

ENTERED JUN -9 2005  
FILED  
JUN -8 2005  
CLERK, US BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re  
  
KENT IVAN DAVIS,  
  
Debtor.

Bankruptcy No. 02-05881-M7  
  
MEMORANDUM DECISION

Creditors Jerry Klauck and Mark Givens ("Creditors") filed a Motion for an Order Awarding Monetary Sanctions Against Debtor Kent Ivan Davis ("Motion"), for fees incurred in this case and two related adversary proceedings. After a hearing on January 5, 2005, the parties submitted further Declarations, an Opposition and a Response, as well as Supplemental Declarations filed by Mr. Amidon on April 18, 2005 and May 13, 2005, in response to the Court's Order of March 24, 2005.

Creditors urge the Court to award all of their fees and costs on the grounds that this was a bad faith filing. The Court will not award the full amount of fees. The Debtor tried to dismiss the case, but the Creditors objected and the Debtor eventually withdrew the

1 motion. Creditors contend the filing was in bad faith because the  
2 Debtor listed their judgments as contract debts rather than fraud  
3 claims in an attempt to discharge nondischargeable debts. A fraud  
4 claim will be discharged regardless of how it was listed, unless the  
5 creditor files and prevails in an adversary proceeding to except the  
6 debt from discharge. 11 U.S.C. §523(c)(1). Creditors also cite to  
7 authority that the Debtor can be responsible for defending a complaint  
8 under Section 523 when the issue of fraud was previously decided in  
9 state court. However, the judgments issued in the adversary  
10 proceedings filed by Creditors were to deny the Debtor's discharge  
11 under §727, something a state court could not have decided.  
12 Therefore, the Court may award fees incurred which are associated with  
13 specific acts of misconduct by the Debtor, not fees generally incurred  
14 to represent a creditor in a bankruptcy case. In re Dyer, 322 F.3d  
15 1178 (9<sup>th</sup> Cir. 2003).

16 In the Supplemental Declaration filed on April 18, 2005 ("April  
17 18 Declaration"), Mr. Amidon itemized fees which were incurred due to  
18 the Debtor's misconduct and failure to comply with the statutorily  
19 mandated duties of a Debtor under the Bankruptcy Code. After review  
20 of the pleadings, the Court finds that the Creditors are entitled to  
21 an award of sanctions to reimburse them for fees and costs incurred  
22 due to the Debtor's misconduct in this case. The specific acts of  
23 misconduct and resultant fees are outlined in the April 18  
24 Declaration. The Court has also previously made findings regarding  
25 the Debtor's misconduct in a Notice of Intended Decision which was  
26 entered on October 20, 2004, and incorporates such findings herein.

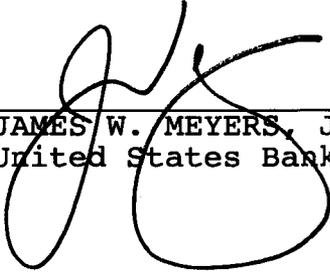
27 The April 18 Declaration itemized 103.3 hours of work caused by  
28 the Debtor's misconduct in this case. They claim the average fee was

1 \$225/hour for total fees of \$23,242.50. In addition, the Creditors  
2 itemized \$3,015.70 in expenses which were attributable to the Debtor's  
3 actions. The Court will award these amounts, except the two fees of  
4 \$150 each to file the adversary proceedings objecting to Debtor's  
5 discharge and dischargeability of the debts.

6 The Creditors have asked for a joint award. The Court will award  
7 sanctions to reimburse the Creditors for the fees incurred due to the  
8 Debtor's misconduct. Since there can only be one recovery on the  
9 award, it will be Mr. Amidon's responsibility to allocate the amount  
10 between his clients.

11 For the foregoing reasons, the Court finds Creditors Klauck and  
12 Givens are entitled to an award of sanctions against the Debtor in the  
13 amount of \$23,242.50 for unnecessary attorney fees and \$2,715.70 in  
14 unnecessary costs. Counsel for Creditors shall submit a proposed form  
15 of order within fourteen days of the date this Order is entered.

16 Dated: JUN 8 2005

  
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JAMES W. MEYERS, Judge  
United States Bankruptcy Court

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