

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

In re:	)	Bankr. No. 13-10118
	)	Chapter 7
NORTHERN BEEF PACKERS)	
LIMITED PARTNERSHIP	)	DECISION RE: BANTZ, GOSCH
Tax ID/EIN 26-2530200	)	& CREMER, L.L.C.'S ELIGIBILITY
	)	TO SERVE AS COUNSEL FOR THE
Debtor.	)	CHAPTER 11 DEBTOR AND ITS
	)	REQUEST FOR CERTAIN FINAL FEES

The matters before the Court are Bantz, Gosch & Cremer, L.L.C.'s eligibility to serve as counsel for the chapter 11 debtor in possession and the firm's request for fees from April 7, 2014 through April 27, 2015. This is a core proceeding under 28 U.S.C. § 157(b)(2). The Court enters these findings and conclusions pursuant to Fed.Rs.Bankr.P. 7052 and 9014(c). For the reasons discussed below, the Court will not disgorge any fees or disallow any additional fees on the grounds Bantz, Gosch & Cremer, L.L.C. was ineligible to serve as counsel for the debtor in possession, and the Court will allow the firm final fees from the bankruptcy estate of \$7,134.75.

I.

Chapter 11 Debtor Northern Beef Packers Limited Partnership filed an application to employ Bantz, Gosch & Cremer, L.L.C. ("Bantz, Gosch") as its local general bankruptcy counsel (doc. 13). In the application, Debtor stated it believed Bantz, Gosch was disinterested under 11 U.S.C. §§ 101(14) and 327(a), did "not hold or represent any interest adverse to the estate," and had "no connection to the Debtor, creditors or their related parties." In its affidavit as the professional to be employed, Bantz, Gosch identified four of Debtor's creditors that Bantz, Gosch

represented at that time on matters unrelated to Debtor or this bankruptcy case. The firm said there may be other connections to persons the firm had previously represented and the firm would disclose those "promptly upon discovery." The firm further declared it would "not represent any creditor or other party in interest in connection with this bankruptcy case" while it was representing Debtor, and said it would "use reasonable efforts to monitor conflicts to ensure that its status as a 'disinterested person' does not change and will file such supplemental declarations and disclosures as are required by Bankruptcy Rule 2014(a)." In the affidavit, the firm repeated some of the information from the employment application and stated, "Except as the Court may determine based on the foregoing, [Bantz, Gosch] does not hold any interest adverse to the estate, and is a 'disinterested person' within the meaning of 11 U.S.C. § 327(a)." Bantz, Gosch also stated in its affidavit it had "performed a conflict check against the names of parties in interest, including: a) the Debtor and its General Partner; b) holders of equity interests in the Debtor; c) officers and directors of the Debtor and its General Partner; d) attorney, accountants and other professionals employed by the Debtor; and e) all secured and unsecured creditors of the Debtor." It then listed the creditors this check identified. The firm did not include on the list Debtor's general partner or disclose any relationship the firm had with Debtor's general partner, Debtor's other equity interest holders, Debtor's and its general partner's officers and directors, or the other professionals Debtor had employed.

Neither Debtor in the employment application nor Bantz, Gosch in its affidavit discussed in any detail the firm's pre-petition relationship with Debtor or any of Debtor's insiders. Debtor and Bantz, Gosch both stated in their respective documents only that the firm had represented Debtor pre-petition in "various matters," they acknowledged Debtor owed the firm \$257,582.68 for these pre-petition services, and they stated the firm would subordinate its claim for these pre-petition fees to the claims of all other creditors.

The United States Trustee objected to Bantz, Gosch's employment by Debtor only on the grounds Bantz, Gosch intended to subordinate its claim for pre-petition fees to other general unsecured claims rather than waive those fees (doc. 32). Bantz, Gosch, in response, filed a reply stating it waived the pre-petition fees (doc. 36). The United States Trustee then withdrew his objection (doc. 50). No other objections to the employment application were filed, and the Court approved the application, though modifying some of the interim payment terms Debtor and the firm had sought (doc. 138).

Debtor also sought and obtained authority to employ Cozen O'Connor, an out-of-district firm, to serve as Debtor's lead bankruptcy counsel (docs. 40 and 112). Debtor's application to employ Cozen O'Connor and Cozen O'Connor's supporting affidavit were similar in format and content to Debtor's application to employ Bantz, Gosch and Bantz, Gosch's supporting affidavit, though Cozen O'Connor's conflicts check produced a different list of creditors with whom that firm had a relationship. Both Cozen O'Connor and Bantz, Gosch disclosed Debtor had paid their respective pre-

petition retainers (docs. 111 and 137); Bantz, Gosch's retainer covered only the case filing fee.

Bantz, Gosch filed its first fee application four months after Debtor's petition date, seeking from the bankruptcy estate \$98,207.50 for compensation for services and \$2,739.60 for reimbursement of expenses, plus the applicable sales tax (doc. 579). The United States Trustee objected, largely because Bantz, Gosch's itemization of services on a particular date had a "lumped" time entry, rather than a specific time assigned for each distinct service rendered (doc. 605). SDIF Limited Partnership 6 and SDIF Limited Partnership 9, two estate creditors, objected on the grounds the fees sought by Bantz, Gosch, when coupled with the fees sought by Cozen O'Connor, were not reasonable for a liquidating chapter 11 case (doc. 637). The Official Committee of Unsecured Creditors ("Creditors Committee") objected (doc. 638), arguing Bantz, Gosch, as Debtor's local counsel, had "strayed far beyond the limited bounds of advising [Debtor] on matters particular to South Dakota law and appearing at 341 meetings and Court hearings." It argued much of Bantz, Gosch's fees should be denied because the firm's services had not "advanced the administration of the case" and were duplicative of Cozen O'Connor's work. The Creditors Committee further argued the fees sought greatly exceeded the \$30,000.00 earmarked for Bantz, Gosch in Debtor's budgets submitted with Debtor's earlier cash collateral requests. Bantz, Gosch filed a response to the several objections and also filed a more detailed itemization of the services it had rendered for the debtor in possession (doc. 686). Following a hearing, the Court limited Bantz, Gosch's interim

allowance to \$30,000.00¹; the balance of Bantz, Gosch's request was held in abeyance until the firm filed its final fee application (doc. 757).

Bantz, Gosch filed its final fee application on November 30, 2015 (doc. 1357), after the case had converted from chapter 11 to chapter 7. In addition to the fees not previously awarded, the firm sought \$42,063.75 for compensation for services rendered from November 13, 2013 through July 8, 2015, \$2,548.14 for sales tax on that compensation, and \$2,240.97 for reimbursement of expenses for the same time period, for a total of \$46,852.86. Forrest C. Allred, the chapter 7 trustee, filed preliminary objections to the application, requested additional time to object, and requested some discovery (doc. 1396). His preliminary objections were:

(i) the lack of benefit to the estate of all services associated with the Scott Olson Digging matter (except to the extent of the pre-conversion "carve-out" for the firm), (ii) the excessive lumping of time entries in the Application, [and] (iii) the seemingly excessive time spent by the applicant given that it only served as local counsel in the case and was limited in the pre-conversion "carve-out" to \$35,000.00 during the first application period (yet submitted an interim application for \$106,854.75).

The Court granted the trustee three extensions of time to file additional objections, directed him to utilize the federal rules for his requested discovery, and set an evidentiary hearing on the application (docs. 1398, 1411, 1415, 1418, and 1421). The Court also entered interim findings regarding Cozen O'Connor's and Bantz, Gosch's final fee applications (doc. 1412). In the interim findings, the Court set forth

¹The actual award from the estate to Bantz, Gosch was \$28,787.00, after the firm applied its \$1,213.00 retainer.

why it believed the two firms' final fee applications needed a closer review, and the Court identified areas of particular concern for the firms to address at the evidentiary hearing.

Trustee Allred eventually filed a supplemental objection to Bantz, Gosch's final fee application (doc. 1440). Therein, he baldly stated he opposed the firm's final fee application "to the extent (1) any compensation requested exceeds limits previously stipulated and approved by the court, and (2) any compensation would impair funds previously stipulated and approved by the court as being reserved or carved out for wage claimants, or other intended claimants."

At the hearing on Cozen O'Connor's and Bantz, Gosch's final fee applications, the evidence presented regarding Bantz, Gosch's final fee application was limited. On questioning from counsel for Cozen O'Connor, Steven R. Jakubowski, former counsel for the chapter 11 Creditors Committee and present counsel for Trustee Allred on some matters, testified he was concerned about the "burn rate" of Bantz, Gosch's fees through April 5, 2014 when compared to Bantz, Gosch's \$30,000.00 budgeted allowance under the chapter 11 cash collateral orders (doc. 1492, p. 73). He also questioned whether Bantz, Gosch's services benefitted the estate, stating he had wanted to review e-mails Bantz, Gosch had exchanged prior to the sale of Debtor's principal asset:²

²In its interim findings regarding Cozen O'Connor's and Bantz, Gosch's final fee applications, the Court advised Attorney Jakubowski and his local co-counsel, Attorney Patrick T. Dougherty of Dougherty & Dougherty, LLP, they should not advise or represent Trustee Allred on matters regarding these chapter 11 professionals' fee

I can say generally I think what was going on was I think they were trying to find an alternative to the sale and working with the insiders of the company to try to find an alternative. [One of Cozen O'Connor's attorneys] often said to me that during the period through the hearing on the sale, that the insiders were trying to find a way to save the case through a plan. And I think that that's what the Bantz firm was doing. And so I think the question is, you know, given the fact that the Debtor had already locked into a process, was that reasonable and appropriate. And I had not been able to get into the details of it to determine that before we were asked to not represent the trustee in the [chapter 11 fee] matter anymore.

Counsel for Bantz, Gosch had one Cozen O'Connor witness verify Bantz, Gosch had not previously been paid by a third party for Bantz, Gosch's services related to the litigation concerning Scott Olson Digging, Inc.'s claim (doc. 1492, p. 98). After counsel for the United States Trustee finished his cross-examination of Attorney Jakubowski, counsel for Bantz, Gosch stated (doc. 1492, p. 80) Bantz, Gosch had joined in Debtor's lead counsel's brief (doc. 1452) and "we would incorporate the testimony into our presentation. I have no further presentation." He made a similar statement after counsel for Cozen O'Connor finished that firm's evidentiary presentation in support of its final fee application (doc. 1492, p. 104). While counsel for the United States Trustee cross-examined Cozen O'Connor's three witnesses, neither the United States Trustee nor Trustee Allred presented any separate evidence

applications since they too had been chapter 11 professionals for the Creditors Committee and had unpaid fees for those services that could be affected by the Court's decisions regarding Cozen O'Connor's and Bantz, Gosch's final fee applications. It does not appear Trustee Allred subsequently retained replacement counsel to address any issues regarding fees for the chapter 11 estate professionals; it is also unclear whether he personally concluded the investigation Attorney Jakubowski testified he had begun regarding Bantz, Gosch's involvement with Debtor's insiders.

regarding Bantz, Gosch's final fee application. Cozen O'Connor's and Bantz, Gosch's final fee applications were taken under advisement (docs. 1458 and 1459).

In its subsequent decision (doc. 1528), the Court set forth its findings and conclusions regarding Bantz, Gosch's request for fees from April 7, 2014, just after the sale of Debtor's packing plant closed, to April 27, 2015, when the case converted to chapter 7³:

On the present record, the Court is unable to award additional fees to Bantz, Gosch. While the application to employ the firm and the firm's affidavit in support of the application was thorough and indicated the firm had represented *Debtor* pre-petition (doc. 13), the firm's billing statements indicate it had previously represented Northern Beef Packers Management, LLC (docs. 579 at page 3 and 1357 at page 8), which Debtor identified as its general partner holding a 40% interest (doc. 105 at page 131). On the present record, Bantz, Gosch's prior representation of Debtor's general partner, particularly one who is a co-debtor (doc. 105 at page 122), disqualifies the firm from representing Debtor under § 327(a). *In re Kappy Investments, Inc.*, 465 B.R. 839, 841-43 (Bankr. D. Minn. 2012); see *Needler v. Rendlen (In re Big Mac Marine, Inc.)*, 326 B.R. 150 (B.A.P. 8th Cir. 2005); and *In re Keeley and Grabanski Land Partnership*, Bankr. No. 10-31482, 2013 WL 2384100, at *4-6 (Bankr. D.N.D. May 30, 2013).

That the firm's efforts may not have been focused exclusively on Debtor's estate is also reflected by the record. Some of Bantz, Gosch's itemized services expressly demonstrate the firm's attention was divided among Debtor, its general partner, and Oshik Song—a limited partner and a general unsecured creditor. Other services addressed political concerns and media inquiries surrounding the EB-5 program and assisting persons involved in that program, all of which bore little relevance to a liquidating debtor, especially once the packing plant had been sold at auction.

Because this issue was not raised previously, Bantz, Gosch may

³Bantz, Gosch's request for fees for services rendered and expenses incurred from the petition date through April 5, 2014 were separately resolved in the Court's earlier decision (doc. 1528) and are no longer at issue.

request an evidentiary hearing to establish it was qualified to represent Debtor in the chapter 11 as general counsel under § 327(a). Absent such a request, however, the firm will not receive additional fees from the funds held by Trustee Allred. Bantz, Gosch may retain the fees it previously received from the professional fee carve-out since those funds were provided by White Oak and, as discussed above, may also receive a *pro rata* share of any funds remaining in the professional fee carve-out for Debtor's counsel.

Bantz, Gosch timely requested an evidentiary hearing (doc. 1544). Therewith, the firm also submitted the affidavit of Rory King, one of its partners (doc. 1543). Attorney King affied he began representing Debtor from its inception in approximately 2006 and never represented Northern Beef Packers Management, LLC, Debtor's general partner. He said Bantz, Gosch's billing statements were addressed to Northern Beef Packers Management, LLC "at the request of the Client." Attorney King, in his affidavit, also opined:

There was never any conflict of interest between the entities of [Debtor] and Northern Beef Packers Management, LLC. Northern Beef Packers Management, LLC was the general partner of [Debtor], and as such, managed the limited partnership.

With the affidavit, Bantz, Gosch submitted a revised billing statement regarding services from April 7, 2014 through April 27, 2015. Attorney King described the revised billing statement in his affidavit, stating:

Additionally, Affiant is of the understanding services rendered must have had a reasonable expectation of adding value to Debtor's estate at the time of services rendered to be considered for payment. Attached hereto as **Exhibit A** [bold in the original], and incorporated by this reference herein, is a revised billing which has eliminated those items of service which may not have been focused exclusively on the debtor's estate (including items relating to the Scott Olson [Digging] litigation) and retained those services which had the reasonable likelihood of benefitting

the estate at the time services were provided, even though those services did not increase the funds available for the unsecured claimants.

After comparing Bantz, Gosch's original final fee application with the firm's revised billing statement for services rendered from April 7, 2014 through April 27, 2015, it appears the firm eliminated 80.80 hours for services for which it sought reimbursement at \$225.00 per hour, for a total reduction of \$18,180.00. Those 80.80 hours were comprised of 66.80 hours for services in April, May, and June 2014, and on July 28, 2014, September 22 and 23, 2014, and February 5, 2015 related to the litigation of Scott Olson Digging, Inc.'s claim; .20 of an hour for services on June 26, 2014 related to the firm's fees; 9.50 hours for services on August 28, 2014, September 18, 2014, and October 21, 22, 23, and 24, 2014 regarding media- or political-related communications; and 4.30 hours for post-conversion services. In its revised billing statement, Bantz, Gosch reduced attendant expenses for which it sought reimbursement from \$1,791.15 to \$850.27, with the largest expense reductions appearing to be travel related to the litigation of Scott Olson Digging, Inc.'s claim.

By order, the Court set a deadline for any party in interest to file an objection to Bantz, Gosch's revised billing statement and stated the evidentiary hearing Bantz, Gosch requested would be set by separate order (doc. 1562). No party in interest objected to or otherwise responded to Bantz, Gosch's revised billing statement. Bantz, Gosch then filed a supplement to its request for an evidentiary hearing, stating an evidentiary hearing was not required and it would "rely solely" on Attorney King's

affidavit (doc. 1575).

The matter was taken under advisement. Bantz, Gosch bears the burden of establishing both that it was qualified to represent the chapter 11 debtor in possession and that it is entitled to the fees it seeks for that representation. *In re Sandpoint Cattle Co.*, 556 B.R. 408, 421-23 (Bankr. D. Neb. 2016).

II.

A chapter 11 debtor in possession administers the case as a fiduciary for the bankruptcy estate. *Baker Botts L.L.P. v. ASARCO LLC*, ___ U.S. ___, 135 S.Ct. 2158, 2163 (2015) (citing 11 U.S.C. §§ 1101(1) and 1107(a)); *Lange v. Schropp (In re Brook Valley VII, Joint Venture)*, 496 F.3d 892, 900 (8th Cir. 2007). This fiduciary obligation is owed both by the debtor in possession and those who control the debtor in possession. *Brook Valley VII*, 496 F.3d at 900. Those in control must act as "agents of the bankruptcy estate, and not for their own personal gain." *Id.* This fiduciary obligation consists of both a duty of care—"to make good-faith decisions that can be attributed to a rational business purpose"—and a duty of loyalty—"to refrain from self-dealing, to avoid conflicts of interests and the appearance of impropriety, to treat all parties to the case fairly[,] and to maximize the value of the estate." *Id.* at 900-01 (quoting, in part, 7 COLLIER ON BANKRUPTCY, ¶ 1107.02[4]).

It is the role of the *attorney* for the debtor in possession to make sure the debtor in possession understands its fiduciary obligation and acts consistent with that obligation. *In re Kappy Investments, Inc.*, 465 B.R. 839 (Bankr. D. Minn. 2012). It

is a fundamental principle in a chapter 11 case that the attorney for the debtor in possession represents the debtor in possession, not its principals or management. *In re Living Hope Se., LLC*, 509 B.R. 629, 647 (Bankr. E.D. Ark. 2014). As an element of this principle, the chapter 11 debtor in possession and the attorney it seeks to employ as its bankruptcy counsel must disclose any relationship that may "even faintly color the independence and impartial attitude required by the Code and Bankruptcy Rules[.]" *Sandpoint Cattle Co.*, 556 B.R. at 425 (quoting *Winship v. Cook (In re Cook)*, 223 B.R. 782, 789 (B.A.P. 10th Cir. 1998) (quoting *In re Roberts*, 46 B.R. 815, 829 (Bankr. D. Utah 1985), *aff'd in part, modified in part, rev'd in part*, 75 B.R. 402 (D. Utah 1987) (quoting *In re Sambo's Restaurants, Inc.*, 20 B.R. 295, 297 (Bankr. C.D. Cal. 1982) (quoting 2 COLLIER ON BANKRUPTCY, ¶ 327.03(f), p. 327-16 (15th Ed. 1981)))).⁴

To be employed, the debtor in possession's attorney may not hold or represent an interest adverse to the estate *and* the attorney must be disinterested. 11 U.S.C. § 327(a). This statute is strictly construed to maintain the integrity of the bankruptcy process. *In re J & M Development of Cass County, Inc.*, Bankr. No. 04-41065-JWV, 2004 WL 1146451, at *2 (Bankr. W.D. Mo. May 19, 2004) (quotation therein omitted). An *interest* is considered *adverse* if it would "tend to lessen the value of a bankruptcy estate or foster a predisposition against the estate." *Blumenthal v. Myers*

⁴The court in *Sandpoint Cattle Company* provided an excellent review of a debtor's attorney's disclosure obligation under 11 U.S.C. § 329 and Fed.R.Bankr.P. 2016 and the consequences of an attorney's failure to fully disclose.

(*In re M & M Mktg., L.L.C.*), 426 B.R. 796, 804 (B.A.P. 8th Cir. 2010) (quoted in *In re Keeley and Grabanski Land P'ship*, Bankr. No. 10-31482, 2013 WL 2384100, at *3 (Bankr. D.N.D. May 30, 2013)). "[T]he adverse interest test is objective[.]" *In re Project Orange Assocs., LLC*, 431 B.R. 363, 370 (Bankr. S.D.N.Y. 2010) (quoted in *Keeley and Grabanski Land P'ship*, 2013 WL 2384100, at *3). A *disinterested person* is defined by statute. It is one who:

(A) is not a creditor, an equity security holder, or an insider;

(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason[.]

11 U.S.C. § 101(14).

III.

By waiving its claim against the estate for pre-petition fees, the record indicates Bantz, Gosch was "disinterested," as that term is defined by § 101(14). *M & M Mktg.*, 426 B.R. at 802 ("Whether an attorney (or law firm) is disinterested is solely a function of the *attorney's* relationship to the debtor." (parenthetical and italics in the original)). What is much less clear is what other interest or interests related to Debtor Bantz, Gosch may have represented and whether any of these interests were adverse to the bankruptcy estate so as to render the firm ineligible for employment under § 327(a).

If Bantz, Gosch did not exclusively represent Debtor—the limited partnership itself—and if the firm's representation of any other interest even faintly colored the firm's independence and the impartial attitude required by the bankruptcy code and the federal rules for an attorney representing a chapter 11 debtor in possession, then the firm was not eligible under § 327(a) to serve as Debtor's local general bankruptcy counsel while Debtor was a chapter 11 debtor in possession. Bantz, Gosch, through Attorney King's affidavit, stated it represented Debtor pre-petition, not Debtor's general partner, Northern Beef Packers Management, LLC. Through the affidavit, the firm did not, however, unequivocally state it had not represented any others connected to Debtor. It also did not state who, if anyone, separately represented Northern Beef Packers Management, LLC or Debtor's other principals and insiders. These omissions are material, but do not necessarily contravene Attorney King's statement regarding the firm's representation of Debtor.

Some circumstances do weigh against the assertions in Attorney King's affidavit. Bantz, Gosch's billing statements being addressed to Debtor's general partner rather than to Debtor is, of course, one such circumstance, especially when the firm's explanation for mailing its statements to the general partner bore little logic.⁵ Also, some of the firm's post-petition billing entries—some the firm removed on its own

⁵The Court wants to clearly state Bantz, Gosch's removal of actual or potential offending services from its final fee application did not—and could not—in any way cure or resolve any employment eligibility issues under 11 U.S.C. § 327(a). The firm's removal of some entries not related to the Scott Olson Digging litigation only clouded the record and heightened the Court's concern that the firm may have been representing an interest adverse to the bankruptcy estate.

volition and some that remained in its revised billing statement—indicate the firm may have been protecting or was at least concerned with interests other than the bankruptcy estate's, the most troubling entries being those surrounding the settlement of the WARN Act adversary proceeding, when the firm seemingly dealt with insiders' concerns about personal liability instead of only dealing with Debtor's concerns as the estate fiduciary.

There is little else in the record to consider. Neither the chapter 7 trustee nor the United States Trustee offered anything that indicated they had investigated Bantz, Gosch's pre-petition relationships with Debtor's insiders and whether any such relationships indicated the firm had represented an adverse interest. Trustee Allred's initial chapter 7 counsel on this issue, Attorney Jakubowski, testified he believed Bantz, Gosch's loyalties may have been divided, and he stated he intended to investigate this issue by reviewing Bantz, Gosch's e-mails. After he was no longer representing Trustee Allred regarding chapter 11 fee applications, however, the record is unclear on whether anyone else picked up this particular rock.

Accordingly, the Court is left only with the unanswered question of who represented Debtor's general partner or other insiders pre-petition and some troubling entries on Bantz, Gosch's original final fee itemization and its revised billing statement. The unanswered question and the Court's concern about some entries are, however, not sufficient to overcome Attorney King's express declaration in his affidavit that Bantz, Gosch had represented Debtor pre-petition and the inference the firm had not

represented others with an interest adverse to the bankruptcy estate.

The Court remains unsure whether it was given the whole picture. *In re Atlanta Sporting Club*, 137 B.R. 550, 553 (Bankr. N.D. Ga. 1991) (quoting *H & K Developers v. Waterfall Village of Atlanta, Ltd. (In re Waterfall Village of Atlanta, Ltd.)*, 103 B.R. 340, 346 (Bankr. N.D. Ga. 1989)) ("The court must be presented the whole picture especially where there is a multilayering of relationships as in the present case."). While the Court does *not* believe Bantz, Gosch deliberately tried to skirt the disclosure requirements of § 327(a), the firm may not have fully appreciated the fiduciary nature of Debtor's obligations as a chapter 11 debtor in possession and the firm's obligations as counsel for that fiduciary. *See Atlanta Sporting Club*, 137 B.R. at 553 ("When an attorney fails to disclose relationships and facts necessary for the Court to make a determination as to whether they meet the requirements of the Code, three explanations may be inferred: oversight or negligence, failure to understand the importance of proper disclosure, or an intent to circumvent the Code.") (quoted in *Kappy Investments*, 465 B.R. at 842); *In re Diamond Mortg. Corp. of Illinois*, 135 B.R. 78, 90 (Bankr. N.D. Ill. 1990) (conflict of interest rules are more strictly applied in the bankruptcy context when estate professionals are retained; not all conflicts can be waived since the bankruptcy estate is a fiduciary for others and the bankruptcy court has to approve the employment of estate counsel). The Court also remains troubled by an apparent lack of interest other parties, some with their own fiduciary obligations to the bankruptcy estate, have shown regarding this issue, either when the case was

commenced or when the Court raised it in its decision (doc. 1528). Nonetheless, on the present record, the Court cannot conclude Bantz, Gosch was ineligible to serve as Debtor's local general bankruptcy counsel pursuant to 11 U.S.C. § 327(a) while Debtor was a chapter 11 debtor in possession. Consequently, no fees sought by the firm will be disgorged or disallowed on these grounds.

Certainly, the Court's findings and conclusions on this issue could have been set forth in fewer than 17 pages. The Court detailed its findings and conclusions, however, to ensure there is no misunderstanding or confusion in any future chapter 11 case regarding a debtor in possession's fiduciary duty, the attorney for the debtor in possession's obligations to the estate, and the need for full and complete disclosure before counsel for the chapter 11 debtor in possession is employed.

IV.

Under 11 U.S.C. § 330(a), Bantz, Gosch is entitled to reasonable compensation for actual and necessary services rendered and attendant expenses incurred between the closing of the packing plant sale and the conversion of the case to chapter 7—April 6, 2014 to April 27, 2015—that were reasonably likely to benefit Debtor's estate or were necessary to the administration of the case at the time the services were provided, regardless of whether the services increased the funds available for unsecured claimants. *Baker Botts*, ___ U.S. at ___, 135 S.Ct. at 2165; *In re Blue Stone Real Estate*, 487 B.R. 573, 577-78 (Bankr. M.D. Fla. 2013), *cited in In re Miller Automotive Group, Inc.*, 521 B.R. 323, 326-27 (Bankr. W.D. Mo. 2014).

Bantz, Gosch bears the burden of proof. *Walton v. LaBarge (In re Clark)*, 223 F.3d 859, 863 (8th Cir. 2000). As previously noted, "[t]his burden is not to be taken lightly, especially given that every dollar expended on legal fees results in a dollar less that is available for distribution to the creditors or use by the debtor." *In re Yankton Coll.*, 101 B.R. 151, 157-58 (Bankr. D.S.D. 1989); *Miller Automotive Group*, 521 B.R. at 326.

Of its own accord, Bantz, Gosch removed most of the fees sought for the litigation of Scott Olson Digging, Inc.'s claim, apparently agreeing with Cozen, O'Connor and the Court that those fees are more appropriately paid by White Oak Global Advisors, LLC. A few of these entries were missed, and they need to be deducted as well: .20 of an hour (half the time listed) on June 25, 2014; .05 of an hour (half the time listed) on October 8, 2014; .30 of an hour on October 17, 2014; .40 of an hour on December 31, 2014; .10 of an hour on January 5, 2015; and .20 of an hour on February 5, 2015. This results in a total deduction of \$281.25 for 1.25 hours. The sales tax will also be adjusted.

The Court also reviewed the other entries in the firm's revised billing statement regarding case administration, the various adversary proceedings, and the preparation of fee applications, but did not find any of these services unnecessary or the times expended unreasonable, though more detail on some entries would have been preferred. Accordingly, under its revised billing statement, Bantz, Gosch will be awarded \$5,928.75 for compensation for services from April 7, 2014 through

conversion of the case to chapter 7 on April 27, 2015, \$355.73 for sales tax, and \$850.27 for reimbursement of attendant expenses, for a total final fee award of \$7,134.75. This sum includes the fees allotted to Bantz, Gosch in the interested parties' stipulation regarding fees related to Adversary Proceeding No. 14-1009 (doc. 1522). Trustee Allred will be authorized to pay these final fees from funds on hand pursuant to 11 U.S.C. §§ 330(a), 503(b), and 507(a) through a formal interim or a final distribution of estate assets.

Dated: January 5, 2017.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "Charles L. Nail, Jr.", is written over a light blue rectangular background.

Charles L. Nail, Jr.
Bankruptcy Judge

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

This order/judgment was entered
on the date shown above.

Frederick M. Entwistle
Clerk, U.S. Bankruptcy Court
District of South Dakota

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

In re:	)	Bankr. No. 13-10118
	)	Chapter 7
NORTHERN BEEF PACKERS)	
LIMITED PARTNERSHIP	)	ORDER AWARDING CERTAIN
Tax ID/EIN 26-2530200	)	FINAL FEES TO BANTZ,
	)	GOSCH & CREMER, L.L.C.
Debtor.)	

In recognition of and compliance with the decision entered this day regarding Bantz, Gosch & Cremer, L.L.C.'s Final Fee Application as Counsel to the Debtor in Possession (doc. 1357), as revised (doc. 1543) and supplemented (doc. 1575), and the record before the Court; and for cause shown; now, therefore,

IT IS HEREBY ORDERED Bantz, Gosch & Cremer, L.L.C.'s final fee application, as revised and supplemented, is granted in part and denied in part, and the firm is awarded \$5,928.75 for compensation for services from April 7, 2014 through April 27, 2015, \$355.73 for sales tax, and \$850.27 for reimbursement of attendant expenses, for a total final fee award of \$7,134.75. Trustee Forrest C. Allred may pay said fees from funds on hand pursuant to 11 U.S.C. §§ 330(a), 503(b), and 507(a) through a formal interim or a final distribution of estate assets.

So ordered: January 5, 2017.

BY THE COURT:



Charles L. Nail, Jr.
Bankruptcy Judge

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

This order/judgment was entered
on the date shown above.

Frederick M. Entwistle
Clerk, U.S. Bankruptcy Court
District of South Dakota