

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**
Bankruptcy Judge Sid Brooks

In re:)	
CHAD M. GLASGOW,)	
SS#: XXX-XX-5604)	Case No. 05-44131-SBB
and)	Chapter 7
VALERIE GLASGOW,)	
SS# XXX-XX-4644)	
Debtors.)	
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GDO INVESTMENTS, INC.,)	
Plaintiff,)	
)	Adv. Pro. No. 06-01334-SBB
v.)	
)	
VALERIE GLASGOW,)	
Defendant.)	

**ORDER GRANTING IN PART, AND DENYING IN PART, PLAINTIFF'S
APPLICATION FOR ATTORNEY FEES AND COSTS**

The above-captioned matter comes before the Court on the *Plaintiff's Application for Attorney Fees and Costs* ("Application") filed on February 22, 2008 (Docket #112) and the *Defendant's Response to Application for Attorney Fees and Costs* ("Response") filed on March 3, 2008 (Docket #113).

I. Background:

On February 4, 2008, this Court issued a *Memorandum Opinion and Order Granting in Part, and Denying in Part, Plaintiff's Amended Complaint to Determine Dischargeability of Plaintiff's Claims Pursuant to 11 U.S.C. § 523* ("Memorandum Opinion")(Docket #106). The Court's Memorandum Opinion denied the Plaintiff's claims under 11 U.S.C. § 523(a)(2)(A) and granted Plaintiff's claims under 11 U.S.C. § 523(a)(6). In prior rulings the Court also denied Plaintiff's claims under 11 U.S.C. § 523(a)(2)(B)¹ and Plaintiff's claims as to Chad Glasgow.² The Court adopts and incorporates herein those opinions and orders.

¹ See Memorandum Opinion and Order Denying in Part, and Granting in Part, Defendants' Motion for Partial Summary Judgment (Docket #69).

² See Order Granting Defendants' Motion For Directed Verdict As To Claims Against Chad M. Glasgow (Docket #92).

The Court entered a judgment under 11 U.S.C. § 523(a)(6) in favor of the Plaintiff in the amount of \$57,333.00, plus applicable interest. The Plaintiff was also allowed to file a legally sufficient application for attorney fees and costs. The Court has considered the Plaintiff's Application and the Defendant's Response and makes the following Order.

II. Plaintiff's Application:

The Plaintiff seeks attorney fees of \$47,290.98, paralegal fees of \$24,662.12, costs of \$14,652.64, minus a reduction of \$5,622.10 for the replevin action, for a total of \$80,983.64. The billing statements attached to the Application start on May 8, 2003, and end on February 11, 2008. These statements cover (1) preparation of the July 2004 extension of the promissory notes, (2) research and preparation of the August 2004 factoring agreement, security agreements, and UCC filings, (3) general review of bankruptcy documents, attendance at the Section 341 Meeting of Creditors, correspondence with the Chapter 7 Trustee, and filings in the main bankruptcy case (4) preparation for, filing and litigating the adversary proceeding, and (5) a replevin action on the diamond ring. In addition to the years of sporadic payments on the loans and renegotiating the terms of the loans, the Defendant has spent two and a half years in bankruptcy court litigating a factually complex and hotly disputed claim.

The Plaintiff asserts that the requested fees and costs are reasonable under COLO. REV. STAT. § 18-4-405, Colorado Rules of Professional Responsibility 1.5, and the "lodestar" test. The Plaintiff points the Court to *Mau v. E.P.H. Corp.*, 638 P.2d 777 (Colo. 1981) and *Double Oak Const., L.L.C. v. Cornerstone Development Intern., L.L.C.*, 97 P.3d 140 (Colo. App. 2003). The Plaintiff also argues against any apportionment of fees between the successful and unsuccessful claims. On this issue, the Plaintiff cites *Hensley v. Eckerhart*, 461 U.S. 424, 103 S. Ct. 1933 (1983). Plaintiff also argues that it is appropriate for the Court to award fees for work done by his paralegal and cites to *Robinson v. Colorado State Lottery Div.*, 155 P.3d 409 (Colo. App. 2006).

III. Defendant's Response:

The Defendant objects to Plaintiff's Application on primarily two grounds: (1) Plaintiff is only entitled to fees, if any, on its claim under 11 U.S.C. § 523(a)(6), and not for its claims under 11 U.S.C. § 523(a)(2), state court actions, or claims relating to Chad Glasgow, and (2) Plaintiff's requested fees and costs are unreasonable, including:

- (a) that the requested fees and costs of \$80,983.64 are over \$20,000 greater than Plaintiff's judgment of \$57,333.00, inclusive of treble damages,
- (b) that Plaintiff's billings go back to 2003 and 2004, before any of the facts occurred supporting the 11 U.S.C. § 523(a)(6) claim,
- (c) that Plaintiff's billings include fees related to the underlying bankruptcy case (i.e. foreclosure issues, attending the meeting of creditors, filing a motion for relief from stay, litigating the Glasgow's exemptions, a motion to avoid lien, and related issues), and
- (d) that Plaintiff initially sought over \$350,000, but obtained a judgment for actual damages of only \$19,111, and

(e) that the affidavit from Richard Clark should be ignored as it is not competent evidence on reasonableness of fees.

The Defendant cites to *Robinson v. City of Edmond*, 160 F.3d 1275, 1283 (10th Cir. 1998) and *Case v. United Sch. Dist. No. 233*, 157 F.3d 1243, 1250 (10th Cir. 1998).

IV. Discussion:

“Under the American Rule, ‘the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys’ fee from the loser.’” *Travelers Cas. and Sur. Co. of America v. Pacific Gas and Elec. Co.*, 127 S.Ct. 1199, 1203 (2007) (citations omitted). This general rule applies unless a statute or contract specifically provide for attorney fees and costs. *Id.*

In the case at hand, the Plaintiff prevailed on its claim under 11 U.S.C. § 523(a)(6) and the Court awarded treble damages and reasonable attorney fees and costs based on Colorado’s “Rights in Stolen Property” statute, COLO. REV. STAT. § 18-4-405. If the Plaintiff had prevailed on it’s claims under 11 U.S.C. § 523(a)(2), an award of reasonable attorney fees may have been appropriate under the loan documents (i.e. contracts) between the parties, but not under COLO. REV. STAT. § 18-4-405. The Court also has discretion, under appropriate circumstances, to award attorney fees under 11 U.S.C. § 105. *Paul v. Iglehart*, Slip Copy, 2007 WL 2422149 (D.Colo. 2007).

A starting point for determining reasonableness of an attorney fee award is a calculation of the lodestar amount, “the number of hours reasonably expended multiplied by a reasonable hourly rate.” *Double Oak Const., L.L.C. v. Cornerstone Development Intern., L.L.C.*, 97 P.3d 140, 152 (Colo. App. 2003). *See also In re Miniscribe Corp.*, 309 F.3d 1234, 1243-44 (10th Cir. 2002). The Court also looks to the twelve factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974).³ Both the lodestar calculation and *Johnson* factors require the Court to consider a “reasonable hourly rate.” Based on this Court’s familiarity with legal fees in this community, the legal services and quality of litigation demonstrated by Plaintiff’s counsel in this case, the complexity of issues and history in this dispute, and accounting for the *Johnson* factors, I conclude that Plaintiff’s counsel’s rates were certainly reasonable at \$150-\$175 per hour for attorney services and \$75-\$85 for paralegal services. The question for the Court focuses on what services and which fees should be allowed at those rates.

³ The twelve *Johnson* factors are: (1) the time and labor required, (2) the novelty and difficulty of the questions, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the “undesirability” of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. These are the same factors cited by the Plaintiff in his Application, *Mau v. E.P.H. Corp.*, 638 P.2d 777, 779 (Colo. 1981).

In *Hensley v. Eckerhart*, 461 U.S. 424, 103 S. Ct. 1933 (1983), a case under the Civil Rights Attorney's Fee Awards Act, the Supreme Court addressed the issue of "whether a partially prevailing plaintiff may recover an attorney's fee for legal services on unsuccessful claims." *Hensley* at 426. The amount of fees to be awarded should be determined on a case by case basis and courts should consider the twelve factors as listed in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). *Hensley* at 429.

Based on these general principals, an award of reasonable attorney fees is appropriate in this case. However, for the reasons set forth below, the Court will reduce the requested amount by 40% or \$32,393.45, resulting in an award of attorney fees and costs of \$48,590.19.

1. Billings from May 8, 2003, through the petition date of October 12, 2005.

Plaintiff's Application includes fees and costs during the time period of May 8, 2003 through October 12, 2005 (the petition date), totaling \$2,214.50. The services during that time period include setting up the factoring agreement, preparing the security agreement, and preparing and filing the UCC financing statement. The vast majority of these services were done prior to any of the acts taken by the Defendant in converting the collateral in the summer of 2005.⁴ Therefore, the Court will not award these attorney fees.

2. Billings unrelated to the adversary proceeding.

Plaintiff's Application also includes fees and costs for services rendered in the main bankruptcy case. The Defendant objects to those fees, specifically those related to foreclosure issues, attending the meeting of creditors, filing a motion for relief from stay, litigating the Glasgow's exemptions, a motion to avoid lien, and related issues. The Court agrees with the Defendant that certain billings should be reduced or eliminated. For instance, numerous billing entries are for general review of the bankruptcy docket sheet on PACER, attending the 11 U.S.C. § 341 meeting, filing a proof of claim, and researching, preparing and filing military status verifications. These tasks are routine, and in some instances reflect that Mr. Olive does not regularly practice before the bankruptcy court and are not directly related to the adversary proceeding or conversion claim.

However, not all of the billings in the underlying bankruptcy case are unrelated to the Plaintiff's claim under 11 U.S.C. § 523(a)(6). The motion for relief from stay related to the business and personal property subject to the security agreements and the objection to exemptions related to the personal property subject to the security agreements.

⁴ Under the Plaintiff's successful 11 U.S.C. § 523(a)(6) claim, the Court found that the personal and business property was sold, without notice to, or authorization from, GDO, during the summer of 2005 and that the CCAP funds were diverted from GDO's account in approximately May or June 2005.

The Court has considered these facts in its determination of how much to reduce the Plaintiff's fees and costs. The Court also considers the fact that the Defendants continued to be less-than-truthful regarding the disposition of certain collateral during their bankruptcy proceeding.⁵

3. Billings related to Plaintiff's unsuccessful claims for relief against Chad Glasgow and pursuant to 11 U.S.C. § 523(a)(2).

The Supreme Court, in *Hensley v. Eckerhart*, addressed the issue of “whether a partially prevailing plaintiff may recover an attorney’s fee for legal services on unsuccessful claims.” *Hensley* at 426. The Supreme Court focused on the eighth *Johnson* factor, the “results obtained.” With respect to this factor, the Supreme Court stated, “This factor is particularly crucial where a plaintiff is deemed ‘prevailing’ even though he succeeded on only some of his claims for relief. In this situation two questions must be addressed. First, did the plaintiff fail to prevail on claims that were unrelated to the claims on which he succeeded? Second, did the plaintiff achieve a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award?” *Id.* at 434. If the successful and unsuccessful claims are unrelated, then the Plaintiff is not entitled to attorney fees on the unsuccessful claims. *Id.* at 435.

The original and amended complaint included three claims for relief against both Chad and Valerie Glasgow, including (1) fraud under 11 U.S.C. § 523(a)(2)(A), (2) false financial statements under 11 U.S.C. § 523(a)(2)(B), and (3) conversion under 11 U.S.C. § 523(a)(6). The Court finds that the Plaintiff's claims under 11 U.S.C. § 523(a)(2) were, indeed, related to the claims under 11 U.S.C. § 523(a)(6). The treble damages and attorneys fees were awarded under COLO. REV. STAT. § 18-4-405 based on the conversion of business personal property, the Glasgow's personal property, and CCAP payments. The Plaintiff could have brought solely the claim for conversion, but many of the facts supporting that conversion were gained through the Plaintiff's investigation into his claims under 11 U.S.C. § 523(a)(2). Additionally, the converted property was tied to the claims under 11 U.S.C. § 523(a)(2), as that property was subject to the security agreements on the loans.

The Supreme Court recognized that in many “cases the plaintiff's claims for relief will involve a common core of facts or will be based on related legal theories. Much of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis.” *Id.* at 435. In this situation, the “court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.” *Id.* at 435. The “level of success” or “results obtained” inquiry supports a reduction of the Plaintiff's requested fees. In the original and amended complaint, for all three claims for relief, the Plaintiff requested the entire unpaid balance on the loans, plus attorney fees, costs of suit, and interest at 25% per annum. This amount included a balance of \$105,773 on the 1998 Note and a balance of \$165,000 on the 2003 Note, for a total of \$270,733, plus attorney fees, costs and interest.

⁵ During the bankruptcy, the Defendants were less than honest in their statements regarding the diamond ring and the amount that they received from the sale of the business property. Generally, the Court found the Defendant, Valerie Glasgow, not particularly credible.

The Plaintiff ultimately recovered \$19,111.00 under 11 U.S.C. § 523(a)(6) for conversion, plus treble damages under COLO. REV. STAT. § 18-4-405, for a total judgment of \$57,333.00. The Court has considered (a) the original claims and amount sought, (b) the successful claim and actual amount awarded and (c) the hours expended and fees incurred. This is not a case of exceptional results leading to the award of the full amount of attorney fees for both the successful and unsuccessful claims. Rather, a reduction in the requested attorney fees is appropriate. Indeed, the Supreme Court stated, “[a] reduced fee award is appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole.” *Id.* at 440. In determining the appropriate amount, the Supreme Court stated, “[t]here is no precise rule or formula for making these determinations. The district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success. The court necessarily has discretion in making this equitable judgment. This discretion, however, must be exercised in light of the considerations we have identified.” *Id.* at 436-437. This Court must decide what is a reasonable attorney fee in light of the Plaintiff’s level of success. *Id.* at 439. The Court may make a general reduction in time if it cannot segregate the Plaintiff’s billing entries for time spent on the unsuccessful claims. *Case v. United Sch. Dist. No. 233*, 157 F.3d 1243, 1252 (10th Cir. 1998).

Although the Court finds that a reduction is appropriate, the Court would note that (1) the Plaintiff’s claims under 11 U.S.C. § 523(a)(2) were, certainly as to Valerie Glasgow, if not also to Chad Glasgow, close questions, (2) Plaintiff’s claims were not at all groundless or frivolous, and (3) the overall case presented by Plaintiff’s counsel was factually extensive and complicated and legally difficult.

4. Reduction.

Based on the above and foregoing, the Court will reduce the requested fees and costs to account for the following: (1) attorney fees and costs during the time period of May 8, 2003 through October 12, 2005, totaling \$2,214.50, (2) a general reduction to account for routine or unrelated fees and costs incurred in the underlying bankruptcy proceeding, and (3) a general reduction under the “results obtained” factor, recognizing that the Defendant successfully defended the claims against Chad Glasgow and the claims under 11 U.S.C. § 523(a)(2).

For the reasons set forth herein, this Court concludes that the fees and costs requested in the amount of \$80,983.64 shall be reduced by 40% or \$32,393.45. Fees and costs in the amount of \$48,590.19 will be awarded against the Defendant and in favor of the Plaintiff. This reduction reflects that the Plaintiff did not prevail on all of its claims, but that the claims were somewhat related and also reflects the continued dishonesty of the Defendant during the bankruptcy proceeding. “A general reduction of hours claimed in order to achieve what the court determines to be a reasonable number is not an erroneous method, so long as there is sufficient reason for its use.” *Mares v. Credit Bureau of Raton*, 801 F.2d 1197, 1203 (10th Cir. 1986). “If the court determines that some reduction in attorney fees is warranted, it may either identify the hours expended on the unsuccessful claim or, in the alternative, merely reduce the total fee by an appropriate amount to reflect the lack of success. *Oten v. Colorado Board of Social Services*, 738 P.2d 37 (Colo.App.1987).” *Porter v. Castle Rock Ford Lincoln Mercury, Inc.*, 895 P.2d 1146 (Colo.App. 1995)

V. Conclusion and Order:

Based upon the above and foregoing, the Court concludes that the Application will be GRANTED, in part. Fees and costs in the amount of \$48,590.19 are reasonable and shall be awarded in favor of the Plaintiff and against the Defendant. The Court further concludes that the Application will be DENIED, in part, as to the remaining requested fees and costs.

IT IS THEREFORE ORDERED as follows:

1. The *Plaintiff's Application for Attorney Fees and Costs* is GRANTED, in part. Fees and costs in the amount of \$48,590.19 are awarded against the Defendant and in favor of the Plaintiff.
2. The *Plaintiff's Application for Attorney Fees and Costs* is DENIED, in part, as to the remaining requested fees and costs.

Dated this 10th day of April, 2008.

BY THE COURT:



Sidney B. Brooks,
United States Bankruptcy Judge