

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

In re: )  
 )  
MERRICK DIXON ) Case No. 00-11770-SSM  
 ) Chapter 13  
Debtor )

**MEMORANDUM OPINION**

Before the court is the request of Friedman Real Estate (“Friedman”), the holder of a second deed of trust against commercial property owned by the debtor at 1908 Constitution Avenue, N.E., Washington, D.C., to determine the appropriate amount of legal fees due under the terms of its deed of trust. Friedman has requested \$3,362.45 in legal fees and expenses. The debtor opposes this amount as being excessive in comparison with the amount of the secured debt. For the reasons stated, the court will allow \$3,169.95.

The debtor filed a chapter 13 petition in this court on April 21, 2000. Among the assets listed on his schedules was commercial property located at 1908 Constitution Avenue, N.W., Washington, D.C., which the debtor valued on his schedules at \$63,000. The property was shown as being subject to 3 liens: a first deed of trust in favor of Provident Bank in the amount of \$71,900, a second deed of trust in favor of Friedman in the amount of 9,050,<sup>1</sup> and a utility lien in the amount of \$1,200. The plan filed by the debtor on May 11, 2000, proposed to “strip” Friedman’s lien and treat its claim as wholly unsecured, based on

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<sup>1</sup> Friedman’s timely-filed proof of claim is in the amount of \$8,976.41 and asserts a value of \$125,000 for the collateral.

the lack of any equity to support it. The plan asserted that the debtor's personal liability on the claim had been discharged in a prior bankruptcy, with the result that Friedman would receive nothing on account of its claim.

Friedman's claim arises under a promissory note dated June 3, 1997, in the original principal amount of \$9,100, with interest at the rate of 12% per annum, repayable in monthly installments of \$95.00, and due in full June 3, 2002. It is secured by a recorded second-lien deed of trust which contains, among other provisions, the following:

7. Protection of Lender's Rights in the Property. If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or *there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations, then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the property. \* \* \* Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.*

(emphasis added). Friedman incurred legal fees and expenses objecting to the proposed stripping of its lien and seeking relief from the automatic stay. The debtor ultimately determined not to litigate the value of the collateral and his Third Amended Plan, filed February 12, 2001, proposes to pay Friedman directly in accordance with the terms of its note and deed of trust. The debtor does not dispute that Friedman is entitled under its deed of trust to payment of fees reasonably incurred to protect its lien interest but simply challenges the claimed amount as excessive.

The court has carefully reviewed the billing records submitted by the two law firms, Loewinger & Brand, PLLC, and The Byrum Law Offices, P.C., that represented Friedman in connection with the plan objections and motion for relief from the automatic stay. In addition to filing objections to each of the plans<sup>2</sup> and a motion for relief from the automatic stay, Friedman's counsel appeared in court on at least four occasions in connection with those matters.

The billing records of Loewinger & Brand reflect 3.8 hours of work at a blended billing rate of \$235.79 per hour plus \$0.99 in expenses. The billing records for Byrum reflect 17.4 hours (over a seven-month period) at \$150.00 per hour, plus \$157.95 in expenses. In the Fourth Circuit, the standard for an award of statutory attorneys fees is set forth in *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 226 n.28 (4th Cir. 1978), *cert. denied* 439 U.S. 934 (1978). Specifically, the factors to be considered are as follows: (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between the attorney and client; and (12) attorneys' fee awards in similar cases. Many of the *Barber*

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<sup>2</sup> This includes the final plan, which appeared to contain conflicting provisions with respect to the payment of Friedman's claim and did not provide for payment of its attorney's fees.

factors are subsumed into the setting of an appropriate hourly rate, which, when multiplied by the time expended, provides a lodestar amount which is then subject to adjustment based on the remaining factors. *Anderson v. Morris*, 658 F.2d 246, 249 (4th Cir. 1981).

With respect to the work performed by Loewinger & Brand, the court determines that the appropriate billing rate, given the nature of the services, should not exceed \$185.00 per hour and that 3.6 hours were reasonably expended. Thus, its fees will be allowed under the deed of trust in the amount of \$666.00, together with its expenses in the amount of \$0.99. Byrum's hourly rate of \$150.00 is reasonable for the services provided, and the time expended is reasonable in light of the number of plans that had to be reviewed, pleadings that had to be prepared, and court appearances that had to be made. In this connection, the court notes that Byrum's billing records reflect "no charge" for numerous minor items. Thus, although 17.4 hours are listed, approximately 1.1 hours are annotated "no charge." The fees of Byrum Law Office will therefore be allowed in the amount of \$2,345.00, together with its expenses of \$157.95. No adjustments to the lodestar amounts are necessary to account for the remaining *Barber* factors. While the court has considered the debtor's argument that the fees and expenses – which here total \$3,169.95 – is large in relationship to the debt, the court cannot find that they are unreasonably disproportionate given that confirmation of the plan would have resulted in the complete loss of the creditor's \$8,976.41 claim.

A separate order will be entered determining that Friedman is entitled to reimbursement of \$3,169.95 in legal fees and expenses under the terms of its deed of trust.

Such sum will bear interest at the rate of 12% from the entry of this order and will be payable on or before the due date of the note, that is June 3, 2002.

Date: April 5, 2001

Alexandria, Virginia

/s/ Stephen S. Mitchell  
Stephen S. Mitchell  
United States Bankruptcy Judge

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