

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:) In Involuntary
JAMES C. JONES and) Proceedings
GWENDOLYN JONES)
) No. BK 91-40841
Debtor(s),)

MEMORANDUM

On June 17, 1991, the Peoples Bank of Marion, as petitioning creditor, filed an involuntary petition under chapter 7 of the Bankruptcy Code against James Jones and Gwendolyn Jones, husband and wife. The Joneses moved to dismiss the involuntary petition on July 9, 1991 as having been improperly filed against joint debtors. Thereafter, on July 15, 1991, the bank filed a motion to dismiss Gwendolyn Jones as a co-debtor in the case. To the bank's motion, the Joneses responded that the improperly filed involuntary petition was insufficient to invoke the Court's subject matter jurisdiction and that the Court had no power to dismiss Gwendolyn Jones as a co-debtor but, instead, must dismiss the involuntary petition. After hearing argument on the matter, the Court entered an Order on August 27, 1991 granting the Joneses' motion to dismiss the involuntary petition and denying as moot the bank's motion to dismiss Gwendolyn Jones as a codebtor.

The Joneses then, by motion filed on September 6, 1991, requested, pursuant to section 303(i) of the Bankruptcy Code,¹ an award of attorney

¹11 U.S.C. § 303(i). Section 303(i) states in pertinent part:

If the court dismisses a petition under this section other than on consent of all petitioners and the debtor, and if the debtor does not waive the right to judgment under this

fees and costs for their defense of the involuntary petition. The bank objected to the request on September 12, 1991, whereupon the Joneses' motion and the bank's objection to it were heard on October 2, 1991. At the hearing, the Court granted the Joneses' motion for an award of attorney fees and costs, gave the Joneses' counsel seven days to file a statement itemizing the attorney fees and costs and allowed the bank seven additional days to respond to the itemized fees and costs. Counsel for the Joneses filed her statement on October 11, 1991 itemizing fees totaling \$1,430.00 and costs totaling \$203.30. The bank filed its response on October 16, 1991 objecting to the award of any fees or costs.

Having already ruled on October 2, 1991 that the Joneses are entitled to an award of fees and costs pursuant to section 303(i) of the Bankruptcy Code, the only issues that remain for the Court to decide are whether the requested fees and costs have been sufficiently itemized and whether they are necessary and reasonable. In its response filed October 16, 1991, the bank devotes substantially all its attention to challenging the sum total of the fees and costs as "not appropriately reasonable." In essence, the bank argues that the fees are not necessary or reasonable because counsel for the Joneses should have advised opposing counsel informally of her authority supporting dismissal of the petition or should have stipulated to the dismissal of

subsection, the court may grant judgment

--

(1) against the petitioners and in favor
of the debtor for--

- (A) costs; or
- (B) a reasonable attorney's fee....

Gwendolyn Jones. According to the bank, counsel's failure to do so at the outset resulted in unnecessary fees and costs. The bank contends as well that counsel's decision to do otherwise was merely part of a pattern of delay engaged in by the Joneses to avoid reaching a determination on the merits of the involuntary petition.

In making this argument, however, the bank chooses to ignore its own complicity in driving up the fees and costs and extending the litigation. A review of the itemized fees and costs reveals that only \$405.00 in fees and \$114.50 in costs were charged by the Joneses' counsel through July 9, 1991, the date on which she filed the motion to dismiss the involuntary petition. When the bank decided to file its motion to dismiss the co-debtor, it did so with full knowledge of the authority upon which the Joneses relied, which was cited in the motion to dismiss the involuntary petition. And, again, it was the bank that, after receiving an unfavorable determination on the competing motions to dismiss, decided to litigate the Joneses' counsel's request for an award of fees and costs. Here, since dismissal of the co-debtor would have been ineffective to create subject matter jurisdiction, the Joneses had no option but to insist on case dismissal. Moreover, counsel for the bank would be dismayed by the results were the Court to adopt his suggested standard in this and other cases and find his fees to be unreasonable or unnecessary whenever he or his client refused to acquiesce to the opposing party's position.

On the issue of whether the fees and expenses are sufficiently itemized, the bank states only that "[t]he itemization does not provide a detailed summary of the work performed and reasons for the work

performed to compare and analyze the entries made in violation of this Court's determination in Wiedau." However, the Court has reviewed the itemized fees and costs submitted by counsel for the Joneses and, apart from an entry on August 1, 1991 which appears to pertain to a second involuntary petition not here at issue, finds that the itemization of fees and costs is sufficiently detailed to be in compliance with the standards set forth by the Court in In re Wiedau's, Inc., 78 B.R. 904 (Bankr. S.D. Ill. 1987).

See Order entered even date.

/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: August 27, 1991