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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Case No. 99-56382-JRG
DOROTHY IZUMI, Chapter 7
Debtor.

**ORDER GRANTING IN PART AND DENYING IN PART
FEE APPLICATION OF
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP**

I. INTRODUCTION

Luce, Forward, Hamilton & Scripps, counsel for the Chapter 7 Trustee, filed its Application For Interim Compensation and Reimbursement of Expenses with the Court. The Application seeks \$74,940.25 for fees and \$1,630.29 for costs. Following the hearing the application was taken under submission. For the reasons hereafter stated fees are approved in the amount of \$35,000. The balance of the requested fees are denied. Reimbursement of expenses in the amount of \$1,630.29 are approved.

II. BACKGROUND

Dorothy Izumi filed her Chapter 7 petition on September 30, 1999. She listed no interests in real property. She listed personal property valued at \$164,800 of which \$160,000 was in a retirement 401K account

1 that was claimed exempt. In reviewing the case the Clerk's Office
2 designated it as a "no asset" case meaning that there were no apparent
3 assets which could be recovered for the benefit of creditors.
4 Creditors were advised not to file claims.

5 Shortly after the filing the Trustee became aware of litigation
6 involving the debtor and her husband, H. Dan Izumi, prior to the
7 filing of her bankruptcy case. A group of creditors holding 92% of
8 the claims in this case, and referred to for convenience as the Baugh
9 Creditors, had commenced litigation against the Izumis in 1984.
10 Fifteen years later, in 1999, they obtained a judgment against the
11 debtor and her husband in the amount of \$2,478,848.80 plus attorney's
12 fees and costs.

13 In this litigation the Baugh Creditors were represented by Karr
14 Tuttle Campbell, a law firm located in Seattle, and by the firm of
15 McDonough, Holland & Allen, located in Sacramento. These attorneys
16 believed there were causes of action available to the estate based on
17 fraudulent transfers of money and real property by the debtor and her
18 husband, as well as other possible causes of action.

19 Based on the Karr and McDonough firms' experience and familiarity
20 with the debtor and her husband, the Trustee obtained the appointment
21 of both Karr and McDonough as Special Counsel to the Trustee. Karr
22 and McDonough pursued various claims against the debtor, her husband,
23 their children and various trusts and entities which sought recovery
24 of the alleged fraudulent transfers.

25 In the Spring of 2002, a settlement was reached. The settlement
26 provided for a payment of \$2 million or, alternatively, the transfer
27 of two real properties which would be sold for the benefit of the
28 estate as well as a \$720,000 judgment against the Izumi parties.

1 Following the settlement of Special Counsel's litigation,
2 applications for compensation were noticed for hearing including this
3 Luce, Forward application.

4 **III. DISCUSSION**

5 Given the nature of this case as described above, the Court must
6 question what Luce, Forward did for the \$74,940.25 it seeks to recover
7 from the estate.¹ The application to appoint Special Counsel was
8 filed on April 19, 2000, and the settlement was approved on March 19,
9 2002, 23 months later. Since Special Counsel was handling the
10 litigation, what was Luce, Forward doing?

11 At the time of the hearing on this application the Court asked
12 the Trustee about the amount of the fees. The Trustee described Luce
13 Forward's role as a "buffer" between the Trustee and Special Counsel.
14 He did not make clear the exact role of a "buffer." After studying
15 the time records the Court has concluded that the Trustee's "buffer"
16 is in the nature of a "litigation monitor." It appears that Luce,
17 Forward inserts itself into the litigation process and becomes part
18 of the litigation team reviewing and commenting on virtually every
19 pleading, e-mail and other aspect of the litigation.

20 The Luce, Forward's application contains a number of descriptive
21 categories for which compensation is sought. Below are some
22 observations about the time entries:

- 23 1. The litigation category seeks \$33,143.75. There are 150
24 time entries by date. Of these, at least 127 appear to
25 clearly involve Special Counsel's action. Of the 150

26
27 ¹ The lawyers who worked on this case for Luce, Forward were formerly with the firm
28 of Rosenblum, Parish & Isaacs. Rosenblum was prior counsel to the Trustee until the lawyers
moved to Luce, Forward. Rosenblum has filed its own fee application seeking \$7,041 in fees.
As such, counsel seeks a total of \$81,981.25.

1 entries 36 are for 6 minutes or less and another 47 are for
2 15 minutes or less. Of the remaining 67 entries, many
3 combine small tasks performed on the same day. If these
4 are included, there are 135 entries of 6 minutes or less
5 and 125 entries of 15 minutes or less. The word "review"
6 appears 153 times.

7 2. The administration category seeks \$2,370.55. There are 25
8 time entries by date. Of these, at least 18 appear to
9 clearly involve Special Counsel's action. Of the 25
10 entries 13 are for 6 minutes or less and 7 more are for 15
11 minutes or less. The word "review" appears 11 times.

12 3. The other assets category in the application seeks
13 \$10,128.75.² There are 79 time entries by date. Of these,
14 at least 66 appear to clearly involve Special Counsel's
15 action. Of the 79 entries 18 are for 6 minutes or less and
16 another 21 are for 15 minutes or less. Of the remaining 40
17 entries, many combine small tasks performed on the same
18 day. If these are included, there are 68 entries of 6
19 minutes or less and 57 entries of 15 minutes or less. The
20 word "review" appears 85 times.³

21 In this sampling there are 216 entries of 6 minutes or less, 189
22 of 15 minutes or less and the word "review" appears 249 times. These
23 repetitive small entries of time represent the vast majority of the
24 time for which \$45,643.05 is sought.

26 ² The supporting time records are part of a section labeled asset disposition.

27 ³ Similar time entries are found in applicant's time records in a section entitled
28 claims. Other categories contain time entries that are for work that should normally be done
by the trustee.

1 No value is added to the litigation process through Luce,
2 Forward's review of Special Counsel's work. Of course, none was
3 needed as Special Counsel was experienced, competent and most familiar
4 with all of the facts in the case. The vast majority of this time
5 provided no benefit to the estate. What happened here is that the
6 trustee put Luce, Forward into the role of monitoring the litigation
7 for him with no concern about what it would cost the estate.

8 It is the trustee's duty to collect and administer the assets of
9 the estate. 11 U.S.C. § 704. It is the trustee's duty to monitor the
10 progress of the litigation. Here, Luce, Forward was performing the
11 trustee's duty. Where the trustee serves as his or her own attorney,
12 11 U.S.C. § 328(b) of the Bankruptcy Code prohibits the awarding of
13 attorney' fees for services that are normally performed by the
14 trustee. The same is true when the trustee is not representing
15 himself or herself but is represented by other counsel. In re Lowery,
16 215 B.R. 140 (Bankr. N.D. Ohio 1997).⁴

17 Here the trustee is a skilled and experienced professional. He
18 indicated that he was monitoring the litigation on at least a
19 quarterly basis. This was probably sufficient.

20 However, the trustee is not a lawyer. Can he consult with
21 counsel he works with frequently about the progress of a matter being
22 handled by Special Counsel? In appropriate circumstances the answer
23 is yes. By way of analogy, a corporate officer might consult with the

24
25 ⁴ Numerous cases deal with the issue of trustee's time versus attorney for the trustee's
26 time. See In re Roderick Timber Co., 185 B.R. 601 (9th Cir. BAP 1995); Hansen, Jones & Leta,
27 P.C. v. Segal, 220 B.R. 434 (D. Utah 1998); In re Howard Love Pipeline Supply Co., 253 B.R.
28 781 (Bankr. E.D. Tex. 2000); In re Perkins, 244 B.R. 835 (Bankr. D. Mont. 2000); In re
Adelson, 239 B.R. 627 (Bankr. S.D. Fla. 1999); In re Polk, 215 B.R. 250 (Bankr. M.D. Fla.
1997); In re Haggerty, 215 B.R. 84 (Bankr. M.D. Fla. 1997); and In re Hall, 208 B.R. 403
(Bankr. S.D. Ohio 1997).

1 corporation's general counsel about a matter being handled by an
2 outside law firm. But such consultation would be periodic and not
3 normally involve a significant amount of time. What occurred here
4 would not have occurred in a corporate environment.

5 **IV. CONCLUSION**

6 The Court has concluded that the bulk of Luce, Forward's work
7 was performing services that should normally be performed by the
8 trustee. The Court will therefore allow the sum of \$10,000 in
9 connection the litigation and the additional sum of \$25,000 for work
10 in matters surrounding the litigation.

11 DATED: _____
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14 JAMES R. GRUBE
15 UNITED STATES BANKRUPTCY JUDGE
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1 Case No. 99-56382-JRG

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6 UNITED STATES BANKRUPTCY COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 CERTIFICATE OF SERVICE

9 I, the undersigned, a regularly appointed and qualified Judicial
10 Assistant in the office of the Bankruptcy Judges of the United States
11 Bankruptcy Court for the Northern District of California, San Jose,
12 California hereby certify:

13 That I, in the performance of my duties as such Judicial
14 Assistant, served a copy of the Court's: **ORDER GRANTING IN PART AND
15 DENYING IN PART FEE APPLICATION OF LUCE, FORWARD, HAMILTON & SCRIPPS,
16 LLP** by placing it in the United States Mail, First Class, postage
17 prepaid, at San Jose, California on the date shown below, in a sealed
18 envelope addressed as listed below.

19 I declare under penalty of perjury under the laws of the United
20 States of America that the foregoing is true and correct.

21 Executed on _____ at San Jose, California.

22 _____
23 LISA OLSEN

24 Office of the U.S. Trustee
25 280 So. First St., Rm. 268
26 San Jose, CA 95113

27 Barry Milgrom, Esq.
28 LUCE, FORWARD, HAMILTON
& SCRIPPS, LLP
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San Francisco, CA 94105-1582