

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

ICS CYBERNETICS, INC.

CASE NO. 88-00478

Debtor

Chapter 11

NATIONAL WESTMINSTER BANCORP,
N.J., Successor-in-Interest
to FIRST JERSEY NATIONAL
CORPORATION,

Plaintiff

vs.

ADV. PRO. NO. 88-0114A

ICS CYBERNETICS, INC.; THE
OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF ICS
CYBERNETICS, INC.; ROCHESTER
COMMUNITY SAVINGS BANK; LEFAC
INTERNATIONAL S.A.; and
INTEGRATED COMPUTER SYSTEMS
AKITIEBOLEG,

Defendants

APPEARANCES:

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STEPHEN D. GERLING, U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The Court has before it the Application of National Westminster Bancorp, N.J. ("NatWest") seeking an award of attorneys' fees and disbursements in the sum of \$10,000 in connection with NatWest's role as a stakeholder in this interpleader adversary proceeding.

The Application was brought before the Court by an Order to Show Cause filed by one of NatWest's attorneys, Winston & Strawn, Esqs. ("Winston"), and appeared on the Court's motion calendar on April 6, 1993.

The Application was opposed by the Debtor and Lefac International, S.A. ("Lefac"), two of the defendants in the interpleader adversary proceeding.

JURISDICTIONAL STATEMENT

This Court has core jurisdiction over this adversary proceeding. See In re ICS Cybernetics, Inc., 123 B.R. 467, 472 (Bankr. N.D.N.Y. 1989), aff'd 124 B.R. 480 (N.D.N.Y. 1990), aff'd No. 90-5057 (2d Cir. Jan 10, 1991).

FACTS

NatWest initially sought attorneys' fees in connection with its role as stakeholder in April of 1992. This Court, by Order dated November 23, 1992 ("November Order") denied NatWest's motion without prejudice, "subject to the re-filing of contemporaneous time records of sufficient detail relating solely to services rendered in connection with the interpleader portion of this adversary proceeding as it pertained to Lefac."

This Court, in reaching its conclusion in the November Order, observed that "the 'time records' are generally confusing, poorly reproduced, lack any meaningful compilation and are devoid of any summaries" and it was impossible to discern from the contemporaneous time records submitted by NatWest's attorneys, which services and disbursements were allocable to the Lefac portion of the interpleader. Thus, NatWest's attorneys, Winston, and co-counsel, Menter, Rudin & Trivelpiece, P.C. ("Menter"), were given the opportunity to re-

file revised time records.

On January 12, 1993, NatWest sought an order of the Court permitting it to set aside \$30,000 of the escrowed interpleader funds as security for the payment of any attorneys' fees to be ultimately awarded to it. NatWest had not, however, prior to January 12, 1993, re-filed its revised fee request pursuant to the directions in the November Order.

On February 3, 1993, over the objection of Lefac and the Debtor, this Court entered an Order granting NatWest's requested relief to the extent of permitting it to retain \$10,000 of the escrowed interpleader funds for a period not to exceed 60 days or until an earlier order of the Court awarding NatWest its stakeholder fee and disbursements.

On March 24, 1993, NatWest sought the instant Order to Show Cause, scheduling a hearing on the Application for April 6, 1993. In support of the Application, NatWest has attached the identical time records it attached to its April 1992 fee application, however, the time records now bear check marks next to those entries which NatWest alleges were for services rendered in connection with the Lefac portion of the interpleader adversary proceeding. Additionally, NatWest has attached portions of its disbursements records.

DISCUSSION

Both the Debtor and Lefac object to the current Fee Application. Lefac asserts that NatWest failed to comply with this Court's February 3, 1993 Order in that it did not obtain any order awarding it a fee within 60 days, and for that reason alone, the instant Fee Application should be denied.

More significantly, Lefac contends that NatWest has failed to heed this Court's admonition in its November Order to re-file contemporaneous time records "of sufficient detail relating solely to services rendered in connection with the interpleader portion of this adversary proceeding as it pertained to Lefac ..."

NatWest replies to Lefac's criticisms by contending that this Court should not judge its Fee Application in accordance with the strict standards contained in 11 U.S.C. §§330, 331 and 503, since NatWest, as a stakeholder, need

only satisfy the four-fold test established by the Second Circuit Court of Appeals in Septembertide Pub., B.V. v. Stein and Day, Inc., 884 F.2d 675, 683 (2d Cir. 1989).

While the Court observes that NatWest's reliance on Septembertide Pub., B.V. v. Stein and Day, Inc., *supra*, may be somewhat misplaced where the fees to be paid may be traced in part to property of a debtor's estate, it will not reach that issue herein.

The contemporaneous time and disbursement records submitted in support of the Fee Application are identical in form and content to those submitted in April of 1992. The addition of check marks to the time records does very little to enhance this Court's ability to review those records in reaching a decision on the Fee Application.

The Court has, however, performed a review of the time records, as well as the itemized disbursements, which review is limited by the inherent defects in those records, and reaches the conclusion that, at best, NatWest can claim a fee of \$3,711.44 and reimbursement of expenses in the sum of \$1,423.44.

The Court has disallowed fees for all services it cannot identify as being related to the Lefac portion of the interpleader adversary proceeding or to the adversary proceeding at all. Additionally, the Court has disallowed fees for any services rendered in connection with the so-called escrow motion filed by NatWest in September 1988.

With regard to disbursements, NatWest has represented that the disbursement total for which it seeks compensation is equal to a percentage of the disbursement amount billed for a specific period because it is unable to match certain disbursements to specific Lefac related attorney time.

The Court, in its analysis of the disbursements, has applied Local Rule 17(b) of this Court and has approved the aforementioned amount.

Upon application of the fees and disbursements as authorized herein, NatWest shall immediately direct its escrow agent to disburse the balance of the \$10,000, plus any interest accrued thereon, in accordance with the Settlement Agreement referred to in the February 3, 1993 Order of this Court.

IT IS SO ORDERED.

Dated at Utica, New York
this day of July, 1993

STEPHEN D. GERLING
U.S. Bankruptcy Judge