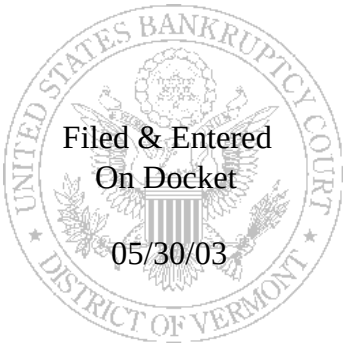
UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

Michael E. French,
Debtor.

Chapter 13
 # 01-10603

Maureen Suggitt and PaineWebber, Inc.
Plaintiffs,
v.

Michael E. French,
Defendant.

Adversary Proceeding
 # 01-1058

Appearances:

Michael P. Palmer, Esq.
Middlebury, VT
Attorney for the Debtor

Robert S. DiPalma, Esq.
Burlington, VT
Attorney for Maureen Suggitt

Jan Sensenich, Esq.
White River Junction, VT
Chapter 13 Trustee

Craig Weatherly, Esq.
Burlington, VT
Attorney for PaineWebber, Inc.

MEMORANDUM OF DECISION
DENYING MOTION TO DISMISS,
CONFIRMING CHAPTER 13 PLAN, WITH MODIFICATIONS,
AND DETERMINING ALLOWANCE OF ATTORNEY'S FEES

Creditors Maureen Suggitt and PaineWebber, Inc. (hereinafter, interchangeably referred to jointly as "Plaintiffs" or "Creditor-Movants") seek a determination that the Debtor has acted in bad faith and, therefore, should either be denied confirmation of his plan or have his case dismissed with prejudice. The Debtor's attorney seeks an Order allowing all fees incurred in representing the Debtor throughout the case and in this adversary proceeding.

These are core proceedings, and this Court has jurisdiction over the instant motions and adversary proceeding pursuant to 28 U.S.C. §§ 157(b) and 1334.

I. PROCEDURAL HISTORY

This is not a typical consumer bankruptcy case; its procedural history is much longer and far more tortured than most consumer cases. Moreover, the timing and nature of the documents filed by the Debtor appear to raise as many of the substantive legal issues against the Debtor as the content of the filings.

A "typical" chapter 7 debtor usually complies with the Bankruptcy Rules and files the required schedules and statements either with the petition or within 15 days of the filing of the petition, see FED. R. BANKR. P. Rule 1007(a), (b) and (c); though it is not unusual for a debtor to amend a schedule or two once thereafter. In this case, on April 24, 2001, Michael E. French (hereinafter, the "Debtor") filed a petition seeking relief under chapter 7 of Title 11 of the United States Code (hereinafter, the "Bankruptcy Code"). There was an initial delay in filing the schedules, but pursuant to an order granting the Debtor's motion for an extension of time, the schedules were timely filed on May 15, 2001.[1] Thereafter, the Debtor filed, not just one, or even two, but four amendments to the schedules.[2]

In a "typical" consumer chapter 7 case, a chapter 7 trustee: (1) is appointed; (2) investigates the accuracy of the debtor's schedules; (3) administers whatever assets there are; and (4) files a report which prompts the closing of the case within approximately four months from the date of filing. In this case: (a) the chapter 7 trustee resigned[3]; (b) a successor chapter 7 trustee was subsequently appointed; and (c) fourteen months after the case was filed, the trustee had not yet concluded administration of the estate; when (d) the Debtor converted his case to chapter 13; and (e) a chapter 13 trustee was appointed.

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[1]Debtor filed a timely Motion to Extend, see doc. #6; the Court granted the Motion, allowing the Debtor until May 15, 2001 to file his required schedules. See Order dated May 11, 2001 (doc. #8).

[2]An amended Schedule F was filed on June 13, 2001 (doc. #12); an amended Schedule J was filed on July 6, 2001 (doc. #15); an amended Schedule I was filed on October 29, 2001 (doc. #37); and, another set of amended schedules (i.e., Schedules A–J, Statement of Financial Affairs, and the Mail Matrix) were filed on August 29, 2002, with the Debtor's chapter 13 plan.

[3]The Trustee appointed in this case had previously represented the Debtor and his wife in a chapter 7 filing in 1989. See doc. #31. Therefore, the Trustee was unable to act as the case trustee and resigned.

In a "typical" consumer chapter 7case: (1) the case trustee and creditors raise any questions they have at a single meeting of creditors; (2) the time for filing objections to the debtor's discharge expires 60 days after the first date set for that meeting; and (3) any objections are raised in a complaint filed within that 60 day period. In this case, however: (a) the meeting of creditors was adjourned twice before the first meeting was held, and a Rule 2004 exam of the Debtor was also held; (b) the time for filing objections was extended not just once, but three times; with (c) both chapter 7 trustees filing motions to extend time to allow them to investigate the Debtor's conduct and subsequently determine whether to file a complaint against the Debtor.[4] Indeed, on November 16, 2001, the Creditor-Movants filed a complaint objecting to the Debtor's discharge (initiating the instant adversary proceeding). Further, after the Debtor filed the Motion to Convert Case to Chapter 13 on August 5, 2002 (doc. #43), Creditor-Movants filed: (i) an objection to the motion to convert (doc. #48)[5]; (ii) a Motion for Reconsideration of the Order granting conversion to chapter 13 (doc. #55) ; (iii) an Objection to Confirmation of Plan (doc. #62); and (iv) a Motion to Dismiss the chapter 13 case (doc. #65), all based primarily on allegations of bad faith conduct by the Debtor.

The adversary proceeding Complaint filed herein was filed while the Debtor's case was still under chapter 7. It seeks a determination that the Plaintiffs' claims are non-dischargeable under § 523(a)(4) and (6), or, alternatively, that the Debtor should be denied a discharge under § 727(a)(2)(A), or, alternatively, if the case is converted to chapter 13, that the case should be dismissed under § 1307(c). Since the Debtor's case has been converted to chapter 13, the first two causes of action, seeking denial of the the chapter 7 discharge

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[4]The original chapter 7 trustee, Raymond J. Obuchowski, filed a stipulated Motion to Extend (doc. #16); this motion was granted. See Order dated July 16, 2001 (doc. #22). Subsequently, Trustee Obuchowski and Creditor-Movants filed a joint Motion to Extend (doc. #25); this motion was also granted. See Order dated Oct. 23, 2001 (doc. #35). Thereafter, the successor chapter 7 trustee, Douglas J. Wolinsky, filed a Motion to Extend (doc. #38). This request for extension was, likewise, granted. See Order dated November 26, 2001 (doc. #40) (extending the objection deadline to January 16, 2002).

[5]Debtor noticed his Motion to Convert under the Court's default procedure, see Vt. LBR 9013-1(f), thus, creating some confusion as to whether interested parties had an opportunity to object to the Motion. Since the Debtor had not previously converted his case, he had the absolute right to do so. See 11 U.S.C. §706(a). Therefore, the Court granted Debtor's Motion without waiting for the objection period (as defined in Debtor's Notice of Hearing) to run. See Order dated Aug. 14, 2002 (doc. #44); see also Order Denying Motion for Reconsideration of Conversion of Case to Chapter 13 dated Sept. 16, 2002 (doc. #58).

and contesting the dischargeability of the subject debts, are moot. Thus, the only cause of action in the adversary proceeding now before the Court is the one seeking dismissal of the case, based upon alleged bad faith conduct of the Debtor.

In the main case, the Creditor-Movants' Objection to confirmation of the plan raised the questions of whether the Debtor was eligible for relief under chapter 13 since he listed his occupation as "stockbroker" and whether the Debtor's pre-petition and post-petition conduct demonstrated bad faith sufficient to justify denial of confirmation or dismissal of the case. The Court answered the first question in its November 26, 2002 Order (doc. #77), in which it found Debtor was not a "stockbroker" as that term is defined within the Code, and that the Debtor's self-labeling of his job did not disqualify him from relief under chapter 13.

Since the open issue in the adversary proceeding raised the same legal issue of bad faith, and relied upon the same allegations and facts as the Creditor - Movants' Objection to confirmation of the plan and their Motion to Dismiss, the hearing on the Objection to confirmation and Motion to Dismiss were consolidated with the trial on the merits of the remaining count of the Complaint. A half-day trial was held on November 26, 2002. The Court reserved decision at that time.

The Debtor's attorney filed a fee application which was also held under advisement until the conclusion of the trial. That matter will be addressed in this decision as well.

II. DISCUSSION

A. The Various Amendments

At the outset, it is important to point out that a debtor has an absolute right to amend his or her schedules. See FED. R. BANKR. P. Rule 1009(a); In re Blaise, 116 B.R. 398, 400 (Bankr. D. Vt. 1990) ("[B]y its terms Rule 1009 liberally entitles a debtor to amend at any time before the case is closed."). Further, one should not draw negative inferences about a debtor's honesty or integrity solely because a trustee or a creditor seeks an extension of time to investigate the debtor's finances before determining whether there is cause to file an adversary proceeding against the debtor or because the trustee or a creditor chooses to file a complaint

questioning the debtor's right to a discharge. See generally FED. R. BANKR. P. Rule 4005 (instructing that the objecting party carries burden of proving objection), see also generally In re Joseph, 121 B.R. 679 (Bankr. N.D.N.Y. 1990) ("[O]nce a debtor files a bankruptcy petition and invokes the benefits of the bankruptcy laws, he can no longer expect to have any financial secrets.") (internal citation omitted). However, it is equally true that when a debtor files schedules that are not clear, raise concerns in the minds of three independent trustees, and are amended multiple times, a reasonable person would have cause to question whether the original schedules were merely prepared sloppily or were calculated to obfuscate the truth. See, e.g., In re Ptasinski, 290 B.R. 16, 26-27 (Bankr. W.D.N.Y. 2003) ("[T]he Bankruptcy Code expects that when debtors and their attorneys are finalizing and signing their schedules, they will devote their full attention to them in order to ensure that they are complete and accurate to the best of the debtor's knowledge and information. Section 727 was enacted, in part, to prohibit a discharge and a fresh start for those who 'play fast and loose with their assets or with the reality of their affairs.'") (citation omitted).

In this case, the amendments made to the schedules changed the amount of the Debtor's income on Schedule I, about six months after filing (see doc. #37), added creditors to Schedule F that the Debtor allegedly initially forgot (cf. doc. #12, with doc. #51, with doc. #69), corrected the amount of Debtor's income from employment shown on the Statement of Financial Affairs (cf., doc. #9, with doc. # 51), and significantly changed the Debtor's income and living expenses on Schedules I and J when the Debtor converted his case to chapter 13, id. In his Reply Memorandum to Creditors' Post Hearing Memorandum (doc. #83) (hereinafter, "Debtor's Post-Trial Memo"), the Debtor indicates that most of these amendments were necessary because of errors or oversights by counsel in the preparation of the schedules, or due to innocent errors by the Debtor. See Post-Trial Memo at 1-2. While there may be reasonable explanations for each of the amendments, the Plaintiffs would have far less reason to accuse the Debtor of 'playing fast and loose' with the facts, *vis a vis* his budget, if, for example, the Debtor had shown the same budget at the time he filed for chapter 7 relief as he showed when he converted his case to chapter 13. Moreover, the timing of both the changes to the schedules and the conversion of the case suggest that these changes were undertaken in

response to probing questions by the trustees and Plaintiffs rather than having been initiated independently by the Debtor. The timing of these changes creates the impression that the Debtor was engaging in defensive maneuvers. The Court finds that the Debtor's conduct does not portray an image in which the Debtor discovered honest mistakes and took voluntary steps to correct them.[6] While it is unfair to impose 20-20 hindsight upon the Debtor or his counsel, as the Debtor's circumstances may have changed from when he first sought bankruptcy relief, an analysis of the procedural history in this case is warranted, as the nature of and time of filing of the documents themselves give rise to questions of bad faith.

B. Chapter 13 Generally

Chapter 13 is designed to give debtors an opportunity to reorganize their finances and "to encourage the repayment of debts through future earnings, as an alternative to the liquidation of assets and the payment of a dividend to satisfy and discharge debts." In re Ciotta, 4. B.R. 253, 255 (Bankr. E.D.N.Y. 1980) (quoting the legislative history of the Bankruptcy Reform Act of 1978 for the proposition that debtors should attempt repayment under chapter 13 before resorting to chapter 7, and that bankruptcy relief should provide the debtor with a fresh start); see also In re Rodrigues, 248 B. R. at 20-21 ("Congress created Chapter 13 to provide honest, unfortunate debtors with a safe harbor from stormy economic weather."). Moreover, chapter 13 cases benefit both debtors and creditors. See In re Ciotta, 4. B.R. at 255 ("[I]n the aggregate, creditors will fare better in chapter 13 than in chapter 7 cases.").

The chapter 13 debtor may retain certain non-exempt property and obtain a super-discharge, even if a creditor or the trustee objects, so long as the debtor is paying into the plan all of his or her disposable income for a period of at least three years and pays creditors at least as much as they would receive if the debtor had filed a chapter 7 case. See 11 U.S.C. § 1325(b). In return, creditors receive at least as much as they would have received if the debtor had filed a chapter 7, and the assurance that the debtor's financial circumstances are fully disclosed in the chapter 13 schedules and subject to investigation by the trustee and creditors as set

[6]One can only speculate how much more quickly the case would have had a confirmed chapter 13 plan and how much litigation would have been avoided if the Debtor had filed a chapter 13 case at the outset, and filed the current schedules with his petition.

forth in, *inter alia,* FED. R. BANKR. P. Rule 2004. Accordingly, the Court believes that a debtor who chooses to file a chapter 13 case – even when, as here, it may appear that the debtor is in chapter 13 only because he or she could not obtain the relief hoped for in chapter 7 — ought to be given every reasonable opportunity to propose a plan that meets the requirements of the Bankruptcy Code and make the payments called for under that plan. Congress has made clear that the use of chapter 13 ought to be encouraged and that chapter 13 cases ought to be dismissed under §1307(c) only upon a showing of cause. See In re Rodrigues, 248 B. R. at 18, 19 (instructing that through § 1307(c), *inter alia*, Congress provided bankruptcy courts with a mechanism to examine and question a debtor's motives when a chapter 13 petition appears to be tainted with a questionable purpose and permitting a court to dismiss a case for "cause," and "[A] Chapter 13 case is illicit if its pendency is fundamentally unfair to creditors in a manner that contravenes the *spirit* of the Code." (emphasis in original)).

C. The Question of Bad Faith

The Creditor-Movants rely on 11 U.S.C. §§ 1307(c) and 1325(a)(3) as the basis for their prayer for relief. They assert that the Debtor has acted in bad faith and, therefore, that the case should be dismissed or the plan denied confirmation. As the court in In re Klevorn instructs, both sections "necessitate a determination of whether the Debtor has acted in good faith." 181 B.R. 8, 10 (Bankr. N.D.N.Y. 1995) ("Code § 1325(a)(3) requires that a Chapter 13 plan be filed in good faith. In addition, the courts have held that the lack of good faith in filing a Chapter 13 petition is 'cause' for dismissal pursuant to Code § 1307(c)).").

Section 1307(c) reads:

> (c) Except as provided in subsection (e) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—
>
> [listing ten examples of "cause" of which "bad faith" is not one].

While "§ 1307(c) does not expressly equate bad faith with 'cause,'" In re Eatman, 182 B.R. 386, 392 (Bankr. S.D.N.Y. 1995) (footnote omitted), bankruptcy courts dismiss or convert cases under § 1307(c) if a debtor

files his or her petition in bad faith. See id. (further citations omitted); see also In re Setzer, 47 B.R. 340, 344 (Bankr. E.D.N.Y. 1985). Moreover, courts generally employ the same flexible standard used for determining good faith as when assessing for bad faith. See In re Klevron, 181 B.R. at 10; see also In re Rodriguez, 248 B.R. 16, 18 (Bankr. D. Conn. 1999) (instructing that through § 1307(c), *inter alia*, Congress provided bankruptcy courts with a mechanism to examine and question a debtor's motives when a chapter 13 petition appears to be tainted with a questionable purpose and permitting a court to dismiss a case for "cause."). Like good faith, an assessment of bad faith is based on the totality of the circumstances. See Eatman, 182 B.R. at 392 (citations omitted); In re Klevron, 181 at 10; In re Setzer, 47 B.R. at 348 ("It should be noted that the bad faith inquiry is one covering many factors and their interaction.").

By contrast, § 1325(a)(3) of the Bankruptcy Code expressly requires a finding of good faith:

> (a) Except as provided in subsection (b), the court shall confirm a plan if—
> * * *
> (3) the plan has been proposed in good faith and not by any means forbidden by law.

As our sister court in the Western District of New York instructs:

> One of the requirements for confirmation of a Chapter 13 plan under § 1325 is that the court find that the plan is proposed in "good faith." The Bankruptcy Code does not define that term. There is no set formula to determine whether a plan is proposed in good-faith; it is to be judged by the totality of the circumstances on a case by case basis. However, a good-faith determination does require "honesty of intention" on the part of the debtor and requires a bankruptcy court to inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code or otherwise proposed his plan in an inequitable manner.

Connelly v. Bath National Bank (In re Connelly), 1995 WL 822677, at *3 (W.D.N.Y. 1995) (internal citations omitted); see also In re Corino, 191 B.R. 283, 289 (Bankr. N.D.N.Y. 1995) ("The essence of the totality of circumstances test requires a determination of whether Debtor's conduct evinces a continuum of bad faith as it relates to the Chapter 13 Plan's proposal.") (citation omitted); see also In re Eatman, 182 B.R. 386, 392 (Bankr. S.D.N.Y. 1995) (instructing that the court must review the totality of the circumstances in determining bad faith).

D. The Instant Case

In this matter, the Court finds that the evidence presented is insufficient to support a finding of bad faith. As noted above, legitimate questions can and have been raised with respect to the Debtor's conduct *vis a vis* the schedules filed in this case. However, the concerns these questions raise may be addressed without so draconian a measure as either denial of confirmation or dismissal of the case.

Here, the Court finds the Movant-Creditors have not demonstrated any particular action by the Debtor for which the Debtor did not have a plausible explanation. For example, the issue of why the balance due on a particular loan was not accurately reflected, and why the amount of loan forgiveness from a prior employer was misstated, was explained by the Debtor by reference to a confusing pay-stub. See Debtor's Post-Trial Memo at 1-2. The Debtor's counsel took responsibility for several errors in the Debtor's income and expense figures; thus, these errors will not be treated as indicia of bad faith by the Debtor. The Creditor-Movants further asserted that, to their detriment, the Debtor inappropriately repaid pre-petition unsecured creditors during the pendency of the bankruptcy case. However, the proof indicated that all such payments to pre-petition creditors were made while the case was under chapter 7 and ceased upon the conversion of the case to chapter 13. In light of the time frame, the Court finds this conduct was neither prohibited under the Bankruptcy Code nor demonstrative of bad faith.

Having weighed the totality of the circumstances, and having taken into account the credibility of the witnesses presented, the Court finds the Creditor-Movants have failed to carry their burden of proof on the issue of bad faith and that there are not facts in evidence sufficient to warrant either denial of confirmation or dismissal of the case. Rather, the Court finds that the Debtor should be given the benefit of the doubt with regard to his potential to consummate a chapter 13 plan.

E. Modifications to the Plan Required as a Condition of Confirmation

However, the questions raised by the Creditor-Movants, together with the testimony presented at the trial, persuade the Court that, in this instance, certain additional provisions must be added to the plan as a condition of confirmation. Since, by his own admission, the Debtor's income is subject to significant

fluctuation, it will be important for the Trustee to monitor the Debtor's income for the plan's duration to ensure that all of Debtor's disposable income is devoted to the plan. The Creditor-Movants request that the Debtor be required to submit copies of his pay stubs on a monthly basis; the Debtor offers to provide annual tax returns to the Trustee.[7] The shortcoming of annual delivery of tax returns is staleness of information and possible lack of cash. By the time the returns are filed, up to approximately 16 months may have passed since the Debtor's income changed; thus, it may be difficult for the Debtor to make up any deposits that should have been made to the Trustee during the prior calendar year (assuming an increase in income). On the other hand, monthly delivery and review of pay stubs seems unduly burdensome to both the Debtor and the Trustee. A compromise between the parties' two positions is more reasonable and will provide a more accurate portrayal of the Debtor's income stream. Accordingly, the Court directs that the Debtor provide copies of his pay stubs to the Trustee and Creditor-Movants quarterly, within three business days of the close of the quarter, beginning June 30, 2003, and that, by June 16, 2003, the Debtor provide the Trustee and the Creditor-Movants with copies of all of his pay stubs from the date of conversion of the case to chapter 13 through the end of the first quarter of 2003. The Court further directs that the Trustee promptly review the submitted pay stubs submitted to determine if he believes a modification of the plan is necessary.[8]

In light of the great efforts expended by both the various trustees and the Creditor-Movants regarding the Debtor's conduct, the protracted procedural history of this case, the evidence presented at the trial, and the atypical nature of this bankruptcy case, the Court is not convinced that the adversary proceeding is wholly without merit. Therefore, the Court further directs that the Debtor's plan shall contain a provision that the adversary proceeding shall remain open, preserving the Creditor-Movants' §523 cause of action, until the case is closed. In this way the Creditor-Movants' cause of action may be prosecuted *if* the Debtor's chapter 13 case is either voluntarily or involuntarily converted to chapter 7.

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[7]The Court presumes this offer of providing annual tax returns means soon after the April 15th filing date.

[8]If the Trustee determines a plan modification is warranted, he shall move for modification on expedited notice, unless the Debtor has already filed a motion for modification that is acceptable to the Trustee.

F. The Debtor's Attorney's Application for Fees

On September 9, 2002, the Debtor's attorney filed an Application for Interim Compensation and Reimbursement of Expenses (doc. #56) seeking approval of $9,666.60 in legal fees plus expenses of $20.98 for the period of March 29, 2001 through August 15, 2002 (hereinafter, "First Fee Application"). The Court took this Application under advisement together with the Plaintiffs' Motions and Objections. Thereafter, Debtor's counsel filed a second Application for Interim Compensation and Reimbursement of Expenses (doc. # 84) for the period of August 16, 2002 through January 30, 2003 (hereinafter, "Second Fee Application"). In the Second Fee Application, counsel sought approval of an additional $13,099.50 in legal fees and $102.10 in expenses. Counsel noticed the Second Fee Application for hearing under the default procedure. A hearing was held on both of counsel's applications on March 13, 2003. Ruling from the bench, the Court denied both applications, without prejudice, based on a lack of compliance with case law and the U.S. Trustee Guidelines, and gave counsel an opportunity to annotate the applications to provide more detail. Counsel did so on March 31, 2003. This amended application (hereinafter, "Amended Application"), covering the period of March 29, 2001 through January 30, 2003, seeks legal fees of $24,363.68 and expenses of $213.68.[9] See Amended Application for Interim Compensation and Reimbursement of Expenses (doc. #88).

The Court finds the total expenses sought to be reasonable and necessary and will allow their reimbursement in full (i.e., $213.68).

Counsel has provided a breakdown of the $24,363.68 fees sought, segregating the fees into three categories. The Court will address the fee application by reference to these categories:

Main Case Fees	$ 5,968.43
Adversary Proceeding Fees	$11,207.25
Motion to Dismiss Fees	$ 8,913.00
Sub-Total	$26,088.68
Less payments Received	*$ 1,725.00*
Total Fees Claimed Due	$24,363.68

[9]The Court notes that the Amended Application deletes the previously included interest charges. See Amended Application at ¶6.

In reviewing the Amended Application, the Court relies on In re S.T.N. Enterprises, Inc., 70 B.R. 823 (Bankr. D. Vt. 1987), as the controlling case in this jurisdiction regarding applications for attorneys' fees.

(1.) The Main Case Fees

In this jurisdiction, the common practice is to charge a flat fee for filing chapter 7 and chapter 13 cases. The Court has already noted that this was not a typical chapter 7 case and, from the May 2001 and June 2001 invoices, it appears that counsel charged the Debtor $900 in legal fees for filing his chapter 7 case. The Court finds this to be reasonable. The balance of the Main Case Fees, $5,068.43, are attributable to the Debtor's chapter 13 case. This seems expensive. Most attorneys in this jurisdiction charge between $1,500 and $2,000 in legal fees for a "typical" chapter 13 case. While the Court finds it appropriate to allow a higher fee in this case because it is, indeed, not a "typical" case, given counsel's admissions that many of the amendments were due to his oversight, the Court is not persuaded that the value of services provided in the chapter 13 case is $5,000. See In re S.T.N. Enterprises, Inc., 70 B.R. at 832 (instructing that the court establishes, *inter alia*, whether the amount charged is reasonable based on the nature, extent and value of services). Rather, the Court finds half that amount to be reasonable. Thus, the Court will allow Debtor's counsel $2,500 in legal fees in connection with Debtor's chapter 13 case. Hence, Main Case Fees in the total amount of **$3,400** will be allowed.

(2.) The Adversary Proceeding Fees

When Debtor's counsel began representation of the Debtor, his hourly rate was $135 per hour. After May 2002, counsel increased his hourly rate to $150. The Court finds theses rates to be reasonable. See id. at 842 ("It is for the Court to determine a reasonable hourly rate.").

With regard to the Adversary Proceeding Fees, the Court notes that "[d]uties appropriate for the non-legal staff are part of an attorney's overhead expenses and must not be billed to the estate at the attorney's hourly rate as legal services." Id. at 838. The Court finds that calls to opposing counsel solely for scheduling purposes, drafting of cover letters, preparing a notice of hearing, calls to the Clerk's Office, and filing and serving of papers, all fall within this category of being appropriate for non-legal staff. Thus, the Court shall

not grant fees to counsel for time spent on these tasks. Accordingly, the Court will reduce the Adversary Proceeding Fees by $518.25.[10] Moreover, "[w]hen billing for legal research, the applicant should identify each specific issue, and should explain why this issue needed to be researched and what use was made of the research in the bankruptcy case." Id. at 833 (citations omitted). Here, counsel has made several entries regarding research that fails to explain why the research was needed and for what purpose it was used.[11] Therefore, the Court shall disallow an additional $566.25 in Adversary Proceeding Fees attributable to research generally.

Further, the Court "shall refuse compensation or reimbursement when the supporting records are unreliable or lack specificity. . . . The test for sufficiency of an application for attorney's fees is whether, standing alone, the application identifies, describes, and explains the services and expenses charged to the estate intelligibly enough to enable [the Court] to evaluate their reasonableness." Id. at 834-35. In this case, the Court finds several charges in the Adversary Proceeding Fees category do not pass this test. For example, regarding legal papers, counsel has made several general entries that make it impossible for the Court to assess the reasonableness of the charges[12]; therefore, such requests shall be disallowed to the extent of $1,903.50. See id. at 833 ("[A]pplicant should clearly identify the document involved and specify the work performed, such as outlining, drafting, revising, cite-checking, proof-reading, photocoying, or indexing.") (citations omitted). Also, the Court is disallowing $121.50 in legal fees for .90 hours of attorney time spent on a motion

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[10] From the Court's calculation, Attorney Palmer spent .65 hours on scheduling matters, billing $87.75; .90 hours drafting cover letters, billing $121.50; .25 hours preparing a notice, billing $33.75; .35 hours in calls to the Clerk's Office, billing $50.25; and 1.50 hours filing and serving papers, billing $225.00.

[11] Counsel billed for legal research without providing sufficient explanation as follows:

– on 11/16/01	0.75 hours (at $135/hour);
– on 11/26/01	0.25 hours (at $135/hour);
– on 12/14/01	1.25 hours (at $135/hour);
– on 07/20/02	1.75 hours (at $150/hour).

[12] Counsel billed generally for work on legal papers as follows:

– on 12/05/01	2.95 hours (at $135/hour);
– on 12/17/01	4.25 hours (at $135/hour);
– on 04/10/02	2.90 hours (at $135/hour);
– on 04/11/01	4.00 hours (at $135/hour).

to extend time that necessitated by counsel's miscalculation of a deadline. Finally, from counsel's Amended Application, the Court is unable to determine whether certain services provided were justified or necessary in the adversary proceeding.[13] See id. at 832, 834. Hence, the Court will reduce the award of compensation of Adversary Proceeding Fees in the additional amount of $591.00. In summary, of the $11,207.25 in Adversary Proceeding Fees sought by counsel, the Court shall allow **$7,506.75**.

(3.) The Motion to Dismiss Fees

As to the Motion to Dismiss Fees, the Court finds this portion of counsel's application to be less problematic, but not problem-free. For example, the Court notes, counsel spent over ten (10) hours preparing for the contested hearing on this matter.[14] Then, counsel billed another 3.75 hours preparing for the hearing. The Court finds the additional 3.75 hours to be excessive and disallows the fees sought for this time (totaling $562.50). Similarly, when comparing the entries of time for December 8th and 9th, 2002, the Court finds a redundancy. Thus, the Court disallows 3.25 hours of "work on memorandum in opposition" (i.e., $487.50). Since the Court cannot evaluate the necessity of correspondence to Attorney Glinka in this matter, time billed for such correspondence in the amount of $67.50 is disallowed.[15] And, as with the Adversary Proceeding Fees, the Court will not permit counsel to bill his legal rate for filing and serving papers,[16] resulting in an additional reduction of the Motion to Dismiss Fees in the amount of $127.50. Hence, of the $8,913 in Motion to Dismiss Fees sought by Counsel, the Court shall allow **$7,668.00**.

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[13]The Court cannot make a determination on necessity or reasonableness on the following entries:
– on 12/17/01 0.10 hours (at $135/hour);
– on 05/2/02 3.50 hours (at $135/hour);
– on 06/24/02 0.25 hours (at $150/hour);
– on 07/12/02 0.45 hours (at $150/hour).

[14]Counsel spent 4.70 hours on 11/04/02 preparing for the hearing and an additional 5.35 hours on 11/5/03.

[15]Counsel billed .35 hours on 12/9/02 and .10 hours on 12/11/02 regarding correspondence to/from Attorney Glinka, both at $150/hour.

[16]The Court estimates counsel spent .5 hours filing paperwork with the Court on 12/13/02. Further, on 12/17/02, counsel billed for .35 hours of time to file and serve papers.

III. CONCLUSION

In conclusion, the Court finds the Creditor-Movants have failed to carry their burden of proof regarding the issue of bad faith. Therefore, their Motion to Dismiss is denied and their objection to confirmation of Debtor's chapter 13 plan is overruled.

The Debtor's chapter 13 plan is confirmed subject to the conditions and amendments described above.

As to Debtor's counsel's Amended Application, the Court shall allow Debtor's counsel's legal fees in the amount of $18,574.75[17] and expenses in the amount of $213.68.

The Debtor is directed to file an amended plan, within 30 days of the date of this Memorandum, which includes the payment of the allowed attorney's fees and expenses, sets forth the continued validity of the instant adversary proceeding, and states the additional income reporting requirements described above. The Debtor is further directed to notice the amended plan for hearing as promptly thereafter as is permissible under the Local Rules.

This Memorandum of Decision constitutes the Court's findings of fact and conclusions of law.

May 29, 2003
Rutland, Vermont

Colleen A. Brown
United States Bankruptcy Judge

[17]This amount is comprised of $3,400 for the Main Case Fees, $7,506.75 for the Adversary Proceeding Fees, and $7,668 for the Motion to Dismiss Fees.