

Attorney's fees and costs
Limited percentage reduction
11 U.S.C. § 330(a)

In re Maritime Services Corp., Case No. 12-34978-rld11

12/17/2012 RLD

Unpublished

The debtor, Maritime Services Corp., and its affiliates, Maritime's Marine Centers, LLC and MML, USA, LLC (collectively, "debtors"), filed for voluntary chapter 11 bankruptcy. The debtors administratively consolidated their cases by order entered on July 17, 2012 (docket no. 53).

Over the course of the bankruptcy, with the aid of their attorneys, the debtors sold their assets in a series of \$ 363 sales. The debtors also pursued and collected accounts receivable, again with the aid of their attorneys.

The debtors are nearing completion of their chapter 11 bankruptcy case. Their attorneys consequently filed four applications for fees and costs ("fee applications") incurred for services rendered to the debtors over the course of their bankruptcy case.

Upon receiving and reviewing the fee applications, the bankruptcy court set them for hearing. At the hearing, the bankruptcy court advised the debtors' attorney that it was considering a limited percentage reduction in the award of fees as allowed by Moreno v. City of Sacramento, 534 F.3d 1106 (9th Cir. 2008), given the various perceived deficiencies in his firm's performance in representing the debtors.

The bankruptcy court requested that the debtors' attorney submit a letter commenting on the potential application of Moreno, among other things. The debtors' attorney complied with the bankruptcy court's request, filing the letter on December 14, 2012 ("letter"). The bankruptcy court took the matter of the fee applications under advisement.

The bankruptcy court approved 100% of the actual costs set forth in the letter by the debtors' attorney. It approved actual fees with a 5% reduction from the amount set forth in the letter by the debtors' attorney.

The bankruptcy court based the 5% reduction on procedural and substantive errors made by the debtors' attorneys over the course of the debtors' bankruptcy case. It cited several examples that were illustrative, but not comprehensive, of the errors made by the debtors' attorneys. It noted that, although none of the errors affected the overall disposition of the debtors' bankruptcy case, the recurring errors generally resulted in increased administrative costs.

Below is an Opinion of the Court.


RANDALL L. DUNN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re:) Bankruptcy Case No.
MARITIME SERVICES CORP.,) 12-34978-rld11 (Lead Case)
MARITIME'S MARINE CENTERS, LLC,)
and MML, USA, LLC,) 12-35135-rld11 and 12-35136-rld11
) (Jointly Administered under
) Case No. 12-34978-rld11)
)
Debtors.) MEMORANDUM OPINION

On December 5, 2012, I held a hearing ("Hearing") on 1) the status of the debtors' ("Debtors") administratively consolidated chapter 11 cases in light of the Joint Motion to Dismiss (Docket No. 227) ("Motion to Dismiss") filed by the Debtors; and 2) four "interim" applications for professional compensation ("Fee Requests") filed by counsel for the Debtors, Field Jerger, LLP ("Field Jerger"). After discussion, with all appearing parties recognizing that all assets of the Debtors, with the exception of a couple of accounts receivable, had been liquidated, and no objections to the Motion to Dismiss having been received, I advised that a Notice of Proposed Dismissal of Case ("Notice") on 21 days' notice would be issued by the court so that the

1 cases would be dismissed by December 28, 2012. The Notice (Docket No.
2 245) was issued on December 5, 2012.

3 The questions presented by the Fee Requests were somewhat more
4 difficult to resolve. The first interim application ("First
5 Application"), filed in the consolidated case but designated as for
6 debtor Maritime Services Corp. (Docket No. 212), requested interim
7 compensation of \$94,266.25 fees and reimbursement of \$2,733.40 expenses.
8 The second interim application ("Second Application"), again filed in the
9 consolidated case but designated as for debtor Maritime Services Corp.
10 (Docket No. 233), requested interim compensation of \$64,424.50 fees and
11 reimbursement of \$2,720.24 expenses. The third application ("MML
12 Application"), filed in the consolidated case but designated as the
13 amended "first and final interim application" for debtor MML, USA, LLC
14 (Docket No. 238), requested compensation of \$14,380.50 fees and
15 reimbursement of \$308.71 expenses. The fourth application ("Maritime's
16 Marine Centers Application"), filed in the consolidated case but
17 designated as the "first and final interim application" for debtor
18 Maritime's Marine Centers, LLC (Docket No. 239), requested compensation
19 of \$24,365.00 and reimbursement of \$401.96 expenses.

20 Unfortunately in these consolidated cases, nowhere in the Fee
21 Requests did Field Jerger provide totals of the fees and expenses
22 requested, and there were some inconsistencies in the math of the Fee
23 Requests. Accordingly, I put together my own totals and calculated
24 actual fees to date aggregating to \$177,789.75 and aggregate actual
25 expenses of \$5,463.10. I calculated projected fees of an additional
26 \$19,646.00.

1 No objections were filed to any of the Fee Requests. However,
2 at the Hearing, I stated that in light of perceived deficiencies in
3 Debtors' counsel's performance in the consolidated cases, I was
4 considering a limited percentage reduction in the award of fees as
5 allowed by Moreno v. City of Sacramento, 534 F.3d 1106, 1112 (9th Cir.
6 2008). Following discussion, I approved the First Application in its
7 entirety and authorized Debtors' counsel to submit a conforming order. I
8 also allowed Debtors' counsel ten days to submit a letter confirming
9 whether he agreed with my calculations of total actual fees and expense
10 reimbursements requested and total projected fees and commenting on the
11 potential application of Moreno v. City of Sacramento. Field Jerger
12 submitted such a letter ("Letter") on December 14, 2012 (Docket No. 250).
13 At that point, I took the matter of the total award of fees and
14 reimbursement of expenses to Field Jerger under advisement.

15 This Memorandum Opinion sets forth the court's findings of fact
16 and conclusions of law under Federal Rule of Civil Procedure 52(a),
17 applicable with respect to this contested matter under Federal Rules of
18 Bankruptcy Procedure 7052 and 9014.¹

19 I. How this case played out

20 This case was initiated by a chapter 11 bankruptcy petition
21 filed by Maritime Services Corp. on June 26, 2012 (Docket No. 1), quickly
22 followed by petitions in behalf of its affiliates Maritime's Marine
23 Centers, LLC and MML, USA, LLC. The three chapter 11 cases were

24
25 ¹ Hereafter, unless otherwise indicated, all chapter and section
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all
rule references are to the Federal Rules of Bankruptcy Procedure, Rules
1001-9037.

1 administratively consolidated by an Order for Joint Administration
2 entered on July 17, 2012 (Docket No. 53). No creditors committee ever
3 was appointed in the consolidated case.

4 From the outset, reorganizing the Debtors in chapter 11 was not
5 recognized as a viable option. The more realistic scenarios involved
6 either a sale of all assets to a buyer interested in continuing the
7 Debtors' businesses under a less oppressive debt load or proceeding with
8 an orderly liquidation of the Debtors' assets. Since no "white knight"
9 or "stalking horse" bidder for the entire businesses ever materialized,
10 the assets were sold in a series of § 363 sales, and Field Jerger
11 proceeded to pursue and collect accounts receivable. The liquidation of
12 assets has been relatively successful. At the end of the line, the major
13 secured creditor, Associated Management Consultants, Inc., d/b/a AMCI
14 Finance ("AMCI"), is being paid close to in full, based on an agreed
15 total, with the principal of the Debtors, Mr. George Selfridge ("Mr.
16 Selfridge"), and his wife being released from personal guarantees.
17 However, the balance of funds received from liquidation of the Debtors'
18 assets will pay no more than a portion of the administrative expenses of
19 the Debtors' consolidated cases. Mr. Selfridge has assumed the
20 obligation personally to pay a material portion of the administrative
21 expenses, and while the bankruptcy case was pending, Mr. Selfridge
22 personally paid the following prepetition payroll tax withholding
23 obligations of the Debtors: a) IRS-\$112,167; b) ODR-\$13,146; and c)
24 Wisconsin Dept. of Revenue-\$700. General unsecured creditors will
25 receive no distribution.

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1 II. Concerns about the Fee Requests

2 From the beginning, there have been a number of problems, both
3 procedurally and substantively, in Field Jerger's handling of the
4 Debtors' cases. The following examples are illustrative, but not
5 comprehensive:

6 1) Due to errors in the initial filings, the Debtors'
7 expedited motions and related notices with respect to interim cash
8 collateral use and payment of prepetition wages needed to be refiled.
9 Compare Docket Nos. 7 and 8 with Docket Nos. 14-17.

10 2) Approximately 44 entries out of the 251 entry docket in
11 this case are changes of addresses for interested parties, presumably
12 corrected from the original mailing matrix and filed schedules.

13 3) The order authorizing payment of prepetition wages had to
14 be amended to correct the case number in the caption. Compare Docket No.
15 45 with Docket No. 47.

16 4) The change of address for Walker Bay Boats was filed with
17 the wrong case number for the consolidated case. See Docket No. 65.

18 5) An Order to Show Cause re: Dismissal, Conversion or Other
19 Relief had to be scheduled for hearing because the initial Rule 2015
20 Financial Report was filed late. See Docket Nos. 68 and 99.

21 6) The August Rule 2015 Financial Report for Maritime's Marine
22 Centers, LLC was filed with the wrong case number for the consolidated
23 case. See Docket No. 166.

24 7) As noted above, the Fee Requests nowhere included totals for
25 the actual and projected fees and expenses in the consolidated case.

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1 None of the errors/mishaps listed above ultimately made any
2 difference to the overall disposition of the Debtors' bankruptcy case.
3 Viewed in isolation, they represent relatively minor problems that could
4 occur (and have occurred) in any case. By all accounts, the liquidation
5 of the Debtors' assets has been both rapid and relatively successful.
6 Some of the referenced problems may have been the results of rushed
7 filings in light of the Debtors' dire situations prepetition, and after
8 the filings, some may have resulted from pressure from AMCI to get sales
9 concluded quickly. However, the recurring problems that have been noted
10 reflect a worrisome lack of attention to detail that I take into account
11 in my evaluation of fee requests because such problems generally result
12 in increased administrative costs.

13 III. Application of Moreno v. City of Sacramento

14 In Moreno, the Ninth Circuit took a District Court to task for
15 reducing the award of fees to the prevailing attorneys in a civil rights
16 case by about 40% of the amount requested without specifically
17 articulating its reasoning for the substantial reduction. In its
18 analysis, the Ninth Circuit recognized that the primary responsibility
19 for reviewing fee requests rests with the trial court, but when an award
20 of reduced fees is made, it must be explained. "The explanation need not
21 be elaborate, but it must be comprehensible." Moreno v. City of
22 Sacramento, 534 F.3d at 1111. Nevertheless, small percentage fee
23 reductions may be made based on a limited review and without a detailed
24 explanation.

25 Where the difference between the lawyer's request and
26 the court's award is relatively small, a somewhat
cursory explanation will suffice. . . . [T]he district

1 court can impose a small reduction, no greater than 10
2 percent - a "haircut" - based on its exercise of
discretion and without a more specific explanation.

3 Id. at 1111-1112 (emphasis added). At the Hearing, I indicated that I
4 was considering a Moreno reduction to the Fee Requests.

5 Section 330(a)(1) authorizes awards of reasonable attorneys
6 fees for "actual, necessary services" performed for the estate and
7 reimbursement for "actual, necessary expenses." Section 330(a)(2) allows
8 me, on my own motion to "award compensation that is less than the amount
9 of compensation requested." Section 330(a)(3) lists a set of
10 nonexclusive factors that I am to consider in determining reasonable
11 compensation for professionals, including whether subject services "were
12 necessary to the administration of, or beneficial at the time at which
13 the service was rendered toward the completion of, a case" in chapter 11.

14 In the Letter, Field Jerger reminds me that they are a small
15 firm that produced positive results in a complicated set of affiliated
16 cases over a short time frame. They also point out that AMCI's counsel
17 stated at the Hearing that he thought that the time spent in Field
18 Jerger's representation of the Debtors was reasonable, that its
19 representation of the Debtors was efficient and that the Fee Requests
20 represented total bills that were less than might have been billed for
21 the same services by some other local firms. AMCI's counsel also stated
22 at the Hearing that the 10% standard stated in Moreno was too stiff of a
23 "haircut" to be imposed in this case. The United States Trustee did not
24 take a position on the Fee Requests at the Hearing.

25 On the other hand, in the Letter, Field Jerger recognizes that,

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1 [i]n the process of our representation, we did
2 encounter challenges with the court clerk's office.
3 We also did obtain negative feedback from chambers
4 over some court submissions.

5 As the nonexclusive list of problems in Section II above indicates, the
6 filings by Field Jerger had issues more often than I typically experience
7 in chapter 11 cases.

8 IV. Fee and Expense Totals and Allowance

9 In the Letter, Field Jerger's total of actual fees in the
10 Debtors' consolidated case is slightly less than my calculation at
11 \$176,816.25. Its calculation of expenses at \$5,963.10 corresponds with
12 my calculation of \$5,463.10, in that Field Jerger's total includes \$500
13 in anticipated expenses, as reflected on Exhibit C to the Second
14 Application. Finally, Field Jerger estimates further fees totaling
15 \$19,885 before it concludes its work for the Debtors.

16 Since the Debtors' consolidated case will be dismissed shortly
17 and before year-end, in my view, Field Jerger's anticipated fees and
18 expenses are a matter to be resolved between Field Jerger and Mr.
19 Selfridge, and I will neither comment nor enter any order with respect to
20 any fees or expenses projected for the future. I will allow 100% of the
21 actual expenses requested in the amount of \$5,463.10. As to actual fees,
22 I have taken the comments and arguments of Field Jerger and AMCI's
23 counsel at the Hearing and in the Letter to heart, but I further conclude
24 that a small percentage reduction in the Fee Requests is appropriate in
25 light of the errors in filings in this case, as listed and discussed
26 above. Accordingly, I will approve actual fees with a 5% reduction from
the amount stated by Field Jerger in the Letter in the total amount of

1 \$167,975.44. The total of actual fees and expense reimbursements that I
2 am approving for Field Jerger in this case is \$173,438.54. I will
3 prepare and enter an order consistent with this Memorandum Opinion.

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5 cc: Maritime Services Corp.
6 Joseph A. Field, Esq.
7 U.S. Trustee
8 David A. Foraker, Esq.