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NOT FOR PUBLICATION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 FREDMAN LIEBERMAN
PEARL LLP WITHOUT PREJUDICE**

Vacated Hearing
Date: October 24, 2018
Time: 11:00 a.m.
Courtroom: 1675

Having considered the interim fee application of Fredman Lieberman Pearl LLP,
general bankruptcy counsel for Catherine Trinh, debtor in possession, the objection of

1 the United States Trustee, applicant's reply, the other papers and pleadings filed in this
2 bankruptcy case, the court determines that pursuant to Local Bankruptcy Rule 9013-
3 1(j)(3), oral argument on the application is not necessary and dispenses with it, vacates
4 the hearing on the application on October 24, 2018, takes the application under
5 submission and rules as follows.

6 The court denies the application without prejudice.

7 The court's reasons are as follows:

- 8 1. 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 at risk.")(citations omitted). As
17 noted by the United States Trustee in his motion to dismiss or convert, debtor
18 has not been in compliance with her reporting requirements in this case by
19 tardily filing monthly operating reports, paying quarterly fees and submitting
20 proof of insurance, her originally filed monthly operating reports were
21 inaccurate, which in the view of the United States Trustee constituted gross
22 mismanagement of the estate, and debtor was incorrectly using her debtor in
23 possession bank accounts. *Motion of United States Trustee to Dismiss or*
24 *Convert*, filed on September 13, 2018. Debtor has only recently taken action
25 to correct these deficiencies and filed amended monthly operating reports to
26 correct the inaccuracies in her prior reports only on October 16, 2018. As the
27 United States Trustee points out in his objection to the fee application, "[t]his
28 case is nowhere near the stage where approval of a disclosure statement is

1 imminent. In fact, given the lack of cash on hand and the status of the appeal
2 of the state court judgment [against debtor for alter ego liability], a disclosure
3 statement and proposed plan of reorganization would not be feasible or
4 confirmable.” *Objection of United States Trustee*, filed on October 3, 2018, at
5 4. Applicant in its reply does not dispute the United States Trustee’s
6 characterization of the status of this case. *Applicant’s Reply*, filed on October
7 17, 2018. Given this state of affairs, it is difficult to conclude that this will be a
8 successful reorganization case, and it is thus difficult for the estate
9 professionals to demonstrate and meet their burden of showing that their
10 services were beneficial to the estate. See *In re Crown Oil Inc.*, 257 B.R. at
11 542 (“Bankruptcy Courts must examine the circumstances and the manner in
12 which services are performed and the results achieved in order to arrive at a
13 determination of a reasonable fee allowance.”), *citing and quoting, In re*
14 *Mednet*, 251 B.R. 103, 108 (9th Cir. BAP 2000). For these reasons, the court
15 agrees with the observations of the United States Trustee that “The fee
16 application seeks \$119,596.50 in fees and \$3,245.14 in expenses. Given the
17 lack of progress in this individual case, the amount of fees sought at this time
18 appear to be excessive. It is too early in the case to determine whether the
19 fees were reasonable or necessary at the time Counsel provided services.”
20 *Objection of United States Trustee*, filed on October 3, 2018, at 4. As pointed
21 out by the United States Trustee in his objection, the Ninth Circuit has held
22 the fee applicant “had an obligation to consider the potential for recovery and
23 balance the effort against the results . . .” and “Absent unusual
24 circumstances, an attorney must scale his or her fee at least to the
25 reasonably expected recovery.” *Unsecured Creditors’ Committee v. Puget*
26 *Sound Plywood, Inc.*, 375 F.3d 955, 961 (9th Cir. 2004). Although *Puget*
27 *Sound Plywood* involved a fee application of counsel for an unsecured
28 creditors’ committee for work objecting to the attorneys’ fee claim of a

1 secured creditor, similarly, the fee application of counsel for debtor in
2 possession in a Chapter 11 reorganization case, the court must consider
3 “whether a reorganization is successful is a factor to be considered in
4 determining whether a debtor’s counsel’s services provide a benefit to the
5 estate.” *In re Crown Oil Inc.*, 257 B.R. at 541 (citations omitted).

6 2. The United States Trustee in his objection argues that the amount of fees
7 requested by the applicant is excessive and should be reduced by 20 percent.
8 *Objection of United States Trustee*, filed on October 3, 2018, at 2. In support
9 this argument, the United States Trustee contends, “In the category of ‘Case
10 Administration,’ Counsel is billing the estate \$82,478.00 which appears
11 excessive for filing routine chapter 11 motions including preparing motions for
12 extension of time to file schedules, motions to continue deadline for
13 disclosure statements and plans and motions to extend exclusivity.” *Id.*
14 While acknowledging the general usefulness of case administration work, the
15 court having cursorily reviewed the work performed by applicant in this area is
16 inclined to agree with the United States Trustee that the amount claimed is
17 excessive and would have probably determined that the United States
18 Trustee was far too conservative in recommending only a 20 percent
19 reduction. Given the early stage of this case and the lack of results so far, the
20 court likely would have made a much greater reduction if it conducted a
21 thorough and independent review of the fee application, but in fairness to the
22 applicant, the court believes that it should wait until a later stage of the case
23 when there are demonstrated results in the case to pronounce on whether the
24 applicant’s fees are reasonable or not. *In re Crown Oil Inc.*, 257 B.R. at 541
25 (citations omitted).

26 3. The application is also premature because the estate does not have the funds
27 to pay the fees and expenses requested, and thus, consideration of the
28 application is somewhat academic because there are insufficient funds to pay

1 the applicant. As noted in the application, applicant had a retainer of \$61,624
2 as of the petition date, which has already been exhausted by the fees
3 requested in this application, and seeks the balance of \$61,217.64 from the
4 total amount requested of \$119,596.50 in fees and \$3,245.14 in expenses
5 against the current funds in the estate of about \$16,900 in debtor's three
6 debtor in possession bank accounts. *Interim Fee Application of Fredman*
7 *Lieberman Pearl LLP*, filed on August 29, 2018, at 0007-0008. The court
8 notes that the accountants for the estate, LEA Accountancy, LLP, also has a
9 pending interim fee application seeking an award of fees of \$10,893.00 and
10 expenses of \$8.56. *Interim Fee Application of LEA Accountancy, LLP*, filed
11 on September 13, 2018. Thus, the estate professionals by their current fee
12 applications are asking for authorization for payment of their fees which the
13 estate does not now have.

- 14 4. Applicant also failed to serve notice of the application on all creditors as
15 required by Federal Rule of Bankruptcy Procedure 2002(a)(6) and Local
16 Bankruptcy Rule 2016-1(a)(2) since the application is a request for
17 compensation exceeding \$1,000, specifically, creditors LEA Accountancy,
18 LLC, and Philip Kaufler, listed on the creditors' mailing matrix. Apparently,
19 this was an inadvertent oversight since these parties are estate professionals,
20 but as administrative expense creditors, they are still entitled to proper notice.
21 The court notes that applicant could readily correct these service defects by
22 proper service on these parties, or obtaining service waivers from them.

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1 For the foregoing reasons, the interim fee application of Fredman Lieberman
2 Pearl LLP is denied without prejudice. Because the hearing on the application noticed
3 for October 24, 2018 at 11:00 a.m. has been vacated, no appearances are required on
4 that date and at that time.

5 IT IS SO ORDERED.

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25 Date: October 22, 2018



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27 Robert Kwan
28 United States Bankruptcy Judge