

In re James, Case No. 389-35090-H13

Hamby v. James Adv. Pro. No. 90-3019-H

6-7-91 HLH Unpublished

A creditor brought a successful adversary proceeding to determine the dischargeability of a debt. Thereafter, the creditor filed a cost bill seeking attorney fees of \$4,576.50. The court reviewed the fee detail and a supplemental memorandum and concluded that the bill was too high under the lodestar approach.

The court noted that 6 attorneys and 4 legal assistants worked on the file and that several conferences between these people unnecessarily increased the bill. The court disallowed the time shown for all such conferences and for entries which were combined in such a way that the court could not tell how much time was spent on each activity.

The court allowed all entries for conferences with the client, opposing counsel and several miscellaneous charges which appeared proper. The court also allowed \$487.50 to prepare and serve the complaint; the creditor had sought \$2960.50 for this work.

After all adjustments were made, the court allowed \$2498 in attorney fees.

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Filed
Unpublished

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re)	
)	Case No. 389-35090-H13
DAVID W. JAMES, JR.,)	
)	
Debtor.)	
_____)	Adversary No. 90-3019-H
JANET R. HAMBY,)	
)	
Plaintiff,)	OPINION
)	
v.)	
)	
DAVID W. JAMES, JR.,)	
)	
Defendant.)	

In this Chapter 13 case this adversary proceeding was brought to determine the dischargeability of a debt represented by a promissory note given in connection with a decree of dissolution, marital settlement agreement and two orders modifying the decree. The defendant/debtor is represented by David W. James. The plaintiff/creditor is represented by Sussman, Shank, Wapnick, Caplan and Stiles (hereinafter referred to as "the firm").

P91-13 (14)

1 11 USC §1328(a) provides that debts "of the kind
2 specified in §523(a)(5) * * *" are not dischargeable in a
3 Chapter 13 case. Section 523(a)(5), to the extent applicable
4 in this matter, provides that any debt "to a spouse * * * for
5 alimony to, maintenance for, or support of such spouse * * *,
6 in connection with a * * * divorce decree or other order of a
7 court of record * * *" is not dischargeable."

8 This action was commenced by the filing of a complaint in
9 which it was alleged that on July 1, 1985 an order was entered
10 by the divorce court awarding the plaintiff the sum of \$28,500
11 as spousal support to be evidenced by a promissory note in
12 that amount with interest on payments overdue for 30 days and
13 for attorney fees and costs in any action to collect the money
14 due. While the answer filed by the defendant denied that any
15 part of the obligation represented spousal support, after some
16 discovery had taken place and the court had set the matter for
17 trial, the defendant admitted that the principal amount of the
18 note was nondischargeable as being spousal support but
19 continued to deny that interest on the principal and attorney
20 fees incurred by the plaintiff was also nondischargeable. The
21 plaintiff then filed a motion for partial summary judgment.
22 This court granted partial summary judgment holding that
23 accrued interest and reasonable and necessary attorney fees
24 were nondischargeable. Thereafter the plaintiff filed a cost
25 bill for attorney fees of \$4,576.50 and costs of \$375.67.
26 Objections to the cost bill were filed by the defendant. The

1 court addressed a letter dated March 15, 1991 to counsel, a
2 copy of which is attached, expressing concerns of the court
3 regarding (1) the lumping of services and (2) failure to give
4 sufficient information so that the court could determine the
5 necessity of the services performed. In response, the
6 plaintiff filed a Supplemental memorandum which attached a
7 copy of the original time statement with handwritten notes on
8 the right side of the pages which are offered as further
9 explanations of the services performed. For the most part
10 these handwritten notes do nothing to meet the concerns
11 expressed in the court's letter of March 15, 1991. Although
12 offered opportunity to do so, neither party has requested any
13 further hearing.

14 In determining what amount should be awarded for the
15 plaintiff's attorney fees in this adversary proceeding, the
16 court will approach the issue by using what is called the
17 lodestar approach. Under lodestar the amount of the fee is
18 determined by multiplying a reasonable hourly rate by the
19 number of hours reasonably spent. The test has two elements,
20 each of which includes the limitation of reasonableness. The
21 experience of this court is that attorney fees in bankruptcy
22 cases range from \$80 to \$200 per hour. The question involved
23 in this case is not one requiring any great expertise. If
24 this case had been handled on behalf of the plaintiff by a
25 single lawyer, \$150 would be a reasonable hourly fee for an
26 attorney with some expertise in bankruptcy cases.

1 Hypothetically, if such an attorney would spend three hours in
2 dictating, proofreading and finalizing a complaint and
3 summons, then \$450 would be reasonable compensation for these
4 services. If some other attorney or firm of attorneys would
5 charge \$600 to accomplish this same product, then, either the
6 hourly rate was too high or an unreasonable length of time was
7 spent. It is not reasonable to seek fees of \$600 for eight
8 hours spent by an inexperienced attorney at \$75 per hour when
9 an experienced attorney charging \$150 per hour could
10 accomplish the same result in three hours. In either case a
11 reasonable fee would be \$450. If an attorney of some
12 experience could accomplish a given result for a fee of \$450,
13 it is not appropriate to award more than \$450 because more
14 than one attorney was utilized. Likewise the fee should not
15 increase because the services of a paralegal were used rather
16 than those of an attorney. In applying the lodestar rule or
17 test the court must therefore look at results accomplished.

18 Generally, in the absence of overreaching, a court will
19 not examine into fees agreed upon between an attorney and his
20 or her client. However, such an agreement should have little
21 or no relevance in determining what might be a reasonable fee
22 to be paid by a third person not involved in the making of the
23 agreement. That person has no voice in the selection of the
24 attorney or any control over the amount of time the attorney
25 may spend.

26 In this case the issue of whether the debt was or was

1 not dischargeable was a simple issue of law. Any attorney of
2 any experience could find the applicable statutes in only a
3 few minutes.

4 In this case the firm billed for time spent by the
5 following attorneys with their hourly rate shown in
6 parenthesis: Barry P. Caplan (\$175); Howard M. Levine (\$150);
7 Richard G. Spier (\$140); Sylvia E. Stevens (\$125); Thomas W.
8 Stilley (\$89.50); and Shawn P. Ryan (\$69.64). The firm also
9 utilized others, whom the court assumes are paralegals:
10 Alexandra A. Hoover (\$70); L. Russell Piekarski (\$60); Sandra
11 G. Russell (\$60); Audry K. Bergen a/k/a Audrey K. La Palm
12 (\$30). Thus in this simple case six attorneys and four
13 paralegals were used. A cursory examination of the itemized
14 time statement demonstrates what happens when this many people
15 work on a single case. There are numerous conferences between
16 attorneys which accomplish nothing for the client. This case
17 could have been competently handled by Caplan, Levine or Spier
18 and with, at the most, one paralegal. When so many persons
19 are involved, it is almost impossible for the court to
20 determine whether a conference between attorneys in the firm
21 served any beneficial purpose. It is not necessary that a
22 large number of attorneys be kept familiarized with the
23 progress of a case. To discuss a case over a cup of coffee
24 without charge is one thing. To charge the time of ten
25 separate persons should require some showing of the necessity
26 therefor. There has been no such showing in this case. Since

1 it is impossible to determine that any of such office
2 conferences were of any benefit to the client, the court must
3 decide what a reasonable fee would be upon the basis of
4 results accomplished. The court will go through the
5 individual entries in the time statement. It will allow
6 appropriate charges (in most instances the amounts shown on
7 the time statement) for conferences with the client,
8 conferences with the opposing attorney, and appearances before
9 the court. Charges for research of the facts and law and
10 preparation of documents will be approved on the basis of what
11 an experienced attorney at \$150 per hour could be expected to
12 charge. The court will not make an allowance for conferences
13 between attorneys when the issue is simple enough that a
14 single attorney of some experience would have no need to
15 confer with another attorney. Also the court will not include
16 items which are lumped where the court cannot determine what
17 time was spent in individual items of service. Nor will
18 allowance be made for services not in connection with the
19 adversary proceeding such as those relating to life insurance,
20 collection of current support, or relief from the automatic
21 stay.

22 1. Following is a list of conferences with the client
23 and correspondence with client, the times spent and the amount
24 allowed by the court.

25	1/12/90	.30 hours @	\$75	\$22.50
26	1/17/90	.20 "	"	15.00

1	1/26/90	.30	"	"	22.50
2	1/31/90	.50	"	"	37.50
3	2/7/90	.20	"	"	15.00
4	2/13/90	.20	"	"	15.00
5	3/7/90	.20	"	"	15.00
6	3/26/90	.20	"	"	15.00
7	4/12/90	.30	"	"	22.50
8	4/23/90	.20	"	"	15.00
9	4/24/90	.10	"	\$175.00	17.50
10	4/24/90	.20	"	75.00	15.00
11	5/1/90	.20	"	"	15.00
12	5/16/90	.10	"	"	7.50
13	8/20/90	.30	"	85.00	25.50
14	8/20/90	.50	"	"	42.50
15	10/8/90	.30	"	100.00	<u>30.00</u>
16					\$ 348.00

2. Following are conferences with opposing counsel:

18	1/12/90	.30	hours @	75.00	22.50
19	1/16/90	.40	"	"	30.00
20	1/18/90	.30	"	"	22.50
21	2/22/90	.50	"	175.00	87.50
22	2/26/90	.50	"	"	87.50
23	3/5/90	.30	"	75.00	22.50
24	3/7/90	.50	"	"	37.50
25	3/8/90	.40	"	"	30.00
26	3/15/90	.20	"	"	15.00

1	3/20/90	.10	"	"	7.50
2	4/5/90	.30	"	"	22.50
3	4/6/90	.10	"	"	7.50
4	4/12/90	.30	"	"	22.50
5	4/24/90	.10	"	"	7.50
6	5/1/90	.30	"	"	22.50
7	5/2/90	.90	"	"	67.50
8	5/2/90	.20	"	"	15.00
9	5/3/90	.20	"	"	15.00
10	5/4/90	.30	"	"	22.50
11	5/15/90	.20	"	"	15.00
12	5/15/90	1.0	"	"	75.00
13	5/16/90	.40	"	"	30.00
14	6/15/90	.30	"	85.00	25.50
15	6/19/90	.50	"	"	42.50
16	6/19/90	.30	"	"	25.50
17	7/10/90	.20	"	"	<u>17.00</u>
18					\$ 795.50

3. Miscellaneous charges which appear to be proper:

20	1/19/90	.20	hour @	75.00	15.00
21	3/20/90	.20	"	"	15.00
22	3/6/90	.20	"	"	15.00
23	3/26/90	.30	"	"	22.50
24	3/29/90	.80	"	70.00	56.00
25	4/3/90	.30	"	75.00	22.50
26	5/3/90	.20	"	60.00	12.00

1	5/24/90	.50	"	75.00	37.50
2	5/24/90	1.20	"	"	90.00
3	5/25/90	.70	"	"	52.50
4	5/25/90	1.60	"	"	120.00
5	5/30/90	1.30	"	"	97.50
6	6/13/90	1.50	"	85.00	127.50
7	6/28/90	.20	"	175.00	35.00
8	7/12/90	.50	"	85.00	42.50
9	9/13/90	.70	"	"	59.50
10	9/18/90	.40	"	30.00	12.00
11	10/8/90	.20	"	175.00	<u>35.00</u>
12					\$ 867.00

13 The above charges of \$348.00, \$795.50 and \$867.00,
 14 totalling \$2,010.50 include all of the time charged for
 15 conferences and correspondence with the plaintiff, all of the
 16 time charges for conferences and correspondence with opposing
 17 counsel and all appropriate charges for services subsequent to
 18 the filing of the answer. They do not include charges where
 19 two or more items of services are lumped together making it
 20 impossible to determine whether or not the time charged for
 21 individual items was reasonable. They do not include office
 22 conferences where the need for such conferences is not given
 23 and where, in many instances, the conferences appear to serve
 24 no useful purpose or, where the conference appears to be
 25 merely a matter of bringing another attorney in the firm up to
 26 date upon what has been happening. They do not include

1 services prior to the filing of the answer, except for
2 contacts with the client or opposing counsel. The reason is
3 because of the inordinate amount of charges for the factual
4 and legal research in connection with and the preparation of
5 the complaint.

6 Prior to the entry for 2/26/90 of "Review answer, letter
7 to client" the time statement shows charges of \$3,353.00.
8 Subtracting therefrom charges up to that time for conferences
9 and correspondence with the plaintiff (\$127.50), conferences
10 and correspondence with opposing counsel (\$250.00) and
11 miscellaneous charges (\$15.00) leaves charges of \$2,960.50 for
12 review of the necessary divorce court documents, research of
13 law, calculation of interest owing on the debt and dictating
14 of a complaint.

15 To determine what a reasonable fee would be to do the
16 necessary research of facts and law and prepare a complaint,
17 the author of this opinion first read all of the relevant
18 divorce court documents and made notes of those parts which
19 would be relevant to the question of dischargeability of the
20 obligations represented by the promissory note. At 10:30 a.m.
21 this author commenced reading and making notes regarding the
22 Decree, the Settlement Agreement, the Order Denying
23 Modification of Decree of Dissolution, the Stipulated Order
24 Modifying Decree of Dissolution, and the promissory note. At
25 11:15 this task was completed - a period of 45 minutes. An
26 attorney of some bankruptcy experience, one who could

1 justifiably charge \$150 per hour, should require less than 15
2 minutes to review the provisions of §1328(a) and §523(a)(5) of
3 the Bankruptcy Code. The court's law clerk took 15 minutes to
4 calculate the amount of interest due upon the promissory note.
5 The complaint consists of six paragraphs plus the prayer. The
6 first paragraph is boilerplate language alleging jurisdiction
7 of the court; the second alleges that the defendant has filed
8 bankruptcy; the third that the state court entered a decree of
9 dissolution incorporating the Marital Settlement Agreement,
10 that it was subsequently modified and that copies are attached
11 as exhibits A through C; the fourth alleges that the
12 obligation to pay \$28,500 is spousal support and that under
13 the terms of the note there was owing at the time of
14 bankruptcy the sum of \$37,558.64; the fifth, that the note
15 provides for attorney fees; and the sixth that under 11 USC
16 §523(a)(5) and §1328(a)(2) the debt is nondischargeable. It
17 should have taken an experienced attorney no longer than one
18 hour to dictate the complaint and another one-half hour to
19 proof read and finalize it and instruct a secretary on the
20 preparation of a summons. Thus reasonable times for such
21 services would be:

22	Read and make notes of relevant documents	.75
23	Review statutes	.25
24	Calculate the amount of interest due	.25
25	Draft complaint	1.00
26	Finalize complaint and instruct secretary	

1 on preparation of summons .50
2 File and arrange service of complaint .50
3 Total Hours 3.25
4 Total charges to prepare and serve
5 complaint \$487.50

6 Adding the sum of \$487.50 to the above total of \$2,010.50
7 for other charges brings a grand total of \$2,498.00. The
8 court finds that the plaintiff is entitled to attorney fees in
9 this amount and costs in the amount of \$375.67.

10 It is interesting to note that the time records show
11 services totalling \$6,546.00, of which only \$4,576.50 was
12 billed to the client. (Exhibit B, page 1, Supplemental
13 Memorandum to Amplify Billing Memorandum.) From this it
14 appears that the firm itself recognized that either the hourly
15 rate at which services were charged or the time spent was
16 unreasonable. Hopefully, this is some recognition by the firm
17 of what happens when too many cooks spoil the broth.

18 The plaintiff may submit an appropriate order.

19 DATED this 7th day of June, 1991.

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21 
22 Henry L. Hess, Jr.
23 Bankruptcy Judge
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28 cc: Barry P. Caplan
29 David W. James, Jr.
30
31

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

1001 S.W. 5TH AVENUE, #900
PORTLAND, OREGON 97204

U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
FILED

March 15, 1991

HENRY L. HESS, JR.
BANKRUPTCY JUDGE

503-326-4186
FTS 423-4186

MAR 15 1991

TERENCE H. DUNN, CLERK

BY DEPUTY

David W. James, Jr.
Attorney at Law
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Suite 1111
Portland, Oregon 97204

Re: James - Case No. 389-35090-H13 90-3019
Hamby v. James, Adv. Proceeding No. ~~90-3029~~-H

Dear Counsel:

Since there was no request for a hearing on the issue of the attorney fee award to the plaintiff, the court began reviewing the file in order to render a decision. In examining the itemized statement of time spent shown in the plaintiff's billing memorandum, it occurs to the court that the plaintiff may wish to supplement or expand the statement.

The law requires a statement of fees that is sufficiently detailed so that the court can determine the necessity of the services performed and the reasonableness of the charges for those services. See, e.g., In re Puget Sound Plywood, Inc., (Unsecured Creditors' Committee; Leon A. Uziel v. Puget Sound Plywood, Inc.), 924 F.2d 955 (9th Cir. 1991); In re Nucorp Energy, Inc., 764 F.2d 655 (9th Cir. 1985). If the court is unable to determine from the schedule of services whether a particular item of service was reasonably necessary or whether the time spent was reasonable, it is appropriate to deny compensation for that item.

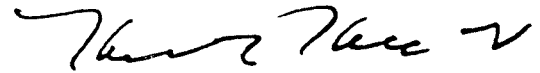
The plaintiff's attorneys' billing memorandum contains, in many instances, insufficient information. For example, an entry dated 1/09/90 is described as "Office conference with Shawn Ryan." Since the description does not state the subject of the conference, the court cannot determine whether the conference was necessary or whether the time spent was reasonable. The billing contains several such deficiencies.

Thomas Stilley
David James
March 15, 1991
Page Two

Another example of inadequate information is demonstrated by the first entry dated 1/10/90 which lists a charge of .80 hours for two services: "Review file; legal research re: options to have debt determined nondischargeable." The Ninth Circuit, quoting from In re Great Sweats, 113 Bankr. 240, 242-44 (E.D. Va. 1990), stated in Puget Sound: "Because the application contains numerous entries which lump together services relating to varying matters, the court is unable to delineate the specific times spent on specific tasks." Puget sound at 1153. All services must be individually itemized before the court can assess the reasonableness and necessity of each item.

If plaintiff's counsel wishes to amplify the billing memorandum, the court will allow 7 days from the date of this letter to do so. Additional time may be granted if a request for an extension is sought within the 7 day period mentioned.

Very truly yours,



Henry L. Hess, Jr.
Bankruptcy Judge

HLH/lo