

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
Eastern Division

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BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In Re:

In Proceedings Under Chapter 11

VISIBLE SOLUTIONS, INC.

Case No.: 05-10984

Debtor.

JUDGE RANDOLPH BAXTER

MEMORANDUM OF OPINION AND ORDER

Before the Court is the Fourth and Final Application for Attorney Fees (the "Application") submitted by Attorney Robert J. Fedor ("Attorney Fedor"), as attorney for Visible Solutions (the "Debtor") in this case. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and General Order No. 84 of this District. The Application and Notice of Hearing was duly served on all parties. After considering the Application, the Court finds as follows:

*

The Debtor filed a petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") on January 27, 2005 (the "Petition Date"). On the Petition Date, the Debtor filed an Application to Employ Attorney Fedor as its attorney. This Court's Order Approving Retention was entered on February 9, 2005.

On January 22, 2008, Attorney Fedor filed the subject Application seeking \$50,000.00¹ in attorney fees and \$1,411.50 in expenses. Included within the amount sought are \$19,522.50 in fees deferred from the first and second applications. His third application was approved in its entirety.

¹It is acknowledged that the Applicant voluntarily reduced his requested fees from \$54,112.50 to \$50,000.00.

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The issue before this Court is whether the Application for services provided by counsel, on behalf of the Debtor, satisfy the requirements for compensation pursuant to sections 327 and 330 of the Bankruptcy Code, Bankruptcy Procedural Rule 2016, Local Bankruptcy Rule 2016-1, and General Order 93-1.

The Bankruptcy Code requires the Court to evaluate applications for professional services and compensation to determine whether they were necessary or beneficial to the estate, as provided for in 11 U.S.C. § 327 and 11 U.S.C. § 330. Although 11 U.S.C. § 327 permits the trustee², with the court's approval, to employ an attorney to assist him or her, professionals are not entitled to compensation for duties that ought to have been performed by the trustee. *11 U.S.C. § 327; See 11 U.S.C. § 704, Fed. R. Bankr. P. 2016, Local Bankruptcy Rule 2016-1, In re Wright Air Lines, Inc.*, 147 B.R. 20, 21 (Bankr. N.D. Ohio 1992).

Section 330 states, in pertinent part:

§ 330. Compensation of officers

(a)(2) The court may, on its own motion, ... award compensation that is less than the amount of compensation that is requested.

(3) In determining the amount of reasonable compensation to be awarded to [a] ... professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including--

- (A) the time spent on such services;
- (B) the rates charged for such services;

² The term "trustee" encompasses debtor, Debtor-in-Possession.

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title [11 USCS §§ 101 et seq.];

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title [11 USCS §§ 101 et seq.].

11 U.S.C. § 330.

To be compensable, section 330 requires the professional service to be “necessary ... or beneficial at the time at which the service was rendered toward the completion of a case”. *11 U.S.C. § 330*. The burden is on the applicant to demonstrate the reasonableness of the [fees] requested. See *In re L & S Industries, Inc.*, 112 B.R. 886, 887 (Bankr. N.D. Ohio 1990).

Federal Rule of Bankruptcy Procedure 2016, and Local Bankruptcy Rule for the Northern District of Ohio 2016 set forth procedural requirements for applications for compensation and reimbursement. *Fed. R. Bankr. P.* 2016; LBR 2016. Additionally, this Court’s General Order 93-1 provides guidelines for compensation and expense reimbursement of professionals. General Order 93-1. General Order 93-1 provides the following at paragraphs 9, 10, and 13, in pertinent part:

9. Entries

... Mere notations of telephone calls, conferences, research, drafting, etc., without appropriately identifying the matter involved, may result in disallowance of the applicable time. Time entries with unexplained abbreviations may be disallowed.

Applicant has the burden to show that services for which compensation is sought are for professional services only and not for services ordinarily performed by a trustee or debtor in possession.

10. Lumping

If separate tasks are performed in a single day, the fee application shall disclose the time required for each task (i.e., no "grouping" or "lumping")

13. Office Tasks

Time spent ... filing, photocopying ... is generally not compensable whether performed by a professional, paraprofessional, or secretary.

Id.

Furthermore, "where the Court has difficulty discerning what services were actually rendered, such services are not compensable." *In re Tenaya Lodge Joint Venure*, Ch. 11 Case No. B87-823, slip op. at 2 (Bankr. N.D. Ohio January 6, 1989).

Upon review of the Application, it does not comply fully with the requirements for compensation of professionals identified herein. The specific deficiencies include duplicate work, lumping, insufficient detail provided in the entry e.g. "Attention to File", and billing for office tasks such as making photocopies and hand deliveries performed by law clerks. A summary of the entries containing these deficiencies is attached as Exhibit A. Fees in the amount of \$273.00 were incurred on February 22, 2007 for duplicate work. See, Application Attachment 1, page 5). Lumping occurred in many instances for fees totaling \$8,352.00. Id. at 40; See, Application Attachment 2, pages 21, 22, and 40; Application Attachment 3, pages 11, 18, 23, 34, 35, 39, 43, 44, 67, 71, 72, and 82. There was insufficient detail regarding the work performed in numerous entries for fees totaling \$6,577.00. See, Application Attachment 2, pages 23,24,28,29, and 34; Application Attachment 3, pages 5, 11, 13, 15, 18, 24, 30, 32, 36, 55, 65, 67, 68, 70, 77, 78, 80 and 81. The Application seeks fees in the amount of \$3,980.00 for office tasks such as making photocopies and hand deliveries

performed by law clerks. See, Application Attachment 1, pages 4, 5, 6, 10, 17, 19, 23, 30 and 43; Application Attachment 2, page 14; Application Attachment 3, page 2, 3, 4, 9, 20, 65, 66, 69, 70, 71, 75, 75, 76, 78, 79, 80, and 81.

Therefore, this Court awards compensation for attorney services that is less than the amount requested because the fees requested were not properly compensable pursuant to sections 327 and 330 of the Bankruptcy Code, Bankruptcy Procedural Rule 2016, Local Bankruptcy Rule 2016 and General Order 93-1. Herein, the Applicant seeks \$50,000.00 in professional fees and \$1,411.50 in expenses. It is acknowledged that the Applicant voluntarily reduced the amount sought from \$54,112.50 to \$50,000.00 to account for time spent that is not compensable. Notwithstanding, the Application as submitted does not meet the standard for compensation based upon the deficiencies noted above, and the following deductions are hereby made. The amount of \$54,112.50 is reduced by \$19,182.00 (\$273.00 for duplicate work, \$8,352.00 for lumping, \$6,577.00 for insufficient detail of entry, and \$3,980.00 for office tasks).

Accordingly, the Application is approved, in part, and denied, in part. The reduced amount of \$34,930.50 is hereby awarded as compensation for services. The amount of \$1,411.50 as compensation for expenses is hereby approved as requested.

IT IS SO ORDERED.

Dated, this 4th day of
March 2008


JUDGE RANDOLPH BAXTER
UNITED STATES BANKRUPTCY COURT

Visible Solutions Final Fee Application.xls

Date	Activity Type	Time	Rate	Fee	Comment	
2/22/2007	Duplicate Work	3.9	\$70.00	\$273.00		\$273.00
1/31/2005	Lumping	5.3	\$250.00	\$1,325.00		
1/31/2005	Lumping	2.5	\$175.00	\$437.50		
2/2/2005	Lumping	0.3	\$175.00	\$52.50		
4/7/2005	Lumping	1.2	\$175.00	\$210.00		
4/22/2005	Lumping	3.5	\$175.00	\$612.50		
7/8/2005	Lumping	1.3	\$250.00	\$325.00		
7/11/2005	Lumping	0.3	\$175.00	\$52.50	phone call to Paul Rini	
7/12/2005	Lumping	0.4	\$175.00	\$70.00	phone call to Paul Rini	
7/15/2005	Lumping	4.2	\$250.00	\$1,050.00		
7/21/2005	Lumping	3.4	\$60.00	\$204.00		
7/21/2005	Lumping	3.4	\$60.00	\$204.00		
7/29/2005	Lumping	3.0	\$60.00	\$180.00		
7/29/2005	Lumping	3.0	\$60.00	\$180.00		
8/1/2005	Lumping	2.8	\$60.00	\$168.00	"Attention to File"	
8/1/2005	Lumping	2.8	\$60.00	\$168.00	"Attention to File"	
8/9/2005	Lumping	2.6	\$250.00	\$650.00		
9/22/2005	Lumping	0.4	\$250.00	\$100.00		
9/30/2005	Lumping	1.1	\$250.00	\$275.00		
12/29/2005	Lumping	4.3	\$60.00	\$258.00	"Attention to File"	
12/29/2005	Lumping	4.3	\$60.00	\$258.00	"Attention to File"	
12/29/2005	Lumping	4.3	\$60.00	\$258.00	"Attention to File"	
1/9/2006	Lumping	2.2	\$60.00	\$132.00		
1/9/2006	Lumping	2.2	\$60.00	\$132.00		
1/11/2006	Lumping	3.3	\$60.00	\$198.00		
1/11/2006	Lumping	3.3	\$60.00	\$198.00		
1/12/2006	Lumping	4.6	\$60.00	\$276.00		
1/12/2006	Lumping	4.6	\$60.00	\$276.00		
6/5/2007	Lumping	0.6	\$170.00	\$102.00		\$8,352.00
2/1/2005	No Description	1.3	\$250.00	\$325.00		
2/2/2005	No Description	1.2	\$250.00	\$300.00		
2/15/2005	No Description	0.5	\$250.00	\$125.00		
2/21/2005	No Description	0.9	\$250.00	\$225.00		
3/22/2005	No Description	0.8	\$250.00	\$200.00		
5/23/2005	No Description	1.5	\$60.00	\$90.00		
5/24/2005	No Description	3.3	\$60.00	\$198.00		
5/31/2005	No Description	0.8	\$250.00	\$200.00		
6/20/2005	No Description	0.6	\$250.00	\$150.00		
6/20/2005	No Description	0.6	\$250.00	\$150.00		
7/12/2005	No Description	0.2	\$175.00	\$35.00	phone call to Paul Rini	
7/21/2005	No Description	0.3	\$250.00	\$75.00		
7/21/2005	No Description	0.7	\$250.00	\$175.00		
7/21/2005	No Description	0.7	\$250.00	\$175.00		
7/26/2005	No Description	5.3	\$60.00	\$318.00	"Attention to File"	
7/26/2005	No Description	5.3	\$60.00	\$318.00	"Attention to File"	
7/26/2005	No Description	5.3	\$60.00	\$318.00	"Attention to File"	
8/2/2005	No Description	0.2	\$60.00	\$12.00	"Attention to File"	
8/2/2005	No Description	0.2	\$60.00	\$12.00	"Attention to File"	
8/2/2005	No Description	0.2	\$60.00	\$12.00	"Attention to File"	
8/4/2005	No Description	0.6	\$60.00	\$36.00	"Attention to File"	
8/4/2005	No Description	0.6	\$60.00	\$36.00	"Attention to File"	
8/4/2005	No Description	0.6	\$60.00	\$36.00	"Attention to File"	

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10/24/2005	No Description	0.3	\$250.00	\$75.00	phone call to Paul Rini	
12/21/2005	No Description	5.3	\$60.00	\$318.00		
12/21/2005	No Description	5.3	\$60.00	\$318.00		
12/22/2005	No Description	6.2	\$60.00	\$372.00		
12/22/2005	No Description	6.2	\$60.00	\$372.00		
12/22/2005	No Description	6.2	\$60.00	\$372.00		
12/27/2005	No Description	2.2	\$250.00	\$550.00		
12/28/2005	No Description	6.5	\$60.00	\$390.00		
2/15/2007	No Description	3.3	\$70.00	\$231.00	No charge	
8/29/2007	No Description	0.2	\$170.00	\$34.00	phone call to Paul Rini	
10/19/2007	No Description	0.3	\$80.00	\$24.00	No charge	\$6,577.00
3/7/2005	Office Task	0.9	\$60.00	\$54.00	deliver check	
6/1/2005	Office Task	1.5	\$60.00	\$90.00	photocopying	
6/1/2005	Office Task	1.0	\$60.00	\$60.00	photocopying	
6/1/2005	Office Task	1.5	\$60.00	\$90.00	photocopying	
6/1/2005	Office Task	1.0	\$60.00	\$60.00	photocopying	
6/1/2005	Office Task	1.5	\$60.00	\$90.00	photocopying	
7/8/2005	Office Task	3.0	\$60.00	\$180.00	photocopying	
7/8/2005	Office Task	3.0	\$60.00	\$180.00	photocopying	
7/8/2005	Office Task	3.0	\$60.00	\$180.00	photocopying	
7/15/2005	Office Task	0.7	\$60.00	\$42.00	photocopying	
7/15/2005	Office Task	0.7	\$60.00	\$42.00	photocopying	
7/15/2005	Office Task	0.7	\$60.00	\$42.00	photocopying	
7/21/2005	Office Task	0.7	\$60.00	\$42.00	delivery	
7/21/2005	Office Task	0.7	\$60.00	\$42.00	deliver check	
7/27/2005	Office Task	1.3	\$60.00	\$78.00		
8/8/2005	Office Task	4.0	\$60.00	\$240.00	photocopying	
8/8/2005	Office Task	4.0	\$60.00	\$240.00	photocopying	
8/9/2005	Office Task	1.2	\$60.00	\$72.00	photocopying	
8/9/2005	Office Task	1.2	\$60.00	\$72.00	photocopying	
8/9/2005	Office Task	1.2	\$60.00	\$72.00	photocopying	
12/19/2005	Office Task	0.5	\$60.00	\$30.00	delivery	
12/19/2005	Office Task	0.5	\$60.00	\$30.00	delivery	
12/19/2005	Office Task	0.5	\$60.00	\$30.00	delivery	
12/20/2005	Office Task	1.2	\$60.00	\$72.00	delivery	
12/20/2005	Office Task	1.2	\$60.00	\$72.00	delivery	
12/20/2005	Office Task	1.2	\$60.00	\$72.00	delivery	
12/23/2005	Office Task	1.2	\$60.00	\$72.00	deliver check	
12/23/2005	Office Task	1.2	\$60.00	\$72.00	deliver check	
12/23/2005	Office Task	0.6	\$60.00	\$36.00	deliver check	
12/23/2005	Office Task	1.2	\$60.00	\$72.00	deliver check	
12/23/2005	Office Task	0.6	\$60.00	\$36.00	deliver check	
1/3/2006	Office Task	4.3	\$60.00	\$258.00	photocopying	
1/11/2006	Office Task	3.3	\$60.00	\$198.00	also lumping	
1/12/2006	Office Task	4.6	\$60.00	\$276.00	also lumping	
1/25/2007	Office Task	1.6	\$70.00	\$112.00	No charge	
2/8/2007	Office Task	2.5	\$70.00	\$175.00		
2/23/2007	Office Task	0.7	\$70.00	\$49.00		
3/22/2007	Office Task	3.8	\$70.00	\$266.00	No charge	
6/29/2007	Office Task	0.7	\$70.00	\$49.00	No charge	
7/23/2007	Office Task	0.2	\$70.00	\$14.00	No charge	
8/29/2007	Office Task	0.3	\$70.00	\$21.00		\$3,980.00
			TOTAL:	\$19,182.00		

Between the dates of January 30, 2005 and October 19, 2007, \$19,182.00 of atty fees should be disallowed because of deficiencies related to entry detail, "lumping", and office tasks performed by law clerks. Examples are tabbed.

\$ 273.00 represents duplicative work

\$ 8,352.00 represents "lumping"

\$ 6,577.00 represents insufficient detail in the entry e.g. "Attention to File"

\$ 3,980.00 represents office tasks such as photocopying and personal deliveries performed by law clerks.