

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**Kimberly and Dean Williams,
Debtors.**

**Chapter 13
Case # 03-10344**

Appearances: *Kathleen Walls, Esq.*
Middlebury, VT
Pro Se Movant

Kimberly and Dean Williams
Cambridge, VT
Pro Se Debtors

**ORDER GRANTING MOTION TO REOPEN
AND DENYING MOTION TO ABSTAIN**

Movant, Kathleen Walls, Esq., has filed a motion requesting that this Court either reopen the instant case in order to determine the amount of fees the Debtors owe her as their former counsel or, alternatively, abstain to allow the state court to decide the issue (doc. # 26). The Debtors have responded, *pro se*, with a letter that is captioned as “Notice of Objection for a Motion to Re-Open Chapter 13 Case” which actually sets forth their opposition to having to pay the attorney’s fees without articulating any specific opposition to having the case reopened (doc. #29). For the reasons set forth below, the Motion to Reopen is granted and the Motion to Abstain is denied.

The salient statutory provisions invoked by this Motion are 11 U.S.C. § 329 and 28 U.S.C. §§ 157(a) and (b), and 1334(c):

11 U.S.C. § 329. Debtor’s transactions with attorneys.

- (a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.
- (b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to—
 - (1) the estate if the property transferred—
 - (A) would have been property of the estate; or
 - (B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or
 - (2) to the entity that made such payment.



28 U.S.C. § 157. Procedures.

- (a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.
- (b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under subsection (a) of this section, and may enter appropriate orders and judgements, subject to review under section 158 of this title.

* * *

28 U.S.C. § 1334. Bankruptcy cases and proceedings.

* * *

- (c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.
- (2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

* * *

Pursuant to the first two of these statutes, this Court finds that it has jurisdiction over a fee dispute between an attorney and his or her client regarding services rendered in contemplation of or in connection with a case under title 11. Pursuant to 28 U.S.C. § 1334, this Court further finds that it is within its discretion to abstain in favor of state court adjudication of such a fee dispute.

The Vermont Supreme Court recently had the occasion to address the question of when the state courts have jurisdiction to resolve fee disputes originating in the context of a bankruptcy case. Although the issue raised was slightly different than that posed here, its ruling is quite instructive. It held that, generally:

Bankruptcy courts, through the United States district courts, have exclusive jurisdiction over the matter of attorney's fees in a bankruptcy proceeding. Edgewater Sun Spot, Inc. v. Pennington & Haben P.A. (In re Edgewater Sun Spot, Inc.), 183 B.R. 938, 943 (N.D. Fla. 1995); aff'd 84 F.3d 438 (11th Cir. 1996).

Webber, Reis, Holler & Urso, LLP v. Miller, Faignant & Behrens and Lisa Chalidze, 2003 VT 65, ¶6, ___ Vt. ___. Based upon the specific facts and the nature of the dispute before it, the Vermont Supreme Court held that the bankruptcy court has exclusive jurisdiction over fee sharing disputes in *open* bankruptcy cases. It took note of the Second Circuit's only pronouncement on this issue, Lemonedes v. Balaber-Strauss (In re Coin Phones, Inc.), 226 B.R. 131, 134 (S.D.N.Y. 1998), aff'd 189 F.3d 460 (2d Cir. 1999), which holds that

a bankruptcy court has the discretion to abstain and allow the state court to adjudicate a fee dispute between two attorneys relating to the services they rendered in a bankruptcy case. See Webber, Reis, Holler & Urso, LLP v. Miller, Faignant & Behrens and Lisa Chalidze, 2003 VT 65, ¶9, ___ Vt. ___. However, the Vermont Supreme Court held that the Coin Phones case was not binding precedent in the Webber, Reis matter because of an essential factual distinction, namely, that the bankruptcy case underlying the fee dispute before it was still open. Id. Accordingly, the highest court of this state held that state courts do not have jurisdiction to adjudicate fee disputes between attorneys, if the dispute relates to attorney's fees incurred in a bankruptcy case and arises while the bankruptcy case is still pending.

The Vermont Supreme Court has not addressed the question of whether the state courts may exercise jurisdiction over fee disputes where: (1) the fee is incurred for services rendered in bankruptcy cases and the dispute is between the debtor and his or her attorney; or (2) where the bankruptcy case is no longer pending at the time the dispute arises. Those circumstances are presented in the instant case and adjudicated herein.

In order to be consistent with both the Coin Phones case and the Webber, Reis case, as well as the plain language of the relevant statutes, it is this Court's determination that if the subject bankruptcy case is still pending, this Court has exclusive jurisdiction over all fee disputes, including those arising under § 329; and conversely, if the case has been dismissed or is otherwise no longer pending, this Court has discretion to abstain. This Court will rely upon two sets of considerations when determining whether it will abstain or decide a fee dispute between a debtor and his or her attorney. First, the Court will consider the specific facts of the case, including, but not limited to, whether an action has been commenced in state court, the convenience of the parties, the nature of the dispute, and the defenses raised. See generally Kolinsky v. Russ (In re Kolinsky), 100 B.R. 695, 705 (Bankr. S.D.N.Y. 1989) (stating, *inter alia*, "[t]he primary concern should be whether the federal bankruptcy objectives are properly served if the Bankruptcy Court concedes its jurisdiction to a state court."). Second, the Court will consider whether the fee dispute is one involving professional fees in general, under § 350, or is between the debtor and his or her attorney, under § 329. If the fee dispute is between the debtor and his or her attorney, the Court will weigh heavily the unique nature of the jurisdiction Congress conferred upon it under § 329.

Ensuring that the relationship between a debtor and his or her attorney is fair is one of the primary duties the bankruptcy courts must perform in their capacity as guardians of the integrity of the bankruptcy system. Clients seeking bankruptcy advice are frequently in particularly vulnerable situations, where they have both a desperate need for immediate financial relief and very little understanding of the complexities of

bankruptcy law. Therefore, court review of transactions between debtors and their attorneys require sensitivity to these vulnerability factors, acknowledgment of the very different bargaining position of each party in the professional relationship, and a heightened level of scrutiny. See In re Wood, 210 U.S. 246, 28 S. Ct. 621 (1908); FED. R. BANKR. P. 2017, eds.' cmt. ("It has long been recognized that, consistent with the overall policy of any bankruptcy legislation, there shall be a provision for examining all transactions of a debtor involved in bankruptcy, including transactions of a debtor with an attorney."). Thus, fee disputes raised under § 329 will be adjudicated in this Court, even after dismissal of the subject case, unless compelling or extraordinary circumstances are demonstrated, warranting abstention under 28 U.S.C. § 1334.

In this case, neither party has presented any argument that persuades the Court there is a compelling reason to abstain and allow the Movant to proceed with her fee collection suit in state court. On the contrary, both the allegations of the Movant's Motion and the defenses to collection of the attorney fees alleged by the Debtors persuade the Court it should hold an evidentiary hearing under § 329, to determine the amount of fees the Debtors owe to their former attorney.


Accordingly, IT IS HEREBY ORDERED that the Motion to Reopen is GRANTED, and the Motion to Abstain is DENIED.

IT IS FURTHER ORDERED that the Court will consider the motion articulating the Movant's right to collect certain attorney's fees and the letter from the Debtors setting forth their opposition to payment of those fees to be a motion and response, respectively, under § 329 and Bankruptcy Rule 2017, and will set this matter for an evidentiary hearing.

IT IS FURTHER ORDERED that the hearing on the Movant's Motion, set for today, shall proceed as a status conference for the purpose of setting deadlines for discovery, for setting a date by which the parties must file a pre-trial statement, and for setting the date of the evidentiary hearing.

SO ORDERED.

November 18, 2003
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge