

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re:

J. Sheldon Fisher & Lillian L. Fisher,

Debtors.

CASE NO. 97-20883

DECISION & ORDER

BACKGROUND

On March 13, 1997, J. Sheldon Fisher (“Sheldon Fisher”) and Lillian L. Fisher (collectively the “Debtors”) filed a petition initiating a Chapter 13 case. On their schedules, required to be filed by Section 521 and Rule 1007, the Debtors indicated that: (1) they owned rental property (the “Red House”) at 7353 Valentown Square, Fishers, New York, which had a current appraised market value of \$85,000; (2) Canandaigua National Bank and Trust Company (“Canandaigua National”) held a first mortgage on the Red House with an outstanding balance of approximately \$35,000; (3) Canandaigua National had scheduled an adjourned foreclosure auction sale of the Red House for March 14, 1997; and (4) there were real property taxes of approximately \$2,400 due in connection with the Red House.

On June 12, 1997, the Debtors filed a Chapter 13 Plan. This Plan addressed the claims of Canandaigua National by providing for: (1) the sale within eighteen (18) months of confirmation of the Red House and the other improved and unimproved real property owned by the Debtors that surrounded the three-story Valentown Museum, formerly owned by the Debtors but at that time owned by an *inter vivos* trust, which property the Debtors believed: (a) could be developed either as an historical museum and display area or for offices, commercial space or residential housing; and

(b) had a total net equity over secured claims of in excess of \$125,000; (2) Canandaigua National's first and second mortgages on the Red House to be paid from the proceeds of the sales of the Debtor's real property; (3) the sale of approximately \$100,000 of the artifacts owned by the Debtors,¹ estimated to have a total liquidation value of between \$200,000-\$300,000, within six (6) months of confirmation, an additional \$100,000 within one year of confirmation, and, if necessary to pay all of the Debtor's creditors in full, any remaining artifacts at auction at fifteen (15) months after confirmation;² and (4) for no payments to secured creditors pending the proposed sales of the Debtor's real and personal property.

On June 19, 1997, Canandaigua National filed a Motion for Relief from the Stay (the "Stay Motion") which alleged that: (1) Canandaigua National in fact was the holder of both a first and a second mortgage on the Red House;³ (2) when the Debtors filed their petition on March 13, 1997, there was \$40,127.12 due Canandaigua National on its two mortgages; (3) the Red House had a value of \$62,000; (4) because of the amounts due on the first and second mortgages, a wrap-around collateral security third mortgage (the "Kendig Mortgage"), unpaid real estate taxes and unavoidable judgment and federal tax liens, there was no equity for the estate in the Red House; and (5) the Red House was not necessary for an effective reorganization under Chapter 13.

¹ Sheldon Fisher, in his nineties at the time of the Chapter 13, had spent a lifetime as a collector and historian and he had accumulated numerous rare artifacts.

² The Debtors had scheduled priority tax claims of approximately \$30,000 and unsecured claims of approximately \$142,000 in addition to approximately \$237,000 of secured debt. This required creditors to be paid in full to meet the requirements of Section 1325(a)(4).

³ In March 1996 the holder of the first mortgage on the Red House commenced a State Court mortgage foreclosure proceeding. In June 1996 Canandaigua National took an assignment of the first mortgage before any foreclosure auction sale was conducted.

On June 27, 1998, the Debtors filed an Amended Plan which included provisions for the sales of \$100,000 of artifacts within nine (9) months of confirmation, an additional \$100,000 of artifacts within one year of confirmation, an auction of any remaining artifacts at fifteen (15) months after confirmation, and the Debtors real property within fifteen (15) months of confirmation with a contract for the sale of the Red House to be obtained within nine (9) months of confirmation. Once again, no payments were proposed for secured creditors pending the proposed sales.

On July 14, 1997, the Court confirmed a Chapter 13 Plan (the "Confirmed Plan"). In order to confirm the Plan, the Court required that: (1) all of the artifacts were to be sold within six (6) months of confirmation, or there would be an auction of any remaining unsold artifacts at nine (9) months after confirmation; (2) contracts for the sales of all of the Debtors real property, including the Red House, were to be obtained within six (6) months of confirmation, with all closings to take place within eight (8) months of confirmation; (3) if the Debtors wished to seek a modification of any of the provisions of the Confirmed Plan, including extensions of the times to sell either artifacts or real property, they could do so only for good cause and on notice to all creditors; and (4) in some cases regular mortgage payments, and, in other cases, interest only, were to be paid monthly to the secured creditors, including interest only to Canandaigua National.⁴

In December 1997 and January 1998, the Debtors received offers for the sale of some but not all of their real and personal property. These offers did not include an offer for the Red House, and,

⁴ The Court determined that the non-exempt equity in the Red House over and above the Canandaigua National first and second mortgages and the unpaid real estate taxes, together with the payments of interest only during the term of the plan and a requirement that post-confirmation real estate taxes be paid, provided adequate protection to Canandaigua National over the relatively short term of the plan. Therefore, the Court denied the Stay Motion.

if they were closed, they would not have paid all of the Debtors' creditors, including Canandaigua National, in full.

On January 23, 1998, after the six (6) month sale term in the Confirmed Plan had expired without the Debtors obtaining a contract for the sale of the Red House, Canandaigua National filed a Notice of Motion to renew its Stay Motion. Before a final hearing was held on the Motion, other offers were received by the Debtors and, pursuant to an April 14, 1998 Order of Sale, substantially all of the Debtor's real and personal property, including the Red House, was sold to the Victor Historical Society, Inc. From the proceeds of the sales Canandaigua National was paid the amounts which it claimed were due on the first and second mortgages by direct payments to Canandaigua National and deposits into escrow with the Chapter 13 Trustee pending the Bankruptcy Court's determination, pursuant to Section 506(b)⁵, of the amount of attorneys fees which it would allow as part of Canandaigua National's secured claim.

On April 3, 1998, the Debtors filed an objection to the secured claim of Canandaigua National, which alleged that: (1) the underlying notes and mortgages held by Canandaigua National did not entitle it to recover attorneys fees beyond a reasonable attorneys fee for a foreclosure of the mortgages, and, in the case of the second mortgage, that reasonable attorneys fee was stipulated in

⁵ Section 506(b) provides that:

To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

the mortgage to be 5% of the total outstanding amount due on the mortgage at the time of foreclosure; (2) to the extent that the provisions of any of its underlying notes and mortgages allowed Canandaigua National to recover attorneys fees of more than 5%, once Judgments of Foreclosure and Sale were entered in the state court foreclosure proceedings, the terms and provisions of the underlying notes and mortgages merged into the Judgments, so that no further right to recover attorneys fees survived; and (3) not all of the attorneys fees which Canandaigua National sought to recover were reasonable, as required by the underlying loan agreements and Section 506(b).

Canandaigua National interposed responses to the objection which alleged that: (1) its underlying loan agreements, specifically its second mortgage documents, provided that it could recover collection costs, including reasonable attorneys fees, beyond just the fees that it incurred in connection with the actual state court proceedings to foreclose the mortgage; (2) all of the attorneys fees which it sought to recover were reasonable, and thus recoverable under Section 506(b); and (3) Canandaigua National was legally and equitably entitled to recover the reasonable attorneys fees that it incurred both: (a) subsequent to the entry of the state court Judgment of Foreclosure and Sale on its second mortgage and before the Chapter 13 petition, because the Debtors or their representatives had specifically requested that Canandaigua National delay a scheduled foreclosure auction sale of the Red House and cooperate with them to allow them to attempt to sell, refinance, or reinstate the mortgages; and (b) in connection with the Debtor's voluntary Chapter 13 case, because the Debtors filed the case and required Canandaigua National to protect its rights and interests in the proceeding.

DISCUSSION

I. Case Law

From the decisions of the United States Court of Appeals for the Second Circuit in *In re Continental Vending Machine Corp.*, 543 F.2d 896 (2nd Cir. 1976) (“*Continental Vending*”), and *In re United Merchants and Manufacturers, Inc.*, 674 F.2d 134 (2nd Cir. 1982) (“*United Merchants*”), we know that: (1) the validity of a clause in a loan agreement providing for the recovery upon default of collection costs, including attorneys fees, is determined by state law (*United Merchants*); (2) allowing a claim under a collection costs provision merely effectuates the bargained-for terms of the loan agreements (*United Merchants*); (3) Section 506(b) permits an oversecured creditor to recover, to the extent of the value of its security, certain collection costs provided for in the agreements giving rise to its claim (*United Merchants*); (4) these recoverable collection costs, including reasonable attorneys fees, are for such services and expenses as are reasonably necessary to enforce a debtor’s obligations and to collect the amounts due on them (*Continental Vending*); (5) in determining what are reasonably necessary services and expenses a rule of reason must be observed in order to avoid such clauses becoming a tool for wasteful diversion of an asset at the hands of secured creditors who, knowing that the estate must foot the bills, fail to exercise restraint in enforcement expenses (*Continental Vending*); (6) in allowing the recovery of reasonably necessary services and expenses, much is left to the discretion of the Bankruptcy Court (*Continental Vending*); and (7) the controlling inquiry is whether, considering all relevant factors, the secured creditor reasonably believed that the services employed were necessary to protect its interests in the collateral (*United Merchants*).

From Bankruptcy Court decisions within the Second Circuit, we also know that: (1) to substantiate a claim for reasonable attorneys fees under Section 506(b) a creditor must show that: (a) it is oversecured; (b) the applicable loan documents provide for the recovery of such attorneys

fees; and (c) any claim for attorneys fees is reasonable, See *In re Mills*, 77 B.R. 413 (Bankr. S.D.N.Y. 1987); and (2) it is unreasonable to ask a debtor to reimburse attorneys fees incurred by a creditor that are not cost-justified either by the economics of the situation or necessary to the preservation of the creditor's interest in the collateral in light of the legal issues involved, See *In re Nic Fur-Cruz Realty Corp.*, 50 B.R. 162 (Bankr. S.D.N.Y. 1985).

II. Entitlement to Reasonable Attorneys Fees - The Underlying Loan Documents

The August 27, 1987 mortgage note, executed by the Debtors in favor of Canandaigua National, that was secured by its second mortgage, contained the following provisions:

1. "In the event of default in the performance of the payment of this Note, mortgagor shall be responsible for all collection costs, court fees (including reasonable attorneys fees) incurred by the Bank;" and

2. "Anything that would be a default under the Mortgage will also be a default under this Note. This means that upon the Lender's demand, I will have to pay the full amount of this debt plus any other charges which the Lender is entitled to under the Mortgage."

The August 27, 1987 second mortgage contained the following provisions:

1. "If this Mortgage is foreclosed, the holder is entitled to recover reasonable attorneys fees for foreclosure. Reasonable fees are hereby agreed to be 5% of the total outstanding amount due on the Note⁶ which this Mortgage secures in addition to statutory costs or disbursements and any additional allowance made pursuant to New York Civil Practice Law and Rules (the "CPLR"), Section 803;" and

⁶ In the Judgment of Foreclosure and Sale obtained by Canandaigua National in the State Court mortgage foreclosure proceeding, attorneys fees of more than 5% of the outstanding amounts due on the mortgage were awarded.

2. “Mortgagor must pay all expenses of Mortgagee, including reasonable attorneys fees, if (a) Mortgagee is made a party in a suit relating to the Property, or (b) Mortgagee sues anyone to protect or enforce Mortgagee’s rights under this Mortgage.”

The bond secured by the first mortgage that was assigned to Canandaigua National contained no provisions with respect to the recovery of general collection costs in the event of a default. However, the first mortgage provided that: “in the event of default herein and foreclosure of the subject premises, the mortgagor shall be responsible to pay reasonable attorneys fees incurred by the mortgagee in connection therewith in an amount not less than 5% of the unpaid principal balance and accrued interest of said Mortgage existing at the time of foreclosure and such sum as so computed, shall be a cost of the foreclosure action.”

A Judgment of Foreclosure and Sale was entered in connection with the first mortgage on April 28, 1996, prior to its assignment to Canandaigua National, and a Judgment of Foreclosure and Sale was entered in connection with the second mortgage on August 12, 1996. Included in the second mortgage Judgment of Foreclosure and Sale were attorneys fees of \$1,915.00 and an additional allowance of \$300.00. Canandaigua National has requested, as part of its secured claim, an allowance of attorneys fees in the amount of \$9,044. This represents attorneys fees of \$3,497.50 that it incurred after the entry of the August 12, 1996 Judgment of Foreclosure and Sale on its second mortgage through the filing of the Debtor’s petition on March 13, 1997, and attorneys fees of \$5,546.50 that it incurred in connection with the Debtor’s Chapter 13 case.

Canandaigua National has asserted that the additional attorneys fees incurred from the time of the entry of the second mortgage Judgment of Foreclosure and Sale and the filing of the Debtor’s Chapter 13 petition were incurred because the Debtors, or their authorized representatives, requested

that Canandaigua National not conduct its scheduled foreclosure auction sales in September 1996 and February 1997, in order to allow the Debtors an opportunity to sell the Red House or refinance or reinstate the Canandaigua National first and second mortgages. Canandaigua National has contended that the Debtors and their representatives could not have anticipated that Canandaigua National would incur, but not be able to recover from the Debtors or the proceeds of the sale of the Red House collateral, the additional expenses associated with acting in good faith in honoring the requests of the Debtors and its representatives to cooperate with them, and, therefore, it would be inequitable for the Court to allow Canandaigua National to be limited only to the attorneys fees awarded in the Judgments of Foreclosure and Sale. Canandaigua National has also asserted that these additional attorneys fees incurred would otherwise be recoverable in the state court foreclosure proceedings if Canandaigua National moved to have the state court vacate the original Judgments of Foreclosure and Sale, pursuant to the New York Civil Proceeding Law and Rules Section 5015, after the fees were incurred and before an auction sale, so that the additional attorneys fees could be awarded in new Judgments of Foreclosure and Sale.

In addition, Canandaigua National has asserted that the provisions in its underlying loan agreements and of Section 506(b), when taken together, allow it to collect reasonable attorneys fees as an oversecured creditor for the services its attorneys performed in the Debtor's Chapter 13 case which were necessary to protect Canandaigua National's rights and interests, and that as so awarded by the Bankruptcy Court, if the automatic stay were lifted to allow Canandaigua National to proceed with its state court foreclosure actions, these fees could also thereafter be awarded in new Judgments of Foreclosure and Sale after the original Judgments were vacated.

I believe that the provisions of Canandaigua National's second note and mortgage, together with the attorneys fee provision in the first mortgage, allow it to recover from the proceeds of the sale of the Red House collateral, any reasonable attorneys fees incurred for services performed in connection with: (1) foreclosing its mortgages that were not services compensated for by the awards of attorneys fees and additional allowances included in the respective Judgments of Foreclosure and Sale; and (2) protecting its interests as a secured creditor in the Debtor's Chapter 13 case.

To the extent that reasonable attorneys fees were incurred in honoring the requests of the Debtors, or their authorized representatives, in a post-judgment workout, I believe the amount of those fees are recoverable under Section 506(b) as collection costs contemplated by the loan agreements. I further believe that those fees, to the extent found reasonable, would be recoverable by Canandaigua National in connection with its state court mortgage foreclosure proceedings after proper applications were made to vacate the original Judgments of Foreclosure and Sale for the purpose of awarding such reasonable attorneys fees, so that they could be included in the "up-set price" at the time of any actual foreclosure auction sale.⁷

The provisions of the second mortgage note and mortgage, signed by the Debtors, clearly evidence Canandaigua National's intent to be compensated for any and all reasonable expenses that it incurred in connection with collecting the amounts due on the note and the mortgage which secured it. As expressed by the Second Circuit in *United Merchants*, it is the policy of Section

⁷ Although this right exists under New York State Law, as a practical matter it is not frequently pursued because often: (1) there is not sufficient equity in the real property to recover the additional fees; and (2) the post judgment fees are not that substantial.

506(b) to give an oversecured creditor the benefit of its bargain where there is such clear and unambiguous language regarding collection costs, including reasonable attorneys fees.

III. Reasonableness of Fees Requested

A. General

Having determined that Canandaigua National's underlying loan agreements and Section 506(b) permit it to recover some attorneys fees that were incurred for services performed after the entry of the Judgments of Foreclosure and Sale through the filing of the Debtor's bankruptcy petition and in connection with the Debtor's Chapter 13 case, and there being no dispute that Canandaigua National is oversecured, the inquiry turns to whether the services for which recovery is requested were: (1) not otherwise compensated for in the respective Judgments of Foreclosure and Sale; (2) reasonable; (3) in connection with the Debtor's Chapter 13 case, necessary to enforce and collect the amounts due Canandaigua National under its first and second mortgages or, if they were not reasonably necessary, whether, under *United Merchants*, Canandaigua National reasonably believed that they were necessary to protect its interests as an oversecured creditor.

B. Prepetition Services

On May 6, 1990, Canandaigua National filed detailed time records (the "Time Sheets") to support the request for an allowance of attorneys fees in the amount of \$9,044.00⁸ which showed in detail the services performed by its attorneys.

⁸ The Time Sheets represent services of greater than \$9,044.00, however, Canandaigua National has not requested an allowance for some of the services detailed on the Time Sheets. I have made deductions from the gross amounts shown on the Time Sheets to arrive at a final allowance.

I have reviewed each of the entries on the Time Sheets for the period from July 18, 1996 through May 14, 1997 which have been labeled "Time Sheets Showing Legal Fees Incurred in Connection with Foreclosure Action for 'Red House' Post-Judgment Application and Prior to Bankruptcy Filing."

I find that, pursuant to Section 506(b), Canandaigua National, as an oversecured creditor, is entitled to recover from the proceeds of the sale of the Red House collateral the amount of \$994.50 for those services performed. That amount represents the applicable hourly rate for the services which were performed in response to extraordinary requests by the Debtors, or their authorized representatives, or because of the need to reschedule further foreclosure auction sales in the second mortgage foreclosure proceeding after the buyer at the initial September 23, 1996 auction sale did not close. It appears that these services were rendered in an effort by Canandaigua National to cooperate with the Debtors, or their authorized representatives, who hoped to be able to payoff or reinstate the first and second mortgages. It does not include services which, in this Court's opinion, were performed in connection with the initial September 23, 1996 auction sale on the second mortgage after the Judgment was entered and that appear to be the regular and customary services performed by attorneys up to and after a foreclosure auction sale for any foreclosing mortgagee in connection with routine residential foreclosures. These regular and customary services were contemplated and included in the award of attorneys fees and the additional allowance made by the state court in the second mortgage Judgment of Foreclosure and Sale.⁹

⁹ As confirmation of this, it should be noted that at no time prior to September 23, 1996 when the initial second mortgage foreclosure auction sale took place did Canandaigua National apply to the New York State Supreme Court for additional attorneys fees to be included in the "up-set price." It simply went to sale with an "up-set price" that did not include any additional attorneys

I have also disallowed such services as those described in the Time Sheets as: (1) "Telephone call with Bob Hitchcock at Channel 10 regarding Fisher foreclosure;" (2) "Telephone call from Parker Well, attorney for Ben Kendig, to inquire why we are reselling Red House;" and (3) "Meeting with woman requesting information about foreclosure sale (she would not provide her name)".

C. Chapter 13 Services

As an overview to any cost-benefit analysis that Canandaigua National should have made at the time of the filing of the Debtor's Chapter 13 case to determine what would be necessary to protect its rights and interests as an oversecured creditor in the Red House collateral, it is helpful to note that: (1) according to Canandaigua National's proof of claim, as of the date of the filing of the Debtor's petition, there was \$42,496.73 due for unpaid real estate taxes (\$2,369.62), Canandaigua National's first mortgage (\$6,373.01) and Canandaigua National's second mortgage (\$33,754.11); (2) interest was accruing on the first and second mortgage Judgments of Foreclosure and Sale at the rate of \$7.85 per day; (3) deducting the \$42,496.73 due from the \$62,000 value of the Red House, as asserted by Canandaigua National in its Stay Motion, there was an equity cushion of \$19,503.27; (4) even under an eighteen (18) month sale plan, as initially proposed by the Debtors, interest on the unpaid Canandaigua National Judgments of Foreclosure and Sale would only accrue in the amount of \$4,239, which would reduce the equity cushion to \$15,264.27; (5) even if no postpetition real estate taxes for the Red House were paid during the proposed eighteen (18) month sale period, and interest accrued on the unpaid prepetition real estate taxes, that would further reduce the equity

fees. Furthermore, it should be noted that even though the foreclosure auction sale on September 23, 1996 was subject to the first mortgage that had been assigned to Canandaigua National, the first mortgage loan agreements did not contain a right to recover general collection costs.

cushion by no more than an additional \$4,000, which would still leave an equity cushion of in excess of \$10,000, more than 16% of the \$62,000 value of the Red House;¹⁰ and (6) even if a 7% estimated cost of sale factor on the \$62,000 value of the Red House (\$4,340) were deducted, that would still leave an equity cushion of in excess of \$5,000.

Another analysis which should have been made by Canandaigua National to determine what was necessary to protect its rights and interests as an oversecured creditor was that even though the Debtors Chapter 13 case was not complex in terms of the legal issues presented, and it did not involve substantial indebtedness, for reasons not totally clear to the Court, it received more newspaper, television and radio coverage than any bankruptcy case in the Rochester, New York area within the last fifteen years. Perhaps it was because the case did involve: (1) a private historical museum which contained valuable artifacts, including Native American artifacts which were ultimately purchased by a Native American Foundation; (2) the participation of the New York State Attorney General, interested in the determination of the disputed ownership of various historical artifacts; (3) an elderly couple hoping to preserve a lifetime of historical effort, as well as their home; (4) courtroom drama; (5) a bidding contest for the historical artifacts between a local antique dealer and a historical society that was in the end backed by a well-known, wealthy businessman and gubernatorial candidate; and (6) individual investors attempting to recover money that they had loaned to the Debtors over the years to help the Debtors preserve the historical artifacts and make them available to be seen and enjoyed by the general public. Because of the interplay of all of these factors, nearly all of the hearings in the Debtor's Chapter 13 case were lengthy, especially during

¹⁰ The amount due at the time of the petition, \$42,496.73, includes the \$3,497.50 in post-judgment pre-Chapter 13 attorneys fees.

1998 when the Court conducted numerous hearings in connection with the sale of the Debtor's real and personal property. However, that did not mean that the attorneys for Canandaigua National were required to attend all of the lengthy and protracted hearings in the case, or attend an entire hearing at times. Given the equity cushion which Canandaigua National enjoyed, so much of what took place in those hearings was not directly related to protecting Canandaigua National's rights and interests as an oversecured creditor in the Red House collateral or insuring the recovery of the amounts due Canandaigua National.

I have reviewed each of the entries on the Time Sheets which detail the services rendered on behalf of Canandaigua National in the Debtor's Chapter 13 case from March 18, 1997 to March 4, 1998. I find that, pursuant to Section 506(b), Canandaigua National, as an oversecured creditor, is entitled to recover from the proceeds of the sale of the Red House collateral the amount of \$4,410.00 for those services performed. That amount represents the applicable hourly rate for the services which were performed that were necessary to protect its interests as an oversecured creditor in the Red House collateral and which Canandaigua National could reasonably have believed were necessary to protect such rights and interests. I have disallowed as unreasonable, in addition to a few items of duplication and services unnecessary to the protection of Canandaigua National's interest in the Red House collateral, such services as: (1) forwarding monthly adequate protection payments to Canandaigua National, which is a bookkeeping function; (2) services for reviewing and forwarding to Canandaigua National a purchase offer which the Time Sheets indicated "does not really involve the property for which the bank is secured in;" (3) conversations with the President of Canandaigua National Bank "since he will be talking to some of the local people tomorrow morning;" (4) numerous file memos; (5) investigations as to the amount of money necessary to pay

all creditors; and (6) services to comply with the requests of a New York State Assemblyman; (7) “confusing call by somebody called Bob Perry who thinks that Penepento bought the Red House, not the Museum, and has until March 15, 1998 to pay \$3,500.00 and he wants to do something about it;” (8) “letter... on the fact the realtors signed has disappeared;” and (9) inquiries regarding the possible sale of the Red House before the six month sale term had expired.

To some extent it appears that Canandaigua National and its attorneys immersed themselves in the Debtor’s high-profile Chapter 13 case. However, that involvement in the case, as interesting as the case may have been, was beyond what was reasonable and necessary to protect Canandaigua National’s rights and interests as an oversecured creditor in the Red House collateral which was, after all, nothing more than a parcel of residential real property.

IV. Overview

Reviewing and allowing reasonable attorneys fees to an oversecured creditor pursuant to Section 506(b) in retrospect is always difficult for a bankruptcy court. In Chapter 11 cases, where there is an anticipation that this Court will be making substantial allowances of professional fees and expenses pursuant to Section 330, fee conferences throughout the case are required. This insures that all parties and the Court can be aware of the professional fees being incurred and periodically review the critical issues of cost-benefit analysis and budgeting in connection with a final determination of reasonableness.

I believe that it would be equally helpful to the parties and this Court if, when it is contemplated that there will be a request by an oversecured creditor for the allowance of substantial attorneys fees pursuant to Section 506(b), the parties focus on the amount of the potential fees being incurred throughout the case. That way, if it is appropriate, the parties can make every effort to

manage the case with those potential fees in mind. This might result in requests that the Court assist the parties in managing the case in a way that will insure that only reasonable and necessary attorneys fees are being incurred by an oversecured creditor.

CONCLUSION

Pursuant to Section 506(b), Canandaigua National is entitled to recover \$5,404.50 as reasonable attorneys fees incurred as an oversecured creditor.

IT IS SO ORDERED.

/s/
HON. JOHN C. NINFO, II
U.S. BANKRUPTCY JUDGE

Dated: July 17, 1998