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7 UNITED STATES BANKRUPTCY COURT
8 EASTERN DISTRICT OF CALIFORNIA
9

10 In re Case No. 05-10001-A-7
11 DDJ, INC., DC No. JF-5

12 Debtor.
13 _____/

14 FINDINGS OF FACT AND CONCLUSIONS OF LAW
15 REGARDING THE OBJECTION BY JOE FLORES TO THE CLAIM OF
16 H. TY KHARAZI

17 On January 24, 2005, H. Ty Kharazi ("Kharazi") filed a
18 timely proof of claim in the amount of \$5,887.50. Attached to
19 the proof of claim as supporting documentation is a copy of a
20 "Memorandum Opinion and Order Granting Plaintiff Joe Flores'
21 Motion for Attorney's Fees" (the "District Court Fee Order").
22 Joe Flores ("Flores"), a creditor in the chapter 7 case, has
23 objected to the Kharazi claim. A hearing on that objection was
24 held June 28, 2006, after which the court took the matter under
25 submission. This memorandum contains findings of fact and
26 conclusions of law required by Federal Rule of Bankruptcy
27 Procedure 7052 and Federal Rule of Civil Procedure 52. This is a
28 core proceeding as defined in 28 U.S.C. §157(b)(2)(B).

Before this chapter 7 case, Flores filed an action in

1 district court against this debtor, DDJ, Inc., and others.
2 Flores was awarded a verdict in that action and judgment was
3 entered in his favor in March 2004. Subsequently, Flores moved
4 for an award of attorney's fees as the prevailing party. The
5 motion was unopposed, and by the District Court Fee Order, fees
6 were awarded pursuant to Flores' motion in the amount of \$16,739.
7 Of that amount, \$7,779 was for Kharazi and his office staff. The
8 motion for fees in the district court was brought not by Kharazi
9 but by Flores. In that motion, Flores contended that he was
10 entitled to attorney's fees. The district court agreed.

11 The District Court Fee Order reflects that "Plaintiff Joe
12 Flores requests attorney's fees for two attorneys." Flores in
13 the District Court Fee Motion sought a total of \$12,259.44 for
14 Kharazi's fees, but the district court awarded a lower amount.
15 The district court awarded \$5,887.50 for fees for Kharazi himself
16 and \$1,891.50 for fees for Kharazi's staff. Kharazi's proof of
17 claim seeks the amount the district court awarded for his fees
18 directly.

19 In his objection to Kharazi's claim, Flores points out that
20 the District Court did not award fees to Kharazi - it awarded
21 fees to Flores for Kharazi. Thus, Flores argues that Kharazi is
22 not a creditor of this chapter 7 debtor. Rather, Kharazi is a
23 creditor of Flores. Flores also makes the point that as part of
24 his own proof of claim, he has included an amount for attorney's
25 fees as awarded by the District Court.

26 Kharazi sued Joe Flores in state court on his fees. A trial
27 was set in that action to commence in June 2005, before the
28 Honorable Stephen J. Kane. Flores has asked the court to take

1 judicial notice of the transcript of the proceeding in Superior
2 Court on June 1, 2005. That proceeding consisted largely of the
3 court enquiring of Flores and Kharazi about the effect of the
4 District Court Fee Order on the Kharazi state court action.
5 Kharazi agreed that he would be satisfied with whatever fees were
6 awarded in the District Court Fee Order. After an extensive
7 discussion and argument before the court, the evidentiary hearing
8 portion of the proceeding commenced. The District Court Fee
9 Order was admitted as an exhibit as was the declaration of Flores
10 in support of his motion for attorney's fees before the district
11 court. Kharazi made a motion, which the state court granted, to
12 amend his complaint to seek quantum meruit and declaratory relief
13 for the state court to order judgment based on the District Court
14 Fee Order. The court then commenced a settlement discussion
15 between Flores and Kharazi and eventually a stipulated judgment
16 was achieved. It was agreed that in Kharazi v. Flores, a fee
17 award of \$7,779 would be entered and that the fees would be paid
18 from the DDJ, Inc. chapter 7 case. Flores stated "Mr. Kharazi
19 can have that money that Judge Ishii has granted it. It's his
20 money. He's already got - - he's already got it on the
21 bankruptcy thing."¹ Flores went on to say "In any case, he
22 [Kharazi] is getting his money from the bankruptcy."²

23 The agreement was reduced to a "Stipulated Order and
24 Judgment" of which the court has been asked to take judicial
25 notice. The Stipulated Order and Judgment states in relevant
26

27 ¹Transcript of state court proceedings at pg. 42-43.

28 ²Id.

1 part:

2 "Plaintiff is awarded \$7,779 against defendant Joe Flores
3 and California Farmer Advocates, Inc. This amount is
4 derived from the attorney's fee award rendered by judge
5 Anthony Ishii in the United States District Court for the
6 Eastern District of California, Case No. CVF 99-5878AWI in
7 his 'Memorandum Opinion' dated October 6, 2004. . . .

8 Plaintiff will not record this judgment or seek enforcement
9 of this judgment except through payment of the attorney's
10 fees awarded in [the District Court action]. The defendant
11 in that action is in bankruptcy. The bankruptcy trustee
12 will decide when and how those fees are paid."

13 Now, having stipulated in the state court action to the
14 amount of Kharazi's fees and to the manner of Kharazi's being
15 paid (through the bankruptcy case), Flores is objecting to
16 Kharazi's proof of claim, despite the fact that the proof of
17 claim is for less than the amount of the fee award in district
18 court or the fee award in state court. Having agreed in state
19 court that the bankruptcy trustee would determine when and how
20 Kharazi is to be paid, Flores now asks the court to sustain his
21 objection to Kharazi's proof of claim and instead have the
22 attorney's fees that have now been awarded to Kharazi twice in
23 two different courts, payable as part of Flores' own proof of
24 claim.

25 This position is inconsistent. Flores has moved in district
26 court, successfully, for an award of attorney's fees on Kharazi's
27 behalf. Then, in state court, Flores stipulated to the amount of
28 attorney's fees awarded by the district court provided that they
be paid through this chapter 7 case. Flores agreed that the
bankruptcy trustee in this chapter 7 case would have discretion
over when and how those fees were paid.

On the one hand, the initial argument made by Flores - that

Kharazi is not a creditor directly of this chapter 7 debtor - is a reasonable one. However, Flores has waived that argument by his motion in the district court that resulted in the District Court Fee Order and by his stipulation in state court. Flores cannot have it both ways. He has agreed in one court that Kharazi is entitled to fees of \$7,779 for representing Flores and California Farmer Advocates, Inc. in their action against DDJ, Inc. and others. He has further agreed that Kharazi's fees should be paid through this bankruptcy case as and how determined by the bankruptcy trustee.

For the above reasons, the objection to claim will be overruled. The court will issue a separate order.

DATED: August 17, 2006

_____/S/_____
 WHITNEY RIMEL, Judge
 United States Bankruptcy Court