

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re)
)
WESTPORT DEVELOPMENT, INC.) Case No. 6:09-bk-19069-KSJ
) Chapter 7
Debtor.)
)
_____)

ORDER GRANTING INTERIM APPLICATION FOR COMPENSATION

This matter came on for hearing on October 13, 2010, on the Interim Application for Compensation filed on July 8, 2010 by special counsel Spencer R. Munns and Bogin, Munns & Munns, P.A.'s (Doc. No. 34) (collectively "special counsel"). William Young, the debtor's principal, made an *ore tenus* objection arguing (1) the fees requested by special counsel are too high and (2) the fees should be paid by Stewart Title, the debtor's title insurance company, because this bankruptcy case was necessitated by Stewart Title's failure to find a title defect in the debtor's real property.

In the Application, special counsel requests fees totaling \$37,452.32 and expenses totaling \$224.38 for the time period of December 16, 2009, through June 30, 2010. Special counsel spent a total of 161.50 hours, which includes work done by attorneys who billed an hourly rate of \$245, and paralegals who billed an hourly rate of \$125. Special counsel also reduced the total fees by 5 percent, cutting the fees requested by \$1,971.18.

Sections 330(a)(1) (A) and (B) of the Bankruptcy Code¹ provide that a bankruptcy court may afford an attorney reasonable compensation for actual, necessary services rendered and reimbursement for actual, necessary expenses incurred. Accordingly, the court must examine all

¹ Unless otherwise stated, all references to the Bankruptcy Code refer to Title 11 of the United States Code.
Westport Development 09-19069 granting fee app.docx / / Revised: 10/28/2010 11:36:00 AM Printed: 10/28/2010
Page: 1 of 4

fees and costs and determine that the services performed and costs incurred were both actual and necessary.

Mr. Young has disputed the reasonableness of special counsel's fees. When determining the reasonableness of attorney's fees, courts are instructed to: (1) determine the nature and extent of the services rendered; (2) determine the value of those services; and (3) consider the 12 factors laid out by the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*² The *Johnson* factors are:

- (1) the time and labor required,
- (2) the novelty and difficulty of the question,
- (3) the skill requisite to perform the legal services properly,
- (4) the preclusion of other employment by the attorney due to acceptance of this case,
- (5) the customary fee,
- (6) whether the fee is fixed or contingent,
- (7) time limitations imposed by the client or the circumstances,
- (8) the amount involved and the results obtained,
- (9) the experience, reputation, and ability of the attorneys,
- (10) the undesirability of the case,
- (11) the nature and length of the professional relationship with the clients, and
- (12) awards in similar cases.

An examination of all these factors leads this Court to find the fees and expenses should be granted.

Special counsel was required to devote a considerable amount of time and effort to resolve the multiple complex matters in this case. The debtor's main asset, several parcels of real property in Rockledge, Florida, had a title defect and its value was less than the mortgages encumbering the property. What's more, the debtor had pre-petition lawsuits pending against the City of Rockledge concerning the title defect and a second matter. The debtor was also seeking to sell the property by completing a short sale, which required resolution of the title dispute and the second legal matter. Special counsel negotiated a global settlement whereby Stewart Title

² 488 F.2d 714 (5th Cir. 1974).

made a \$10,000 payment to the City of Rockledge to help resolve the title dispute, and the debtor agreed to settle its second claim against the city.

Resolving these legal matters allowed the debtor to successfully proceed with a short sale of the property to Hammock Harbor L.L.L.P., which also required a significant amount of time and skill. Special counsel negotiated an agreement with the mortgage holder, BB&T, to accept \$1.34 million in satisfaction of the loans on the property which totaled more than \$1.5 million. Negotiating the sale to Hammock Harbor similarly required special counsel to devote many hours of work to complete the transaction. Special counsel sold the property for \$1.6 million, and Hammock Harbor agreed to pay closing costs totaling almost \$80,000.

Taking on this case prevented special counsel from accepting other work, and the hourly billing rates are reasonable for this type of work. Special counsel's efforts lead to the debtor successfully resolving a number of complex issues and selling the property, which resulted in a benefit to the estate. The fees were actual, necessary, and reasonable. The expenses, which were mostly phone and fax charges and a title search fee, were also actual, necessary, and reasonable.

The bankruptcy estate, and not Stewart Title, should bear the cost of special counsel's fees. Stewart Title paid pre-petition attorney's fees in the title dispute action. Stewart Title also paid an additional \$10,000 as part of the global settlement special counsel negotiated with the City of Rockledge to resolve all the pending legal matters to facilitate the sale of the property. Additionally, many of the legal fees incurred did not result from the title defect, including time spent negotiating the short sale with BB&T, the sale to Hammock Harbor, and the negotiations with the City of Rockledge to resolve the second lawsuit.

Accordingly, it is

ORDERED:

1. The Interim Application for Compensation (Doc. No. 34) is allowed in the amount of \$37,452.32 for fees and in the amount of \$224.38 for expenses.
2. William Young's *ore tenus* objection is denied.

DONE AND ORDERED in Orlando, Florida, this 28th day of October, 2010.

A handwritten signature in black ink, appearing to read "Karen S. Jennemann" with a stylized flourish at the end.

KAREN S. JENNEMANN
United States Bankruptcy Judge

Copies furnished to:

Debtor: Westport Development, Inc., PO Box 939, Cape Canaveral, FL 32920

Principal of Debtor: William Young, c/o Thomas H. Yardley, 1970 Michigan Avenue, Bldg. D, Cocoa, FL 32922

Debtor's Counsel: Thomas H. Yardley, 1970 Michigan Avenue, Bldg. D, Cocoa, FL 32922

Trustee: Leigh R. Meininger, PO Box 1946, Orlando, FL 32802

Trustee's Counsel: John H. Meininger, III, PO Box 1946, Orlando, FL 32802

United States Trustee, 135 W. Central Blvd., Suite 620, Orlando, FL 32801