

1
2 U.S. BANKRUPTCY COURT
3 FOR THE DISTRICT OF ARIZONA

4 **In re**)
5 **TERRY JOHN and JANET SUSAN**) In Chapter 11 proceedings
6 **GARDONA,**) Case No.: 10-30863
7 **Debtors**) **MEMORANDUM DECISION RE FEES**
8)
9)
10)

11 The Debtors hired Jerry Krumwiede to represent them in a Chapter 13 case.¹ After
12 the petition date of September 27, 2010, he filed three amended plans and several
13 schedule amendments on December 10, and additional amended plans on December 21
14 and 29. In the meantime, the Trustee filed a motion to dismiss, claiming that Debtors
15 exceeded the debt limit² because of their personal liability on debts of a related
16 corporation. After a hearing, the Court granted the Trustee’s motion and signed the
17 corresponding order on April 6, 2011. Seven days later, Mr. Krumwiede obtained an
18 order approving fees of \$5,000.00 to be paid through the plan (“Fee Order”).³ The docket
19 does not reflect that the Debtors approved the fees or that notice of the amount sought,
20 beyond that provided with the filing of the initial plan, had been given.

21 On April 22, 2011, the Debtors terminated Mr. Krumwiede and hired James
22 Kahn, who immediately filed a motion to convert to Chapter 11 which the Court granted
23 on May 6, 2011. Mr. Kahn then filed this motion to reconsider the Fee Order
24 (“Reconsideration”); the Chapter 13 Trustee joined, arguing that due to Mr. Krumwiede’s
25 many amended plans the Trustee could not prepare a recommendation which, if prepared,
26

27 _____
28 ¹ When initially hired, Mr. Krumwiede was affiliated with Wesbrooks Law Firm. Soon thereafter, he
established his own firm and brought this representation with him.

² 11 USC § 109(e).

³ Mr. Krumwiede received no retainer.

1 would have included an objection to the fees.⁴ Mr. Krumwiede filed a response and the
2 Court held a hearing on July 26.

3 At bottom, the Reconsideration turns on whether Mr. Krumwiede should have
4 known that the Debtors were ineligible for Chapter 13 relief thereby avoiding the seven
5 months of largely worthless effort expended in Chapter 13. To this key point, Mr.
6 Krumwiede “throws the Debtors under the bus” by claiming that Mr. Gardona misled him
7 concerning whether he was personally liable on the business loans. This defense might
8 ring true, but the documents provided by the lender in response to claims objections
9 clearly show the personal liability of the Debtors on the larger loan as co-makers and on
10 the smaller line of credit as guarantors.

11 These are documents that it is counsel’s obligation to review prior to filing a case,
12 particularly one where the debt limit may be in play. Failure to do so is not an acceptable
13 level of practice. *See* 11 U.S.C. § 707(b)(4)(C) and (D).⁵ The entire Chapter 13 could
14 have been avoided if counsel had dug deeper and not simply accepted his clients’
15 insistence that these were solely corporate obligations.

16 After reviewing the docket, the Court concludes that Mr. Krumwiede’s efforts
17 resulted in some modest benefit to the estate that could inure to the benefit of the Chapter
18 11 estate. Therefore, the Court will allow a fee of \$1500.00 to Mr. Krumwiede for his
19 work in the Chapter 13. After payment of this amount, and payment by the Trustee to

20
21 ⁴ After the hearing on July 26, the Trustee filed an accounting of funds held in the Chapter 13 trust. As of
conversion, the Trustee had disbursed \$4,311.59 and held an additional \$4,738.34. If the prior order
allowing fees were to stand, \$189.53 would go to the Trustee for fees and \$4,548.81 to Mr. Krumwiede.

22 ⁵ 11 U.S.C. 707(b)(4):

23 (C) The signature of an attorney on a petition, pleading, or written motion shall constitute
a certification that the attorney has--

24 (i) performed a reasonable investigation into the circumstances that gave rise to
the petition, pleading, or written motion; and

25 (ii) determined that the petition, pleading, or written motion--

(I) is well grounded in fact; and

26 (II) is warranted by existing law or a good faith argument for the
extension, modification, or reversal of existing law and does not
constitute an abuse under paragraph (1).


27 (D) The signature of an attorney on the petition shall constitute a certification that the
28 attorney has no knowledge after an inquiry that the information in the schedules filed
with such petition is incorrect.

1 himself for his accrued fees, the remainder of the funds held shall be turned over to the
2 Debtors in Possession.

3 Current counsel for the Debtors is to submit a form of order.
4
5
6
7

8 **So ordered.**

9 Dated: August 25, 2011

10
11 
12 CHARLES G. CASE II
13 UNITED STATES BANKRUPTCY JUDGE

14 Copies of the foregoing served
15 by auto-generated notice

16 Terry John Gardona and Janet Susan Gardona
17 25049 N. 63rd Drive
18 Phoenix, AZ 85083
Debtors

19 JAMES F KAHN
20 JAMES F. KAHN, P.C.
21 301 E. BETHANY HOME RD., #C-195
22 PHOENIX, AZ 85012
Counsel for Debtors

23 Jerry D. Krumwiede, Esq.
24 Krumwiede Law Offices, PLLC
25 7501 North 16th Street, Suite 200
26 Phoenix Arizona 85020-4677
Former Attorney for Debtors
27
28