U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: **21-02110-hb**

Order

The relief set forth on the following pages, for a total of 24 pages including this page, is hereby ORDERED.

FILED BY THE COURT
05/15/2024

Chief US Bankruptcy Judge
District of South Carolina

Entered: 05/15/2024

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:	C/A No. 21-02110-HB
Samuel Frank Cooper,	Chapter 7
Debtor(s).	**ORDER ON FEE DISPUTE MOTION AND SANCTIONS MOTION**

Before the Court for consideration is the Fee Dispute Motion filed by Debtor Samuel Frank Cooper[1] and the Motion for Sanctions against Cooper pursuant to Fed. R. Bankr. P. 9011(c)(1)(A) ("Sanctions Motion")[2] filed by his attorneys of record in the above-captioned case, Moss & Associates, Attorneys, P.A. (the "Firm"). Cooper appeared at the hearing representing himself and Jason T. Moss appeared on behalf of the Firm. The parties did not present testimony or documentary evidence as exhibits, and instead elected to call the Court's attention to documents and information in their pleadings and events and documents on the case docket.

BACKGROUND AND FACTS

The relationship between Cooper and the Firm began at least by March 2018, when the Firm represented Cooper in an earlier bankruptcy proceeding.[3] The creditor matrix filed with Cooper's petition in that case listed creditors SunTrust Bank and SunTrust Mortgage, Cooper's Schedule D listed SunTrust Mortgage as holding two mortgages secured by Cooper's real property, and Cooper's confirmed plan provided he was not in default on his mortgages with SunTrust Mortgage and would maintain regular payments. On August 9, 2021, Cooper received a Chapter 13 discharge, and the case was concluded and closed.

[1] The 39-page document at ECF No. 160 captioned "Response to Moss Associates Filing November 17th 2023 and Demand That Attorney Fees Be Returned to Debtor". Orders and responses at ECF Nos. 160, 166-170.
[2] Motion and hearing notice at ECF Nos. 177, 178. Despite this dispute, the Firm remains Cooper's attorney of record in this case.
[3] C/A No. 18-01140-hb.

Two (2) days after that case was closed, on August 11, 2021, J. Ronald Jones, Jr. ("Jones") filed a motion in that case on behalf of The Reliable Automatic Sprinkler Co., Inc. ("Reliable") requesting an order declaring (1) Reliable's claims against Cooper arising from its complaint filed against Cooper and two others in the Supreme Court of the State of New York, County of Westchester (Index No. 53514/2021) (the "Reliable Suit") were not discharged in the bankruptcy case; (2) Reliable is not stayed from prosecuting its claims against Cooper; and (3) Reliable may collect upon any judgment obtained against Cooper.[4] Reliable attached the complaint in the Reliable Suit to its motion, which alleged Cooper and two others conspired to overcharge Reliable for information technology products, services, and support, and requested a judgment against the defendants—jointly and severally—in an amount to be determined at trial but no less than $931,000.00.[5] Jones filed a certificate of service attesting to service of the motion on August 11, 2021, on Cooper by mail and on the Firm by electronic mail.[6] The docket also reflects that the Firm received a Notice of Electronic Filing of the motion. The Court later entered an Order striking the motion filed in that closed case and no further action was taken therein.[7]

On August 15, 2021, four (4) days after Reliable's motion was filed and served, Cooper filed this Chapter 13 case, again represented by the Firm. Gretchen D. Holland was appointed as Chapter 13 Trustee ("13 Trustee"). At the time of filing, "[o]nly an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $419,275 and noncontingent, liquidated, secured debts of less than $1,257,850," was

[4] C/A No. 18-01140-hb, ECF No. 113.
[5] It appears the complaint was filed on June 28, 2021. The filing alleges that after Cooper was terminated from employment with Reliable in February of 2021, Reliable learned of events alleged therein. The events alleged appear to have taken place while C/A No. 18-01140-hb was pending.
[6] C/A No. 18-01140-hb, ECF No. 114.
[7] C/A No. 18-01140-hb, ECF No. 117, entered Aug. 16, 2021.

eligible to be a Chapter 13 debtor. 11 U.S.C. § 109(e) (as it read on August 15, 2021). Above the attorney signature on the petition certain duties are explained as follows:

> I, the attorney for the debtor(s) named in this petition, declare that I have informed the debtor(s) about eligibility to proceed under Chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each chapter for which the person is eligible. I also certify that I have delivered to the debtor(s) the notice required by 11 U.S.C. § 342(b) and, in a case in which § 707(b)(4)(D) applies, certify that I have no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.

The referenced § 342(b) notice includes, among other things, warnings to a debtor of the debt limit requirements for Chapter 13, warnings regarding the consequences of omitting required information, and warnings regarding bankruptcy crimes.

The initial filing in this case was a "minimal filing" and listed only one creditor name with an address: Colonial Savings and Loan Mortgage. Included with the minimal filing was the Disclosure of Compensation of Attorney for Debtor(s) (Form B2030) (the "Disclosure of Compensation") that indicates Cooper would pay the Firm $4,000.00 (of which $1,286.00 had already been paid, and the $313.00 filing fee paid), and in exchange, the Firm "agreed to render legal service for all aspects of the bankruptcy case, including. . .[a]nalysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy" and "[p]reparation and filing of any petition, schedules, statement of affairs and plan which may be required[.]" The Disclosure of Compensation also outlined which services were not included in the $4,000.00 fee, including representing Cooper in any dischargeability actions, relief from the automatic stay actions, and adversary proceedings. The Disclosure of Compensation does not indicate whether converting a case to another chapter is included in the $4,000.00 fee. A copy of the signed retainer agreement between Cooper and the Firm was not attached to the Disclosure of Compensation, does not appear to have been filed anywhere else on the docket, and

was not submitted into evidence at the hearing. On August 30, 2021, Cooper, through the Firm, requested additional time to file schedules and statements and an extension was granted.

Only weeks after the case was filed—on September 10, 2021—Jones, on behalf of Reliable, filed a motion for relief from stay pursuant to 11 U.S.C. § 362, and filed a certificate indicating service on Cooper and the Firm.[8] Jones self-scheduled the hearing for October 5, 2021. The notice scheduling the hearing indicated that if no objection was filed within fourteen (14) days from September 10, 2021, "you may be denied the opportunity to appear and be heard on this proceeding before the Court." The motion requests relief from stay to continue with the Reliable Suit against Debtor. The motion argued that even if any portion of its suit was a claim involved in the prior bankruptcy, it was not a claim of the type that was discharged. The causes of action listed in the attached amended complaint leveled at Cooper and the other defendants, apparently under New York law, included fraud, fraud in the inducement, "faithless servant", conspiracy, and aiding and abetting fraud.[9] The amended complaint requested a judgment against the defendants—jointly and severally—in an amount to be determined at trial but no less than $1,700,000.00.

On September 13, 2021, schedules and statements were filed in the bankruptcy case.[10] They did not include any mention of Reliable or its pending lawsuit as a disputed debt or otherwise; however, two other pending lawsuits are listed. Child support and spousal support are listed in the schedules, and secured debt of approximately $340,000.00. Truist Bank is listed on Schedule D as having a second mortgage on property located at 1048 Emerald Place, Evans, GA 30809 (the "Evans Property"). No unsecured debt is scheduled. The documents are signed by Cooper under penalty of perjury. The certificate of service accompanying the schedules indicates service of

[8] ECF No. 13.
[9] The amended complaint had the same case number as mentioned above.
[10] ECF No. 15.

notice of the bankruptcy case on a number of creditors and parties in interest, but neither Reliable nor Jones was included.[11]

The initial Chapter 13 Plan filed on September 13, 2021 provided Cooper was current on one mortgage and would make payments directly to the creditor, and for another mortgage, he proposed to engage in loss mitigation. The Plan acknowledges that payments are due under a domestic support obligation and provides Cooper will pay those claims. The Plan estimated payment of less than 100% of any unsecured claims. A certificate of service for the Plan includes Jones, who had filed a pleading in this Court and at that point appeared on the Court's creditor matrix.[12]

The Statement of Financial Affairs discloses fees paid for the first case in the amount of $4,132.00 from August 2018 through December 2020. There was no challenge to fees during the prior case. The statement also indicates that Cooper paid the Firm $1,599.00 ($1,286.00 in attorney fees plus the $313.00 filing fee) for this case in April 2021 (while the prior case was pending).[13] On September 14, 2021, the Firm filed a Certificate of Credit Counseling on behalf of Cooper, indicating he had taken the course while the prior case was pending on April 12, 2021.[14]

On September 27, 2021, Jones certified to the Court that no timely responses to Reliable's motion had been received and asked the Court to enter an order lifting the automatic stay by default without a hearing. On the same day, three (3) days after the objection deadline but before entry of any order, the Firm filed a response to the motion, asserting an objection but stating the Firm had been unable to contact Cooper. The response triggered the self-scheduled hearing noticed by

[11] ECF No. 14.
[12] ECF Nos. 17, 18.
[13] These representations about fees paid in each case remained the same in the amended Statement of Financial Affairs filed on May 16, 2022 (ECF No. 74).
[14] This document was filed after the deadline for filing, but no consequences were imposed.

Reliable for October 15, 2021. The following day, September 28, 2021, Reliable filed a proof of claim asserting a non-priority unsecured claim against Cooper in the amount of $1.7 million.

On October 4, 2021, the Firm filed a text entry on the docket stating that the response to Reliable's motion was withdrawn because it was filed in error[15] and asking that the hearing not be held. Therefore, Jones again filed a notice with the Court that no objection was pending and submitted a proposed order for relief. The order was signed on October 4, 2021, granting relief from the automatic stay to return to state court to litigate Reliable's claim. Jones served a copy of that order on Cooper by mail on the same day and filed proof thereof.[16]

On November 3, 2021, a continued meeting of creditors pursuant to 11 U.S.C. § 341 was held and Cooper was examined by the 13 Trustee. A day later, Reliable objected to confirmation of the proposed plan.[17]

On November 15, 2021, three (3) months after this case was filed, an amended schedule E/F was filed adding Reliable as a disputed creditor for "Litigation." The same day, the Firm also filed an objection to Reliable's claim asking that Reliable's claim be disallowed and stating:

> Creditor received an Order Granting Motion for Relief of Stay on October 4, 2021 in efforts to continue proceedings against the Debtor in State Court….
>
> 3. Debtor asserts no claim amount has been established to date. Furthermore, if Creditor is awarded an amount in State Court this debt would be considered post-petition.
>
> 4. Therefore, the debtor objects to the general unsecured non-priority claim filed in the amount of $1,700,000.00 and requests the claim be disallowed….

These grounds, combined with the facts, do not appear to present a reason to disallow the claim. A future hearing on the objection was self-scheduled for January 13, 2022. Proof of service

[15] ECF No. 21.
[16] ECF Nos. 23, 25, 26.
[17] ECF No. 27.

indicates Cooper was mailed a copy of the objection and notice.[18] Relevant hearings were continued at the requests of the parties. The Firm filed a notice of change of address for Cooper on November 17, 2021. The Firm did not charge additional amounts for this work. On November 19, 2021, Reliable filed Adv. Pro. No. 21-80071-hb, asserting that its claim is a non-dischargeable debt pursuant to 11 U.S.C. §§ 523 and 1328. A summons was issued, with an answer due on December 22, 2021. Jones filed a certificate of service attesting to service of the summons and complaint on Cooper by mail at the address listed in the above-referenced notice of change of address and on the Firm by electronic mail on November 22, 2021.

On November 30, 2021, the Firm filed a document titled Disclosure of Supplemental Attorney Fees indicating it was signed by Cooper on November 19, 2021, listing potential amounts the Firm may charge for services. Most of the services listed in this document are likely to involve a Chapter 13 proceeding. The document does not list services related to converting the case to another chapter, but does include charges for loss mitigation services, relief from stay matters, objections to claims, and many other itemized services, and states "[i]f you have an issue that requires legal work greater than the above-referenced amounts, a request for approval of additional fees will be submitted to the Bankruptcy Trustee and Bankruptcy Court. If any additional work is needed, the Attorney rate is $500/ per hour...." The Firm did not file any requests for supplemental fees pursuant to SC LBR 2016-1(b) while this case was pending under Chapter 13 nor disclose any additional fees paid.

On December 7, 2021, Jones filed a response to Cooper's claim objection.

On January 6, 2022, a Clerk's Entry of Default was filed in the Reliable adversary proceeding and an Order and Judgment of Nondischargeability was entered regarding Reliable's

[18] ECF No. 30.

claim on January 7, 2022, which were served on Cooper on January 8 and 9, 2022, respectively. This ended the adversary case.

The Firm subsequently withdrew the claim objection, listing the reason as "debtor to convert." The Firm charged Cooper $1,000.00 for the conversion, and he paid $700.00 on January 11, 2022, and $300.00 on January 12, 2022. A notice of voluntary conversion to Chapter 7 was filed on January 14, 2022, indicating it was signed by Cooper.

Another amended schedule E/F was filed to add a $60,000.00 debt to MTEK, which is apparently a company owned by Cooper. John K. Fort was appointed as Chapter 7 trustee ("7 Trustee").

The 13 Trustee filed the Final Report and Account in February 2022, indicating the Firm was not paid any attorney fees by the 13 Trustee and the plan was not confirmed.

The 7 Trustee examined Cooper at the Chapter 7 first meeting, which concluded on April 11, 2022, and issued a notice to file claims.

On April 18, 2022, the Office of the United States Trustee filed Adv. Pro. No. 22-80019-hb, objecting to Cooper's discharge under Chapter 7 ("UST Adversary")[19] based on, among other allegations, Cooper's failure to list Reliable in the schedules, failure to schedule and properly value assets, and failure to disclose pre-petition transfers of property to family members. An answer was filed on May 18, 2022, conceding almost all factual allegations in the complaint but disagreeing with the complaint's legal conclusions, and a discovery schedule was set.[20] In May and June of 2022, Cooper filed amendments to his schedule A/B in the underlying bankruptcy.[21] The Firm

[19] Adv. Pro. No. 22-80019-hb, ECF No. 1.
[20] Adv. Pro. No. 22-80019-hb, ECF Nos. 4, 8.
[21] ECF Nos. 74, 75.

charged Cooper $3,000.00 for work related to this adversary proceeding and Cooper paid $1,500.00 on April 28, 2022, and $1,500.00 on May 23, 2022.

On June 29, 2022, the Firm again objected to the claim of Reliable. A review of the objection indicates no viable grounds for disallowance stated, and no grounds for Cooper's standing as a Chapter 7 debtor to object to a claim.[22] Reliable again responded, triggering the self-scheduled hearing on the objection. The Firm subsequently withdrew the objection, stating the withdrawal was "with prejudice."[23] No additional amounts were charged specifically for this or the prior objection, but at some point the Firm charged Cooper either $2,500.00 or $1,500.00 for the Firm's assistance with the Reliable Suit. The record does not contain details of the bill or payment, and it is unclear whether this was for work on the adversary proceeding that was previously filed in this Court or for work related to the state court litigation and settlement referenced below, but the Firm admits it received $1,500.00.

On July 26, 2022, the Firm filed a voluntary waiver of discharge, signed by Cooper. A telephonic hearing was held on August 25, 2022, at 11:00 a.m. A review of the recording of the hearing indicates that attorney Peter D. Korn appeared on behalf of the Firm, and Cooper also participated and affirmed that his waiver was voluntary and informed. An order waiving discharge was entered on August 25, 2022, resolving the UST Adversary.

Meanwhile the 7 Trustee hired counsel, liquidated property, evaluated claims, and objected when appropriate, including to a claim filed by MTEK, which was disallowed. During this time, many hearings were held and often Cooper and a representative of the Firm attended.[24]

[22] Chapter 7 debtors generally do not have standing to object to proofs of claim. *See In re Riley*, 478 B.R. 736, 745 (Bankr. D.S.C. 2012).
[23] ECF No. 85.
[24] *See* docket entries through February 2024.

On October 13, 2023, Truist Bank filed a motion for relief from stay as to the Evans Property located in Georgia.[25] The 7 Trustee did not object. The Firm filed a timely response to the motion.[26] On the same date, Cooper filed his own response to the motion without the assistance of counsel.[27] In his filing, Cooper references "previous attorney Moss and Associates", however nothing on the docket at that time indicates that Cooper was not actively being represented by the Firm. On November 15, 2023, the Firm filed a reply to Cooper's response which is ninety-four (94) pages long.[28] The Firm then withdrew its response to Truist's motion on November 16, 2023, with a docket entry noting "Debtor consents to Order Granting Relief".

Out of an abundance of caution, and to address Cooper's unassisted filing, the Court held a hearing on Truist's motion on November 20, 2023. At the hearing, Korn appeared and reiterated the Firm's intent to withdraw its response. Cooper did not appear at that hearing, but Korn stated Cooper had indicated he would be withdrawing his *pro se* response as well. The Court recognized Cooper's intention to withdraw his response, and noted that regardless, the Court was inclined to grant Truist's motion. The Court subsequently entered an order that granted Truist relief from the automatic stay,[29] and it was served on Cooper. The Firm did not charge any additional amounts for this work.

A few days earlier, on November 17, 2023, Jones filed a withdrawal of Reliable's claim, stating that Cooper had fulfilled his obligations under a settlement agreement made outside this Court.[30]

[25] ECF No. 138.
[26] ECF No. 140.
[27] ECF No. 141.
[28] ECF No. 142.
[29] ECF No. 147, entered Nov. 21, 2023.
[30] ECF No. 144.

The 7 Trustee filed objections to claims of Colonial Savings, F.A. and Suntrust Bank on the grounds that those debts were secured by real estate and self-scheduled them for hearing on January 17, 2024.[31] No response was filed, and therefore the hearings were removed from the Court's calendar and orders were entered on January 16, 2024, allowing the claims but providing no distribution would be made by the 7 Trustee because the assets securing the claims would not be administered by the estate.[32]

The Court was in session for other unrelated cases on January 17, 2024, but not for a hearing on the claim objections which had already been sustained. Cooper nevertheless appeared at the courthouse. The case docket from that date includes the following entry:

01/17/2024		(private) Case Notes for Internal Use Only: Debtor, Samuel Frank Cooper, appeared in court on Jan 17, 2024, but there was no scheduled hearing on the calendar other than Objection to Claim that had no responses filed. The recording is at slot 11 starting at 9:54:52 AM and ending at 10:11:48 AM. He may request a CD of the hearing. (Lee, D) (Entered: 01/17/2024)

A review of that recording reflects the Court informed Cooper that, based on the objections and the resulting orders, the 7 Trustee would not be paying those secured claims with funds collected by the estate. At that time, Cooper voiced grievances against the Firm. He was instructed that he must submit requests to the Court in writing with notice to the affected parties before a hearing can be properly held.

On December 27, 2023, Colonial Savings, F.A. filed a motion requesting relief from stay for the Evans Property. As proper notice was given and no response was filed by the 7 Trustee or any other party, an order lifting the automatic stay as to Colonial was entered on January 19, 2024.

[31] ECF Nos. 149, 150.
[32] ECF Nos. 152, 153.

On February 13, 2024, Cooper filed the Fee Dispute Motion which asks the Court to order the Firm to return fees Cooper paid it for representation in this case and his prior case.[33] The Court interprets the Fee Dispute Motion to base its challenge to the Firm's fees on the following ostensible allegations:

- the Firm failed to obtain loan modifications with SunTrust (now Truist)—presumably regarding its mortgage on the Evans Property—for Cooper even though Cooper paid for them;[34]
- the Firm failed to oppose Truist Bank's motion for relief from stay regarding the Evans Property;
- the debt to SunTrust (now Truist) was not discharged in Cooper's prior bankruptcy due to the Firm's failure to report the debt to the trustee even though Cooper had informed the Firm about the debt, resulting in further costs to Cooper; and
- even though Cooper informed the Firm on multiple occasions prior to the filing of this case about the existence of Reliable's suit against him, the Firm did not list Reliable or its claim in the schedules or statements—resulting in Cooper having to convert to Chapter 7 and contributing to him having to waive his discharge—and did not contest Reliable's motion for relief from stay—resulting in Cooper losing the automatic stay with respect to the suit and having to defend himself in New York and settle the case for $30,000.00.

[33] An attachment to the pleading appears to indicate Cooper is requesting $8,300.00 for fees paid for representation in this case and $4,132.00 for fees paid for representation in the prior case, though it also indicates Cooper alleges he has suffered damages totaling $57,432.00, consisting of the above-noted fees plus the $30,000.00 he alleges it cost him to settle the Reliable Suit and $15,000.00 for "estimate legal RAS."

[34] Cooper appears to allege in an attachment to the pleading that a completed loss mitigation/mortgage modification application with Truist Bank for the Evans Property was not submitted even though he provided all the documents the Firm requested to complete the application.

The Firm responded and a hearing was scheduled.[35]

On February 22, 2024, the 7 Trustee filed a Notice of Trustee's Final Report and Application for Compensation.[36] No objections were filed, and the Court entered an order on March 21, 2024 approving distributions.[37]

On April 4, 2024, the Firm filed the Sanctions Motion, and the Court scheduled a hearing and set a deadline to object. The Sanctions Motion contends that Cooper's Fee Dispute Motion fails to provide adequate factual or legal grounds and is therefore frivolous and without merit. The Firm requests the Court impose a $5,000.00 sanction on Cooper pursuant to Fed. R. Bankr. P. 9011. Cooper was given notice by mail of an earlier draft of the Sanctions Motion before it was filed, of the Sanctions Motion at the time it was filed by the Firm, and of the Court's hearing notice and objection deadline by the Bankruptcy Noticing Center, all at the address provided to the Court for Cooper.[38] Cooper did not respond.

The Sanctions Motion sets forth events that occurred in this case and Cooper's previous case and the fees charged Cooper.[39] Regarding the attempts to obtain loss mitigation or mortgage modification with SunTrust Mortgage, the Firm alleges that in both cases, it sent a loss mitigation/mortgage modification application to SunTrust, the application was forwarded to Cooper, and SunTrust denied the application.

[35] ECF Nos. 160, 161, 166-172, 177, 178. The Order scheduling the hearing clarified that at the hearing, the Court would only hear argument or testimony and receive evidence regarding whether the Firm should return any fees paid it by Cooper.
[36] ECF No. 164.
[37] ECF No. 176.
[38] ECF Nos. 177, 178, 179.
[39] Attached to the Sanctions Motion is the Firm's internal log of meetings it had with Cooper, but it contains little detail.

The Firm alleges that $700.00 of the $1,700.00 charged to Cooper for the attempted loan modification during the prior case remains outstanding.[40] The Firm summarizes charges made to and payment received from Cooper in the current case in its Sanctions Motion at pages 17 – 19. As the docket indicates, $4,000.00 was charged to Cooper for representation in the Chapter 13 case and he paid $1,286.00 (filing fee not considered in either of these numbers). The Firm admits that Cooper was further charged and Cooper paid $1,000.00 for converting his case to Chapter 7. Post-conversion, the Firm charged and was paid $1,700.00 for the attempted loan modification, and $3,000.00 for the Firm to defend the UST Adversary. The timing of the $1,500.00 charge for the Firm to help Cooper find legal representation in the Reliable Suit is unclear, but it appears to be post-conversion as well. Therefore, in this case, the Firm alleges in pleadings it charged Cooper $11,200.00 and admits that he paid $8,486.00, leaving a balance for this case of $2,714.00.

Neither party disputes payment of the $1,286.00 for the initial filing, or that this payment reduces the $4,000.00 charged to $2,714.00. Cooper's payment records for this case submitted with his Fee Dispute Motion somewhat match the Firm's charges. As mentioned above, his records include payments of: (1) $700.00 on January 11, 2022 and $300.00 on January 12, 2022 (total $1,000.00 for conversion, paid prior to conversion to Chapter 7 on January 14, 2022); and (2) $1,500.00 on April 28, 2022 and $1,500.00 on May 23, 2022 (total $3,000.00 for UST Adversary). He also included payment records for $850.00 on July 11, 2022 and $850.00 on July 18, 2022 (total $1,700.00 for loan modification). The parties disagree as to whether $1,500.00 or $2,500.00 was paid for the Firm's assistance with the Reliable Suit, but the Firm acknowledges a $1,500.00 charge and payment thereof.

[40] None of the supplemental fee requests filed in the prior case are for loan modifications. The Firm alleges Cooper was charged on March 26, 2019 (post-confirmation), at which point the Firm had already been paid more than $4,000.00 in fees (*see* C/A No. 18-01140-hb, ECF No. 35). The Firm also did not file an application for compensation for the loan modification fees in the prior case.

Moss and Cooper appeared at the hearing and discussed the events of the cases but did not present testimony under oath. When asked how much he wanted the Firm to return to him, Cooper noted several times he had previously asked the Firm to return $8,300.00.[41] Cooper repeated allegations he has made previously, including that he informed members of the Firm about the Reliable Suit prior to filing this case, and complained that the Firm did not earn the fees charged for the Firm to help him find counsel in the Reliable Suit and that the Firm's advice to waive his discharge was deficient. The Firm opposed Cooper's request for return of fees, denying that the Firm was aware of the Reliable Suit prior to filing this case. The Firm also framed its Sanctions Motion more as a defense to Cooper's request. Notably, the record does not include any documents—beyond those filed on the Court's docket previously—to support the position of either party. For example, such relevant documentation from the Firm or Cooper's records would likely include drafts of schedules, notes from meetings, instructions, relevant emails, loan modification documents or responses thereto, relevant communications between the parties indicating who knew what when, and whether actions taken by the Firm were with Cooper's consent or at his direction. Additionally, no party testified under oath to help fill in the details of the timing and content of communications between the parties. In short, Cooper and the Firm appeared to completely disagree on most facts relevant to resolution of this dispute, and the Court must rely on undisputed facts and details and what is on the docket to resolve their dispute.

DISCUSSION AND CONCLUSIONS OF LAW

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), and this Court may enter a final order.

[41] This amount roughly matches the $8,486.00 the Firm agrees Cooper has paid.

I. Fee Dispute Motion

Section 329 provides:

> Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

11 U.S.C. § 329(a).

Rule 2016 provides:

> Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 14 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 14 days after any payment or agreement not previously disclosed.

Fed. R. Bankr. P. 2016(b). In short, § 329 "requires an attorney to disclose the compensation paid or to be paid in connection with the bankruptcy case, the disclosure of which is made by the attorney under Bankruptcy Rule 2016." *In re Prophet*, 651 B.R. 263, 275-76 (Bankr. D.S.C. 2022), *aff'd sub nom. In re Rosenschein*, 651 B.R. 677 (D.S.C. 2023).

If the compensation paid by a debtor to an attorney representing the debtor in a bankruptcy case for legal services related to the case "exceeds the reasonable value of any such services, the court may . . . order the return of any such payment, to the extent excessive, to. . . the entity that made such payment." 11 U.S.C. § 329(b); *see also* Fed. R. Bankr. P. 2017 (providing the Court authority to determine whether payments by debtors to their counsel for pre- or post-petition bankruptcy services are excessive). "It is the attorney's burden to show the reasonableness of his

fees." *In re Busche*, No. 15-02559-DD, 2015 WL 6501157, at *3 (Bankr. D.S.C. Oct. 27, 2015) (citing *In re Kestner*, No. 12–32831–RAG, 2015 WL 1855357, at *10 (Bankr. D. Md. Apr. 20, 2015) ("Once a question has been raised about the reasonableness of an attorney's fees under section 329, the attorney bears the burden of establishing that the fee is reasonable.")).

From the petition date of this case through the date of conversion, for the Chapter 13 proceeding SC LBR 2016-1(b)(1) provided:

> An attorney representing a debtor in a chapter 13 case may obtain approval of attorney's fees without the filing of a formal fee application and a hearing when the attorney and the debtor(s) agree in writing that the fee for representation will be equal to or less than the amount set forth in Chambers Guidelines at the time of the filing of the case (collectively, the "Expedited Fee Amount"). Unless the Court orders otherwise, the Expedited Fee Amount is deemed an allowed administrative claim under 11 U.S.C. § 503(b)(2). The amount may be claimed by the attorney's filing of the Attorney Fee Disclosure Statement pursuant to Fed. R. Bankr. P. 2016(b) (Director's Bankruptcy Form B2030). The B2030 Form shall clearly indicate the fee agreed upon, the amount paid to date, and the amount to be paid through the chapter 13 plan, and shall define any charges or potential charges for supplemental fees described in paragraph (b)(2). Counsel must include as an attachment to the B2030 Form, a copy of counsel's signed representation agreement with the debtor(s).

The Chambers Guidelines of the undersigned provided that the Expedited Fee Amount for purposes of SC LBR 2016-1(b)(1) was $4,000.00 for consumer cases, the amount agreed upon by Cooper and the Firm for services in this case.

"Attorneys representing debtors in bankruptcy cases have an affirmative duty to disclose all fee arrangements and all payments fully and completely." *In re Green*, C/A No. 20-03190-HB, 2021 WL 5177427, at *11 (Bankr. D.S.C. Nov. 3, 2021) (citing 11 U.S.C. § 329(a); Fed. R. Bankr. P. 2016(b)). "An attorney's duty to make an accurate disclosure of fees is as significant as debtors' duty to disclose their assets and liabilities. Such disclosures are important in that they enable the Court, trustees, and other parties to review the reasonableness of fees and debtors' transactions with their attorneys." *In re Welch*, 647 B.R. 518, 526 (Bankr. D.S.C. 2022) (quoting *In re Walker*,

C/A No. 01-11884-W, slip op. at 7 (Bankr. D.S.C. Feb. 27, 2002)). "A fee agreement may be cancelled, and compensation denied under § 329(b), if an attorney fails to comply with disclosure obligations under § 329(a) and Fed. R. Bankr. P. 2016(b)." *Green*, 2021 WL 5177427, at *11 (citing *In re TJN, Inc.*, 194 B.R. 400 (Bankr. D.S.C. 1996)).

Here, Cooper does not seem to dispute the price of the services at issue, or whether those prices were reasonable if the services were properly rendered. Rather, the dispute is about whether the service was provided by the Firm or was appropriate and productive.

At outset, the Court concludes it is too late for either party to raise any dispute about fees from Cooper's prior bankruptcy case. Even if the facts before the Court in this matter were complete enough to support review of fees, which they are not, over two and a half (2 ½) years have passed since that case was closed without a fee challenge in that case, and Cooper received a discharge. Further, Cooper appears to allege the mortgage debt to SunTrust (now Truist) was not discharged in Cooper's prior bankruptcy due to the Firm's failure to report the debt to the trustee even though Cooper had informed the Firm about the debt, resulting in further costs to Cooper. As noted above, it is too late to raise a dispute about fees incurred in the prior case. Even if this allegation was timely, it does not have merit on this record. The record reflects that SunTrust was listed on the creditor matrix, the debts owed to SunTrust were listed on Schedule D, and the debts were treated in the Chapter 13 plan. Further, the debts to SunTrust are secured by mortgages on Cooper's real property, and "[g]enerally, liens pass through bankruptcy unaffected and unimpaired." *In re Baker*, C/A No. 17-03405-dd, slip op. at 4 (Bankr. D.S.C. Dec. 15, 2017) (citing *Johnson v. Home State Bank*, 501 U.S. 78 (1991); *Long v. Bullard*, 117 U.S. 617 (1886)). Therefore, this is not a sufficient ground on which to require the Firm to return fees to Cooper.

In the current case, $4,000.00 was charged for the Chapter 13 proceedings, $1,286.00 was paid, and then the Firm charged Cooper another $1,000.00 for conversion. There is no evidence in the record of a fee agreement between the Firm and Cooper stating an amount to be charged in the event of conversion, or that this is a service that is excluded from the fee previously charged. Such an agreement may exist, but it is not in this record. Therefore, the sum of $1,714.00 remains due from the Chapter 13 portion of this case ($4,000.00 less pre-conversion payments of $1,286.00 and $1,000.00).[42]

The issues related to the Reliable Suit span this entire case (pre- and post-conversion) and could impact this $4,000.00 charge. Cooper alleges he informed the Firm pre-petition on multiple occasions about the existence of Reliable's allegations and lawsuit against him, but the Firm did not list Reliable or its lawsuit in the schedules or statements—resulting in Cooper having to convert to Chapter 7 and contributing to him having to waive his discharge—and did not contest Reliable's motion for relief from stay—resulting in Cooper losing the automatic stay with respect to the suit and having to defend himself in New York and settle the case for $30,000.00. The Firm did file an objection, but it was late, with an explanation that the Firm had not been able to get in touch with Cooper. That objection was withdrawn, but the record is not sufficient for the Court to conclude that at the time, the withdrawal was contrary to Cooper's instructions or without his consent. It is not clear whether Cooper directly informed the Firm about the Reliable issues before filing the instant case as he says, but the record does indicate the Firm was given notice prior to filing this case for Cooper by being served with the motion Reliable filed in the first case that discussed the lawsuit and included the complaint. The Firm therefore appears to have had pre-petition notice that Cooper's unsecured debts may have exceeded the Chapter 13 unsecured debt

[42] The amount is a pre-conversion debt and the Firm failed to file a proof of claim for those fees in this asset case. However, Cooper has waived his discharge, so the amount is still due.

limit, and that this case may involve complicating factors to be considered prior to the filing. However, the same facts indicate that Cooper had notice of this claim against him and yet failed to ensure that the alleged debt was included on his schedules and statements, signed under penalty of perjury. On this record, the Court cannot determine who is at fault, or more at fault, for the failure to list Reliable in the schedules and statements and any resulting consequences, and therefore cannot conclude that the issues related to Reliable are a basis to require the Firm to return fees or to be compensated in an amount less than the base fee of $4,000.00 charged in this case, of which $1,714.00 remains due.

Post-conversion, Cooper alleges the Firm failed to obtain loan modifications with SunTrust (now Truist) for Cooper even though he paid for the service. The parties agree the Firm charged Cooper for loan modification work in this case in the amount of $1,700.00, an agreement disclosed and supported that charge, and Cooper paid the Firm that amount. It is also undisputed that no loan modification was achieved. The Firm alleges that a loan modification application was submitted during this case and subsequently denied, but produced no evidence substantiating that claim. Cooper's allegation, combined with the lack of success and lack of other evidence in this record, is sufficient to place the burden on the Firm to demonstrate it expended a reasonable degree of effort and care to at least attempt a loan modification and submitted an application as asserted. Since the parties gave contradictory versions of the history of this matter and there is nothing in the record substantiating the Firm's charges, Cooper prevails on this ground. When the parties have different versions of the facts and neither presents credible testimony or documentary evidence, the party with the burden of proof loses. Therefore, Cooper prevails regarding the $1,700.00 he paid in this case. Therefore, the tally is now the Firm +$14.00.

Cooper requests return of fees because the Firm failed to oppose Truist Bank's post-conversion request for relief from stay. The record before the Court reflects that the Firm filed a timely response but subsequently withdrew it, indicating in the withdrawal that Cooper consented to relief from stay. There is no evidence that the Firm charged any additional amount for that opposition, the 7 Trustee did not object, and the Court cannot find that Cooper would have prevailed with his *pro se* response. Due to Cooper's *pro se* response, the Court held a hearing out of an abundance of caution, but Cooper did not appear to prosecute it. Further, Korn—an attorney at the Firm—indicated at that hearing that Cooper intended to withdraw his *pro se* response. Cooper has not presented sufficient evidence indicating that the Firm acted contrary to his instructions at that time and the Firm disagrees with his version of events. The docket and hearing records clearly indicate the events and the work done by the Firm. No additional fees were charged for this specific work and without anything beyond that record, Cooper's dispute of any portion of fees charged overall in this case that could be attributed to that work is not sufficiently supported.

Cooper alleged at the hearing that he paid the Firm $2,500.00 post-conversion for the Firm to help him obtain assistance and counsel in the Reliable Suit, but the Firm did not provide this service. The Firm admits that Cooper paid at least $1,500.00 for this service. As Cooper has alleged the Firm did not perform the services it promised to perform, and the Firm admits Cooper paid $1,500.00 for the services, the burden is on the Firm to show it provided those services. There is nothing disclosed on the docket prior to this dispute regarding the fees charged or paid, or the work performed, and the Firm has failed to present anything beyond statements that contradict Cooper's statements. Again, this service may have occurred but there is simply no evidence in this record that it did. Cooper thus prevails on this ground, but only to the extent of the $1,500.00

admittedly received by the Firm. Subtracting the $14.00 owed to the Firm from $1,500.00 results in $1,486.00 owed to Cooper.

Finally, Cooper alleged at the hearing that the Firm's advice to waive his discharge was deficient, apparently challenging the $3,000.00 charged and paid for defense of the UST Adversary.[43] The UST's complaint presented detailed grounds for denying Cooper a discharge, justifying the Firm's filing of an answer. Thereafter, the record before the Court indicates Cooper thought at the time that waiving his discharge was the best course of action, as he signed the waiver and affirmed at the hearing held that his waiver was voluntary and informed. There is nothing in the record showing what advice the Firm provided or, if the Firm did counsel Cooper to waive his discharge, that such counsel was unreasonable. This record does not present grounds to require the Firm to return fees to Cooper.

In summary, the Firm must return $1,486.00 to Cooper based upon the following calculation: $1,000.00 for conversion, as no fee agreement listing this service as excluded from the base fee was presented to justify this charge; plus $1,700.00 for the Firm's failure to meet its burden of proof regarding the value of loss mitigation work in this case; plus $1,500.00 for the Firm's failure to meet its burden of proof regarding assistance to Cooper in finding counsel for the Reliable Suit; less $2,714.00 owed the Firm as the outstanding balance of the $4,000.00 base fee.

II. Sanctions Motion

> By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—
>
> > (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

[43] The only fee agreement in the record discloses a charge of $500.00 per hour for excluded services, and adversary proceedings were excluded in the initial Disclosure of Compensation.

> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Fed. R. Bankr. P. 9011(b). "If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may . . . impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation." Fed. R. Bankr. P. 9011(c). *Pro se* filings must be liberally construed and, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers[.]" *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

Though the Court concludes that Cooper did not prevail with all parts of his Fee Dispute Motion, he made allegations about the quality of the service provided and charges made and has prevailed on several charges, and therefore the Court cannot find that the allegations were entirely without merit or presented for an improper purpose as discussed above. Therefore, the standards of Rule 9011 that result in sanctions are not met. Accordingly, the Firm's Sanctions Motion is denied.

IT IS, THEREFORE, ORDERED the Firm's fees are allowed and disallowed as set forth herein, and as a result the Firm shall pay Cooper $1,486.00 **within twenty-one (21) days of the entry of this Order.** All other relief requested by the Firm and Cooper is denied.