UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

In re: ALLEN KEITH NORWOOD and PAMELA S. NORWOOD, Debtors — **Case No.: 5:22-BK-71210** — **Chapter 13**

ORDER AND OPINION DISALLOWING CLAIM 14 AND DENYING THE RELATED APPLICATION FOR ADMINISTRATIVE EXPENSES; AND HOLDING IN ABEYANCE CLAIMS 12 AND 15 AND THE RELATED APPLICATIONS FOR ADMINISTRATIVE EXPENSES

On July 24, 2024, the Court held a hearing on several pleadings filed by Allen Keith Norwood and Pamela S. Norwood [Norwoods or debtors] in which they objected to three proof of claims [collectively, Claims] and related applications for administrative expenses [collectively, Applications]. The Claims were filed by the Bond Law Office in the amount of $1837.50 for legal fees [Bond Law Claim]; Lax, Vaughan, Fortson, Rowe & Threet, P.A. in the amount of $15,865.45 for legal fees and costs [Lax Vaughn Claim]; and, real estate agent Nathan Genovese in the amount of $3450, which is comprised of fees charged at an hourly rate and a "non-sale" listing fee [Agent Claim]. The Applications seek priority status for the Claims under 11 U.S.C. § 507. All amounts sought were incurred or charged prior to the conversion of the debtors' case from a chapter 7 to a chapter 13. The debtors allege that all of the charges in the Claims and Applications are excessive and unreasonable, and that the work performed was unnecessary.

Two claimants made certain concessions during the July 24 hearing. First, Stanley Bond [Bond], the chapter 7 trustee in this case prior to its conversion to a chapter 13, stated that the amounts in Claim Number 13 are cumulative and duplicative of the amounts in Claim Numbers 12, 14, and 15, and the associated applications filed at docket entries 96, 99, and 100. Therefore, the Court sustains the objection to Claim Number 13 (Dkt. No. 110) and

disallows the claim. The Court also sustains the objection to the related application (Dkt. No. 111) and denies the application (Dkt. No. 98). Second, attorney Branch Fields [Fields] stated that his hourly rate of $315 in the Lax Vaughn Claim should be reduced to $305 per hour to match the hourly rate disclosed by Bond in his application to employ Fields's law firm, Lax, Vaughan, Fortson, Rowe & Threet, P.A. [Lax Vaughn] and approved by the Court. At the conclusion of the hearing, the Court took the remaining matters under advisement.

For the reasons stated below, the Court disallows the Agent Claim (Claim Number 14) and denies the associated application for administrative expenses (Dkt. No. 96) and holds in abeyance a final ruling on the Lax Vaughn Claim (Claim Number 12), the Bond Law Claim (Claim Number 15), the related applications for administrative expenses at docket entries 99 and 100, and the objections filed at docket entries 106, 107, 108, and 109.

I. Jurisdiction

The Court has jurisdiction over these matters under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and this is a core proceeding under 28 U.S.C. § 157(b)(2)(B). This order contains findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

II. Applicable Law

Generally, 11 U.S.C. § 507 provides the order in which different types of claims are paid and affords certain types of claims priority status over other types of claims. The claimants in this case each seek to have their respective claims treated as "administrative expense" claims. Whether the Claims qualify as administrative expenses requires reference to §§ 507(a)(2), 503(b), and 330(a).

Under § 507(a)(2), administrative expenses that are allowed under § 503(b) are granted priority status and are therefore paid before certain other claims.

See also 11 U.S.C. § 1326(b)(1) (stating that unpaid § 507(a)(2) claims "shall be paid before or at the time of each payment to creditors under the [chapter 13] plan"). Section 503(b) allows administrative expense claims for "compensation and reimbursement awarded under section 330(a) of this title." 11 U.S.C. § 503(b)(2). Pursuant to § 330, the court may award to a professional person employed under § 327—

> (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and
>
> (B) reimbursement for actual, necessary expenses.

11 U.S.C. § 330(a)(1). What constitutes reasonable compensation is set forth in § 330(a)(3), which provides that—

> (3) [i]n determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
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> > (A) the time spent on such services;
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> > (B) the rates charged for such services;
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> > (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
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> > (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
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> > (E) with respect to a professional person, whether the person is board certified or otherwise has

> demonstrated skill and experience in the bankruptcy field; and
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> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

And, § 330(a)(4) sets out compensation that is not allowed—

> (4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for—
>
> (i) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate; or
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a). In order to seek payment, Federal Rule of Bankruptcy Procedure 2016 requires that counsel "shall file an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested." Fed. R. Bankr. P. 2016(a).

Professional fees are not denied priority as an administrative expense in a chapter 13 merely because the fees were incurred prior to conversion.[1] In fact, courts have routinely analyzed, and approved, such requests. *See In re Colburn*, 231 B.R. 778, 786 (Bankr. D. Or. 1999) (finding "no decisions that have declined to approve reasonable compensation and reimbursement of expenses" for chapter 7 trustee's counsel whose employment was approved under § 327 in a case converted to a chapter 13 and citing *In re Collins*, 210 B.R. 538 (Bankr. N.D. Ohio 1997); *In re Wells*, 87 B.R. 732 (Bankr. N.D. Ga.

[1] Similarly, in cases converted to chapter 7, § 726(b) implicitly contemplates such priority by subordinating § 503(b) claims for fees incurred prior to conversion to claims for fees incurred after conversion. *See* 11 U.S.C. § 726(b); *see also Huisinga v. Carter* (*In re Juhl Enter., Inc.*), 921 F.2d 800 (8th Cir. 1990).

1988); *In re Roberts*, 80 B.R. 565, 568–70 (Bankr. N.D. Ga. 1987); *In re Woodworth*, 70 B.R. 361, 363 (Bankr. N.D.N.Y. 1987); and *In re Parameswaran*, 64 B.R. 341, 344 (Bankr. S.D.N.Y. 1986)). Therefore, the issue before the Court is whether the fees, costs, and charges in the Claims and Applications satisfy both § 330(a)(3) and (a)(4).

III. Prior Litigation

The fees and expenses relate to prior litigation in the chapter 7 case; specifically, the debtors' claim of an urban, Arkansas homestead exemption in certain real property, Bond's multiple objections to the debtors' exemptions, Bond's attempt to sell the property under § 363(h), and the debtors' successful effort to convert the case to avoid the sale. In order to assess whether the Claims meet § 330(a)(3) and (a)(4), particularly as to reasonableness and value, the Court will briefly review the case's relevant history.

A. Chapter 7 Case[2]

On September 29, 2022, the debtors filed their chapter 7, voluntary bankruptcy petition and their first set of bankruptcy schedules. On Schedule A/B, the debtors listed certain real property, a duplex, located at 1117 West Persimmon Street, which is a .76 acre tract in Rogers, Arkansas [Persimmon Property]. The debtors' statements in their Schedule A/B regarding their interest in the Persimmon Property were inconsistent. The debtors checked a box indicating that *only* the debtors held an interest in the Persimmon Property, but also claimed to own just half of the property's total value, $156,000 of $312,000. Under "other information," the debtors stated that

[2] The history pertaining to the debtors' chapter 7 case is based on the evidence received by the Court during the November 30, 2023 hearing and the Court's related ruling on February 1, 2024.

they owned one side of the duplex while the joint debtor's sister owned the other half.

The deed for the Persimmon Property actually shows three owners: the debtors and the joint debtor's sister, Nita J. Williams [Williams]. The deed was the result of certain pre-petition transfers. Prior to the bankruptcy filing, on May 11, 2022, the debtors conveyed their interest in the Persimmon Property to Williams. The next day, on May 12, 2022, Williams executed a warranty deed transferring her interest in the Persimmon Property to "Nita J. Williams, an unmarried person, and Pamela Sue Norwood and Keith Allen Norwood, wife and husband ("Grantees"), as joint tenants with a right of survivorship." The former trustee objected to the debtors' claim of only a one-half interest, versus a two-thirds interest, and the current chapter 13 trustee has objected to the debtors' plan on that basis as well.

On the debtors' initial Schedule C, the debtors claimed a homestead exemption in the Persimmon Property pursuant to the Arkansas Constitution, Article 9, Sections 3 and 5, in the amount of $75,750. This exemption amount is calculated by deducting the secured claim on Schedule D, $160,500, from the total stated value of the Persimmon Property, $312,000, and then dividing the result ($151,500) in half, presumably representing the alleged total value of the debtors' claimed one-half interest.

On February 6, 2023, Bond filed his first objection to claim of exemptions, arguing that the debtors' claimed exemption in the Persimmon Property was improper in part because the exemption claimed consisted of more land than the constitutional limitation of one-quarter acre for urban property, thereby exceeding allowable amounts under the Arkansas Constitution, Article 9, Section 5. Bond also argued that the debtors understated the nature and value of their interest, interpreting the latest deed as conveying to each of the

Norwoods a one-third interest in the Persimmon Property, for a total interest of two-thirds, and not just one-half as stated on their schedules.[3]

On March 6, 2023, the Court entered an Agreed Order Sustaining Trustee's Objection to Claim of Exemptions [March 6 Order], sustaining Bond's objection and ordering the debtors to amend Schedule C "to claim an exemption properly within the allowable limits of Art. 9, §§ 3 and 5 of the Arkansas Constitution and 11 U.S.C. § 522 for an urban homestead and describe said claimed exemption accurately in metes and bounds."

On April 7, 2023, the debtors filed their first set of amended schedules, amending the description of their interest in the Persimmon Property on Schedule A/B. The debtors divided the Persimmon Property into two portions listed at Asset 1.1 and 1.2. (Dkt. No. 35). The descriptions are inconsistent with the mandates of Schedule A/B, which are straightforward: list the value of the entire property and then the value of the portion the debtors own. Instead, Asset 1.1 appears to be only .25 acres of the .76 acre Persimmon Property. Asset 1.2 appears to represent .13 acres of the Persimmon Property. Nowhere on the amended Schedule A/B is the remaining .38 acres valued. Presumably, the .38 acre portion is referenced but not listed because the debtors claim that .38 acres is owned by Williams, a non-debtor. However, Schedule A/B requires valuation of the *entire* property, including the interest of a non-filing co-owner. The debtors also lowered the value of the Persimmon Property to $290,000 and valued their interest at $145,000. Notably, amended Schedule A/B lacks a metes and bounds description as they agreed to provide in the March 6 Order, but attempts to describe a .25

[3] Bond also alleged that the deed to Williams was a fraudulent transfer but he did not file an adversary proceeding seeking to set aside the transfer, ostensibly because Williams transferred the property back to the debtors and herself on May 12, 2022.

exempt and .13 acre non-exempt portion in feet, but without any starting or ending points. To their amended schedules, the debtors attached a "Basemap" showing the entire .76 acre property and a FEMA flood map, showing that an unknown portion of the Persimmon Property lies in a flood zone. On amended Schedule C, the debtors claimed an exemption in Asset 1.1 in the amount of $64,750, which amount appears to have resulted from deducting the secured claim on amended Schedule D, still $160,500, from the amended total stated value of the Persimmon Property, $290,000, and then dividing the result ($129,500) in half, again, presumably representing the total value of the debtors' claimed one-half interest. The debtors also claimed an exemption of $1000 in Asset 1.2 using a personal property exemption under Section 2 of Article 9 of the Arkansas Constitution.

On April 28, 2023, Bond filed an objection to the debtor's amended exemptions on roughly the same grounds—the debtors' exemptions exceed allowable amounts and the debtors have understated their interest in the Persimmon Property. On June 20, 2023, Bond commenced an adversary proceeding against the debtors and Williams requesting the right under 11 U.S.C. § 363(h) to sell both the debtors' interests and Williams's interest in the Persimmon Property for the benefit of the estate. On September 15, 2023, the debtors filed a motion to convert this case to a chapter 13, to which Bond objected on September 29.

On November 30, 2023, the Court held a hearing on Bond's objection to the debtors' amended exemptions and the debtors' response, the debtors' motion to convert their chapter 7 case to a chapter 13, Bond's objection to the debtors' motion to convert, and, in the associated adversary proceeding, Bond's complaint and the defendants' answers. On February 1, 2024, the

Court gave its verbal ruling.[4] In its ruling, which is now a final order, the Court sustained Bond's objection to the debtors' amended exemptions and ordered the debtors to amend their exemptions within fourteen days; granted the debtors' motion to convert on conditions (including that the case could not be dismissed without notice and a hearing); and, denied the relief requested in the complaint as moot without prejudice to refiling should the case reconvert to a chapter 7 case.

In sustaining Bond's objection to the debtors' exemptions, the Court stated that Schedule C requires debtors to both describe the exempt property and value the exemption and it was unclear to the Court based on both the description and assigned value whether the debtors were trying to exempt more than .25 acres. In fact, this Court found that that the debtors' various descriptions were confusing and could not say with certainty what property the debtors were trying to claim as exempt and non-exempt homestead property. The Court stated it was not issuing an order to show cause at that time based on the debtors' failure to comply with the March 6 Order, because the debtors made a timely attempt to amend their schedules and describe the homestead exemption. However, the Court stated that Bond's attorneys could file an application for administrative expense claims for appropriate fees and expenses in the chapter 13 case.

B. Chapter 13 Case

On February 8, 2024, the debtors filed their second set of amended schedules, resulting from the Court's February 1 ruling sustaining the former trustee's objection. The Persimmon Property was again divided into two assets on Schedule A/B. Asset 1.1 contained a legal description of .25 acres. The total

[4] The Court's verbal ruling was memorialized in written orders entered in the main case on February 7, 2024, at docket entries 63, 64, and 65, and in adversary proceeding 5:23-ap-07020 on February 21, 2024, at docket entry 35.

value of Asset 1.1 decreased to $280,000, and the debtors' value of the portion they claim to own also decreased to $140,000. Asset 2.2 was described as "[r]emainder 1/2 acre portion of property not exempted under Arkansas Constitutional exemptions. Debtors have 1/2 interest. Property is in a flood zone." The debtors increased the value of Asset 2.2 to $5000 and stated their interest at $2500. Schedule C was also amended to claim a much higher exemption in the amount of $129,500 for Asset 1.1 and $1000 for Asset 1.2, again using a personal property exemption under Section 2 of Article 9 of the Arkansas Constitution.

On April 9, 2024, the chapter 13 trustee filed an objection to the debtors' exemptions that, among other objections, references and reiterates Bond's prior objections. Specifically, the chapter 13 trustee asserts that the debtors hold a two-thirds interest in the Persimmon Property and also that "[t]he Debtors have had two orders to amend their claim of exemptions and have failed to properly do so. The metes and bounds measurements contained in the February 8, 2024, amended Schedule A/B [do] not close and exceed the allowable limits of Art. 9, §§ 3 and 5 of the Arkansas Constitution and should be disallowed."

On April 10, 2024, Bond, now in his capacity as a potential claimant in the chapter 13, filed his third objection to the debtors' exemptions. (Dkt. No. 88). Like Bond's two previous objections, his third objection stemmed from the unremedied confusion regarding what portion of the Persimmon Property the debtors were claiming as exempt. The debtors filed their third and fourth sets of amended schedules on July 16, 2024, July 24, 2024, respectively.[5]

[5] To date, the third and fourth sets of amended schedules have drawn no objections, but it is unclear whether the debtors' most recent amendments fully addressed and satisfied the pending objections filed by the chapter 13 trustee and Bond to the debtors' second set of amended schedules.

The debtors have also filed a chapter 13 plan in which they have proposed a monthly payment of $625 for a term of forty-eight months. Both Bond and the chapter 13 trustee have objected to the plan and, as a result, it remains unconfirmed. Among other things, the chapter 13 trustee has alleged in her amended objection to confirmation of the debtors' plan that the debtors own a two-thirds interest in the Persimmon Property, rather than the one-half interest claimed by the debtors, and the trustee has also alleged that the debtors must increase their proposed plan payment to account for $11,897.11 in non-exempt equity. (Dkt. No. 93). In addition to raising some of the same objections as the chapter 13 trustee, Bond's objection to confirmation seeks reconversion of the case to a chapter 7. (Dkt. No. 89).

Joint debtor Pamela Norwood testified at the July 24 hearing that, although she and her husband have been making their chapter 13 plan payments for the past six months, they cannot afford to increase their plan payment by any amount. Ms. Norwood also testified that she and her husband did not ask Genovese, Bond Law Office, or Lax Vaughn to perform any of the work for which they now seek to be paid through the debtors' chapter 13 plan. Ms. Norwood stated that if she and her husband are required to pay such fees, they will be denied the fresh start they sought by filing bankruptcy. Against this backdrop, the Court will now turn to whether the three claims represent appropriate fees and expenses under § 330 that are entitled to priority as administrative expenses.

IV. Findings of Facts and Conclusions of Law

The debtors' objections to the Claims are that the fees are unreasonable and excessive and that the work performed was unnecessary. The debtors did not point to any specific charge that they believe to be particularly unreasonable, excessive, or unnecessary. The burden of proof as to the reasonableness of the requested compensation is on the applicant. *In re Marlar*, 315 B.R. 81, 84 (Bankr. W.D. Ark. 2004) (citing *In re Werth*, 32 B.R. 442, 444 (Bankr. D. Colo.

1983)). "In addition to any objection voiced by a party in interest, the Court has an independent duty to investigate the reasonableness of compensation." *In re Griffin*, 302 B.R. 1, 4 (Bankr. W.D. Ark. 2003) (citing *In re Pettibone Corp.*, 74 B.R. 293, 299–300 (Bankr. N.D. Ill.1987) (citations omitted)). The Court will address each claim and related application in turn.

A. Bond Law Office's Claim Number 15 and Application

On January 11, 2023, the Court approved Bond Law Office's employment under § 327. (Dkt. No. 20). On April 10, 2024, Bond Law Office filed its proof of claim with an attached invoice in the amount of $1,837.50, representing 5.25 hours of legal work at $350 per hour for work performed between January 19, 2023, and November 30, 2023. The Bond Law Claim is described as an unsecured administrative expense claim and seeks priority under § 507(a)(2).[6] A separate application for administrative expenses was filed for this claim on May 14, 2024 [Bond Law Application].

The attorney fees described in the Bond Law Claim and Application are on account of work performed by attorney Stanley Bond. Bond testified that the fees charged are for attorney work and not for the performance of his chapter 7 trustee duties.[7]

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[6] All three applications cited § 507(a)(1) as an additional basis for priority treatment. However, because the claims are plainly not in the nature of domestic support obligations and the debtors listed no such obligations in their schedules, subsection (a)(1) is inapplicable and the Court need not address it further.

[7] This distinction is important. Chapter 7 trustee fees (as opposed to compensation for attorney work) would generally not be an allowable administrative expense in a case converted to a chapter 13. *In re Fischer*, 210 B.R. 467, 469 and n.1 (Bankr. D. Minn. 1997) (finding that § 326(a) puts a cap on the amount of fees that may be allowed to a trustee and is based on monies disbursed to parties in interest but noting that "[t]rustees [] indirectly profit by being employed as the attorney for the trustee and obtaining reasonable compensation for that service which is not subject to the cap.").

Based on the testimony and other evidence at the July 24 hearing and the Court's review of Bond Law Office's invoice entries, the Court finds that the fees requested constitute reasonable compensation for actual and necessary attorney services provided to Bond by the Bond Law Office, a professional approved under § 327, and meet the stated requirements of § 330(a)(3) and (a)(4). Specifically, the hourly rate of $350 is commensurate with the hourly rates charged in Northwest Arkansas, and the total number of hours is reasonable given the difficulty of resolving the issues in this case. The work described both in testimony and in the invoice appear to be for attorney services related to issues regarding the Persimmon Property and the debtors' exemption therein. The Court can discern no duplication in the work performed when comparing it to work described in the Lax Vaughn Claim nor when compared to Bond's duties as trustee under § 704 in this particular case. While the debtors did not question whether Bond was an experienced bankruptcy practitioner in Arkansas with skill and expertise in bankruptcy, such a finding is supported by testimony and this Court's general experience with Bond in this and other cases.

The Court also finds that the services provided by Bond Law Office were necessary and reasonably likely to benefit the debtors' estate at the time they were performed. *See Boyd v. Engman*, 404 B.R. 467, 486 (W.D. Mich. 2009) (quoting *In re Williams*, 378 B.R. 811, 823 (Bankr. E.D. Mich. 2007) and stating that "[t]he concept of 'benefit to the estate' must be measured 'at the time [the services] were rendered, not at the time the court reviews the application.'"). Based on the description of the services in the invoices and Bond's testimony at the July 24 hearing, the Court finds that the attorney fees and expenses in the Bond Law Claim were incurred by Bond Law Office in furtherance of causes of action on behalf of the trustee that, if successful, would have resulted in value for the benefit of the chapter 7 estate. Bond, as trustee, had a good faith basis to object to the debtors' exemptions, on which

he prevailed, and to file a complaint to sell the Persimmon Property, and both were in the pursuit of an asset with potential non-exempt equity. Although the Court granted the debtors' motion to convert on conditions, which mooted the complaint to sell, the Court finds that Bond hired Bond Law Office to pursue causes of action that were reasonably calculated to benefit the estate and Bond Law Office carried out those objectives.

Further, while the Court believes that the Norwoods did not ask Bond to perform such work, that does not mean that the work was unnecessary. Debtors in bankruptcy would rarely be motivated to request that a trustee's professionals perform work because such work is often adverse to debtors' efforts. Trustees must perform certain duties under § 704, including subsection (a)(1) applicable here, to collect and reduce to money debtors' interests in property, and they may hire counsel to assist them. Further, some of Bond's counsel's work was done in an effort to decipher the debtors' confusingly stated claims of exemptions and to obtain the debtors' compliance with a prior court order, which matters were within the debtors' control.

Therefore, the Court finds that this factor has also been met. However, two final factors merit consideration, which are discussed below in section C in regard to the Claims and Applications of both Bond Law and Lax Vaughn.

B. Lax Vaughn's Claim Number 12 and Application

On February 2, 2023, the Court approved Bond's application under § 327 to employ Lax Vaughn to act as additional counsel for him in his capacity as chapter 7 trustee. (Dkt. No. 24). On April 5, 2024, Lax Vaughn filed its proof of claim with an attached invoice in the amount of $15,865.45 for legal fees and costs, representing 57.70 hours of legal work comprised of 45.90 hours of work performed by attorney Branch Fields at the rate of $315 per hour; 4.70 hours of work performed by Stacie Lake at the rate of $130 per hour; 3.10 hours of work performed by Abby Ryan at a rate of $90 per hour;

and 4 hours of work performed by David Lee at a rate of $90 per hour. All legal work described in the invoice was performed between February 3, 2023, and November 30,2023. Expenses totaling $156.95 were incurred between March 1, 2023, and November 30, 2023, and were itemized separately on the invoice. The Lax Vaughn Claim is described as an unsecured, administrative expense claim and seeks priority under § 507(a)(2). A separate application for administrative expenses was filed for this claim on May 14, 2024 [Lax Vaughn Application].

Based on the testimony and other evidence at the July 24 hearing, including Fields's concession that his hourly rate should be reduced from $315 to $305, resulting in a reduction of $458.50 from the total fees stated on the Lax Vaughn Claim, and the Court's independent review of the invoice entries, the Court finds that the fees requested (minus $458.50) constitute reasonable compensation for actual and necessary attorney services provided to Bond by Lax Vaughn, a professional approved under § 327, and the fees meet the stated requirements of § 330(a)(3) and (a)(4).

Specifically, the hourly rates of $305 for attorneys and $90 to $130 for support staff or paralegals are commensurate with the hourly rates charged in Northwest Arkansas. The total number of hours, though much higher than those of Bond Law Office, is reasonable given the difficulty in resolving the issues in this case, the amount of legal research performed, the number of pleadings drafted, and the time allocated to preparation for hearings. In addition, there does not appear to be duplication between the attorneys nor does Lax Vaughn appeared to have charged for work that falls within trustee duties. The work described in the invoice is for attorney services related to the issues connected to the Persimmon Property and the debtors' exemption of that property. In addition to not disputing any specific charge, the debtors did not question whether the attorneys at Lax Vaughn were experienced bankruptcy practitioners in Arkansas with skill and expertise in bankruptcy,

and such a finding is supported by Bond's selection of them and this Court's general experience with Fields and Lax Vaughn in this and other cases. Also, for the same reasons stated above in relation to Bond Law Office, the Court finds that work performed by Lax Vaughn was necessary and reasonably calculated to benefit the estate at the time it was performed.

C. Additional considerations relevant to Bond Law Office's and Lax Vaughn's Claims and Applications

Although the Court has found that the requirements specifically enumerated in § 330 have been satisfied as to the Claims and Applications filed by both Bond Law Office and Lax Vaughn, such findings do not mark the end of the Court's query. The language of § 330(a)(3) is broad and instructs the court to take into account "all relevant factors." Two factors not required expressly by the statute, except to the extent encapsulated by "value," but considered by other courts, include whether the work to be compensated actually resulted in a benefit to the estate and whether the fees are proportional to the value of the benefit achieved. The bankruptcy court in *In re Kusler* allocated considerable weight to these non-statutory factors, stating that

> [t]he "threshold issue" to be considered in awarding fees is whether the services rendered actually benefitted the estate. *See Reconversion*, 216 B.R. at 52, *citing In re Lederman Enterprises, Inc.,* 997 F.2d 1321, 1323 (10th Cir. 1993). "Unless the Court determines that a benefit was conferred upon the estate, the inquiry goes no further, and the fees are not compensable." *Id.* Economic recovery is not the only indicator of "benefit to the estate." Courts should also consider "whether the services rendered promoted the bankruptcy process in accordance with the practices and procedures provided under the Bankruptcy Code." *In re Spanjer Bros., Inc.*, 203 B.R. 85, 90 (Bankr. N.D. Ill. 1996); *see also In re Holder*, 207 B.R. 574, 584 (Bankr. M.D. Tenn. 1997) (and cases cited therein). However, in Chapter 7 cases, the strongest indicator of "benefit" is a distribution to creditors. When the liquidation of assets results in payment only of the professionals responsible for the liquidation, courts are required to review the matter with great scrutiny. This Court agrees with those courts which have said

> that "[a]bsent extraordinary circumstances, bankruptcy estates should not be consumed by the fees and expenses of court-appointed professionals." *In re Toney*, 171 B.R. 414, 415 (Bankr. S.D. Fla. 1994); *accord*, *In re Auto Parts Club, Inc.*, 211 B.R. 29 (9th Cir. BAP 1997).

In re Kusler, 224 B.R. 180, 184 (Bankr. N.D. Okla. 1998).

Here, the efforts of Bond Law Office and Lax Vaughn did not result in the turnover or liquidation of money or property for the benefit of the estate prior to conversion. However, that does not mean that their work did not benefit the estate and will not ultimately result in money or property for the benefit of the estate.

Without Bond's counsel's timely objections to exemptions being filed, the debtors' first scheduled exemptions would have been allowed. By entering into the agreed order sustaining that objection, the debtors acknowledged that their first claimed exemption in the Persimmon Property exceeded what was permitted under the Arkansas Constitution. Bond's objection to the debtors' amended exemptions was sustained, further narrowing the issues for the chapter 13 trustee upon conversion of the case. The chapter 13 trustee did not testify on July 24. However, based on the content of the chapter 13 trustee's objection to the debtors' exemptions, Bond's prior objections, made through counsel, identified the disputes concerning the Persimmon Property—both the continued uncertainty regarding the amount of the debtors' true ownership interest (a one-half interest according to the debtors versus a two-thirds interest according to Bond) and the protracted problems in the case created by the debtors' inability to clearly delineate the scope of their claimed exemption in the property. Because of Bond's counsel's efforts in the chapter 7, these issues were developed upon the conversion of the case, and the chapter 13 estate received the benefit of both the preservation of arguments and development of concrete issues through prior litigation.

In addition, Ms. Norwood testified on July 24 that the only reason she and her husband converted to a chapter 13 was to prevent Bond from selling their home. Due to the work of Bond's counsel in furtherance of Bond's proposed sale, the debtors' creditors are positioned to receive some distribution through the chapter 13 plan payments that would have otherwise been unavailable.[8]

However, while Bond's counsel's work resulted in benefits to the estate, it is difficult at this point to quantify those benefits and, by extension, to assess the proportionality of such benefits to the fees sought by Bond Law Office and Lax Vaughn. *See In re Rancourt*, 207 B.R. 338 (Bankr. D.N.H. 1997) (citing cases in which courts applied blanket fee reductions to compensation awarded under § 330 because the attorney fees sought were not proportional to the recovery for the estate). Here, there are pending objections to confirmation of the debtors' plan, which currently proposes to pay $625 for forty-eight months. The Court cannot at this point calculate the monetary benefit to the chapter 13 bankruptcy estate because the outcome of the pending objection to confirmation by the chapter 13 trustee, part of which includes the same exemption issues raised first by the former chapter 7 trustee, is unknown. Likewise, the outcome of Bond's pending objection to confirmation is unknown. Further, based on Ms. Norwood's testimony, any increase in plan payment could result in a reconversion of the debtors' case to a chapter 7. Resolving these objections will assist the Court in assessing the actual benefits to the estate and proportionality of fees to distribution to creditors.

Because the Court is without a basis to decide whether the fees sought by Bond Law Office and Lax Vaughn are proportional to the actual recovery by

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[8] Had the debtors' motion to convert been denied, creditors may have received a distribution from Bond's proposed sale of the Persimmon Property, had such sale been approved by the Court. In either scenario, Bond's counsel's work was beneficial to the estate.

the estate until certain other pending litigation is resolved, the Court holds in abeyance a final ruling on the Bond Law Claim and the Lax Vaughn Claim until such time as the Court has determined—or the parties have agreed—whether the debtors own a one-half interest or a two-thirds interest in the Persimmon Property, the amount of non-exempt equity that the debtors must pay into their chapter 13 plan in order to obtain confirmation, and whether the case should be reconverted to a chapter 7.

D. Agent's Claim Number 14 and Application

On April 5, 2024, Nathan Genovese filed Claim Number 14 as the real estate agent for the former chapter 7 trustee in the amount of $3450 for a "non-sale" listing fee of $1500 and hourly compensation in the amount $1950, for 13 hours of work at $150 per hour. The claim is described as an unsecured, administrative expense claim seeking priority under § 507(a)(2). A separate application for administrative expenses was filed for this claim on May14, 2024.

The Court does not question whether Genovese performed the work described nor does it dispute that the services assisted Bond as the former trustee. But, there are key differences between Genovese's proof of claim and the other two claimants'. Genovese was hired under § 327 by order dated March 8, 2023. (Dkt. No. 32). Bond's application to employ Genovese stated in paragraph 6 that "[t]he Trustee intends to list the Property at or around the price of $285,000. The Chapter 7 Trustee proposes to pay the Proposed Brokers a commission of 3.0% of the sales price. The Trustee intends to pay an additional commission in the amount of 3.0% of the sales price, to the broker, if any, representing the buyer. An authentic copy of the Authorization and Right to Sell (the "Listing Agreement") is attached to this Application as Exhibit A." (Dkt. No. 30). However, there was no Exhibit A attached to the application and the application itself did not disclose a non-sale fee or an hourly rate and under what circumstances either would be

charged. Further, these do not appear to be compensation for actual costs, such as the actual cost a real estate agent might incur to re-key a property or make a necessary repair before showing a property to a prospective buyer, both of which would generally be considered normal and compensable costs that a real estate agent might expend. However, without anything in the record to the contrary, both a non-sale fee and paying a real estate agent an hourly rate are unexpected, uncommon, and most importantly, were not terms noticed out in Bond's application to employ Genovese, which prevented the debtors from objecting to—and the Court from approving—such terms.

Debtors' attorneys are generally aware that the more a trustee's professionals work, the higher the trustee's administrative expenses will be. It is expected that attorneys working for a trustee will charge an hourly rate that has been disclosed. This fact contributes to early compromises in cases where a debtor might want to keep potential administrative costs low or non-existent. However, uncustomary charges for the industry do not enjoy that same expectation, and while the debtors could have reasonably expected the attorneys to continue to invoice charges at the hourly rates disclosed in their respective applications, they could not have expected either of the real estate agent's charges because they were not disclosed. For these reasons, the Court finds the fees unreasonable pursuant to § 330, disallows Genovese's claim, and denies his application for administrative expenses.

V. Conclusion

For all of the above-stated reasons, the Court disallows Claim Number 14 and denies the application for administrative expense filed at docket entry 96 and holds in abeyance Claims 12 and 15, the associated applications for administrative expenses filed at docket entries 99 and 100, and the objections filed at docket entries 106, 107, 108, and 109 until the relevant portions of the chapter 13 trustee's and Bond's objections to confirmation have been adjudicated or agreed upon by the parties.

IT IS SO ORDERED.

Honorable Bianca M. Rucker
United States Bankruptcy Judge
Dated: 09/03/2024

cc: Carl Hopkins
Stanley Bond
Branch Fields
Nathan Genovese
Chapter 13 trustee
United States Trustee