

JUN 09 2005

IN THE UNITED STATES BANKRUPTCY COURT U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA FOR THE DISTRICT OF ARIZONA

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In re:)	Chapter 13
MARK BROWN and TERESA BROWN,)	No. 4-03-bk-04592-JMM
Debtors.)	MEMORANDUM DECISION RE:
)	ATTORNEYS' FEES
)	(Opinion to be Posted)

This court has been asked to decide upon the reasonableness of requested attorneys' fees in a chapter 13 case. Debtors' counsel has requested \$5,478, of which \$2,750 has been paid.

THE PLAN

This case was filed as a chapter 13 case on August 21, 2003. The Debtors' schedules reflect routine property ownership, including a home and two motor vehicles, all secured to individual lienholders. A \$7,000 obligation to the IRS and \$8,200 owed on two credit cards round out their obligations. The Debtors listed their property values and liens as follows:

	<u>Value</u>	<u>Lien</u>
Residence	\$ 111,000	\$ 82,414
Pontiac Firebird	12,055	16,945
GMC Sierra	12,875	21,052

The Debtors, both of whom work, have a combined monthly income of \$3,342, and monthly expenses of \$2,393 (including their mortgage payment). They have two minor children, ages 7 and 12.

1 The Debtors proposed a plan of 50 months' duration, paying \$880 per month to the trustee.
2 The plan proposed to continue making normal mortgage payments "outside" the plan, and the home's
3 \$2,500 arrearages through the plan.

4 The plan also proposed to "cramdown" the vehicles to their true values, and pay the
5 unsecured balances pro-rata with other unsecured claims. The unsecureds would receive essentially no
6 distribution (\$100) under the plan.

7 The IRS is to be paid in full as a priority expense, along with the \$2,550 in attorneys' fees.

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9 **CREDITOR ACTION**

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11 The secured creditor on the home filed a stay relief motion, which was quickly worked
12 out by a stipulation to cure the mortgage arrears over a six-month period. This resolution simultaneously
13 cured one of the trustee's plan objections, as well.

14 Similarly, the claim and valuation of the debt secured by the 2000 Pontiac Firebird was
15 also resolved by stipulation.

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17 **PLAN CONFIRMATION**

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19 The plan was confirmed on June 9, 2004. In the plan, the attorneys' fee was set at \$2,250
20 (plus the \$500 paid pre-petition, for a total of \$2,750). All of the trustee's routine objections had been
21 resolved, and Debtors' counsel signed off on the form of order, as did the trustee and the secured creditors
22 on the house and Pontiac.

1 **POST CONFIRMATION EVENTS**

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3 An amendment to the plan, adjusting the payments and extending the plan's duration to
4 60 months, was filed on November 19, 2004. No order was ever signed approving the changes.

5 On January 20, 2005, the trustee filed a motion to dismiss, alleging a payment delinquency
6 of \$1,284.80.

7 The Debtors responded with a request for moratorium, which included a request to
8 increase attorneys' fees to \$5,478, of which \$2,750 had been paid. Counsel did not file a separate fee
9 application, but attached his billings which included an itemized fee breakdown. The trustee responded,
10 specifically objecting to the fee request.

11 The fee issue was argued on June 6 2005, after which the court took the matter under
12 advisement.

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14 **ATTORNEYS' FEES**

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16 With the schedules, Debtors' counsel filed a Rule 2016 statement, noting that he intended
17 to charge \$3,050 in fees, \$500 of which had been paid prior to the filing of the petition.

18 In the Debtors' plan, counsel noted the fee arrangement set forth above, and further stated,
19 "(a)dditional fees may be charged by hourly fee pursuant to an executed bankruptcy fee agreement."
20 Plan, para. IV(1).

21 As noted above, the approved fee, in the confirmed plan, as of June 9, 2004, was \$2,750.
22 Debtors' counsel signed off on the confirmation order. Since confirmation, Debtors' counsel filed a
23 moratorium request, and an amended payment schedule to accommodate a cure of the Debtors' post-
24 confirmation delinquencies.

1 **DISCUSSION**

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3 An attorneys' fee is presumed to be reasonable, in this District, if it is \$2,750 or below,
4 for a routine case. This is known as a "no look" fee, meaning that no detailed fee application needs to
5 be filed. As of plan confirmation on June 9, 2004, that fee was deemed reasonable and accepted by
6 Debtors' counsel.

7 Since confirmation, Debtors' counsel has simply routinely responded to delinquency
8 problems caused by his clients' failure to pay. He has attributed this failure to the Debtors' employers
9 not promptly responding to the wage orders.

10 However, because counsel for the Debtors accepted \$2,750 for all legal work to and
11 through confirmation on June 9, 2004, this court must determine whether, for the work done since that
12 date, an additional fee of \$2,728 is justified.

13 A review of the Debtors' counsel's billing statement, attached to the "Motion for
14 Moratorium, Modification of Plan and Allowance of Attorneys' Fees," shows that counsel performed 3.3
15 hours of work from June 10, 2004 to the present date. At his billing rate of \$315 per hour, this works out
16 to fees incurred of \$1,039.50. To request \$2,728 for this same time period is excessive and unreasonable,
17 and is justified neither by the work done, the hourly rate, nor by any affidavit showing any type of
18 extraordinary need.

19 The types of problems set forth in the invoice, post-confirmation, are not atypical, and
20 do not require additional fees of \$2,728. Indeed, to seek such additional fees, for the limited post-
21 confirmation work, is excessive and unreasonable.

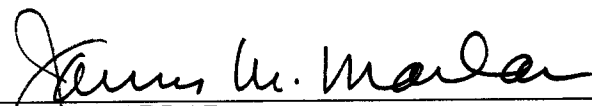
22 The court will allow \$250 for such post-confirmation efforts.
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RULING

The trustee's objection to the additional \$2,728 in requested attorneys fees is sustained in part and overruled in part. The Debtors' counsel shall be entitled only to an additional \$250 in fees for his post-confirmation efforts. Total fees, therefore, from inception to the present, shall be \$3,000. The court's review of the entire file in this case merits this result. A separate order will issue. FED. R. BANKR. P. 9021.

DATED: June 9, 2005.



JAMES M. MARLAR
UNITED STATES BANKRUPTCY JUDGE

1 COPIES served as indicated below this 9
day of June, 2005, upon:

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