

NOT FOR PUBLICATION

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CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re

SAMUEL KELSALL,

Debtor.

Bankruptcy No. 04-10374

Adversary No. 05-90072

MACK BARCLAY, INC.

Plaintiff,

v.

MEMORANDUM DECISION

SAMUEL KELSALL,

Defendant.

The Chapter 7 debtor, Samuel Kelsall ("Debtor"), states that he is employed at Kelsall & Associates PC ("Firm"). He has filed an ex parte application ("Application") to employ the Firm to represent him in these bankruptcy proceedings.¹ The Debtor contends that "justice and equity" call for his being allowed to employ the Firm and have the Firm compensated from the estate since the Trustee's counsel will seek

¹ The Debtor filed the Application under the caption of this adversary proceeding. However, he references certain matters that concern the main case. The Court considers this Application with the understanding that the Debtor's concerns are not limited only to the litigation in this adversary proceeding.

1 compensation from the estate for its services. The Chapter 7 Trustee
2 ("Trustee") and Mack Barclay, the plaintiff in this adversary
3 proceeding, have filed opposition to the Application.

4 In general, the Court does not review the decisions of Chapter
5 7 debtors regarding whom they employ as their counsel. Therefore, to
6 the extent that the Debtor merely seeks a Court order granting him
7 authority to employ the Firm as his counsel, the Application is
8 unnecessary.

9 It is clear, however, that the real issue raised by the parties
10 is whether the Firm will be entitled to compensation from the estate
11 for the services it provides. The Debtor examines the conflict that
12 has existed among the various circuits as to whether Section 330(a)
13 allows for compensation to counsel for Chapter 7 debtors, pointing to
14 cases such as In re Century Cleaning Services, Inc., 195 F.3d 1053
15 (9th Cir. 1999), wherein that Court held counsel for a debtor in a
16 case converted from Chapter 11 to Chapter 7 could seek payment of his
17 fees pursuant to Section 330(a)(1).

18 However, the cases upon which the Debtor relies, including
19 Century Cleaning Services, have been abrogated with the Supreme
20 Court's decision on Lamie v. U.S. Trustee, 540 U.S. 526 (2004).
21 Pursuant to Lamie, the Firm cannot seek compensation from the estate
22 unless it has been employed by the Trustee to provide services for the
23 estate.

24 The Court also notes that even before Lamie and the dispute over
25 the scope of Section 330(a), counsel for Chapter 7 debtors could not
26 seek compensation from the estate for services provided for the
27 benefit of the debtor and which did not benefit the estate. See,
28 e.g., In re Kohl, 95 F.3d 713, 714 (8th Cir. 1996)(counsel for debtor

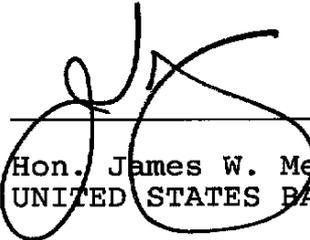
1 not compensated from the estate for services related to preparation
2 of tax returns, reaffirmation of debt and litigation over exempt
3 property because there was no benefit to the estate); In re Reed, 890
4 F.2d 104 (8th Cir. 1989)(counsel's services must benefit estate to be
5 compensated under Section 330(a) and services rendered in
6 nondischargeability litigation only benefitted the debtor); In re
7 Hanson, 172 B.R. 67 (9th Cir. BAP 1994)(services rendered in defending
8 exemptions are not for the benefit of the estate).

9 Finally, the Court notes the Debtor's concern that the adversary
10 proceeding brought by Mack Barclay will divert his resources and
11 interferes with his fresh start. While the Court recognizes that
12 litigation can be costly, litigation over whether a debt will be
13 discharged simply is part of the bankruptcy process under Chapter 7.
14 Anytime nondischargeability litigation is initiated a debtor must
15 decide whether he will incur the cost of hiring counsel or represent
16 himself. But such litigation concerns only the debtor and the
17 creditor bringing the action. It does not benefit the estate. Hence,
18 there is no injustice in allowing compensation to counsel for the
19 trustee for services rendered in assisting the trustee administer the
20 estate and meet the duties set forth in Section 704, while not
21 allowing compensation from the estate to counsel for the Chapter 7
22 debtor.

23 The Application will be DENIED.

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25 OCT 14 2005

26 Date: _____

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28 Hon. James W. Meyers
UNITED STATES BANKRUPTCY JUDGE