



ORDERED in the Southern District of Florida on June 25, 2015.

A handwritten signature in cursive script that reads "A Jay Cristol".

**A. Jay Cristol, Judge
United States Bankruptcy Court**

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

In re:

LITTLE REST TWELVE, INC.,

Debtor.

Case No. 11-31773-AJC

Chapter 7

**ORDER SANCTIONING EMANUEL ZELTSER FOR
UNAUTHORIZED AND BAD FAITH FILING OF BANKRUPTCY PETITION**

THIS MATTER came before the Court for an evidentiary hearing on May 14, 2015 (“Evidentiary Hearing”), upon this Court’s *Order Granting Little Rest Twelve’s Motion for Sanctions for Unauthorized and Bad Faith Filing of Bankruptcy Petition* [ECF No. 45] (“Sanctions Order”). Specifically, the Sanctions Order determined that an award of sanctions in favor of Little Rest Twelve, Inc. (“LR12”), and against Emanuel Zeltser (“Zeltser”), is appropriate for the reasons set forth therein (all of which are incorporated here by reference), and set a further Evidentiary Hearing to fix the amount of sanctions against Zeltser. The Court, having considered the arguments of counsel at the Evidentiary Hearing, the evidence adduced at the

Evidentiary Hearing, including the time records of counsel for LR12, and the record of this proceeding and the related involuntary chapter 11 proceedings (Case Nos. 11-17047-AJC, 11-17051-AJC, and 11-17061-AJC, U.S. Bankruptcy Court for the Southern District of Florida), as well as Zeltser's *Objection to Request for Fees in Relation to Debtor's Motion for Sanctions for Unauthorized and Bad Faith Filing of Bankruptcy Petition* [ECF No. 65], finds it appropriate to enter sanctions against Zeltser as follows.

Findings of Fact

This Order awards sanctions against Mr. Zeltser for his unauthorized and bad faith filing of this chapter 7 bankruptcy case in July, 2011 in the U.S. Bankruptcy Court for the Southern District of New York. At the time of the filing, three involuntary chapter 11 petitions were pending before this Court. *See*, Case Nos. 11-17047-AJC, 11-17051-AJC, and 11-17061-AJC. The central issue early on in those cases was the ownership and control of those entities, including LR12. At the outset of those cases, Mr. Zeltser appeared before this Court and asked it to decide the ownership issue. However, shortly thereafter, he filed this voluntary bankruptcy case in New York for LR12. The case was transferred to this Court and abated pending a final determination of the ownership issue in the first-filed case. This Court decided the ownership issue in the three involuntary bankruptcy cases against Mr. Zeltser's clients and that decision was affirmed on appeal to the U.S. Court of Appeals for the Eleventh Circuit. *See, In re Fisher Island Investments, Inc.*, 778 F.3d 1172 (11th Cir. 2015).

Subsequently, the U.S. Trustee moved to dismiss this case, which was granted by this Court [ECF No. 10]; however, the Court reserved jurisdiction to award sanctions against Mr. Zeltser, among others, for the filing. A motion was filed by LR12, and this Court, after notice and a fair opportunity to be heard (including briefing and oral argument), and for the reasons set

forth in this Court's Sanctions Order, determined Mr. Zeltser liable for sanctions in an amount to be determined. To that end, the Court set the Evidentiary Hearing to determine the amount of sanctions against Mr. Zeltser. The Evidentiary Hearing was rescheduled, twice on the same day, *sua sponte*, by the Court's automated "re-notice." ECF Nos. 61 and 62.

At the Evidentiary Hearing, the Court took into evidence the billing records of counsel for LR12, which Mr. Zeltser stipulated to the authenticity of; namely, that of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. ("Stearns Weaver"), Hogan Lovells US, LLP ("Hogan Lovells"), and Gusrae Kaplan Nusbaum PLLC ("Gusrae"). The time records reflect 284 hours expended by LR12's professionals at a blended rate of \$435.65. Specifically, the blended hourly rates for the respective law firms for the time periods in question are broken down as follows:

<u>Law Firm</u>	<u>Time Period</u>	<u>Blended Rate</u>
Stearns Weaver	2011	<u>\$274.77</u>
	2014-2015	<u>\$441.69</u>
Hogan Lovells	2011	n/a
	2014-2015	<u>\$646.69</u>
Gusrae	2011	<u>\$363.24</u>
	2014-2015	<u>\$701.71</u>

The total amount of fees requested by LR12 is \$121,982.50. LR12 also seeks reimbursement for its out of pocket expenses of \$3,000.00. On the record, Ms. Redmond, on behalf of LR12, volunteered a twenty percent (20%) discount on its fees, or \$24,396.50, to account for any perceived duplication of effort given the presence of multiple law firms handling

the matter. The Court believes no discount should apply, but given counsel's generosity, will reduce the award to the amount requested.

Mr. Zeltser, represented for the first time in this case by Mr. Reynolds of Slatkin & Reynolds, P.A., took the position that, despite the Sanctions Order's clear language that the Court was setting an evidentiary hearing on the amount of sanctions, the Court's automated "re-notice" of the hearing reset the proceeding to one that is non-evidentiary. The Court, for the reasons set forth on the record, did not find the argument proffered by Mr. Zeltser's counsel to be meritorious. The Court is all too familiar with Mr. Zeltser's delay tactics throughout these proceedings and does not believe any further delay was warranted under the circumstances. However, in abundance of caution, and to mitigate any perceived prejudice to Mr. Zeltser, the Court permitted Mr. Zeltser to review the time records and submit proposed findings of fact and conclusions of law that address any concerns Mr. Zeltser may have with LR12's counsels' billing records. The Court has reviewed Mr. Zeltser's submissions and, for the reasons set forth below, finds Mr. Zeltser unpersuasive.

Conclusions of Law

Having previously determined that Mr. Zeltser is liable for sanctions in its Sanctions Order, this Order solely addresses the amount of sanctions against Mr. Zeltser. LR12 has requested the reimbursement of its fees and expenses in connection with this matter be awarded as sanctions against Mr. Zeltser. The Court grants this request. Given the egregious conduct of Mr. Zeltser in the filing of this voluntary chapter 7 case, in light of his other litigation tactics, the Court believes sanctions are warranted and justified.

Legal Standard

In the Eleventh Circuit, when awarding reimbursement of attorney's fees and expenses, the Court is required to utilize the "lodestar approach" by multiplying the number of hours reasonably expended by a reasonable rate. *See Gray v. Bostic*, 625 F.3d 692 (11th Cir. 2010); *Loranger v. Stierheim*, 10 F.3d 776, 781 (11th Cir. 1994). In addition, when analyzing reasonableness of fees, bankruptcy courts typically analyze the twelve factors enumerated in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), made applicable to bankruptcy proceedings by *In re First Colonial Corp. of America*, 544 F.2d 1291 (5th Cir. 1977). Finally, it is well settled law in the Eleventh Circuit that "there is no need to hold an evidentiary hearing every time the written pleadings present a dispute of opinions on matters as to which the courts possess expertise. Such matters might include the *reasonableness of the fee*, the *reasonableness of the hours* and the *significance of the outcome*." *In re Hollywell Corp.*, 967 F.2d 568 (11th Cir. 1992) (quoting *Norman v. Housing Authority of Montgomery*, 836 F.2d 1292, 1304 (11th Cir. 1988)) (emphasis in original).

Reasonableness of Hours Expended

Mr. Zeltser does not dispute that the hours reflected in Stearns Weaver's billing records are accurate. Rather, in his objection, Mr. Zeltser urges the Court to look at this case in a vacuum and determine that the hours expended by Stearns Weaver on discrete tasks were unreasonable. Doing so would ignore the litigious circumstances and bad faith nature of Zeltser's actions in multiple jurisdictions, as well as the litigation pending in both Florida and New York courts. The Court, in its Sanctions Order, found that the filing of the voluntary chapter 7 petition for LR12, was merely one of the many procedural and jurisdictional games Zeltser improperly employed in the pending proceedings. Therefore, the Court declines Mr.

Zeltser's invitation to look at this particular case with blinders and instead finds that the number of hours spent by Stearns Weaver in connection with this case, when taken in context of the forum shopping litigation spawned by Mr. Zeltser, was reasonable and necessary under the circumstances. Indeed, as part of the whole, this is one of the most complex and difficult cases pending in the Southern District of Florida and counsel's representation was extremely effective, the work was skillfully done, the issues were novel and difficult, counsel expended significant time representing LR12 in this case and other related matters, and the results obtained were excellent.

Mr. Zeltser's specific objections are overruled. In particular, the Court concludes that the time spent by Stearns Weaver attorneys for researching law, drafting the motion, and preparing for and attending the hearing on the motion to transfer venue was reasonable under the circumstances. The motion was filed early on in these cases when Mr. Zeltser was in the thick of his forum shopping tactics and LR12's counsel was faced with the daunting task of contesting pleadings in multiple jurisdictions through multiple counsel. Despite the complexity involved, counsels' presentations to the Court were distilled and coherent. This is especially impressive given the jurisdictional morass created by Mr. Zeltser. In addition, the time spent researching and drafting the motion for sanctions and preparing for hearings related thereto was also reasonable and necessary under the circumstances. Finally, because of the complexity of these matters, requiring numerous hours of research, drafting, and preparation, and numerous billing matters to be opened by the law firms representing LR12, the time spent litigating the sanctions as well as litigating the amount of the fees was also reasonable under the circumstances.¹

¹ While it is true that Gusrae's time records are commingled, that unfortunate circumstance is a result of Mr. Zeltser's duplicitous litigation tactics. Indeed, as explained in Gusrae's affidavit [ECF No. 75], all of the work, with the exception of the hours voluntarily reduced in its affidavit, was performed for LR12.

Given counsel's generous voluntary reduction of twenty percent (20%) to account for any perceived duplication of effort or inefficiencies (or any time included in the billing records for other matters), which the Court specifically finds Mr. Zeltser responsible for, the Court finds that the hours spent by LR12's counsel in this case are eminently reasonable under the circumstances.

Reasonableness of Rates

Zeltser objects to the hourly rates of LR12's counsel and states that they are unreasonable under the circumstances. Zeltser's objections are without merit and accordingly are overruled. This was not a routine chapter 7 case. As explained, the case was one chapter in a complex global saga involving hundreds of millions of dollars of assets. The skill of the professionals employed was commensurate with the skill of other professionals handling complex business bankruptcies in this jurisdiction.

Zeltser's objection to the rates of New York counsel is overruled. The case was filed in New York, and LR12's conferral with New York counsel already familiar with the pending litigation regarding the work done in this case was not only reasonable, but Gusrae's input was necessary.

In addition, Zeltser's objection to the rates charged by Stearns Weaver is overruled. The Court is familiar with the reputations of LR12's bankruptcy counsel. During the pendency of this case, Patricia Redmond, Esq., was lead bankruptcy counsel for LR12. She regularly practices before this Court, and has done so for over three decades; she is regarded as one of the most skilled bankruptcy lawyers by her peers and independent rating services. Eric J. Silver, Esq. an associate at the same firm, is a former judicial law clerk, and also regularly practices before this Court. Their skill and professionalism are well known to this Court and I find that

their rates are reasonable and commensurate with services provided by comparable distinguished professionals in the local market.

The Court is its own expert on the reasonableness of fees, *see In re Hollywell Corp.*, *supra*, and finds that the hourly rates charged by LR12's counsel are reasonable. In particular, and as discussed herein, the skill of the professionals involved is evidenced by their extraordinary success in this case, as well as the related cases.

For the foregoing reasons, the Court finds it appropriate to award sanctions against Zeltser and in favor of LR12 in an amount equal to \$100,586.00, representing the fees and expenses incurred by counsel for LR12 as a result of the frivolous filing of Debtor's Chapter 7 bankruptcy case in New York. Therefore, it is –

ORDERED and ADJUDGED as follows:

1. Sanctions in the form of fees and expenses of LR12's counsel are awarded against Mr. Zeltser in the amount requested, or \$100,586.00; and, such fees and expenses are reasonable and necessary under the circumstances.
2. The Court compels payment of the amount in paragraph 1 of this Order within fourteen (14) days of the entry of this Order, or LR12's counsel shall file a notice of non-compliance with this Order and submit to the Court a proposed final judgment against Zeltser pursuant to Bankruptcy Rules 9014, 7052, 7054 and 7058, which final judgment will provide for, among other things, post-judgment interest pursuant to 28 U.S.C. § 1961.
3. The Court retains jurisdiction over all affected parties with respect to any matters, claims, or rights arising from or related to the implementation and interpretation of this Order.

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Submitted by (as amended by the Court) and Copy furnished to:

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(Attorney Redmond shall serve a copy of this Order upon all interested parties and file a Certificate of Service.)