

---

SO ORDERED,



*Selene D. Maddox*

Judge Selene D. Maddox

United States Bankruptcy Judge

The Order of the Court is set forth below. The case docket reflects the date entered.

---

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF MISSISSIPPI**

**IN RE: IRONWOOD FINANCIAL, LLC**

**CASE NO.: 21-10866-SDM**

**DEBTOR**

**CHAPTER 11**

**ORDER APPROVING APPLICATION TO EMPLOY ATTORNEYS AND  
DISCLOSURE OF COMPENSATION**

This matter came before the Court for hearing on September 14, 2021 on the Debtor's *Application to Employ Attorneys and Disclosure of Compensation* (the "Application to Employ")(Dkt. #118)<sup>1</sup> and the *Objection to the Debtor's Application to Employ Mitchell, McNutt & Sams, P.A.*, (the "Objection")(Dkt. #131) filed by Creditor, Worldpay ISO, Inc. ("Worldpay"). The Debtor also filed a *Response* (Dkt. #163) to Wordplay's Objection. After reviewing the pleadings above, the testimony of the witnesses, and the parties' arguments at the hearing, the Court issued a bench ruling approving the Application to Employ. This Order incorporates that ruling by reference, which includes the Court's factual findings and legal conclusions.

---

<sup>1</sup>In its Application to Employ, the Debtor seeks to retain and employ the law firm of Mitchell, McNutt & Sams, P.A. ("Mitchell McNutt") as general counsel in the Debtor's Chapter 11 bankruptcy case. As stated in the Application to Employ, several attorneys from Mitchell McNutt will be working on the Debtor's behalf, including D. Andrew Phillips, James P. Wilson, Jr. and/or Rosamond H. Posey, among others. The Court notes that the Debtor has already retained, and this Court has approved, the employment of Craig M. Geno as general bankruptcy counsel for the Debtor. (*Order Authorizing Debtor to Employ Attorneys*, Dkt. #103).

As an initial matter, Mitchell McNutt previously filed an application on behalf of the Debtor seeking employment by this Court. (Dkt. #67).<sup>2</sup> The United States Trustee (the “UST”) filed a limited response (Dkt. #100) to that initial application questioning whether Mitchell McNutt met the requirements of 11 U.S.C. § 327(a)<sup>3</sup> due to a prepetition claim against the Debtor for legal fees in the amount of \$11,071.02. The Court acknowledges that Mitchell McNutt did indicate it would waive any claim to outstanding attorney’s fees incurred by the Debtor prepetition. In any event, the Court later entered an order allowing the withdrawal of the initial application without prejudice. (Dkt. #117).<sup>4</sup>

The Application to Employ and the Objection currently before the Court do raise a few issues. Mainly, whether Mitchell McNutt is “disinterested” within the meaning of § 327(a) and §101(14) and whether Mitchell McNutt is disqualified from representing the Debtor due to Mitchell McNutt’s prepetition employment as counsel for the Debtor under § 1107(b).<sup>5</sup> At the hearing, Mitchell McNutt presented its case in chief by calling several witnesses. First, James P. Wilson (“Wilson”), an attorney with Mitchell McNutt, testified that he has a long-standing

---

<sup>2</sup>Worldpay did not file any response or objection to the initial application. At the hearing on September 14, 2021, Worldpay’s counsel stated that the failure to file any responsive pleading was due to the limited response already filed by the UST. The Court also notes that the UST did not file any response to the Application to Employ currently before the Court.

<sup>3</sup>All subsequent statutory references refer to Title 11 of the United States Code unless stated otherwise.

<sup>4</sup>Mitchell McNutt explained in its current Application to Employ that “in an effort to address the U.S. Trustee’s response, clarify the Firm’s waiver of the pre-petition claim against the Debtor’s estate, and to make additional disclosures in order to ensure no known conflicts of interest existed, Mitchell, McNutt withdrew its First Application by Order entered on July 21, 2021 (Dkt. # 117) and filed its current Application the next day on July 22, 2021.” (Application to Employ, Dkt. #118).

<sup>5</sup>Because of Mitchell McNutt’s prepetition employment, the law firm received a potential preference payment in the amount of \$11,700.00 and has a prepetition claim for attorney’s fees of approximately \$11,071.02. At the hearing, the parties did not really address the legal implications of the potential preference payment, but as the Court stated above, Mitchell McNutt is waiving any prepetition claim for attorney’s fees outstanding at the time the Debtor filed its Chapter 11 petition.

relationship with the Debtor and its owners, and that he has represented the Debtor in previous and rather complex litigation. The Court also heard testimony from Craig M. Geno (“Geno”), the Debtor’s other bankruptcy counsel, who testified that he has relied on Wilson’s (and by extension, Mitchell McNutt’s) expertise in and knowledge of the Debtor’s business structure. Further, Geno testified that due to Wilson’s involvement in and knowledge of the Debtor’s previous litigation and business dealings, Geno has been able to use the information and assistance provided by Wilson and Mitchell McNutt without expending unnecessary time and effort. Finally, the Court heard testimony from William D. Lovelace, one of the Debtor’s owners, who testified that based on Mitchell McNutt’s retention concerning other legal issues, the Debtor would rather employ Geno and the attorneys at Mitchell McNutt as opposed to spending even more money on counsel from larger law firms.<sup>6</sup> On the other hand, Worldpay’s argument is that the Debtor should seek to employ Mitchell McNutt as special counsel under § 327(e) with a more defined or specific role to avoid duplication of effort and legal services between Geno and Mitchell McNutt.<sup>7</sup>

While the Fifth Circuit has not directly addressed all the legal question(s) presented to this Court, the Court can, however, look to other bankruptcy courts within the Fifth Circuit for guidance. Counsel for Mitchell McNutt aptly cited to *In re SMBC Healthcare*, 473 B.R. 871 (Bankr. S.D. Tex. 2012) in their pleadings and arguments. The court in *SMBC Healthcare* analyzed the standard for which attorneys and law firms may be employed under § 327(a) and § 1107(b), and this Court will briefly address that standard. Section § 327(a) provides a two-

---

<sup>6</sup>In fact, Geno previously testified about the hourly rate of Mitchell McNutt’s attorneys, indicating that the \$250 max hourly rate was not only reasonable but also “way too low.”

<sup>7</sup>At the hearing, Worldpay made an *ore tenus* motion to withdraw its objection over whether Mitchell McNutt and one of its attorneys, Wilson, is an “insider” as defined in § 101(31)(B)(i) and (ii). The parties acknowledged at the hearing that Wilson is listed as a registered agent for the Debtor and its related entities as opposed to an officer or director, and as such, the Court granted the *ore tenus* motion.

pronged requirement for employment: “[e]xcept as otherwise provided . . . the trustee, with the court’s approval, may employ one or more attorneys . . . that do not hold or represent an interest adverse to the estate, and that are disinterested persons . . . .” 11 U.S.C. § 327(a). As to the first prong, i.e., whether an attorney (or law firm) holds an interest adverse to the bankruptcy estate, the court in *SMBC Healthcare* stated that courts have looked for guidance to the Code of Professional Responsibility.<sup>8</sup> 473 B.R. at 877 (citing *In re GHR Energy Corp.*, 60 B.R. 52, 61 (Bankr. S.D. Tex.1985).

Moving to the second prong, the Bankruptcy Code defines who is a “disinterested person” in § 101(14): “a person that . . . is not a creditor . . . and does not have an interest materially adverse to the interest of the estate or of any class of creditors . . . by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.” 11 U.S.C. § 101(14)(a). On its face, the Bankruptcy Code seems to disqualify employment for attorneys who may have a prepetition claim for attorney’s fees. But as the court in *SMBC Healthcare* notes, § 1107(b) provides “flexibility” in determining whether attorneys may be employed by the bankruptcy estate. 473 B.R. at 888. Specifically, § 1107(b) provides:

[n]otwithstanding section 327(a) of this title, a person is not disqualified for employment under section 327 of this title by a debtor-in-possession solely because of such person’s employment by or representation of the debtor before the commencement of the case.

11 U.S.C. § 1107(b).

Admittedly, the flexibility provided under § 1107(b) does not directly answer the question whether Mitchell McNutt’s prepetition attorney’s fee claim (regardless of the waiver) disqualifies the firm and its attorneys for employment. Nevertheless, this Court agrees with the court in *SMBC*

---

<sup>8</sup> The Code of Professional responsibility has since been replaced by the ABA Model Rules of Professional Conduct.

*Healthcare* in that a totality of the circumstances test (as opposed to a “per se” approach to § 327(a)) is in line with other Fifth Circuit approaches in making attorney disqualification decisions. 473 B.R. at 878-89 (citing *In re West Delta Oil*, 432 F.3d 347 (5th Cir. 2005)).

In analyzing the first prong in this case, the Court finds that there has been no evidence presented in the pleadings nor through testimony that any violation of the Mississippi Rules of Professional Conduct or the ABA Model Rules of Professional Conduct has occurred. In fact, no allegation of the kind has been made by any party in this case. Accordingly, Mitchell McNutt does not hold an interest adverse to the bankruptcy estate under § 327(a).

Likewise, Mitchell McNutt is a “disinterested person” under § 327(a). Similar to the court in *SMBC Healthcare*, this Court, in utilizing a totality of the circumstances approach and considering the arguments and testimony, considered several factors for determining disqualification including, but not limited to: (1) whether Mitchell McNutt is an insider of the Debtor; (2) whether Mitchell McNutt holds a mortgage or other type of lien on the property of the debtor; (3) whether Mitchell McNutt holds any other type of interest on property of the estate; (4) whether Mitchell McNutt will serve as general or special bankruptcy counsel; (5) whether there was an undisclosed relationship present pursuant to Bankruptcy Rule 2014; (6) whether Mitchell McNutt received potential preferential payments; and (7) how badly the Debtor needs to employ Mitchell McNutt to represent the estate. *Id.* at 880.

While there is and has been a long-standing relationship between Mitchell McNutt and the Debtor, Mitchell McNutt has fully disclosed that relationship in its pleadings and at the hearing. Additionally, Mitchell McNutt is not automatically disqualified for employment under § 327(a) and § 1107(b) solely because the Debtor employed their services prepetition. Based on testimony provided by Wilson and Geno, it is clear to the Court that Mitchell McNutt has knowledge and

experience that is beneficial to the Debtor and the Debtor's additional counsel, Geno. Despite the existence of certain prepetition claims and a potential preference payment in this bankruptcy case, these facts are outweighed by the aforementioned factors, the waiver of the prepetition claim for attorney's fees, the established relationship between Mitchell McNutt and the Debtor, and the need and desire for the knowledge of Mitchell McNutt in this Chapter 11 bankruptcy case.

While the Court understands Worldpay's argument that Mitchell McNutt should be retained as special counsel under § 327(e) to avoid the duplication of legal services provided and billed by Mitchell McNutt and Geno, the Court can certainly make a determination whether these services and fees are reasonable and not duplicative against the bankruptcy estate under § 330 once the appropriate application for compensation is filed.

Therefore, it is **ORDERED** that

(1) the *Application to Employ* filed by the Debtor is hereby **APPROVED** and Mitchell, McNutt & Sams, P.A., by and through counsel named in the Application, is employed as counsel for the Debtor;

(2) Worldpay's *ore tenus* motion to withdraw their objection with respect to 11 U.S.C. 101(31)(B)(i) and (ii) is **GRANTED**; and

(3) Mitchell McNutt and its attorneys shall file with the Court the application for compensation as required by 11 U.S.C. § 330 and Rule 2016(b) of the Federal Rules of Bankruptcy Procedure at the appropriate time. No fees or compensation shall be allowed until such application is filed and approved by this Court.

##END OF ORDER##