attorney's argument concerning the size of the dividend being paid to the unsecured creditors, thereby noting that such has no relevance in his review of the value of the legal services actually rendered in the case by the attorney. Upon entry of the Confirmation Order, the Court included the following provision:

Given that this case involves only the payment of attorney's fees and general unsecured claims, with the Debtor's counsel electing to forego the submission of a formal fee application, the Court finds that the total amount of attorney's fees to be paid to the Debtor's attorney under Section 4.3 of the Plan is \$2,800.00 which the Court finds to be the reasonable value of the services to be rendered by the Debtor's attorney pursuant to LBR 2016(h).

Case 3

18-90091. Christina L. Cravy. [Judge confirmed plan with no reduction to the "no-look" fees]

Issue: Was the Debtor's attorney entitled to the full \$4,000.00 "no-look" fee (\$3,500.00 for the basic case plus \$500.00 for stay litigation) as authorized under LBR 2016(h) where the proposed Chapter 13 Plan only proposed to pay the balance of the unpaid attorney's fees and a dividend to the unsecured creditors?

Facts: The Debtor filed a Chapter 13 Plan that proposed to pay 60 monthly plan payments to the Trustee who, after Trustee's fees, would cure a mortgage arrears to the SBA (with the Debtor maintaining the post-petition direct mortgage payments); ad valorem tax payment to Tyler County on that property; the unpaid balance of the Debtor's attorney's fees; and the balance of the plan payments being disbursed to the unsecured creditors. The Debtor's attorney subsequently learned from the SBA that the SBA had foreclosed on the property a year earlier. The Debtor's attorney was able to negotiate a settlement with SBA that, in exchange for the Debtor vacating the property by the end of July, 2018, the SBA would pay \$5,000.00 to the Debtor to cover her costs of vacating and relocating. The Debtor filed an Amended Plan thereby surrendering the property to the SBA and Tyler County while continuing to pay the balance of the unpaid "no-look" attorney's fees with the balance of plan payments being disbursed to the unsecured creditors. At the hearing, the attorney emphasized the legal work that he had performed in the case included not only the legal work as reflected on the Court's docket (including the filing of the original Plan and the Amended Plan) but also the legal work he had performed that was not reflected on the Court's docket (including the negotiations and settlement with the SBA). The attorney declined to submit a formal fee application.

Ruling: The Judge confirmed the proposed plan thereby approving the full no-look fees.

Trustee's Observations concerning these three cases

--These cases are placed on the call docket in order to allow the Debtor's attorney to present any additional information that the attorney wishes the Judge to consider to justify the amount of the attorney's fees that may not be reflected in the legal services evident from a review of the Court's Docket. LBR 2016(h)(8) states that the "no-look" fee as set forth therein "does not establish minimum, maximum, or average fees, nor does it establish the reasonableness of a fee in a particular case."

--The attorney needs to advise the Court of additional issues that reasonably takes the case out of a Chapter 7 to a Chapter 13. The attorney needs to be prepared to explain to the Court why the value of the legal services justify the award of the full "no-look" fee in these type of cases.

--Relevant factors that may justify the award of the full "no-look" fee may include the following:

- Direct payments to other creditors
- Debtor's inability to file a Chapter 7 bankruptcy case
- Negotiations with creditors or other work that may not be reflected on the Court's docket sheet
- Objections to claims filed or to be filed
- Stay litigation
- Debtor's attorney's voluntary reduction of fees from the "no-look" fee
- Legal services performed in a "business" case
- Above median case that prevents the Debtor from filing a Chapter 7

--Irrelevant factors that will probably have no effect on the Court's examination of the value of the legal services rendered in such cases:

- Size of the dividend going to the unsecured creditors
- Debtor that is "financing" the payment of the Debtor's attorney's fees through a Chapter 13 where the Debtor was financially unable to pay the Debtor's attorney's Chapter 7 fees up front in order to, instead, file a Chapter 7