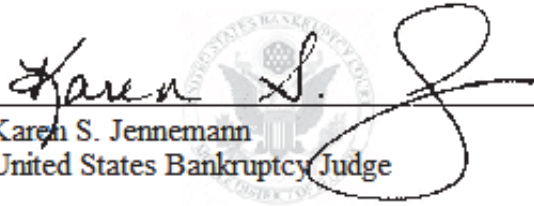


ORDERED.

Dated: April 17, 2020



 Karen S. Jennemann
 United States Bankruptcy Judge

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

| | | |
|-----------------------|---|----------------------------|
| In re |) | |
| |) | |
| MELBOURNE BEACH, LLC, |) | Case No. 6:17-bk-07975-KSJ |
| |) | Chapter 11 |
| Debtor. |) | |
| _____ |) | |

ORDER DENYING RETENTION AND COMPENSATION OF MCINTYRE THANASIDES BRINGGOLD ELLIOTT GRIMALDI GUITO & MATTHEWS P.A.

This case came before the Court to consider the retention and compensation of McIntyre Thanasides Bringgold Elliott Grimaldi Guito & Matthews P.A. (the “Law Firm”) from December 26, 2017 through March 2, 2018—the period of time it represented the Debtor.¹ Pirogee Investments, LLC and Yellow Funding Corp. (the “Disputed Owners”) oppose compensation of

¹ Debtor filed an Application to Employ the Law Firm (Doc. No. 17), which the Court approved the on February 21, 2018 (“Order”) (Doc. No. 47). On February 22, 2018, Debtor filed an Agreed Motion to Vacate the Order (Doc. No. 51) and about a month later, the Law Firm filed an Application for Compensation for Services Rendered and Reimbursement of Expenses as Counsel to the Debtor for the Period from December 26, 2017 through March 2, 2018 (Doc. No. 83). The Court abated these matters pending any party in interest returning them to the Court’s calendar (Doc. Nos. 344 and 345). On March 23, 2020, the Law Firm requested a hearing on the matters, which the Court granted and set the matters to be heard April 15, 2020 (Doc. No. 624).

the Law Firm for the services rendered and expenses.² The retention and compensation of the Law Firm is denied.

For years, Brian West (“West”) and the Disputed Owners have engaged in aggressive and expensive litigation relating to their competing ownership interests and management of the Debtor. West filed this Chapter 11 case³ on behalf of the Debtor and with the assistance of the Law Firm, who received a \$25,000 retainer.⁴ The Law Firm represented the Debtor for approximately two months in this case.⁵ During this time, the Law Firm rendered services on behalf of the Debtor totaling \$39,625.50, and incurred expenses totaling \$1,869.98.⁶

The Disputed Owners opposed this bankruptcy filing and sought dismissal,⁷ which the Court denied in the Order Denying Disputed Owners’ Motion to Dismiss and Directing Appointment of a Chapter 11 Trustee.⁸ Although the Court denied dismissal, the Court, however, found that under the Debtor’s Amended Operating Agreement and Florida law, West lacked authority to file this bankruptcy case for the Debtor.⁹ So, the Law Firm had no authority by the Debtor to file this case.

With this background in mind, the Court now addresses the Law Firm’s retention and request for compensation. Because West lacked authority to file this bankruptcy case on behalf of the Debtor, West similarly lacked authority to retain the Law Firm to file a bankruptcy case on

² Disputed Owners filed an Objection to Application of Law Firm for Compensation for Services Rendered and Expenses Reimbursement of Expenses as Counsel for Debtor for the Period from December 26, 2017 through March 2, 2018 (Doc. No. 112), which they later supplemented (Doc. No. 632).

³ This case was filed on December 26, 2017.

⁴ Affidavit of Attorney James W. Elliott (Doc. No. 17-1, par. 5).

⁵ On March 2, 2018, Law Firm filed an Unopposed Motion for Leave to Withdraw as Counsel (Doc. No. 54), which the Court granted (Doc. No. 96).

⁶ Doc. No. 83.

⁷ Doc. No. 267. Responses and related pleadings include: Doc Nos. 297, 306, 311, 318, 319, 333, 334. A trial was held on April 11, 2019.

⁸ Doc. No. 383. A detailed history of this case is found in the Order Denying Disputed Owners’ Motion to Dismiss and Directing Appointment of a Chapter 11 Trustee (Doc. No. 383). To the extent necessary, the Court’s factual findings made in the order (Doc. No. 383) are incorporated into this order.

⁹ Doc. No. 383, pgs. 6-7.

behalf of the Debtor. And, the Law Firm lacked the authority to represent the Debtor during its short tenure. Accordingly, it is

ORDERED:

1. The Agreed Motion to Vacate Order Approving Debtor's Application to Employ McIntyre Thanasides Bringgold Elliott Grimaldi Guito & Matthews P.A. (Doc. No. 51) is GRANTED.

2. The Order Approving Debtor's Application to Employ McIntyre Thanasides Bringgold Elliott Grimaldi Guito & Matthews P.A. as Counsel (Doc. No. 47) is VACATED.

3. The Debtor's Application to Employ McIntyre Thanasides Bringgold Elliott Grimaldi Guito & Matthews P.A. as Counsel (Doc. No. 17) is DENIED.

4. The Application of McIntyre Thanasides Bringgold Elliott Grimaldi Guito & Matthews P.A. for Compensation for Services Rendered and Reimbursement of Expenses as Counsel to Debtor for the Period from December 26, 2017 through March 2, 2018 is DISALLOWED.

5. Nothing in this Order requires McIntyre Thanasides Bringgold Elliott Grimaldi Guito & Matthews P.A. to disgorge the \$25,000 retainer.

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Attorney James W. Elliott is directed to serve a copy of this order on interested parties who do not receive service by CM/ECF and file a proof of service within 3 days of entry of the order.