

Court's Denial of Debtor's Attorney request to seek additional attorney's fees through the filing of a Fee Application for legal services during the "no-look" period of time after Attorney had elected in the confirmed plan to take the "no-look" fee pursuant to the Court's Local Rules (2 Cases with similar rulings)

First Case: 12-10797 Ballard

Facts: The Debtor's Chapter 13 Plan was originally confirmed thereby providing for the payment of the "no-look" attorney's fees of \$3,500.00 (\$3,000.00 for the basic case and \$500.00 upon the certification of stay litigation) to the Debtor's attorneys pursuant to the Court's Local Rule of Bankruptcy Procedure 2016(h)(1)(B).

After confirmation but before the filing of the Trustee's Recommendation Concerning Claims (the "TRCC"), the Debtor's attorney represented the Debtor in stay litigation filed by the creditor holding the mortgage on the Debtor's home. Ultimately, the Motion for Relief from Stay was withdrawn.

After the filing of the TRCC but before such was ruled upon, the Debtor's attorney filed a Motion to Modify on behalf of the Debtor for the stated purpose of allowing the Debtor to pay off his mortgage with insurance proceeds he received from Hurricane Ike and to remove any further payment by the Trustee to the mortgage holder of pre-petition mortgage. The Debtor's attorney requested an additional \$600.00 for the legal work and proposed that the fees be held in escrow to allow him an opportunity to file a fee application. Upon the resolution of the Trustee's objections to the Motion to Modify, the Trustee signed off on the proposed Modification Order with the escrow language and caused the Order to be uploaded for the Court's entry.

Ruling: Without the necessity of a hearing, the Court entered the proposed Modification Order with two changes. First, the Court blacked out the escrow of attorney's fees provision. Second, the Court added the following provision:

Additional Attorney's Fees DENIED

The attorney for the Debtor has previously elected the "no-look" fee option pursuant to LBR 2016(h). Thus, the option to file a fee application for amounts in excess of the "no-look" fee for services rendered for the period through the first successful post-confirmation modification of the Debtor's Chapter 13 plan has been voluntarily forfeited and any request for allowance of additional fees beyond those granted in the Order Confirming Chapter 13 Plan entered on March 11, 2013 is DENIED.

Second Case: 13-60405 Santos

Facts: The Debtor's Chapter 13 Plan was originally confirmed thereby providing for the payment of the "no-look" attorney's fees of \$3,500.00 (\$3,000.00 for the basic case and \$500.00 upon the certification of stay litigation) to the Debtor's attorneys pursuant to the Court's Local Rule of Bankruptcy Procedure 2016(h)(1)(B). The plan, as confirmed, provided for 100% dividend plus interest of 6% to the unsecured creditors with no future modifications to reduce this dividend.

After confirmation but before the filing of the Trustee's Recommendation Concerning Claims (the "TRCC"), the Debtor's attorney represented the Debtor in stay litigation filed by a creditor (former spouse) concerning proceedings pending in State Divorce Court. Ultimately, an Agreed Order was entered relating to this Motion to Lift Stay.

Again, prior to the filing of the TRCC, the Debtor's attorney filed a Motion to Modify the terms of the confirmed plan to conform to the Agreed Order entered relating the Motion to Lift Stay and to request an additional \$1,500.00 in attorney's fees for handling the stay litigation with escrow language included pending the filing and approval of a Fee Application. The Trustee objected to the award of additional attorney's fees during the "no-look" period of time after the attorney had elected the "no-look" fees under the terms of the confirmed plan. The Trustee and the Debtor's attorney stipulated at the hearing that the underlying legal services were performed and that \$1,500.00 was a reasonable fee for these services.

The Debtor's attorney also filed a Fee Application to justify the award of all of the attorney's fees, including both pre-confirmation and post-confirmation fees.

Hearing: The Motion to Modify was set for hearing on the 2/19/14 Tyler Modification Docket.

Ruling: The Court denied the Modification in part as such related to the request for additional attorney's fees above the "no-look" fee of \$500.00 for handling stay litigation and confirmed the remaining parts of the Modification. In that regard, the Court held that the attorney elected the "no-look" fee as provided for in the Court's Local Rule of Bankruptcy Procedure 2016(h)(1)(B) and that the *res judicata* effect of the entry of the Confirmation Order prevented the Debtor's attorney from changing that election. The Court concluded that the attorney cannot now back out of a "bad" election just because the additional legal services during the "no-look" period of time as contemplated by the Local Rules could have yielded attorney's fees greater than the "no-look" fee had the fee application option had been previously elected instead.

In addition, the Court pointed out that the Trustee relied upon the Debtor's election of the "no-look" fee by his starting to disburse attorney's fees to the attorney upon confirmation of the case. In a case where the attorney declines to elect the "no-look" fee, thereby opting instead to file a fee application, the Trustee must hold such fees in escrow and cannot disburse such until the fee application is filed and ruled upon.

The Court, in a separate Order, denied the pending Fee Application, noting that the ruling in open Court that the attorney was bound by the "no look" fee precluded the approval of the additional fees as sought by the Fee Application.

Conclusion: Generally, the Trustee supports the concept of the debtors' attorneys being paid a reasonable fee for the services rendered in a Chapter 13 case, whether the attorney elects to charge the "no-look" fee as provided for under the Court's Local Rules or whether the attorney, in the appropriate case where additional work is required for whatever reason, elects to have the fees escrowed pending the filing of a fee application. However, the Trustee will object to the following:

--The Trustee will object to an attorney's attempt to change an election from the "no-look" to a fee application after confirmation. The Court's ruling is clear that, once the election is made, such cannot be changed later to cover additional fees during the so called "no-look" period of time.

--The Trustee will object to fee applications seeking additional fees above and beyond the "no-look" fee amount in relatively routine Chapter 13 cases. The Trustee believes that there has to be a reasonable basis for the attorney to seek additional fees in a particular case through the filing of a Fee Application and that the burden of proof of justifying these additional fees clearly rests on the debtors' attorney. The Trustee will also look to determine whether contemporaneous time records were kept by the debtors' attorney in order to support the additional fees to be supported by such a fee application. To contrast this to the *Santos* case, the Trustee acknowledged that the additional legal services were performed in a hotly contested Motion to Lift Stay as filed by the Debtor's ex-spouse and that \$1,500.00 was a reasonable fee for such services.