

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Northern Division

In re:)	
)	Bankr. No. 94-10050
DEWAIN FRANKLIN WALETICH, aka)	Chapter 12
BUZZY WALETICH,)	
Social Security No. [REDACTED]-5219)	MEMORANDUM OF DECISION RE:
and)	ALLOWABLE COSTS AND FEES FOR
)	AFCB UNDER 11 U.S.C. § 506(b)
JOAN MARIE WALETICH,)	
Social Security No. [REDACTED]-2930)	
)	
Debtors.)	

The issue before the Court is whether creditor AgAmerica Farm Credit Bank is entitled to attorneys' fees and costs under 11 U.S.C. § 506(b) and whether the amount sought is reasonable. This is a core proceeding under 11 U.S.C. § 157(b)(2). This Memorandum of Decision and accompanying Order shall constitute findings and conclusions under F.R.Bankr.P. 7052. As set forth more fully below, the Court concludes that Ag America Farm Credit Bank is entitled to \$2,030.25 in fees and costs under 11 U.S.C. § 506(b).

I.

Debtors filed their Chapter 12 petition on April 4, 1994. They filed their first proposed plan on July 1, 1994. Objections were filed by AgAmerica Farm Credit Bank (AFCB), First National Bank of Eden, and Farmers Home Administration (FmHA). A confirmation hearing was held September 20, 1994, without resolution of the objections. An evidentiary hearing was scheduled for the following month if the objections were not resolved by negotiation. At the evidentiary hearing on October 18, 1994, interested parties agreed that Debtors would file a modified plan and notice it for a confirmation hearing on November 21, 1994.

56.

Debtors did not get a modified plan filed until November 18, 1994 -- too late for a hearing on November 21, 1994. Debtors noticed the modified plan for a confirmation hearing on December 20, 1994 but the last date for objections stated in the notice did not comply with F.R.Bankr.P. 2002(a)(9).

AFCB filed a Motion to Dismiss on November 25, 1994 on the grounds that the confirmation process had exceeded the 135 days allowed by 11 U.S.C. §§ 1221 and 1224 and because the pending modified plan also was not confirmable. AFCB also raised good faith concerns, claimed the estate was subject to loss, and argued there was not a reasonable chance for Debtors to reorganize. The Motion to Dismiss was noticed for hearing at the same time as the confirmation hearing on Debtors' modified plan.

Debtors filed a response to AFCB's Motion to Dismiss on December 12, 1994. They argued the delay in confirmation was caused by other creditors' actions, that the estate is not diminishing, and that they have proceeded in good faith.

AFCB and FmHA filed objections to the modified plan. Debtors filed a response to AFCB's objections. Appearances at the confirmation hearing on December 20, 1994 included Philip W. Morgan for Debtors, Robert M. Ronayne for AFCB, and Trustee A. Thomas Pokela. Trustee Pokela announced that the objections of FmHA had been resolved. Attorneys Ronayne and Morgan presented their respective arguments on whether AFCB is entitled to attorneys' fees and other costs under 11 U.S.C. § 506(b). The core issue was whether the amount AFCB sought was reasonable. The Court directed Attorney Ronayne to file a statement of costs. Debtors were given

an opportunity to respond. Confirmation was continued pending resolution of this issue.

Attorney Ronayne filed a statement of fees and other costs on December 23, 1994. A total of \$2,137.11 was sought for bankruptcy related services and costs from April 8, 1994 through November 1, 1994. Debtors responded on January 3, 1995. They essentially argued that all services by Attorney Ronayne after May 17, 1994 when a stipulation was prepared were unnecessary. They contend that subsequent services were the result of AFCB's "hostile, non-cooperative attitude, culminating in the filing of a Motion to Dismiss. . . ." AFCB filed a response on January 9, 1995. Therein, they stated the initial stipulation was withdrawn because Debtors did not respond. AFCB also stated that some services, including preparation for the confirmation hearing in October, 1994, were not billed. Further, AFCB stated its counsel did not bill for services that took less than seven and a half minutes to render and that all billed services were rounded to the nearest quarter hour.

II.

Section 506(b) of the Bankruptcy Code provides that creditors holding fully secured claims shall be allowed "any reasonable fees, costs, or charges provided for under the agreement under which the claim arose." Debtors do not dispute that AFCB has a fully secured claim or that AFCB is entitled to reasonable fees and costs under § 506(b). Rather, Debtors argue the \$2,137.11 sought by AFCB is not reasonable.

If a secured creditor is entitled to fees and costs under

§ 506(b), a bankruptcy court may exercise broad discretion in determining what amount is reasonable but it may not deny recovery altogether. *Manufacturers National Bank v. Auto Specialties Manufacturing Co. (In re Auto Specialties Manufacturing Co.)*, 18 F.3d 358, 362 (6th Cir. 1994); *In re Kroh Brothers Development Co.*, 105 B.R. 515, 520 (Bankr. W.D. Mo. 1989). The court has the responsibility to prevent overreaching by creditors' attorneys in their attempts to be paid from the estate. *Kroh Brothers*, 105 B.R. at 520.

Reasonable fees include those necessary for the collection and protection of the creditor's claim until the collateral is sold, the plan is confirmed, or the case is dismissed or converted. *Id.* at 521. However, fees sought under § 506(b) generally will not be "reasonable" if they are not "cost-justifiable either by the economics of the situation or necessary in order to preserve the creditor's interests in . . . the [bankruptcy] case." *In re Foertsch*, 167 B.R. 555, 562 (Bankr. D.N.D. 1994). Services related to a creditor's attorney's "excessive caution or overzealous advocacy" may be denied. *Kroh Brothers*, 105 B.R. at 521. The creditor bears the burden of proving the fees and costs sought are reasonable. *Foertsch*, 167 B.R. at 56 (citing *In re Rausch*, 41 B.R. 833, 834 (Bankr. D.S.D. 1984)); *Kroh Brothers*, 105 B.R. at 520.

III.

From a review of the itemized bill provided by Attorney Ronayne, the Court is confident that the services rendered and costs incurred were directed appropriately at the collection and protection of AFCB's claim and that they were not the product of

excessive caution or overzealous advocacy. It does not appear that AFCB or its counsel caused any unnecessary delay or that their actions thwarted the initial stipulation.

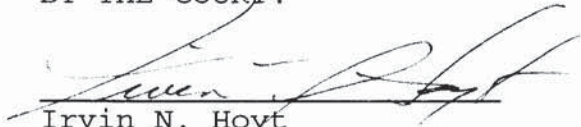
The Court's only concern is Attorney Ronayne's minimum billing increment of .25 of an hour. This Court previously has held that time records should reflect the actual time spent rendering each particular service. *In re McDaniel Enterprises, Inc.*, Bankr. No. 88-10199, slip op. at 4 (Bankr. D.S.D. April 9, 1991). Billings in quarter-hour segments generally are not accepted. *Id.*

From AFCB's January 9, 1995 response, it does not appear that Attorney Ronayne has actual time billings available since his accepted billing practice with AFCB is to submit all time records in quarter hour increments. Therefore, the Court will reduce the fees sought by five percent to account for any increased time due to Attorney Ronayne's quarter-hour billing practice. AFCB will be allowed fees and costs of \$2,030.25 under § 506(b).

An appropriate order will be entered. Debtors should immediately prepare and file a second modified plan that reflects this claim and serve and notice the second modified plan for objections and a confirmation hearing.


Dated this 3rd day of March, 1995.

BY THE COURT:


Irvin N. Hoyt
Chief Bankruptcy Judge



CERTIFICATE OF SERVICE
I hereby certify that a copy of this document was mailed and delivered, or faxed this date to all parties in interest set forth on the attached service list.

Patricia Merritt, Bankruptcy Clerk
By: 
Date: 3-3-95

NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered

MAR 03 1995

Patricia Merritt, Clerk
U.S. Bankruptcy Court, District of S.D.

Case: 94-10050 Form id: 122 Ntc Date: 11/25/94 Off: 3 Page : 1
Total notices mailed: 7

Debtor Waletich, Dewain Franklin Rt. 3, Box 277, Sisseton, SD 57262
Debtor Waletich, Joan Marie Rt. 3, Box 277, Sisseton, SD 57262
Aty Morgan, Philip PO Box 901, Britton, SD 57430
Trustee Pokela, A. Thomas PO Box 1102, Sioux Falls, SD 57101
Aty Lloyd, Thomas Rm. 326, 225 S. Pierre St., Pierre, SD 57501
Aty Ronayne, Robert M. PO Box 759, Aberdeen, SD 57402-0759
Intereste U.S. Trustee, Shrivvers Square, Suite 502, 230 S. Phillips Avenue, Sioux Falls, SD 57102