

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

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December 19, 2003

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Subject: ***In re The Credit Store, Inc.***
Chapter 7; Bankr. No. 02-40922

Dear Counsel:

The matter before the Court is the Supplemental Final Fee Application for Allowance of Compensation and Reimbursement of Expenses, Plus Applicable Sales Tax by Baker & McKenzie, Counsel for the Official Committee of Unsecured Creditors. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014. As set forth below, Baker & McKenzie shall be allowed \$2,812.50 for compensation and \$168.75 for sales tax thereon.

Summary of facts. The Credit Store, Inc. ("Debtor") filed a petition for relief under chapter 11 on August 15, 2002. The United States Trustee appointed an Official Committee of Unsecured Creditors ("Committee") on August 20, 2002. The Committee filed an application to employ Baker & McKenzie as its attorneys on September 17, 2002. The Court granted the Committee's application on October 1, 2002.

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Debtor's case was converted to chapter 7 on February 4, 2003. Baker & McKenzie filed its First and Final Application for Compensation and Reimbursement of Expenses by Baker & McKenzie, Counsel for the Official Committee of Unsecured Creditors ("first application"), for services rendered between July 10, 2002 and February 4, 2003, on February 25, 2003. By order entered April 9, 2003, the Court allowed Baker & McKenzie \$392,245.50 for compensation, \$23,534.73 for sales tax thereon, and \$18,710.29 for expenses. Pursuant to the Court's order, Baker & McKenzie was permitted to file a supplemental fee application.

Baker & McKenzie filed its Supplemental Final Fee Application for Allowance of Compensation and Reimbursement of Expenses, Plus Applicable Sales Tax by Baker & McKenzie, Counsel for the Official Committee of Unsecured Creditors ("supplemental application"), for services rendered between February 4, 2003 and July 31, 2003, on September 9, 2003. The United States Trustee and Chapter 7 Trustee John S. Lovald ("Trustee Lovald") filed objections to Baker & McKenzie's supplemental application on September 11, 2003 and September 26, 2003, respectively.

The Court wrote counsel on October 10, 2003, inviting briefs on the issue of whether Baker & McKenzie could be compensated for services rendered after the conversion of Debtor's case to chapter 7. Baker & McKenzie filed its Statement of Baker & McKenzie in Support of its Supplemental Final Fee Application for Allowance of Compensation and Reimbursement of Expenses, Plus Applicable Sales Tax on October 24, 2003. The United States Trustee filed a response thereto on October 31, 2003. Trustee Lovald filed a brief concerning Baker & McKenzie's supplemental application on November 7, 2003. The matter was taken under advisement.

Discussion. In a chapter 11 case, the United States Trustee is responsible for appointing a committee of unsecured creditors. 11 U.S.C. § 1102(a)(1). The committee may, with Court approval, employ an attorney to represent it. 11 U.S.C. § 1103(a). The court may award the committee's attorney "reasonable compensation for actual, necessary services" and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1).

Upon conversion of the chapter 11 case to chapter 7, any committee of unsecured creditors ceases to exist. *Belgravia Paper Company v. BCC Equipment Leasing Corp.* (*In re Great Northern Paper, Inc.*), 299 B.R. 1, 5 (D. Me. 2003); *Creditors' Committee v. Parks*

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Jaggers Aerospace Co. (In re Parks Jaggers Aerospace Co.), 129 B.R. 265, 268 (M.D. Fla. 1991) ("The committee permanently dissolves when the Chapter 11 proceeding is dismissed or converted to a Chapter 7 action."); *In re Freedlander, Inc. The Mortgage People*, 103 B.R. 752, 758 (Bankr. E.D. Va. 1989) ("[C]onversion to Chapter 7, and the ensuing termination of the Chapter 11 Order for Relief, results in the dissolution of any committee appointed under 11 U.S.C. 1102"); *In re Kel-Wood Timber Products, Co.*, 88 B.R. 93, 94 (Bankr. E.D. Va. 1988) (same).

When the committee ceases to exist, the attorney's right to compensation from the bankruptcy estate likewise ceases to exist. *In re Energy Cooperative, Inc.* 95 B.R. 961, 964 (Bankr. N.D. Ill. 1989) (A creditors committee's attorney's "right to compensation from the estate terminate[s] along with the existence of such Chapter 11 Creditors' Committee."); *Kel-Wood Timber Products, Co.*, 88 B.R. at 94 ("[T]he conversion to Chapter 7 . . . prevents any award of attorneys' fees from the estate for postconversion services.").

Baker & McKenzie has not pointed the Court to any contrary authority. Indeed, the only somewhat contrary authority cited by any party is *Sable, Makoroff & Gusky, P.C. v. White (In re Lyons Transportation Lines, Inc.)*, 162 B.R. 460 (Bankr. W.D. Pa. 1994), cited by the United States Trustee in his objection to Baker & McKenzie's supplemental application. However, as the United States Trustee correctly points out in his objection, that case involved facts and circumstances not present in this case.¹

In its statement in support of its supplemental application, Baker & McKenzie argues that participants in a bankruptcy case cannot "simply abandon their client's interests" upon conversion. However, Baker & McKenzie's only client in this case was the Committee. As discussed above, upon conversion, the Committee ceased to exist. Thus, Baker & McKenzie no longer had a client whose interests needed to be protected.

¹ The Court in *Lyons* specifically "directed that the Chapter 11 Committee would remain intact and that the Trustee could utilize the services of [the attorneys for the Committee]" following conversion of the case to chapter 7. *Lyons*, 162 B.R. at 463. The Court was not asked to, and did not give, any such direction in this case.

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Baker & McKenzie also argues that it should be compensated under the "'substantial benefit' standard," by which it presumably means the provisions of 11 U.S.C. § 503(b)(3)(D) and (4). However, § 503(b)(3)(D) (and by reference § 503(b)(4)) is inapposite in this case, for several reasons. First, Baker & McKenzie's application was made pursuant to 11 U.S.C. §§ 328 and 330, not § 503(b)(4). Second, by its own terms, § 503(b)(3)(D) specifically excludes committees appointed under § 1102. Third, § 503(b)(3)(D) applies only in chapter 9 and chapter 11 cases. Finally, Baker & McKenzie has made no showing that the Committee has in fact made a substantial contribution in Debtor's chapter 7 case.

In this case, the Committee ceased to exist on February 4, 2003. Baker & McKenzie's right to compensation from the estate ceased to exist on that same date. Therefore, the Court will not allow compensation for the services Baker & McKenzie rendered postconversion, with one exception.

While other courts are split on the issue,² this Court has long held that an attorney "will be allowed reasonable compensation for preparing his fee application and the necessary expenses for filing and serving the application." *In re Brandenburger*, 145 B.R. 624, 630 (Bankr. D.S.D. 1992). See also *In re Kauer*, Bankr. No. 88-30038, slip op. at 10-11 (Bankr. D.S.D. March 27, 1992). This holding is in keeping with 11 U.S.C. § 330(a)(6), which clearly contemplates that a court may compensate an attorney for such services:

Any compensation awarded for the preparation of a fee application shall be based on the level and skill reasonably required to prepare the application[.]

The Court will therefore allow compensation for the following services Baker & McKenzie rendered in preparing its first fee application:

² See, e.g., *In re Nucorp Energy, Inc.*, 764 F.2d 655, 662 (9th Cir. 1985) ("[B]ankruptcy counsel are entitled to compensation for the time and effort spent in preparing fee applications."); *In re Courson*, 138 B.R. 928, 933 (Bankr. N.D. Iowa 1992) ("[C]ompensation . . . for the preparation of . . . fee applications . . . is not warranted.").

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DATE	DESCRIPTION	HOURS
02/18/03	Begin draft of first and final fee application.	5.2
02/19/03	Review correspondence and billing files in preparation for fee application and draft same	9.7
02/20/03	Continue draft of fee application.	3.8
02/22/03	Review invoices and revise fee applications to include appropriate fees and expenses.	.4
02/24/03	Review Federal and Local Rules regarding preparation of notice of filing fee application and calculation of time to respond.	.6
02/25/03	Prepare notices for fee applications of FTI and B&M and Connecting Point reimbursement request; prepare certificate of service for all applications and notices; convert applications, notices, exhibits and certificate of service to PDF and electronically file with Court; organize filed documents and arrange for outside bankruptcy mailout service	2.8
	TOTAL	22.5

Each of the foregoing services was rendered by Catherine M. Chapple, a paralegal, whose hourly rate is \$125.00.³ Baker & McKenzie's fee for those services thus amounts to \$2,812.50. The applicable sales tax thereon is \$168.75.

Baker & McKenzie would also be entitled to reimbursement of

³ This is significantly higher than the hourly rate generally charged by paralegals in the District of South Dakota. However, Ms. Chapple's hourly rate was disclosed in the Committee's application to employ Baker & McKenzie, and no party in interest objected to it.

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related expenses. However, its itemization of its expenses is insufficiently detailed for the Court to determine which of its expenses are related to the foregoing services and which are related to other services for which Baker & McKenzie cannot be compensated. Thus, the Court will not allow any reimbursement of expenses at this time. In the event Trustee Lovald recovers sufficient assets to pay all administrative expenses,⁴ Baker & McKenzie may submit a more detailed itemization that would enable the Court to identify those expenses that directly relate to the services for which compensation has been allowed herein.

The Court will enter an appropriate order.⁵

NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered

DEC 19 2003

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

Sincerely,



Irvin N. Hoyt
Bankruptcy Judge

INH:sh

cc: case file (docket original; serve copies on court and party and U.S. Trustee)

Under seal for each party. A copy of this document was electronically transmitted, mailed, hand delivered or faxed this date to the parties on the attached service list.

DEC 19 2003

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota
By *rhj*

⁴ In his brief, Trustee Lovald states that he is not currently holding any funds out of which anything can be paid to Baker & McKenzie.

⁵ In his brief, Trustee Lovald states that any compensation awarded to Baker & McKenzie "would be subject to, and inferior to, administrative expense claims arising in the administration of the chapter 7 case." This may not be an entirely accurate reading of 11 U.S.C. § 726(b). However, because there appear to be no funds with which to pay the sums awarded to Baker & McKenzie, regardless of how its claim is classified, the Court reserves for later determination the question of whether the compensation allowed herein is a chapter 7 or a chapter 11 administrative expense.

Label Matrix for USBC
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Fri Dec 19 08:58:36 CST 2003

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