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IT IS SO ORDERED.

Dated: March 13, 2024



Guy R. Humphrey
Guy R. Humphrey
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re: :
SHAWN DAVID THIRTYACRE, : Case No. 23-31221
: Chapter 13
Debtor. : Judge Humphrey
:

ORDER APPROVING ATTORNEY FEES (DOC. 63)

This matter is before the court on the *Application for Attorney’s Fees* (doc. 63) (the “Application”) filed by Wayne P. Novick, counsel for the debtor, Shawn David Thirtyacre (“Debtor”), which seeks an award of attorney fees in the amount of \$9,000.00 for services rendered by Mr. Novick, Elizabeth Chinault, and Mr. Novick’s law firm (collectively, “Novick”) pre-petition and pre-confirmation. Mr. Novick also sought \$222.40 for reimbursement of expenses. Mr. Novick voluntarily reduced his fee from \$12,475.00, which represented 29.5 hours of attorney time at \$400 per hour and a hypothetical paralegal rate of \$150 per hour for 4.5 hours.¹ Prior to the hearing, Mr. Novick filed an amended time sheet which adjusted certain time entries and therefore changed the total attorney time to 24.9 hours and the hypothetical paralegal

¹ The Novick law firm does not currently employ or use a paralegal in its practice. The court determines the \$400 per hour rate of Mr. Novick and Ms. Chinault is reasonable for their experience level and the hypothetical paralegal rate of \$150 per hour is also reasonable.

time to 5.8 hours. Doc. 73. Further, due to a math error, the reimbursement of expenses was reduced to \$199.70. Mr. Novick was still seeking \$9,000.00 as his reduced fee.

Pursuant to a prior Order (doc. 66), the court held a hearing on the Application on March 7, 2024. The hearing was attended by Wayne P. Novick and Elizabeth Chinault, counsel for the Debtor; Scott G. Stout, counsel for the Chapter 13 Trustee; and John G. Jansing, the Chapter 13 Trustee. Nathan A. Wheatley and Laura Atack, counsel for the United States Trustee, appeared by phone.

Based upon the *Memorandum in Support of Application for Attorney's Fees* (doc. 73) and the arguments of counsel presented at the hearing, the court finds that the actual and necessary work required to effectively represent the Debtor in this case supports an award of \$9,000.00. The Debtor filed his Chapter 13 petition pro se on August 2, 2023 (Doc. 1). The Debtor's case faced imminent dismissal due to the Debtor's deficient filings. Doc. 9. Moreover, the Debtor was subject to a limited automatic stay after thirty (30) days from the date of his petition as a result of the dismissal of a prior case filed in early 2023. See No. 23-30084. Upon being retained, Novick effectively extended the automatic stay and prevented the case from being dismissed. Ultimately, the Debtor's Chapter 13 plan was confirmed (Doc. 61), and he appears current on his plan payments. The court also considered the particular challenges in undertaking to represent any debtor that initially files a Chapter 13 case pro se.

In addition to the work performed related to confirmation of the plan, Novick provided services related to attempts to conduct a sale of the assets of the Debtor's limited liability company, Advanced Tools, LLC, for the potential benefit of the Debtor's Chapter 13 estate. Section 330(a)(4)(B) of the Bankruptcy Code "provides the framework for determining the extent to which counsel may be compensated from the bankruptcy estate for services provided to the debtor that do not directly benefit the bankruptcy estate[.]" *In re Pochron*, No. 21-31410, 2022 Bankr. LEXIS 1041, at *8, 2022 WL 1085459, at *4 (Bankr. S.D. Ohio Apr. 8, 2022). "In order for services to be compensable by the bankruptcy estate under this subsection, those services must: 1) be provided to an individual debtor; 2) be provided 'in connection with' a Chapter 12 or Chapter 13 case; 3) benefit the debtor; 4) be necessary to the debtor; and 5) otherwise be appropriate under the terms of § 330." 2022 Bankr. LEXIS 1041, at *8-9, 2022 WL 1085459, at *4 (citing *In re Hunt*, 588 B.R. 496, 499 (Bankr. W.D. Mich. 2018)).

In this case, Novick has provided services to Advanced Tools, LLC to facilitate the sale of its assets. The phrase “in connection with” has been liberally interpreted. See *Pochron*, 2022 Bankr. LEXIS 1041, at *9, 2022 WL 1085459, at *4-5 (collecting cases). Furthermore, the court is aware that if Advanced Tools, LLC’s efforts to sell its assets become fruitful, the Debtor and his estate may benefit from the value of the Debtor’s membership interest, after any debts of Advanced Tools, LLC are fully paid. However, at this time, Novick’s services for Advanced Tools, LLC only represent a potential benefit to the Debtor and his estate. Here, the financial benefit to the Debtor and his estate is contingent on Advanced Tools, LLC’s success in liquidating its assets and funds remaining after the payment of corporate debts (particularly back rent owed to the lessor of Advanced Tools, LLC’s former business location), and is therefore, “somewhat remote.” *Hunt*, 588 B.R. at 499. Requests for compensation for work performed in connection with a case should be denied when no benefit to the debtor is derived from those services. See *In re Select Tree Farms, Inc.*, 568 B.R. 1, 5 (W.D.N.Y. 2017).

In response to the court’s concern about including the fees for the services rendered to Advanced Tools, LLC in the Application, Novick has agreed to exclude the fees for these services from this Application. As the fees for these services have been excluded from the Application before the court, the court need not decide whether the potential benefit to the Debtor or his estate is sufficient for the court to award the requested fees pursuant to § 330(a)(4)(B). Instead, the court approves the Application in the amount of \$9,000.00, which reflected the discount described in the both the Application and Memorandum in Support of the Application. In considering the loadstar calculation as required by *In re Boddy*, 950 F. 2d 334 (6th Cir. 1991), as well as the “results obtained” as discussed in *In re Village Apothecary*, 45 F. 4th 940 (6th Cir. 2022), this award represents the total fees rendered to the Debtor pre-petition and pre-confirmation. Based on the court’s independent analysis, even eliminating the itemized entries related to liquidating the property of Advanced Tools, LLC, reducing certain entries that is more appropriately billed at a paraprofessional rate, and applying other reductions due to vague or lumped entries, the court finds the overall fee is reasonable because of Mr. Novick’s voluntary reduction of his fees.

For all these reasons, the court awards \$9,000.00 in attorney fees and \$199.20 in the reimbursement of expenses.

Nothing in this order shall prohibit counsel for the Debtor from filing a separate itemized fee application for the services rendered to liquidate the assets of Advanced Tools, LLC if those fees were beneficial to this bankruptcy estate, and otherwise for further fees incurred following the confirmation of the Debtor's Chapter 13 plan.

IT IS SO ORDERED.

Copies to:

All Creditors and Parties in Interest

Edward H. Cahill, Office of the US Trustee, 170 North High Street, Suite 200, Columbus, Ohio 43215-2417 (Assistant United States Trustee)

Nathan A. Wheatley, Office of the US Trustee, 170 North High Street, Suite 200, Columbus, Ohio 43215-2417 (Counsel for the United States Trustee)

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