

1 JUDGE HERB ROSS (Recalled)

2 UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ALASKA
3 605 West 4th Avenue, Room 138, Anchorage, AK 99501-2253 — (Website: www.akb.uscourts.gov)
4 Clerk's Office: 907-271-2655 (1-800-859-8059 In-State) — Judge's Fax: 907-271-2692

5
6 **Filed On**
10/10/08

7 In re

8 DARRYL F. JORDAN,

9 Debtor(s)

Case No. A04-00225-HAR
In Chapter 7

10 **MEMORANDUM REGARDING**
INTENTION TO REDUCE ATTORNEY
FEES

11 After reviewing the application by John Siemers for attorney fees,¹ I believe they are
12 excessive, and propose to reduce them by \$5,000.00 (on top of a voluntary reduction of \$4,090.29
13 given by Mr. Siemers). I will give Mr. Siemers an opportunity to respond to the proposed
14 reduction and be heard on his response.

15 Most of the fees were incurred in an adversary with Darryl Jordan, his wife, and two
16 children to assert an interest in a family residence.² The property was acquired 9-10 years before
17 the bankruptcy in the name of the wife and children, but not the debtor. Nonetheless, the debtor
18 lived there, made payments on the deed of trust note, and sometimes did things or made
19 statements as if he was a co-owner.

20 A majority of the fees were incurred in preparing the summary judgment motion filed by
21 the trustee to establish the equitable interest of the debtor, and the opposition to the cross-motion
22 for summary judgment by the Jordans.

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24 ¹ Docket No. 61, seeking \$28,698.00 in fees and \$392.29 in costs, for a total of \$29,090.29, less a
25 discount of \$4,090.29 given by Mr. Siemers, for a net request of \$25,000.00. Fees were calculated at \$200.00 per
hour.

26 ² Adv. No. A06-90010-HAR.
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1 The court has an independent duty to review attorney fees, even without an objection.³ In
2 this case, debtor spent about 96.9 hours preparing the trustee's motion and responding to the
3 Jordans' opposition. The attached table excerpts summary judgment work from the trustee's bill.

4 I have reviewed the summary judgment pleadings in the adversary and find that the issues
5 were somewhat fact intense, but the legal issues were not unusually complex with respect to the
6 trustee's position that debtor had an equitable interest in the residence. What strikes me is that
7 over twelve full 8-hour days of time is charged on the summary judgment task. An estimate of
8 five full 8-hour days (40 hours), or generously adding another day (48-hours) seems more
9 reasonable. Especially when the trustee was shooting for only about a \$72,000 recovery if he had
10 prevailed.

11 The attached chart shows that if 48-hours at \$200.00 per hour is used for the amount
12 found reasonable for attorney fees for this portion of the work, or **\$9,600.00**, a further reduction
13 of **\$5,669.71** results. The court has rounded this down to only a **\$5,000.00** reduction to error on
14 Mr. Siemer's side.

15 If Mr. Siemers accepts the reduction, the amount allowed for attorney fees and costs would
16 be **\$20,000.00** and not \$25,000.00. If he does not contest this result, the trustee can lodge an
17 amended order for distribution. He shall be granted until **Tuesday, October 21, 2008** to file a
18 response and request a hearing, if he desires one.

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³ In re Martech U.S.A, Inc., 6 ABR 29, 32 [fn 7] (Bankr D AK 1998).

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DATED: October 10, 2008

/s/ Herb Ross
HERB ROSS
U.S. Bankruptcy Judge

Serve:
John Siemers, Esq.
Kenneth Battley, Trustee
US Trustee
Case Manager
Cheryl Rapp, Deputy Clerk

D6940

10/10/08

MEMORANDUM REGARDING INTENTION
TO REDUCE ATTORNEY FEES

EXHIBIT

Excerpts from Billing Statement of John Siemers in A04-00225-HAR, Darryl Jordan

Date	Details for Summary Judgment Preparation	Hours	Fees
05/09/05	Research on co-tenants	2.6	520.00
05/10/05	Go over cases	3.7	740.00
10/12/05	Research on Jordan's unrecorded interest	4.0	800.00
10/13/05	Research on Jordan's homestead interest	4.2	840.00
10/15/05	Research on interest in residence	3.0	600.00
10/17/05	Research on fraudulent transfer, etc.	4.0	800.00
10/23/05	Research interest in co-owned homestead	2.0	400.00
10/26/05	Review cases on joint ownership and draft memo	2.5	500.00
01/17/06	Research H&W ownership, joint tenancy	2.5	500.00
01/19/06	Review cases on 541, etc., 363(h), outline SJ	4.2	840.00
01/21/06	Work on draft SJ	4.5	900.00
01/25/06	Review/revise SJ	2.7	540.00
02/07/06	Review/revise SJ	1.5	300.00
02/08/06	Final revisions of complaint; review SJ	1.5	300.00
05/31/06	Phone; review docs; calculate persents for SJ	2.7	540.00
07/28/06	Go over opposition and cross-motion for SJ	3.5	700.00
07/31/06	Research interest in marital assets	4.5	900.00
08/01/06	Reseach marital assets and claims against	4.7	940.00
08/02/06	Research/recview case authority; draft SJ	6.2	1,240.00
08/04/06	Review/revise draft SJ	3.0	600.00
08/11/06	Research 548	4.6	920.00
08/16/06	Review depo Jordan	2.8	560.00
08/17/06	Work on opposition to SJ	3.2	640.00
08/18/06	Review/revise corrected draft of reply	5.2	1,040.00
08/19/06	Go over revisions	1.4	280.00
08/21/06	Final revisions of memo in opposition to SJ	1.8	360.00
09/14/06	Review reply brief on SJ	4.2	840.00
09/15/06	Work on analysis of SJ	3.2	640.00
10/10/06	Go over briefing; work on oral argument	3.0	<u>600.00</u>
	Total fees for preparation of summary judgment	96.9	19,380.00
	- Less amount of voluntary reduction (approx 20.45 hrs)		<u>4,090.29</u>
	Balance of attorney fees for summary judgment prep		15,289.71
	Court's estimate of reasonable fees (6 x 8hr x \$200/hr)		<u>9,600.00</u>
	Further reduction in fees proposed by the court		5,689.71
	Rounded down		<u>5,000.00</u>

Date	Details for Summary Judgment Argument	Hours	Fees
10/12/06	Prepare for oral argumebnt	1.5	300.00
10/13/06	Prepare for and attend oral argument	2.0	400.00
	Total fees for oral argument of summary judgment	3.5	700.00