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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

DENNIS C. EKSTROM,

Debtor.

Chapter 11

Case No. 2-08-07750-SSC

(Not for Publication- Electronic Docketing
ONLY)

MEMORANDUM DECISION RE:
OSBORN MALEDON FEE APPLICATION

I. INTRODUCTION

On February 18, 2009, Osborn Maledon, P.A. (“Osborn Maledon”) filed its “First Application for Approval and Payment of Compensation and for Reimbursement of Expenses to Osborn Maledon, P.A., Counsel for Debtor” (“Application”). It was appropriately noticed to all creditors and interested parties, with FL Receivables Trust 2002-A (“FL Receivables”) interposing the only objection to the relief requested. The Court conducted a hearing on the Application and the Objection thereto. Mr. Cross, on behalf of the firm, requested that he be able to file a declaration in support of the Application. Mr. Taylor, on behalf of FL Receivables, did not request to present any evidence in the matter. The parties agreed that after the submission of Mr. Cross’ declaration, the matter would be deemed submitted. Mr. Cross filed a declaration on March 30, 2009 and an amended declaration on March 31, 2009 (together “Declaration”). As of March 31, 2009, the date the last Declaration was filed with the Court, this matter was deemed under advisement.

1 In this Memorandum Decision, the Court has set forth its findings of fact and
2 conclusions of law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure. The issues
3 addressed herein constitute a core proceeding over which this Court has jurisdiction. 28 U.S.C.
4 §§ 1334(b) and 157(b) (West 2008).

5 II. DISCUSSION

6 Consistent with the Local Rules of this Court, Osborn Maledon has submitted a
7 detailed Application to this Court, outlining the tasks that were performed for the Debtor and the
8 expenses that should be reimbursed. The Declaration also sets forth the years of experience of
9 Mr. Cross in the bankruptcy field; the extent, quality, and nature of the services rendered; the
10 reasonableness of the fees requested and the actual expenses incurred; and Mr. Cross' reduction
11 of the fees and expenses to be received by Osborn Maledon. The Court has also independently
12 reviewed the Application. Bankruptcy courts must examine the circumstances and manner in
13 which services were performed and the results achieved in order to arrive at a determination of a
14 reasonable fee allowance. In re Kile, 345 B.R. 182 (Bankr.D.Ariz. 2004); In re Crown Oil, Inc.,
15 257 B.R. 531, 541 (Bankr. D.Mont. 2000), *citing* In re Mednet, 251 B.R. 103 (9th Cir. BAP
16 2000).

17 In the Objection, FL Receivables has interposed a number of objections to the
18 relief requested. The Court shall discuss the objections seriatim.

19 A. Asset disposition

20 On September 24, 26, and 29, Osborn Maledon worked on an opinion letter
21 concerning a loan for a non-debtor entity, of which the Debtor is a minority owner, and a
22 meeting with a mortgage lender on the Debtor's hotel property in Lava Springs, Idaho. Mr.
23 Cross replies in his Declaration that both matters pertained to an attempt to obtain funds by Mr.
24 Ekstrom to fund his plan of reorganization. Mr. Ekstrom, as the Debtor, would need to analyze
25 any potential assets to provide a funding source for his plan. Thus, if Mr. Ekstrom were able to
26 obtain a loan for a non-debtor from which he could benefit, or if he were able to obtain another

1 loan on property that he owns, that additional funding would inure to the benefit of Mr.
2 Ekstrom's creditors. From the Court's standpoint, a sufficient connection has been shown to this
3 bankruptcy estate to approve the services provided by Osborn Maledon on the matter.

4 B. Business Operations

5 On October 1, 2008, Osborn Maledon undertook certain services pertaining to the
6 Debtor's "business operations." These services are related to the loans that Mr. Ekstrom was
7 attempting to obtain to fund his plan of reorganization. Since the Court has approved the
8 concept of obtaining additional financing, the Court concludes that the performance of services
9 in furtherance of that goal, even if labeled "business operations" is also appropriate.

10 C. Case Administration

11 For the reasons set forth above, since the Court has approved Mr. Ekstrom's
12 pursuit of funding for his plan of reorganization, the incurrence of fees in case administration to
13 obtain an opinion letter is also appropriate.

14 Although the Court denied Mr. Ekstrom's request for a temporary restraining
15 order, the Debtor was entitled to request the relief from the Court. The Debtor and his estate
16 would have benefitted if the Court had concluded that the funds, including credit card receipts of
17 non-debtor related entities, could not be garnished by FL Receivables. The preservation of those
18 funds by the Debtor was to protect potential funding for his estate. A denial of a matter before
19 the Court does not require the Court to deny all compensation requested therewith. In re Kile,
20 345 B.R 182 (Bankr. D. Ariz. 2004); In re Crown Oil, Inc., 257 B.R. 531, 541 (Bankr. D. Mont.
21 2000)(Counsel is not expected to succeed in everything undertaken on behalf of the client). On
22 this record, the Court concludes that there was a sufficient connection with the Debtor's estate,
23 and the potential benefit to that estate great enough, that even though the relief was denied, it
24 was appropriate and reasonable for Osborn Maledon to pursue the relief. It should be
25 compensated for the services rendered.

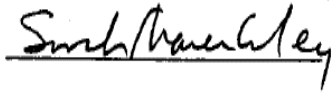
1 The Court has carefully reviewed these entries and has concerns about the
2 tremendous amount of time expended by Mr. Stapleton, which appears to more related to his
3 understanding of how an individual debtor proceeds in a Chapter 11 proceeding given the
4 changes to BAPCPA. Although the Court understands the general need to stay abreast of
5 changes under the Bankruptcy Code, the estate should not bear that burden at the rate of \$335
6 per hour. In re Spanjer Bros., Inc., 191 B.R. 738 (Bankr. N.D. Ill 1996)(Fees disallowed for
7 research on basic bankruptcy concepts); In re Sirefco Inc., 144 B.R. 495 (Bankr.D.Mont.
8 1992)(Fee reduced when research benefitted the attorney’s knowledge base, as well as
9 benefitting client). Certain entries were also so general in nature that the Court was concerned
10 that counsel was not focusing on the strategy of how to propose a confirmable plan, but more on
11 the “how-to” or learning experience nature of the work proposed that should not have been billed
12 to this particular estate. Based upon the foregoing, the Court will disallow the entry of July 2,
13 2008, in the amount of 1.70 hours for research regarding the requirements of an individual in a
14 Chapter 11 proceeding, a similar entry on July 3, 2008 for 1.80 hours, research of 1.20 hours
15 regarding the classification of the FL Receivables claim on July 18, 2008, the less detailed
16 entries of “work on plan and disclosure statement” from July 23, 2008 and July 24, 2008 in the
17 amount of 4.30 hours and 3.20 hours, respectively, further work on the plan and disclosure
18 statement on August 5, 6, 7, and 9, in the amount of 1.70 hours, 1.10 hours, .70 hours, and 3.40
19 hours, respectively.

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21 Summary of Disallowed Time of Mr. Stapleton

22 Dates	Time Expended	Hourly Rate
23 7/2/08	1.70 hours	\$335/hour
24 7/3/08	1.80 hours	\$335/hour
25 7/18/08	1.20 hours	\$335/hour
26 7/23/08	4.30 hours	\$335/hour

1 reimburseable expenses. Accordingly, the Court shall approve legal fees in the reduced amount
2 of \$74,369.00, and expenses in the reduced amount of \$1,232.91.¹ Osborn Maledon may utilize
3 the retainer in the amount of \$46,680.10 to set off against these legal fees and costs which are
4 approved by the Court on an interim basis. Osborn Maledon may also pay the balance of the
5 reduced fees and expenses due and owing to it provided that payment will not prejudice
6 claimants of equal or higher priority. The objection of FL Receivables is sustained, in part, and
7 overruled, in part. Osborn Maledon is directed to submit a form of order which is consistent
8 with this decision.

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10 DATED this 13th day of May, 2009.

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13 Honorable Sarah Sharer Curley
14 United States Bankruptcy Judge

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26 **1.** Osborn Maledon requested \$83,012.50 in fees and expenses of \$1,517.47 in the
27 Application. \$83,012.50 minus \$6,398.50 minus \$2,245.00 equals \$74,369.00. \$1,517.47 minus
28 \$284.56 equals \$1232.91.