


ORDERED.

Dated: July 29, 2015



Karen S. Jennemann
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	
)	
NORTH AMERICAN CLEARING, INC.,)	Case No. 6:08-ap-00145-KSJ
)	Chapter 7
Debtor.)	
)	

ORDER DENYING GOBLE’S MOTION FOR ATTORNEY FEES AND COSTS

Richard Goble, a *pro se* creditor in this Securities Investor Protection Act (“SIPA”)¹ liquidation proceeding of North American Clearing, Inc. (“NACI”), seeks payment of nearly \$370,000 for attorney fees he incurred allegedly as an employee or director of NACI in all 18 lawsuits litigated in connection with NACI’s liquidation.² The Trustee, Robert Gilbert, objects to Goble’s request arguing that no legal basis exists to award Goble attorney fees for these actions.³ The Court denies Goble’s request.

NACI was a small broker-dealer and clearing house placed into SIPA liquidation as of

¹ The Securities Protection Investor Act is located 15 U.S.C. § 78aaa *et seq.*
² Doc. No. 606.
³ Doc. No. 621. SIPC filed an omnibus response to Goble’s various motions. Doc. No. 615.

May 27, 2008.⁴ Goble, through a trust, was the sole owner and an employee of NACI prior to the liquidation proceedings. Goble consistently has disputed the events that led to NACI's ultimate liquidation.

The litigation surrounding NACI was precipitated by the SEC's complaint for injunctive relief against NACI, Goble, and other defendants in the United States District Court for the Middle District of Florida ("District Court"), beginning the SEC Case.⁵ The District Court initially appointed a receiver, then on July 28, 2008, entered the SIPA Order commencing this liquidation proceeding.⁶ The SIPA Order, among other things, appointed Gilbert as the Trustee and ordered him to pursue orderly liquidation of NACI pursuant to the SIPA.⁷ The SIPA Order also removed the liquidation proceeding to this Court.⁸

Goble now seeks attorney fees of approximately \$370,000 incurred in litigating 18 cases filed in other courts by Goble and all disputing NACI's liquidation (the "Goble Litigation").⁹

Goble previously sought an attorney fee award from this Court for fees incurred defending a fraudulent transfer avoidance adversary proceeding brought by the Trustee ("Avoidance Adversary").¹⁰ The Court denied Goble's request, finding no legal basis to set aside the American Rule under which each side bears its own attorney fees and costs.¹¹ To the extent Goble again asks for attorney fees in the Avoidance Adversary, the Court again denies the request as duplicative and for the reasons already articulated.

⁴ Although the District Court's order appointing the Trustee was entered on July 28, 2008 (Doc. No. 1), the SIPA makes clear that the filing date relates back to the appointment of the initial receiver. *See* 15 U.S.C. § 78III(7)(B).

⁵ SEC Case refers to Case No. 6:08-cv-00829-MSS-KRS.

⁶ SIPA Order, Doc. No. 1.

⁷ SIPA Order, ¶ II.

⁸ SIPA Order, ¶ IX. *See* 15 U.S.C. § 78eee(b)(4).

⁹ The Trustee, in his response, provides a useful summary of each piece of litigation. Doc. No. 621 Ex. A.

¹⁰ Case No. 6:10-ap-00151-KSJ.

¹¹ Doc. No. 328, Avoidance Adversary.

But, Goble also expands the scope of his request to include *all* fees incurred in *all* cases resulting from NACI's liquidation. As an initial matter, this Court does not have jurisdiction to award Goble attorney fees for the cases filed in other courts. A court "lacks jurisdiction to award attorney's fees where it lacks subject matter jurisdiction over the underlying action."¹² The only case this Court had subject matter jurisdiction over was the Avoidance Adversary, in which the Court already denied Goble's fee motion. If Goble indeed is entitled to attorney fees in other cases, he should have pursued them there.

Even if this Court has the authority to award Goble fees for non-bankruptcy litigation, Goble again has failed to cite a valid legal basis to for fees. Goble relies on the same bases he relied on in the Avoidance Adversary: an employment contract with NACI's predecessor, and § 607.0850 of the Florida Statutes. The Court adopts the same reasoning from its order in the Avoidance Adversary.¹³ No credible evidence showed that NACI adopted Goble's employment agreement with Empire Financial Holding Company, and, if considered, it does not provide a basis for the attorney fees incurred in the Avoidance Adversary, much less the entire Goble Litigation.

Section 607.0850 of the Florida Statutes also does not support Goble's fee request. As the Court previously explained, that statute only requires corporations to indemnify certain agents for legal expenses if they are sued "by reason of the fact" that they are a director, officer, employee, or agent of the corporation.¹⁴ Section 607.0850 only applies if the "director, officer, employee, or agent of the corporation has been successful on the merits or otherwise in defense"

¹² *Archer v. Silver State Helicopters, LLC*, No. CIV06CV1229JAHRBB, 2007 WL 4258237, at *1 (S.D. Cal. Dec. 3, 2007).

¹³ Doc. No. 328, Avoidance Adversary.

¹⁴ See Fla. Stat. § 607.0850(1)–(3). See Doc. No. 328 at 5, Avoidance Adversary.

of one of the proceedings described in the statute.¹⁵ Goble was a plaintiff in a majority of the Goble Litigation—not in defense—and otherwise has not shown he was successful on the merits in any case aside from the Avoidance Adversary.

Goble further does not discuss any basis for awarding him costs incurred in the Goble Litigation. The Court similarly cannot imagine how it has the authority to award Goble costs from the various cases that occurred in other courts. The Court already awarded Goble taxable costs incurred in the Avoidance Adversary.¹⁶ Goble is not entitled to any other costs, at least by order of this Court.

Accordingly, Goble's motion for attorney fees and costs for all NACI related cases is denied.

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Attorney Hywel Leonard is directed to serve a copy of this order on interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of this order.

¹⁵ Fla. Stat. § 607.0850(3).

¹⁶ Doc. No. 328, Avoidance Adversary.