

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN**

Cite as: [Unpublished]

Richard R. Chapman and Kimberly S. Chapman, Debtors
Bankruptcy Case No. 01-34985-13

United States Bankruptcy Court
W.D. Wisconsin, Madison Division

March 19, 2003

Jenny R. Armstrong, Armstrong Law Offices, Ltd., Madison, WI for Debtors

Robert D. Martin, United States Bankruptcy Judge

MEMORANDUM DECISION

The Debtors, Richard and Kimberly Chapman, filed a Chapter 7 petition on August 8, 2001. Kepler & Peyton was appointed as attorney for the Chapter 7 Trustee.

The Debtors valued certain real estate that they owned at \$16,250. Kepler & Peyton investigated the value of the property and found that the county tax assessor valued the property at \$49,200 and informed the Debtors. Soon thereafter, the Debtors moved to convert their case to Chapter 13. Their motion was granted. In pursuit of its efforts begun on behalf of the Chapter 7 Trustee, Kepler & Peyton objected to confirmation of the Debtors' Chapter 13 plan because it failed to meet the best interest of creditors' test. The Debtors amended their plan shortly before the Court held a final hearing on confirmation. Kepler & Peyton incurred fees and costs preparing for hearings, hiring an appraiser to appraise the property, and examining the Debtors at their §341 meeting.

On December 17, 2002, Kepler & Peyton moved for an allowance of an administrative claim of \$2,764.75 for services that it rendered "in connection with creating and preserving the bankruptcy estate." The Debtors objected. The Chapter 13 trustee indicated via letter that he did not object.

At a hearing on their motion, Kepler & Peyton argued that it was entitled to administrative expense priority under §503(b)(1). At the Court's invitation, Kepler & Peyton filed a letter brief on February 17, 2003; the Debtors did not file any brief.

Discussion

Kepler & Peyton divide its fees between those incurred pre-conversion and those incurred post-conversion. Section 348 states that the “conversion of a case under section 706, 1112, 1208, or 1307...terminates the service of any trustee or examiner that is serving in the case before such conversion.” To the extent that unpaid, compensable services have been rendered and expenses have been incurred in the Chapter 7 case, the Chapter 7 trustee or his counsel become a claimant of the debtor’s Chapter 13 estate. E.g., In re Collins, 210 B.R. 538, 540 (Bankr. N.D. Ohio 1997); In re Wells, 87 B.R. 732, 737 (Bankr. N.D. Ga. 1988).

Section 1322 governs the priority of claims to be paid through a Chapter 13 plan. Regarding administrative claims, §1322(a)(2) provides for “full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claims agrees to a different treatment of such claim.” Section 507(a)(1) specifically provides a priority for administrative expenses that are allowed under §503(b). Section 503(b) allows the actual, necessary costs and expenses of preserving the estate and compensation and reimbursement under §330(a) as administrative expenses.¹ In turn, §330(a)(1) provides that the court may award a professional person employed under §327 reasonable compensation for actual, necessary services rendered and reimbursement for actual, necessary expenses.²

Here, Kepler & Peyton was employed under §327. Its pre-conversion costs and expenses covered actual and necessary services—e.g., investigating the value of the Debtors’

¹Section 507(b) states, in part:

After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including

(1)(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case;

.....

(2) compensation and reimbursement awarded under section 330(a) of this title....

²Section 330(a)(1) provides:

After notice to the parties in interest and the United States Trustee and a hearing, and subject to section 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103—

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

(B) reimbursement for actual, necessary expenses.

property. The requested costs and expenses of \$2,764.75 are reasonable. That amount represents a small fraction of the estate and the benefit to creditors expected in Chapter 13 under the amended plan. Accordingly, the pre-conversion costs and expenses are an administrative expense under §503(b)(2). As an administrative expense, the costs and expenses receive first priority.³

The requested post-conversion expenses should also receive first priority as an administrative expense under §503(b)(2). Although §348 states that a trustee's duties are terminated by the conversion of a case, case law indicates that costs and expenses incurred after conversion, but based upon pre-conversion proceedings brought by the claimants, are entitled to administrative expense status, also. E.g., In re Washington, 232 B.R. 814, 817 (Bankr. S.D. Fla. 1999) (awarding administrative expense status to trustee's attorney's post-conversion costs and expenses because costs and expenses were incurred based upon attorney's pre-conversion investigation of debtor's property). Here, Kepler & Peyton objected to confirmation, and incurred post-conversion costs and expenses, based upon its pre-conversion investigation of the value of the Debtors' real estate. The post-conversion costs and expenses were intertwined with the pre-conversion services that Kepler & Peyton rendered and are reasonable in light of the benefit to creditors. Therefore, the post-conversion costs and expenses should be treated as administrative expenses.⁴ It may be so ordered.

³There does not appear to be a reason to prioritize between administrative expenses between chapters when a case is converted to Chapter 13, as there is when a case is converted to Chapter 7. When a case is converted to Chapter 7, there is a risk that there will not be sufficient assets to pay the administrative costs of the Chapter 7. Section 726(b) recognizes this potential and requires that the Chapter 7 expenses be paid before the expenses of the previous chapter.

However, when a case is converted to Chapter 13, as in this instance, there is no such risk because all of the estate's administrative expenses must be paid in full as a condition to confirmation of the plan. 11 U.S.C. §1322(a)(2); see In re Rodriguez, 240 B.R. 912, 916 (Bankr. D. Colo. 1999); but see Collins, 210 B.R. at 540 (using §726(b) as rationale that *any* pre-conversion administrative expense is subordinate to *any* post-conversion administrative expense, even though distinction may not be relevant in conversion to Chapter 13).

⁴Kepler & Peyton argued that its post-conversion costs and expenses should be treated as an administrative expense under §503(b)(1)(A). However, in objecting to the confirmation of the Debtors' plan, Kepler & Peyton did not "preserve" the estate, as required by §503(b)(1)(A).