

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ENTERED ON DOCKET

MAR 14 2011

IN RE:) CHAPTER 7
)
DANIEL J. MILES,) CASE NO. 09-92601 - MHM
)
Debtor.)

ORDER DENYING COMPENSATION

This case commenced December 9, 2009, as an involuntary Chapter 7 petition and was converted by Debtor to a Chapter 11 case December 17, 2010. A Chapter 11 Trustee was appointed April 19, 2010, and this case was reconverted to a Chapter 7 case June 1, 2010.

On June 30, 2010, Debtor's attorney filed its *Application for Final Compensation*, seeking compensation in the amount of \$30,140.50 and reimbursement of expenses in the amount of \$2,570.86 for the period from April 19, 2010 through June 1, 2010 ("the Application") (Doc. No. 255). On August 3, 2010, Trustee filed *Trustee's Objection to Application for Final Compensation by Attorneys for Debtor, Burton & Armstrong, LLP* (Doc. No. 272) ("the Objection"). Hearing was held August 4, 2010; present at the hearing were Debtor's counsel, Joseph J. Burton, Jr., of Burton and Armstrong, LLP ("the Law Firm"); attorney for the United States Trustee, Lindsay Swift; and Chapter 11 Trustee, James Cifelli ("Trustee"). The Law Firm and Trustee presented their arguments on the Application and Objection. Following the hearing and responding to Trustee's

objection, on August 27, 2010, the Law Firm filed its *Amended and Restated Application for Final Compensation of Attorneys for the Debtor* (Doc. No. 286), reducing the amount of compensation sought to \$25,458.00 and reimbursement of expenses to \$893.49.

Trustee contends that §330(a) does not permit compensation of Debtor's attorney after the appointment of a Chapter 11 Trustee, relying on *Lamie v. U.S. Trustee*, 124 S. Ct. 1023 (2004); *Inglesby, Falligant, Horne, Courington & Nash, P.C. v. Moore (In re American Steel Product, Inc.)*, 197 F. 3d 1354 (11th Circ. 1999); and *Andrews & Kurth L.L.P. v. Family Snacks, Inc. (In re Pro-Snax Distributors, Inc.)*, 157 F. 3d 414 (5th Cir. 1998). In *Lamie*, the Supreme Court concluded that, as a result of the 1994 amendments to the Bankruptcy Code, which removed the debtor's attorney from the entities entitled to compensation from the bankruptcy estate, §330(a) does not allow a debtor's attorney to be compensated from the estate after conversion to Chapter 7. In *American Steel*, the Eleventh Circuit Court also held that the amended §330(a) precludes award of attorneys fees to a debtor's attorney in Chapter 7 and Chapter 11 cases. In *Pro-Snax*, the Fifth Circuit Court concluded that, under the amended § 330(a), a debtor's attorney could not be compensated from the estate for work performed after appointment of a Chapter 11 trustee.

The Law Firm asserts that neither *Lamie* nor *American Steel* is applicable to the instant case because they dealt with services of a debtor's attorney after conversion to a Chapter 7. Most of the cases cited by the Law Firm in support of its position, however,


pre-date the opinion in *Lamie*; and the cases cited that were decided after *Lamie* are inapposite, i.e. they do not address the issue of whether a debtor's attorney may be compensated for work performed after appointment of a Chapter 11 Trustee or conversion to Chapter 7.

On the issue of whether, under §330(a) as amended in 1994, a debtor's attorney may be compensated for work performed after appointment of a Chapter 11 Trustee, the reasoning in *Pro-Snax*, which is essentially the same reasoning as set forth in *Lamie*, is persuasive. When a Chapter 11 Trustee is appointed, the debtor loses its status as a debtor-in-possession and, therefore, the debtor's attorney loses its status as a professional employed under §327. Therefore, the difference between the appointment of a Chapter 11 Trustee and conversion and appointment of a Chapter 7 Trustee, for the purposes of §330(a), is a distinction without a difference, so that the reasoning in *Lamie* must apply to preclude compensation of the Law Firm. The services provided by the Law Firm after appointment of Trustee assisted Trustee by providing information that Debtor had a statutory obligation to provide. The Law Firm was not required to work without compensation but merely must look to his client, Debtor, for his compensation. Accordingly, it is hereby

ORDERED that the Application, as amended, is *denied*: Debtor's attorney is directed to turn over the unspent retainer to the Chapter 7 Trustee.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order
upon Debtor, Debtor's attorney, the Chapter 7 Trustee, and the U.S. Trustee.

IT IS SO ORDERED, this the 14th day of March, 2011.



MARGARETH H. MURPHY
UNITED STATES BANKRUPTCY JUDGE