

Not Reported in B.R., 2000 WL 33950132 (Bkrcty.D.N.J.)
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United States Bankruptcy Court,
D. New Jersey.
In re: VOICESMART, CORP., Debtor.

No. 97-44110 WFT.
Hearing Date March 14, 2000.
May 31, 2000.

Ben Becker, Becker, Meisel, Livingston, New Jersey,
for Trustee.

Lewis Smith, LeBouf, Lamb, Greene & MacRae,
Newark, New Jersey, for IDB WorldCom Services,
Inc.

Joseph Adams, Somerdale, New Jersey, for Sprint
Communications.

Brunnock & Fleming, PC, Morristown, New Jersey,
for Teledirect & Gabriel Duarte.

OPINION

TUOHEY, Bankruptcy J.

*1 The within matter came before the Court pursuant to a contested fee application for a hearing scheduled on March 14, 2000. The Court listened to the argument of counsel and reserved decision.

Issues going to the allowance of fees in a Chapter 7 are core matters as defined by the Federal Congress in 28 U.S.C. Section 157. Therefore, the Court finds that the issues taken under advisement are a core matter.

FINDINGS OF FACT

The within Bankruptcy commenced with the filing of an involuntary complaint by certain creditors of the alleged debtor. Debtor thereafter moved pursuant to Bankruptcy Section 303(b)(1), for an order dismissing the involuntary petition. Debtor further requested that the petitioning creditors be required to post an indemnity bond and the debtor further requested that should the Court dismiss the petition as a

bad faith filing, that damages be assessed against the petitioning creditors.

The Court conducted a hearing on the debtor's dismissal motion on April 2, 1998. Thereafter, the Court took the dismissal motion under advisement. On June 8, 1998 the Court entered a written opinion in the Voicesmart case, wherein the debtor's dismissal motion was denied. Thereafter, on June 17, 1998 the alleged debtor filed an answer to the involuntary petition of Voicesmart. After a hearing on July 8, 1998 the Court entered an order for relief placing Voicesmart Corporation in a Chapter 7 proceeding. Thereafter, on July 20, 1998 the debtor filed a motion of appeal to the District Court of the entry of the order for relief. In due course, Stacey Meisel, Esq. was dully appointed Chapter 7 Trustee. The debtor then filed a motion on July 22, 1998 to stay the appointment of a case trustee pending debtor's appeal of the entry of an order for relief.

On July 28, 1998 the Bankruptcy Court entered an order denying the stay pending appeal in connection with the order for relief. Ultimately on October 29, 1998 then District Court Judge Maryanne Trump Barry entered an order affirming the opinion of the Bankruptcy Court and leaving the order for relief of July 8, 1998 in place.

At the hearing of March 14, 2000 the parties advised the Court on the record that there was an attempted appeal to the Third Circuit in connection with Judge Barry's affirmation of the Bankruptcy Court's written opinion. The appeal in the Third Circuit was ultimately dropped pursuant to a resolution of certain issues between the parties. Attorney for the petitioning creditors at the Court's hearing of March 14th at page 12, line 18 noted that the Chapter 7 Trustee took no position on the appeal. Thus, the Trustee left the litigation in the District Court and the attempted appeal to the Third Circuit to the petitioning creditors to defend.

The counsel for the Chapter 7 Trustee highlighted at the Court's hearing of March 14th that the Bankruptcy estate currently through resolution of certain litigated matters now has \$450,000.00 in the estate.

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Counsel also notes that in page 16, line 8 that there are general unsecured creditors in the Chapter 7 of \$1.4 million dollars.

*2 The applicant, Joseph Adams, Esq., who represented the petitioning creditor Sprint Communications Company, seeks legal fees of \$95,010.50 and out of pocket disbursements of \$3,326.82 for a total application of \$98,337.32.

The trustee highlights in her argument through counsel on page 15 of the March 14th transcript, that there were two attorneys representing petitioning creditors and that one of said attorneys, the firm of Brunnock & Fleming, filed a fee application on January 10, 2000 wherein they sought \$44,300.00 in fees and disbursements of \$605.63. As highlighted in the oral argument, said firm took a voluntary cut in their fees. The Bankruptcy Court entered an order on April 4, 2000 awarding the Brunnock firm \$21,894.37 in fees and disbursements of \$605.63 for a total of \$22,500.00. The fee order is a consent order.

A detailed review of both the Brunnock & Fleming fee application as well as the application of Joseph Adams, causes the Court to conclude that the lead counsel on behalf of the petitioning creditors was Mr. Adams. The Court notes, however, that by May 19, 1999 the case is in a settlement mode. While there is time expended by Mr. Adams after May 19th, the Court concludes that said time is basically on behalf of his specific client, Sprint Communications, and is not time expended directly in connection with the involuntary and the protection of this Court's order for relief through the appellate process. The Court has thus disallowed all time after May 19, 1999. Said time amounts to the sum of \$9,988.00.

In addition, the Court has reviewed the extensive amount of time expended in connection with the preparation of pleadings and briefs, namely \$32,994.00 as well as telephone calls amounting to \$11,468.00. The Court is deducting additional \$5,000.00 in connection with these two cost centers.

For the aforesaid reasons, \$14,988.00 in fees are disallowed. Joseph Adams, Esq., as counsel for the petitioning creditor, Sprint Communications Company, is allowed a counsel fee of \$80,022.50 and disbursements as requested of \$3,326.82.

The Court has taken into consideration that this was a hotly contested involuntary proceeding, that the end result was an affirmance by the District Court of the entry of the order for relief and the generation of in excess of \$400,000.00 in assets for the benefit of the creditors.

None of these assets would have been under the Court's jurisdiction and been available for creditors without the efforts of Mr. Adams as co-counsel for the petitioning creditors. The Court feels that the work performed is justified, and that the fee approved herein is in conformance with the Third Circuit standards as set forth in *In re Busy Beaver Building Centers, Inc.*, 19 F.3d 833 (3d Cir.1994).

CONCLUSION

The Court thus awards Joseph Adams, Esq. a fee of \$80,023.50.

Bkrtcy.D.N.J.,2000.

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