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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:	CASE NO. 03-67234-JB
	:	
CNS COMMUNICATIONS, LTD	:	
	:	CHAPTER 7
Debtor.	:	
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	:	
DETROIT PHONE CARD, INC.	:	
	:	ADVERSARY PROCEEDING
Plaintiff,	:	NO. 07-6681-JB
	:	
v.	:	
	:	
VERIZON BUSINESS GLOBAL, LLC	:	
BUCHANAN, INGERSOLL &	:	
ROONEY, PC	:	
	:	
Defendants.	:	

ORDER

This adversary proceeding came before the Court for a hearing on March 31, 2008 on a motion by Defendants Verizon Business Global, LLC ("Verizon"), and Buchanan, Ingersoll & Rooney, P.C.'s ("BIR"), to dismiss Plaintiff's first amended complaint (the "Motion") (Docket #12). The relief sought by Plaintiff in the Complaint is the imposition of a constructive trust on Funds held by BIR. Present at the hearing were Tamara Ogier, counsel for the Chapter 7 Trustee (the "Trustee"), John McGovern, counsel for Plaintiff Detroit Phone Card, Inc. ("Detroit Phone"), William Roundtree, counsel for Defendants, and Gary Freed and John Rezac, counsel for Voice Solutions, LLC, d/b/a Voice Solutions

("Voice Solutions"). Voice Solutions had filed a motion to intervene in this adversary proceeding on March 28, 2008.

It appears that BIR is currently holding funds (the "Funds") in its escrow account pursuant to a proposed settlement agreement and mutual release (the "Settlement Agreement") among the Estate of CNS Communications, Ltd., MCI WorldCom Communications, Inc. (predecessor to Verizon), GSR Cellular, LLC ("GSR") and Wael Al-Khatib ("Mr. Khatib"), which was presented to the Court on June 8, 2004, by the Trustee's Motion to Compromise and Settle Claim ("Motion to Compromise"). The Court conducted a hearing on the Trustee's Motion to Compromise on July 7, 2004, at which time the Court instructed counsel for the Trustee to investigate the source of the Funds to confirm that the bankruptcy estate had no interest in the Funds. The Trustee conducted an investigation and determined that the estate has no interest in the Funds. The Court did not enter an order approving the Settlement Agreement, and the Trustee withdrew the Motion to Compromise on March 7, 2008.

The Plaintiff Detroit Phone filed this adversary proceeding on November 29, 2007, seeking the imposition of a constructive trust on the Funds. Voice Solutions has filed a garnishment action, *Voice Solutions, LLC, d/b/a DCI Voice Solutions v. GSR Cellular, LLC, Wael (Wally) Al Khatib, Ramona D. Al Khatib*, Case No. 002158, Court of Common Pleas, Commonwealth of Pennsylvania (the "Garnishment Action"), alleging entitlement to the Funds based on a judgment it obtained against GSR and Mr. Khatib. Verizon claims that it is entitled to the Funds based on its allegation that the Settlement Agreement is

enforceable vis-a-vis Mr. Khatib, notwithstanding the fact that the Trustee withdrew her motion to approve the Settlement Agreement. Thus, three non-debtor parties are claiming an interest in the Funds. The Trustee announced at the March 31, 2008 hearing that the bankruptcy estate has no interest in the Funds and no basis to claim an interest in the Funds. After hearing from counsel, the Court concludes that this dispute among non-debtor parties as to the Funds is not a matter over which the Bankruptcy Court can exercise jurisdiction. The adversary proceeding does not arise under Title 11 of the United States Code, it does not arise in this bankruptcy case and it is not related to this bankruptcy case. *See* 28 U.S.C. §1334(b), *Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.)*, 910 F.2d 784 (11th Cir. 1990). Accordingly, this adversary proceeding is dismissed without prejudice to Detroit Phone pursuing whatever claims and remedies it might have in another court, without prejudice to Voice Solutions pursuing its garnishment action or claiming entitlement to the Funds in any other forum and without prejudice to Verizon claiming entitlement to the Funds based on its allegation that the proposed Settlement Agreement is enforceable by Verizon against Mr. Khatib. Any other outstanding motions are moot, and this Order shall be effective upon entry.

IT IS SO ORDERED, this 11th day of April, 2008.



JOYCE BIHARY
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

A copy of the foregoing Order was mailed to the following:

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