



NOT FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

CATHERINE TRINH,

Debtor.

Case No. 2:18-bk-11475-RK

Chapter 11

**ORDER DENYING INTERIM FEE
APPLICATION OF LEA ACCOUNTANCY.
LLP WITHOUT PREJUDICE**

Vacated Hearing

Date: October 24, 2018

Time: 11:00 a.m.

Courtroom: 1675

Having considered the interim fee application of LEA Accountancy, LLP,
accountant for Catherine Trinh, debtor in possession, the objection of the United States
Trustee, applicant's reply, the other papers and pleadings filed in this bankruptcy case,

1 the court determines that pursuant to Local Bankruptcy Rule 9013-1(j)(3), oral argument
2 on the application is not necessary and dispenses with it, vacates the hearing on the
3 application on October 24, 2018, takes the application under submission and rules as
4 follows.

5 The court denies the application without prejudice.

6 The court's reasons are as follows:

- 7
1. 8 Given the early stage of this bankruptcy case, the court cannot meaningfully
9 assessed whether the fees are reasonable under 11 U.S.C. §330 because
10 whether there will be a successful outcome in this Chapter 11 reorganization
11 bankruptcy case is far from certain, and there is insufficient demonstrated
12 progress in this case to warrant an award of attorneys' fees in this case
13 because it is not even clear that this case will survive the motion of the United
14 States Trustee to dismiss or convert. *See In re Crown Oil Inc.*, 257 B.R. 531,
15 541 (Bankr. D. Mont. 2000) ("Chapter 11 cases which lack viable changes of
16 reorganization may place the fees of counsel [or other estate professionals] at
17 risk.")(citations omitted). As noted by the United States Trustee in his motion
18 to dismiss or convert, debtor has not been in compliance with her reporting
19 requirements in this case by tardily filing monthly operating reports, paying
20 quarterly fees and submitting proof of insurance, her originally filed monthly
21 operating reports were inaccurate, which in the view of the United States
22 Trustee constituted gross mismanagement of the estate, and debtor was
23 incorrectly using her debtor in possession bank accounts. *Motion of United*
24 *States Trustee to Dismiss or Convert*, filed on September 13, 2018. Debtor
25 has only recently taken action to correct these deficiencies and filed amended
26 monthly operating reports to correct the inaccuracies in her prior reports only
27 on October 16, 2018. Given this state of affairs, it is difficult to conclude that
28 this will be a successful reorganization case, and it is thus difficult for the

1 estate professionals to demonstrate and meet their burden of showing that
2 their services were beneficial to the estate. See *In re Crown Oil Inc.*, 257
3 B.R. at 542 (“Bankruptcy Courts must examine the circumstances and the
4 manner in which services are performed and the results achieved in order to
5 arrive at a determination of a reasonable fee allowance.”), *citing and quoting*,
6 *In re Mednet*, 251 B.R. 103, 108 (9th Cir. BAP 2000). The Ninth Circuit has
7 held the fee applicant “had an obligation to consider the potential for recovery
8 and balance the effort against the results . . .” and “Absent unusual
9 circumstances, an attorney must scale his or her fee at least to the
10 reasonably expected recovery.” *Unsecured Creditors’ Committee v. Puget*
11 *Sound Plywood, Inc.*, 375 F.3d 955, 961 (9th Cir. 2004). Although *Puget*
12 *Sound Plywood* involved a fee application of counsel for an unsecured
13 creditors’ committee for work objecting to the attorneys’ fee claim of a
14 secured creditor, similarly, the fee application of estate professionals working
15 for the debtor in possession in a Chapter 11 reorganization case, the court
16 must consider “whether a reorganization is successful is a factor to be
17 considered in determining whether a debtor’s counsel’s [or other estate
18 professional’s] services provide a benefit to the estate.” *In re Crown Oil Inc.*,
19 257 B.R. at 541 (citations omitted).

- 20 2. The case is in the early stages, and at this time, there is no disclosure
21 statement or plan filed, and it is unclear when debtor will be able to do so.
22 Moreover, the court notes that much of the time billed by the applicant related
23 to debtor’s monthly operating reports which the United States Trustee said
24 were inaccurate and indicating gross mismanagement of the estate, and
25 implicitly admitted by debtor as inaccurate in filing corrected and amended
26 reports, and the court is uncertain whether the amended monthly operating
27 reports recently filed have corrected the inaccuracies because the United
28 States Trustee has not completed its review of the amended reports. Thus,
there may be a serious issue about the value of the applicant’s services

1 rendered if the services resulted in inaccurate reporting of debtor's financial
2 status on the original monthly operating reports.

- 3 3. The United States Trustee and the application stipulated to a reduction of
4 \$1,000 in the amount of fees requested by the applicant as excessive.
5 *Stipulation to Reduce Fees re: Application for Payment of Interim Fees and/or*
6 *Expenses of LEA Accountancy, LLP*, filed on September 13, 2018, at 2. In
7 the stipulation, the United States Trustee stated that he believed that the fees
8 charged for the 90 day projection was excessive. *Id.* Having cursorily
9 reviewed the work performed by applicant in this area, the court is inclined to
10 agree with the United States Trustee that the amount claimed is excessive,
11 but would have probably determined that the United States Trustee was far
12 too conservative in recommending only \$1,000 reduction. Given the early
13 stage of this case and the lack of results so far, the court likely would have
14 made a much greater reduction if it conducted a thorough and independent
15 review of the fee application because much of the work billed relating to the
16 original monthly operating reports, which were inaccurate, but in fairness to
17 the applicant, the court believes that it should wait until a later stage of the
18 case when there are demonstrated results in the case and more information
19 on whether the applicant was responsible in any way for the inaccuracies in
20 the original monthly operating reports it prepared for debtor to pronounce on
21 whether the applicant's fees are reasonable or not.
- 22 4. The application is also premature because the estate does not have the funds
23 to pay the fees and expenses requested, and thus, consideration of the
24 application is somewhat academic because there are insufficient funds to pay
25 the applicant. Another fee applicant, Fredman Lieberman Pearl LLP, general
26 bankruptcy counsel to debtor in possession applicant had a retainer of
27 \$61,624 as of the petition date, which has already been exhausted by the
28 fees requested in its application, and seeks the balance of \$61,217.64 from
the total amount requested of \$119,596.50 in fees and \$3,245.14 in expenses
against the current funds in the estate of about \$16,900 in debtor's three
debtor in possession bank accounts. *Interim Fee Application of Fredman*

1 *Lieberman Pearl LLP*, filed on August 29, 2018, at 0007-0008. The court
2 notes that the applicant's pending interim fee application seeking an award of
3 fees of \$10,893.00 and expenses of \$8.56. *Interim Fee Application of LEA*
4 *Accountancy LLP*, filed on September 13, 2018. Thus, the estate
5 professionals by their current fee applications are asking for authorization for
6 payment of their fees which the estate does not now have.


- 7 5. Applicant also failed to serve notice of the application on all creditors as
8 required by Federal Rule of Bankruptcy Procedure 2002(a)(6) and Local
9 Bankruptcy Rule 2016-1(a)(2) since the application is a request for
10 compensation exceeding \$1,000, specifically, creditor Philip Kaufler who
11 listed on the creditors' mailing matrix was not served with notice. Apparently,
12 this was an inadvertent oversight since this party is an estate professional,
13 but as an administrative expense creditor, he is still entitled to proper notice.
14 The court notes that the applicant could readily correct this service defect by
15 proper service on this party, or obtaining service waivers from him.

16 For the foregoing reasons, the interim fee application is denied without prejudice.
17 Because the hearing on the application noticed for October 24, 2018 at 11:00 a.m. has
18 been vacated, no appearances are required on that date and at that time.

19 IT IS SO ORDERED.

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25 Date: October 22, 2018

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27 _____
28 Robert Kwan
United States Bankruptcy Judge