



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
December 10, 2018

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:

HARTLAND MMI, LLC,

Debtor.

)
) Case No.: 17-10549-MKN
) Chapter 11

)
) Date: November 14, 2018
) Time: 9:30 a.m.
)
)

**ORDER REGARDING FIRST AND FINAL APPLICATION FOR AWARD OF
COMPENSATION TO DAVID J. WINTERTON & ASSOC., LTD.¹**

On November 14, 2018, the court heard the First and Final Application for Award of Compensation to David J. Winterton & Assoc., Ltd. (“Fee Application”). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.²

BACKGROUND

On February 8, 2017, Hartland MMI, LLC (“Debtor”) filed a voluntary Chapter 11

¹ In this Order, all references to “ECF No.” are to the number assigned to the documents appearing on the docket maintained in the above-captioned proceeding by the Clerk of the Court. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

² On the same date, the court heard a motion by the United States Trustee (“UST”) to dismiss the Chapter 11 case or convert it to Chapter 7 (“UST Motion”). (ECF No. 261). One of the reasons for the motion was that the Chapter 11 debtor in possession had never filed a report of the sale of its primary asset. As of the hearing, the monthly operating reports filed by the Chapter 11 debtor in possession did not include such information. Because counsel represented that the information would be provided, the hearing on the UST Motion was continued to December 5, 2018, to allow the UST to consider whether to proceed with its request.

1 bankruptcy petition along with its schedules of assets and liabilities (“Schedules”) and other
2 required information. (ECF No. 1). On its Schedule “A/B,” Debtor listed real property located
3 at 1044 South 6th Street, Las Vegas, Nevada. The value of the real property was scheduled as
4 \$3,600,000. The same schedule also listed real property located at 525 Park Paseo, Las Vegas,
5 Nevada. The value of the latter property was scheduled as “Unknown.” Together, the two
6 parcels of real property are known as the Hartland Mansion. In addition to the real property, the
7 same Schedule listed the Debtor having “Cash” with a value of \$7,365, and “Miscellaneous
8 Furnishings” with a value of \$50,000.00. On its secured creditor Schedule “D,” Debtor listed,
9 inter alia, MRT Holdings LLC, c/o LTV Private Equity Inc. (“LTV”), as having a claim in the
10 amount of \$1,040,643.75 secured by a deed of trust against the real property. The Schedules are
11 signed under penalty of perjury by Garry Hart (“Hart”) who is described as the “Manager” of the
12 Debtor.³

13 On February 28, 2017, an application to employ the law firm of David J. Winterton &
14 Associates, Ltd. (“Winterton Firm”) as counsel for the Debtor was filed (“Employment
15 Application”) and was noticed to be heard on April 5, 2017. (ECF Nos. 18 and 19). The
16 Employment Application did not seek approval retroactive to the bankruptcy petition date.

17 On April 6, 2017, an order granting the application to employ the Winterton Firm was
18 entered (“Employment Order”). (ECF No. 32). The Employment Order did not approve
19 employment of the Winterton Firm retroactive to the bankruptcy petition date.

20 On August 7, 2017, the deadline for both non-governmental and governmental entities to
21 file proofs of claim had expired. According to the claims register maintained by the clerk of the
22 court, secured claims totaling \$1,316,858.67, and general unsecured claims totaling \$226,289.58
23 were filed by the applicable deadlines.

24 On February 20, 2018, a motion to sell the Hartland Mansion was filed (“Sale Motion”)

25
26 ³ In addition to the Chapter 11 petition, Schedules and related documents, Debtor also
27 filed a “Statement Regarding Authority to Sign and File Petition,” that was signed by Hart as
28 manager of the Debtor, and which specifically directed the Debtor to hire counsel for the Chapter
11 proceeding. (ECF No. 7).

1 and noticed to be heard on shortened time for March 7, 2018. (ECF Nos. 159 and 161).

2 On February 27, 2018, opposition to the Sale Motion was filed by creditor Pro-Tect
3 Security Services, LLC. (ECF No. 164).

4 On March 2, 2018, opposition to the Sale Motion was filed by creditor Benjamin B.
5 Childs, Esq. (ECF Nos. 165 and 167). On this same date, a limited objection was filed by LTV.
6 (ECF No. 166).

7 On March 14, 2018, an amended Sale Motion was filed by Debtor and noticed to be
8 heard on March 21, 2018. (ECF Nos. 181 and 185).

9 On March 16, 2018, Debtor filed a combined reply to the three oppositions to the Sale
10 Motion. (ECF No. 191).

11 On July 26, 2018, an order was entered granting the Sale Motion (“Sale Order”). (ECF
12 No. 258).

13 On October 10, 2018, a “First and Final Application for Award of Compensation to
14 David J. Winterton & Assoc., Ltd.” (“Fee Application”) was filed and noticed to be heard on
15 November 14, 2018. (ECF Nos. 274 and 275). Two exhibits are attached to the Fee Application.
16 Exhibit “1” consists of a billing statement dated February 11, 2017, reflecting services provided
17 by the Winterton Firm from December 1, 2016, through February 8, 2017. Exhibit “2” consists
18 of a 90-page billing statement (“Winterton Billing Statement”) dated October 10, 2018,
19 reflecting services rendered from February 13, 2017, through October 10, 2018. The total
20 amount of attorney’s fees set forth in the Winterton Billing Statement is \$319,095.00 and the
21 total amount of costs is \$4,999.07.

22 On October 24, 2018, an objection to the Fee Application was filed by Hart as Executor
23 of the Estate of Ailene E. Wart (“Hart Objection”).⁴ (ECF No. 278).

24
25 ⁴ Hart apparently is the same individual who signed the Chapter 11 petition as the
26 manager of the Debtor. Although Hart apparently is unsatisfied with the compensation now
27 sought by the Winterton Firm at the conclusion of this Chapter 11 proceeding, there is no
28 evidence in the record that Hart ever sought to terminate the firm’s services for any reason
during the Chapter 11 proceeding in favor of obtaining different bankruptcy counsel. Was Hart,

1 On October 31, 2018, an additional objection to the Fee Application was filed by Robert
2 W. Lueck (“Lueck Objection”). (ECF No. 279). On the same day, the UST also filed an
3 objection (“UST Objection”), supported by the declaration of Tina Spyksma (“Spyksma
4 Declaration”). (ECF Nos. 280 and 281). Attached to the Spyksma Declaration as Exhibit “A” is
5 a copy of the Winterton Billing Statement blocking out certain time and hourly rate figures, as
6 well as resulting dollar amounts, for specific billing entries.

7 On November 7, 2018, replies were filed by the Winterton Firm to the objections of Hart
8 (“Reply to Objection”), Lueck, and the UST, along with the declarations of Gene Campbell
9 (“Campbell Declaration”) and David J. Winterton, Esq. (“Winterton Declaration”).⁵ (ECF Nos.
10 284,⁶ 285, 286, 287, and 288).

11 On November 14, 2018, a hearing was held in which counsel for the objecting parties as
12 well as the Winterton Firm presented oral argument. No requests were made to cross-examine
13 any of the witnesses whose declarations had been filed, nor to conduct an evidentiary hearing.
14 The record in this matter is closed.

15 APPLICABLE LEGAL STANDARDS

16 Professionals who perform services for a debtor in possession cannot be compensated
17 unless the services were previously authorized by a court order. See, e.g., In re Capitol Litho
18 Printing Corp., 573 B.R. 771, 774-75 (Bankr. D. Ariz. 2017). For a professional person
19 or any other party or their attorneys, unaware that the Debtor’s attorneys would bill the
20 bankruptcy estate for responding to their contacts or communications?

21 ⁵ In his declaration, attorney Winterton attests, *inter alia*, that the explanation of the fees
22 in the Fee Application and the replies to the various objections are true and correct. See
23 Winterton Declaration at ¶ 23. Attorney Winterton also attests that he met with Hart and that
24 Hart, along with his spouse, had no objection to the fee request. Id. at ¶ 22. No request was
25 made to cross-examine attorney Winterton, nor was a request made to have Hart or any other
percipient witness testify to rebut attorney Winterton’s written testimony. The additional
explanations for attorney Winterton’s billing entries set forth in the replies, therefore, are
supported by the uncontested testimony set forth in the Winterton Declaration.

26 ⁶ In its reply to the Hart objection, the Winterton Firm represented that it is holding
27 \$683,062.66 from the Hartland Mansion sale proceeds, after payment of \$2,216,287.34 to
secured creditors, commissions, and closing costs. See Reply to Hart Objection at 5:21-25.

1 employed under Section 327, Section 330 provides that the court may award reasonable
 2 compensation for actual, necessary services rendered by the professional person and
 3 reimbursement for actual, necessary expenses. 11 U.S.C. § 330(a)(1)(A)-(B).

4 Compensation requested under Section 330 is not automatic. Rather, the “court may, on
 5 its own motion or on the motion of the United States Trustee, the United States Trustee for the
 6 District or Region, the trustee for the estate, or any other party in interest, award compensation
 7 that is less than the amount of compensation that is requested.” 11 U.S.C. § 330(a)(2). Section
 8 330(a)(3) provides that:

9 In determining the amount of reasonable compensation to be awarded to
 10 . . . [a] professional person, the court shall consider the nature, the extent, and the
 value of such services, taking into account all relevant factors, including —

- 11 (A) the time spent on such services;
- 12 (B) the rates charged for such services;
- 13 (C) whether the services were necessary to the administration of,
 or beneficial at the time at which the service was rendered toward
 the completion of, a case under this title;
- 14 (D) whether the services were performed within a reasonable
 amount of time commensurate with the complexity, importance,
 15 and nature of the problem, issue, or task addressed;
- 16 (E) with respect to a professional person, whether the person is
 board certified or otherwise has demonstrated skill and experience
 17 in the bankruptcy field; and
- 18 (F) whether the compensation is reasonable based on the
 customary compensation charged by comparably skilled
 practitioners in cases other than cases under this title.

19 11 U.S.C. § 330(a)(3)(A)-(F).

20 Section 330(a)(4), however, provides that “[t]he court shall not allow compensation for
 21 (i) unnecessary duplication of services; or (ii) services that were not – (I) reasonably likely to
 22 benefit the debtor's estate; or (II) necessary to the administration of the case.” 11 U.S.C. §
 23 330(a)(4)(A)(i)-(ii) (I and II). See Smith v. Edwards & Hale, Ltd. (In re Smith), 317 F.3d 918,
 24 926 (9th Cir. 2002), abrogated on other grounds by Lamie v. United States Trustee, 540 U.S. 526
 25 (2004) (“[u]nder [S]ection 330(a)(4)(A), a bankruptcy court may award compensation if the
 26 services rendered were not unnecessarily duplicative and if the services rendered were both
 27 reasonably likely to benefit the debtor’s estate and were necessary for the administration of the
 28

1 case.”). In the latter case, the circuit acknowledged that Section 330 “[e]xpressly contemplate[d]
2 compensation for preparation of fee applications.” *Id.* at 927, citing 11 U.S.C. § 330(a)(6).⁷

3 Prior to 1994, Section 330 provided limited guidance on the award of compensation to
4 professionals employed by a bankruptcy estate. Section 330 stated that a bankruptcy court may
5 award “reasonable compensation for actual, necessary services...based on the nature, the extent,
6 and the value of such services, the time spent on such services, and the cost of comparable
7 services other than in the case under this title.” 11 U.S.C. § 330(a)(1) [superseded]. See, e.g., In
8 re Gianulias, 111 B.R. 867, 869-70 (E.D. Cal. 1989) (affirming bankruptcy court decision
9 requiring Chapter 11 debtor’s counsel to submit evidence of prevailing rates charged by
10 bankruptcy attorneys in the community in order to establish a reasonable hourly rate). In 1994,
11 Section 330(a) was amended to add subsection 330(a)(3), which required the court to consider
12 “the nature, the extent, and the value” of the professional services, and which delineated five
13 specific factors that must be considered in determining the amount of reasonable compensation.
14 See Bankruptcy Reform Act of 1994, Pub.L. No. 103-394, 108 Stat. 4106 (effective Oct. 22,
15 1994). Those factors included the time spent, the rates charged, the necessity or benefit of the
16 services at the time they were performed, the complexity, importance, and nature of the task
17 addressed, and the customary compensation of comparably skilled attorneys in non-bankruptcy
18 cases. See 11 U.S.C. § 330(a)(3)(A through E) [superseded]. In 2005, Congress added the
19 language of current subsection 330(a)(3)(E), which requires the court to consider a sixth factor:
20 whether the professional is board certified or otherwise has demonstrated skill and experience in
21 the bankruptcy field. See Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,
22 Pub.L. No. 109-8, 119 Stat. 23 (enacted April 20, 2005).

23 Several other provisions of the Bankruptcy Code permit or require an award of attorney’s
24 fees in matters before the bankruptcy court. For example, bankruptcy courts are permitted or
25 required to award fees when involuntary bankruptcy petitions are dismissed without consent, see
26 11 U.S.C. § 303(i), to award attorney’s fees as damages to individuals injured by a violation of

27 ⁷ Compensation is not available to a professional, however, for the time expended in
28 responding to objections to a fee application. See Baker Botts L.L.P. v. ASARCO LLC, 135
S.Ct. 2158, 2166-67 (U.S. 2015).

1 the automatic stay, see 11 U.S.C. § 362(k)(1), to allow attorney’s fees as part of a creditor’s
2 oversecured claim, see 11 U.S.C. § 506(b), and to award attorney’s fees to an individual debtor
3 for defending a dischargeability complaint under Section 523(a)(2) that was brought without
4 substantial justification. See 11 U.S.C. § 523(d). Outside of bankruptcy, attorney’s fees also are
5 awarded in a variety of proceedings. See, e.g., Gates v. Deukmejian, 987 F.2d 1392 (9th Cir.
6 1992) (award of reasonable attorney’s fees under 42 U.S.C. § 1988 in civil rights litigation);
7 Nilsen v. York County, 400 F.Supp.2d 266 (D. Maine 2005) (award of attorney’s fees out of a
8 common fund produced by a class-wide settlement of strip search litigation).

9 None of the other provisions of the Bankruptcy Code addressing an award of attorney’s
10 fees require the court to take into account the six factors now specified in Section 330(a)(3)(A
11 through F). While courts may be required to address an award of attorney’s fees outside of
12 bankruptcy, this court also is unaware of any statute that requires consideration of specific
13 factors, if any, that are similar to those set forth in Section 330(a)(3). This dissimilarity no doubt
14 exists because of the unique role occupied by a professional employed by a bankruptcy estate,
15 particularly counsel for a Chapter 11 debtor.

16 A Chapter 11 debtor in possession has a fiduciary responsibility to the creditors of the
17 bankruptcy estate. See Woodson v Fireman’s Fund Ins. Co. (In re Woodson), 839 F.2d 610, 614
18 (9th Cir. 1988) (“[Debtor’s] failure to notice his creditors of the \$1 million in a timely fashion is
19 troubling because [Debtor] is not an ordinary litigant. As debtor in possession he is the trustee of
20 his own estate and therefore stands in a fiduciary relationship to his creditors.”). That fiduciary
21 responsibility also rests with bankruptcy counsel for the debtor in possession. See Everett v.
22 Perez (In re Perez), 30 F.3d 1209, 1219 (9th Cir. 1994). As part of its fiduciary obligation under
23 Section 1107, a debtor in possession is accountable for all property received. See 11 U.S.C. §§
24 1107(a), 1106(a)(1), and 704(a)(2). As a fiduciary to creditors of the estate, a debtor in
25 possession, therefore, is accountable for assets of the bankruptcy estate that are expended on
26 professional services that are not necessary or beneficial to the estate.

27 The factors set forth in Section 330(a)(3) address these concerns. The considerations
28 reflected in Sections 330(a)(3)(A, B, D and E) are consistent with the “lodestar” method utilized

1 in determining other attorney's fee awards in both bankruptcy and non-bankruptcy cases. That
2 method typically bases an award on a reasonable number of hours charged at a reasonable hourly
3 rate. See Gates v. Deukmejian, 987 F.2d at 1397; Nilsen v. York County, 400 F.Supp. at 271.
4 Sections 330(a)(3)(A and D) focus on the number of hours billed by the professional. Likewise,
5 Sections 330(a)(3)(B and E) focus on the hourly rate charged by the professional, taking into
6 account the professional's qualifications, skills and experience. Section 330(a)(3)(C) focuses on
7 the necessity to the administration of the bankruptcy case, or the benefit to the completion of the
8 bankruptcy case, of the services performed by the professional at the time the services were
9 rendered. This factor recognizes both the limited resources available to pay unsecured creditors
10 in a bankruptcy case and the corresponding need to limit the administrative expenses of
11 completing the case. These concerns are not implicated by the other Bankruptcy Code
12 provisions where an award or allowance of attorney's fees will be satisfied by a source that does
13 not reduce the distribution to unsecured creditors. Section 330(a)(3)(F) focuses on whether the
14 fees charged by the professional in the bankruptcy case are comparable to those charged in non-
15 bankruptcy cases. This factor recognizes that bankruptcy serves an important function and that
16 attorneys providing services in bankruptcy cases should not be dissuaded from representing
17 debtors. See In re Gianulias, 111 B.R. at 870 ("In enacting section 330(a), Congress sought to
18 ensure that bankruptcy attorneys would not be paid less than their colleagues practicing in other
19 areas of the law. Congress expressed its concern that if the field did not provide adequate
20 compensation, bankruptcy specialists, who enable the system to operate smoothly, efficiently,
21 and expeditiously, would be driven elsewhere.").

22 Thus, in Section 330, Congress provided specific guidance for the reasonableness of
23 compensation awarded to professionals who provide services to a bankruptcy estate. Although
24 much discretion is still afforded to bankruptcy courts in awarding fees under Section 330, the
25 task is not relegated simply to the gut instinct of the bankruptcy judge. Compare Nilsen v. York
26 County, 400 F.Supp.2d at 277 n.30 (favoring a "market-mimicking" approach over a judge's
27 "fee Gestalt").
28

DISCUSSION

1
2 The court has reviewed the billing statements attached to the Fee Application, as well as
3 the history of the proceedings in this case. As previously mentioned, the total amount of
4 attorney's fees set forth in the Winterton Billing Statement is \$319,095.00 and the total amount
5 of costs is \$4,999.07. The court also has considered the written objections presented by Hart,
6 Lueck, and the UST, and the detailed replies to each objection submitted by attorney Winterton.
7 The oral arguments of counsel at the hearing also have been considered. Based on this record,
8 the court concludes that the Winterton Firm should be allowed professional fees and
9 reimbursement of costs advanced in the amounts set forth below.

10 As an initial matter, the court must deny any fees or costs incurred prior to April 5, 2017.
11 The Chapter 11 proceeding was commenced on February 8, 2017. The Employment Application
12 was not filed until February 28, 2017, and did not seek authorization to employ the Winterton
13 Firm *nunc pro tunc* to the date of commencement of the Chapter 11 proceeding. The
14 Employment Application was granted on April 5, 2017, and the Employment Order also did not
15 authorize the Debtor to employ the Winterton Firm retroactive to the petition date. The first nine
16 pages of the Winterton Billing Statement included time entries from February 13, 2017 through
17 April 4, 2017. The professional fees billed for that period are \$31,600, based on 86.5 hours of
18 services rendered. The costs billed for that period are \$140.47. The Winterton Firm seeks final
19 allowance of attorney's fees and costs during an unauthorized period and both amounts therefore
20 must be disallowed. See, e.g., In re Watson, 2015 WL 3939781, at *4 (B.A.P. 9th Cir. June 25,
21 2015)(“Failure to receive court approval for the employment of a professional...precluded the
22 payment of fees’ ...Therefore, if the bankruptcy court abused its discretion in granting
23 [retroactive authorization of employment], it follows that [counsel] was not entitled to payment
24 of legal services prior to entry of the Nunc Pro Tunc Order.”).

25 For the period from April 5, 2017 through October 10, 2018, the Winterton Billing
26 Statement reflects professional fees charged in the total amount of \$287,495. This total is based
27 on 775.3 hours of services rendered by members of the firm during that period. For the same
28

1 period, the Winterton Billing Statement reflects costs charged in the total amount of \$4,858.60.⁸

2 The objecting parties maintain that the amount of time billed by the Winterton Firm in
3 this Chapter 11 case is excessive.⁹ Based on excessive billing or insufficiently described billing,
4 Hart maintains that the original attorney fee request of \$319,095 should be reduced by fifty
5 percent to \$159,547.50. See Hart Objection at 8:21-23.¹⁰ Based on an alleged lack of
6 complications in the case,¹¹ Lueck argues in writing that the original attorney fee request should
7 be “scaled back to approximately \$100,000,” see Lueck Objection at 2:19-20, and then changed
8 that suggestion to approximately \$125,000 at the hearing. On a percentage basis, Lueck
9 therefore asserts that the original attorney fee request should be reduced by approximately sixty-
10 one percent. Based on time entries of approximately \$165,000 of attorney’s fees identified in its
11 Exhibit “A” for “emails, conferences, phone calls, meeting, and other communications,” see

12 ⁸ None of the objecting parties appear concerned about the costs detailed in pages 85
13 through 89 of the Winterton Billing Statement. The court is concerned. The Winterton Billing
14 Statement includes charges of \$20 apiece to the bankruptcy estate apparently for parking tickets
15 that the attorneys received on at least three separate occasions while attending court hearings:
16 5/5/2017, 5/22/2017, and 11/15/2017. Those amounts are disallowed. The statement also
17 includes a postage charge of \$2,491 on 2/23/2018, for mailing 47 items at \$53.00 per item. The
18 docket reflects that the Sale Motion was filed and served on 2/22/2018, but the motion, notice of
19 hearing, and certificate of service (ECF Nos. 159, 161 and 162) consisted of 31 pages at most, all
20 served by first class mail. There are no other entries in the docket for the preceding days in
21 February 2018, evidencing an item that would cost \$53.00 to have been served by first class
22 mail. This postage charge also will be disallowed.

19 ⁹ Only Lueck asserts that an hourly billing rate of \$400 for attorney Winterton is not
20 reasonable, see Lueck Objection at 10:24, but does not suggest what hourly rate would be
21 reasonable. The court previously approved compensation of attorney Winterton at the same
22 hourly rate for representation of a Chapter 11 debtor. See In re C & S Company, Inc., Case No.
23 16-14155-MKN (“C & S Company”), Order on First and Final Application for Award of
24 Compensation to David J. Winterton & Assoc., Ltd., Docket No. 410, entered April 5, 2018.
25 The court concludes that a similar hourly rate is appropriate in the present case.

24 ¹⁰ Based on a record and for reasons not present in the current case, the court reduced the
25 Winterton Firm’s requested fees by fifty percent in the C & S Company proceeding after a
26 Chapter 11 trustee was appointed.

26 ¹¹ Lueck argues that the Winterton Firm’s fees “should be reduced considerably because
27 this was a single asset estate and not that complicated. Difficult, yes; complicated, no.” Lueck
28 Objection at 11:13-14.

1 UST Objection at 4:4-7, the UST apparently argues that the original fee request should be
2 reduced by deducting fifty percent of the amount in Exhibit “A.” If that deduction occurs, the
3 attorney fees would be reduced to \$236,595.¹² On a percentage fee basis, the UST therefore
4 argues that the original attorney fee request should be reduced by approximately twenty-six
5 percent. The average of the three requested percentage reductions of the Winterton Firm’s
6 original attorney fee request is approximately forty-six percent.

7 The current fee dispute, therefore, comes to this: the Winterton Firm seeks attorney’s
8 fees of \$319,095 even though it is eligible for no more than \$287,495 during the period of
9 authorized employment. The objecting parties, however, assert that the Winterton Firm should
10 be allowed attorney’s fees ranging from a minimum of \$125,000 to a maximum of \$236,595.
11 While each of the objecting parties refer to specific entries in the Winterton Billing Statement as
12 examples of excessive billing, all of them seek a percentage or lump sum reduction of the total
13 amount of the fees requested rather than a reduction on an item by item basis.

14 In reviewing the amount of services billed by the Winterton Firm in this case, the court
15 takes into consideration how this case has proceeded. The voluntary Chapter 11 petition, signed
16 by Hart, was filed on February 8, 2017. The Hartland Mansion was the primary asset of the
17 Chapter 11 estate, and the Debtor had entered into a listing agreement to sell the property more
18 than a month before the bankruptcy was filed. See Exhibit “1” to Motion for Approval to
19 Employ Coldwell Banker Premier Realty as Realtor for the Debtor and to Approve Executory
20 Contract, effective January 6, 2017. (ECF No. 29). After the Chapter 11 petition was filed, the
21 Debtor took the usual steps of seeking authority to use cash collateral (ECF No. 28), to approve
22 the employment of the existing realtor, and to obtain postpetition financing. (ECF No. 30).¹³ By

23 ¹² Fifty percent of \$165,000 is \$82,500. Deducting the latter amount from the original fee
24 request of \$319,095 reduces the attorney fees to \$236,595.

25 ¹³ LTV filed an “Omnibus Objection” to the Debtor’s cash collateral and postpetition
26 financing motions. (ECF No. 46). In that objection, LTV represents that because the Debtor
27 defaulted on its obligation, it had commenced foreclosure proceedings against the Hartland
28 Mansion under its deed of trust and recorded a notice of sale on January 9, 2017. See Omnibus
Objection at 3:1-6. Debtor’s commencement of the instant Chapter 11 proceeding on February
8, 2017, triggered the automatic stay under Section 362(a)(4) preventing LTV from enforcing its

1 June 8, 2017, the 120-day exclusive period under Section 1121(b) for the Debtor to file a
2 proposed Chapter 11 plan expired, allowing any creditor or other party in interest to file a
3 proposed plan of reorganization.¹⁴

4 In addition to the motions filed by the Debtor, several motions were filed by Lueck,
5 including a motion to appoint a Chapter 11 trustee (“Lueck Trustee Motion”). (ECF No. 61).¹⁵
6 Likewise, objections to various claims were filed on behalf of the Debtor. All of the motions and
7 claim objections were continued by agreement, or resolved in some manner, without a Chapter
8 11 plan ever being proposed by the Debtor. Likewise, a Chapter 11 plan was never proposed by
9 a creditor or other party in interest even though the plan exclusivity period had elapsed.
10 Apparently because the Hartland Mansion was anticipated to be sold even before the Chapter 11
11 was filed, none of the parties in interest actively pursued or even proposed a plan of
12 reorganization.¹⁶ Moreover, no party in interest pressed to have a Chapter 11 trustee appointed
13 to expedite a sale of the Debtor’s primary asset.

14 On February 20, 2018, more than a year after the Chapter 11 was commenced, Debtor
15 filed the Sale Motion.

16 On July 26, 2018, after numerous hearings, the Sale Order was entered. That order
17 authorized the Debtor to sell the Hartland Mansion free and clear of liens for \$2,900,000, with
18 secured claims, commissions, and other items paid out of escrow, including a settlement amount

19 rights under the deed of trust. During the Chapter 11 case, LTV did not seek relief from the
20 automatic stay under Section 362(d) to complete the foreclosure proceeding.

21 ¹⁴ The motion authorizing the Debtor to employ a realtor was granted on June 26, 2017.
22 (ECF No. 92). The broker was granted an exclusive right to sell the property until December 31,
23 2017.

24 ¹⁵ The motion sought only to appoint a Chapter 11 trustee under Section 1104, rather
25 than to dismiss or convert the case under Section 1112. If Lueck had filed a motion to dismiss or
26 convert the Chapter 11, the motion would have been heard within 15 days and decided no later
27 than 15 days after commencement of a hearing under Section 1112(b)(3).

28 ¹⁶ On October 1, 2017, a mass shooting took place on the Las Vegas Strip that took the
lives of 58 concert goers. Counsel for the Debtor and the parties informed the court that a
potential buyer of the Hartland Mansion required additional time to consider the market effect
that the tragedy would have on the viability of the property.

1 of \$3,000 to Lueck.¹⁷ All remaining proceeds from the sale were to be held in the trust account
2 of the Winterton Firm.

3 On August 28, 2018, the UST Motion was filed because the Debtor had not filed a report
4 of the sale of the Hartland Mansion,¹⁸ had not filed a proposed Chapter 11 plan, had not filed
5 monthly operating reports, and had not paid quarterly fees to the UST. The Winterton Firm filed
6 a response to the UST Motion.

7 Although reorganization of the Debtor has never been pursued in this Chapter 11
8 proceeding, the primary asset of the bankruptcy estate has been liquidated. None of the parties
9 objecting to the Fee Application ever objected to the Debtor's sale of the Hartland Mansion and
10 none have suggested that the amount obtained from the liquidation sale was unreasonable. More
11 would have been better, but that is not determinative of the necessity or benefit of the services
12 provided by counsel. More important, no party disputes that if the Chapter 11 case had not been
13 commenced, LTV could have completed its foreclosure sale of the Hartland Mansion (perhaps
14 even by credit bid), to the detriment of all other creditors in this case.

15 In addition to the manner in which the Chapter 11 case has proceeded, the court has
16 considered the total number of hours billed by attorney Winterton at the highest hourly rate,
17 compared to the hours billed by lower rates by the associate attorney and paralegal for the
18 Winterton Firm. Of the 861.8 hours for which the Winterton Firm seeks compensation, 743.3
19 hours were billed by attorney Winterton (approximately eighty-six percent), 40 hours were billed
20 by the associate (approximately five percent) and 78.5 hours were billed by the paralegal
21 (approximately nine percent). See Fee Application at 16:2 to 17:24. In the Winterton Billing
22 Statement, the first time entry for attorney Winterton is dated February 13, 2017, the first time

23 ¹⁷ The settlement required Lueck to withdraw all of his previous motions, including his
24 motion to appoint a Chapter 11 trustee.

25 ¹⁸ As mentioned in note 6, supra, the Winterton Firm represented in its response to the
26 Hart Objection that it was holding \$683,062.66 in remaining sale proceeds. Because that result
27 was never included in the Debtor's monthly operating reports, nor separately reported in the
28 case, the court directed the Debtor to file a copy of a settlement or closing statement from the
sale of the Hartland Mansion. On November 20, 2018, a monthly operating report ending
October 31, 2018, was filed, page 10 of which appears to be a copy of the settlement statement.

1 entry for the paralegal is dated February 17, 2017, and the first time entry for the associate is
2 dated November 20, 2017.¹⁹ This allocation of services is not ideal, but it likely reflects the
3 realities of a solo law practice and the hiring of an associate well after the Chapter 11 case was
4 filed.²⁰

5 Prior to the associate's initial time entry on November 20, 2017, the Winterton Billing
6 Statement reveals that attorney Winterton billed 283.7 hours for professional services in this
7 case. That figure represents approximately thirty-eight percent of the total hours that he billed.
8 Clearly there were no other attorneys in the Winterton Firm prior to November 20, 2017, who
9 could have provided attorney services to the bankruptcy estate. After November 20, 2017,
10 attorney Winterton billed 459.6 hours in the case. That figure represents approximately sixty-
11 two percent of the total hours he billed. A review of the time entries after November 20, 2017,
12 reveals that attorney Winterton spent the greatest portion of his time drafting, amending, and
13 negotiating the Sale Motion, in addition to time spent negotiating and disputing the final form of
14 the Sale Order that accomplished the disposition of the Hartland Mansion. It is not unexpected
15 nor unreasonable that attorney Winterton, as senior counsel in a two-attorney law firm, rather
16 than the associate, would undertake those critical tasks.²¹

17 ¹⁹ According to the Fee Application, the associate billed at an hourly rate of \$250 and
18 was admitted to practice in December 2017. See Fee Application at 2:14. The Winterton Billing
19 Statement, however, reflects that the associate was billing at the full hourly rate on November 20
20 and 22, 2017, before she was admitted to practice. The court does not know when the associate
21 was admitted to practice during December 2017, although there are numerous billing entries at
22 the full hourly rate during December. The court also does not know if the associate was admitted
23 to practice in another jurisdiction before being admitted in the State of Nevada.

24 ²⁰ In addition to the 861.8 hours for which the Winterton Firm seeks compensation,
25 attorney Winterton also represents that he did not bill for any cell phone calls when he was out of
26 the office, nor for any "Normal secretarial and administrative proceedings..." See Reply to Hart
27 Objection at 4:22-25. There is no information provided as to the duration of any unbilled cell
28 phone calls, and secretarial time is an unbillable overhead expense that is included in a
professional's hourly rate. Compare *In re Nucorp Energy, Inc.*, 764 F.2d 655, 659 n.5 (9th Cir.
1985). The court also has no idea what "administrative proceedings" means. Under these
circumstances, there is no way to determine the significance of the Winterton Firm's alleged
generosity as an aspect of billing judgment.

²¹ In larger law firms, attorneys frequently discuss cases amongst themselves in order to
share information, coordinate services, or to finalize the firm's product. Excessive discussions or

1 Having considered the number of hours billed by the Winterton Firm over the eighteen
2 months it took to obtain the Sale Order, as well as the delegation of tasks within the firm, the
3 court also takes into account the complexity of the case. The court agrees with Lueck that this
4 Chapter 11 is not complicated, see note 11, supra, but appears to have been made difficult
5 because of its origins in an unusual state court probate proceeding.²² Selling the Hartland
6 Mansion in a Chapter 11 proceeding should not have been a complicated task, especially where
7 the Debtor's most prominent creditor, LTV, was significantly oversecured. As previously
8 indicated, the Debtor engaged a realtor to sell the Hartland Mansion a month before the Chapter
9 11 proceeding was commenced. The automatic stay arising upon the filing of the Chapter 11
10 petition prevented LTV from foreclosing on its collateral. Because of the substantial equity
11 cushion in the property, LTV apparently had the good sense not to seek relief from stay under
12 Section 362(d)(1) nor under Section 362(d)(2). Difficulties apparently arose when the marketing
13 process did not produce quick results in part due to the unanticipated events occurring in Las
14 Vegas towards the end of 2017. But for the foreclosure efforts by LTV, however, the same
15 difficulties may have arisen if the Chapter 11 was never commenced. The bottom line is that
16 achieving a sale of the Hartland Mansion was not a complicated task and that the difficulties
17 were significant but not extraordinary.

18 _____
19 conferences may be unreasonable and the requested fees may be disallowed. There is no
20 indication in the Winterton Billing Statement, however, that the senior counsel and the associate
21 engaged in a significant amount of conferences between themselves. Rather, the billing
22 statement reflects a substantial amount of time spent in various forms of communication with
23 Hart, creditors, third parties, and their counsel. Any implication that attorney Winterton spent
24 his time "dialing for dollars" by initiating excessive or unnecessary phone calls or other
25 communications has no support in the evidentiary record. More important, no objecting party
26 attempted to offer evidence disputing attorney Winterton's explanations for the number of
27 communications involved in the case. See note 5, supra.

28 ²² Significant information about the probate proceeding of Ailene Hart, denominated
Case No. P-14-080879, pending in the Eighth Judicial District Court, Clark County, Nevada, is
not found in any of the papers filed by the Debtor. Instead, a lengthy and colorful description of
the history of that proceeding is found in pages 6 through 13 of the Lueck Trustee Motion. An
affidavit attached to that motion attests that the narrative history in the motion is derived from
the affiant's "detailed knowledge of the probate case and related litigation." Lueck Trustee
Motion at 19:1-3. Much of that narrative history, however, appears to be statements of opinion,
speculation, and hearsay, rather than matter of personal knowledge.

1 Based on the foregoing, the court concludes that the rates charged by the Winterton Firm
2 are appropriate. Those hourly rates appear to be comparable to those charged in non-bankruptcy
3 matters. While the court has not been provided evidence of whether the members of the law firm
4 possess any relevant certifications beyond their licenses to practice law, the firm has
5 demonstrated sufficient skill and experience in bankruptcy matters. Because the Chapter 11
6 proceeding prevented the Hartland Mansion from being foreclosed, and allowed the sale to be
7 completed, the services rendered by the Winterton Firm were both necessary and beneficial.

8 From the sale of the Hartland Mansion, the sum of \$683,062.66 remains. See notes 6 and
9 18, supra. If the Winterton Firm receives the maximum allowable attorney's fee amount of
10 \$287,495, it would receive approximately forty-two percent of the net proceeds of the sale.²³ As
11 previously concluded, this Chapter 11 proceeding presented no extraordinary difficulties because
12 the value of the Hartland Mansion far exceeded the amount of the primary secured creditor's
13 claim. From the very beginning, a sale of the only asset was contemplated. The risk of
14 nonpayment of any reasonable fees earned by counsel for the Chapter 11 debtor was not
15 substantial. For that reason, some adjustment of the attorney's fees is appropriate to reflect the
16 reasonable value of the services performed.

17 The court therefore will reduce the original fee request by the initial amount of \$31,600
18 to reflect the amounts billed during the period prior to the authorized employment of the
19 Winterton Firm. For the remaining \$287,495 billed during the authorized period of employment,
20 the court will apply a fifteen percent reduction of \$43,124.25. The resulting allowance for
21 attorney's fees is \$244,370.75. The court also will reduce the original cost reimbursement
22 request by the amount of \$140.47 incurred in the period prior to the authorized employment of
23 the Winterton Firm. From the remaining \$4,858.60 incurred during the authorized period of
24 employment, the court will disallow the three parking ticket charges totaling \$60.00, as well as
25 the postage charge of \$2,491 that was dated on 2/23/2018. The resulting allowance for
26 reimbursement of costs advanced is \$2,307.60.

27 ²³ If the Winterton Firm receives the full amount of the attorney's fees it requests, i.e.,
28 \$319,095, it would receive approximately forty-seven percent of the net proceeds of the sale.

