

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

IN RE:) CHAPTER 13
) CASE NO. 03-10220-JDW
KWAJALEIN L. WATERS,)
)
DEBTOR.)

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

COUNSEL

For Trustee: Kristin Hurst
Post Office Box 1907
Columbus, Georgia 31902

For Mr. Hunt Charles R. Hunt, Pro Se
112 E. Lee Street
Dawson, Georgia 39842

MEMORANDUM OPINION

This matter comes before the Court on Charles Hunt's application for attorney fees. This is a core matter within the meaning of 28 U.S.C. § 157(b)(2)(A). After considering the pleadings, the evidence, and the applicable authorities, the Court enters the following findings of fact and conclusions of law in conformance with Federal Rule of Bankruptcy Procedure 7052.

Findings of Fact

Debtor Kwajalein Waters filed a Chapter 13 case on February 3, 2003. Among the debts paid through the Chapter 13 plan were two mortgages of \$554.00 and \$391.88 per month. As of September 20, 2004, Debtor's monthly plan payment, including the two mortgages, was \$1,675.00.

In July 2006, Debtor asked her attorney, Charles Hunt, about obtaining a payoff figure for her plan. Mr. Hunt refused to obtain the payoff amount and told Debtor she could get the information from the Chapter 13 Trustee. On July 18, 2006, the Trustee provided Debtor with a payoff amount of \$15,865.32, good through July 28, 2006. The payoff included funds sufficient to pay Debtor's mortgages through August.

Debtor made no payments by the July 28, 2006, deadline. After the deadline passed, her mortgage obligations continued to accrue at a rate of \$945.88 per month, which increased the amount necessary to fully payout the plan. Although Debtor made a payment of \$1,675.00 (the amount of her regular plan payment) in September and made a payment of \$12,500.00 in October, the Trustee was unable to close the case because the payments were insufficient to cover mortgage debt that came due after July 28, 2006.

By letter of November 16, 2006, Mr. Hunt notified Debtor the new payoff amount for her

plan was \$2,700.00, good through November 28, 2006. Thereafter, Debtor made two additional payments of \$1,500.00 each on December 1, 2006, and February 5, 2007. The Trustee never received the December 1 payment.

The Trustee filed a motion to dismiss the case on February 12, 2007. Debtor, without the assistance or knowledge of Mr. Hunt, filed an Objection to Motion to Dismiss Chapter 13 Case. She attached numerous documents to the objection, including a copy of the November 16, 2006, letter sent to her by Mr. Hunt. The Court held a hearing on the motion to dismiss on March 7, 2007. Mr. Hunt appeared at the hearing. During the hearing, the parties became aware for the first time that the December 1, 2006, payment for \$1,500.00 was unaccounted for. In addition, the Trustee provided a new payoff amount of \$5,148.50 (not including the missing \$1,500.00), good through the end of March. Debtor represented to the Court she could pay that amount immediately, and the Court allowed her case to continue. Debtor paid off the case by the end of March. After all distributions were made, the Trustee had a balance on hand of \$81.65.

Mr. Hunt filed an application for compensation on March 13, 2007, seeking \$585.00 for 3.9 hours of services related to Debtor's payoff request. The Court held a hearing on the fee application on May 8, 2007. During that hearing Debtor testified that Mr. Hunt was not involved in any matters relating to the payoff, and that she dealt directly with the Trustee's office. In addition, Debtor accused Mr. Hunt of making inappropriate remarks to her after the March 7, 2007, hearing. She also adamantly denied ever seeing Mr. Hunt's letter of November 16, 2006, which provided an up-to-date payout amount. Debtor's testimony about the letter is inaccurate. As noted above, she personally filed with the Court a copy of the letter on March 5, 2007, as an attachment to her objection to the Trustee's motion to dismiss. In addition, the Trustee indicated

Mr. Hunt had been in contact with her office regarding his efforts to explain to Debtor her payoff obligations.

The hearing also provided revelations about the missing December 1, 2006, check for \$1,500.00. Debtor testified she obtained the cashier's check from the bank, immediately placed it in an envelope addressed to the Trustee, went to a post office adjacent to the bank, purchased a stamp at the counter, and handed the envelope to the postal worker at the counter to be mailed. According to the Trustee, when she was unable to locate the check in her system, she asked Debtor to initiate a trace. Debtor did not immediately do so, and the Trustee's office contacted Mr. Hunt about the problem. Eventually, Debtor requested a trace, and the bank discovered the check had been altered and cashed by an unknown party. The bank refunded Debtor the \$1,500.00, and Debtor issued a replacement check to the Trustee, which was part of her final payoff of the case in March.

Mr. Hunt filed an itemization of time he spent on the payoff issue. It lists various telephone calls and letters between Mr. Hunt and Debtor related to refinancing her house¹; various telephone calls and letters between Mr. Hunt and the Trustee's office related to the payoff and to tracing the missing December 1, 2006, cashier's check; and Mr. Hunt's attendance at the hearing on the Trustee's motion to dismiss.

Conclusions of Law

The Bankruptcy Code authorizes the Court to award fees to a Chapter 13 debtor's

¹ Apparently, Debtor sought a payoff of her plan so she could take over her mortgage payments and refinance her house.

attorney as follows:

In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

11 U.S.C. § 330(a)(4)(B).

Debtor has argued Mr. Hunt is not entitled to fees because he provided no assistance with the payoff of her case. The Court disagrees. Debtor's testimony is not credible. It is contradicted by Mr. Hunt, by the Trustee, by documents filed by Debtor in this case, and by the Court's experience in this case. The Court finds Mr. Hunt provided necessary services to Debtor by keeping her informed of the status of her payoff request, appearing at the hearing on the Trustee's motion to dismiss, and facilitating communication between Debtor and the Trustee.

The Court notes that all of Mr. Hunt's fees could have been avoided if Debtor had paid off her case immediately upon receiving a payoff figure from the Trustee. Instead, Debtor took approximately eight months to finalize the payoff. According to the evidence, Mr. Hunt was in no way responsible for the delay, which arose solely from the actions of Debtor.

It is undisputed the itemization of time submitted by Mr. Hunt represents time he actually spent working on this case. Furthermore, the Court concludes the services were necessary and reasonable. Consequently, the Court will grant Mr. Hunt's motion for additional compensation and award him fees of \$585.00. Trustee is authorized to remit the balance of funds on hand to Mr. Hunt. To the extent the Trustee has insufficient funds on hand to satisfy the fees, Mr. Hunt is authorized to recover the balance directly from Debtor.

An Order in accordance with this Opinion will be entered on this date.

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