

FILED & JUDGMENT ENTERED
 David E. Weich
 Jul 03 2008
 Clerk, U.S. Bankruptcy Court
 Western District of North Carolina



J. Craig Whitley
 United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
 CHARLOTTE DIVISION**

In Re:)	
)	
SEERTECH CORPORATION,)	Case No. 06-31156
)	Chapter 7
Debtor.)	
_____)	

ORDER

This matter comes before the Court upon the Final Application of Special Counsel to the Trustee for Compensation and Reimbursement of Fees, Objection to Claims, and Motion to Close the Bankruptcy Case, as well as David Baird's Objection to closing the bankruptcy case. A hearing was held in this matter on May 29, 2008.

The Seertech bankruptcy case was initially filed with this Court on July 21, 2006. From early in the case, the Trustee experienced difficulty securing the books and records from the Debtor. The Debtor's officers, Frank Bachinsky and Michael Sauvante, failed to cooperate, forcing the Trustee to file several Motions for turn over and a change of venue for

Rolltronics and Voltaflex, two related companies, from a California Bankruptcy Court.

Upon examining these companies' books and records and investigating their agents, the Trustee began to unravel Bachinsky and Sauvante's elaborate shell game. In an effort to hinder the Trustee's progress in exposing their fraud, Sauvante filed a complaint against the Trustee with the North Carolina Bar Association. This Court sanctioned Sauvante in the amount of \$14,644.50, to cover the fees and expenses incurred by the Trustee in defending the inappropriately filed grievance.¹ As of entry of this Order, Sauvante has failed to pay those sanctions.

On April 21, 2008, after exhaustive and lengthy uncompensated efforts, the Trustee concluded that given the lack of resources available to the estate, further administration of the case would be fruitless. He filed a Final Report and Account, Claims Objections and a Final Application for Fees and Expenses for his professional. This drew objection by *pro se* creditor/investor Baird and led to a hearing on May 29, 2008.

At that hearing, the Trustee asserted that he had administered the bankruptcy cases to the extent possible, in light of the officers' dilatory actions, sought approval of his fees, and was preparing to close the bankruptcy cases. It should be noted that at the time of the hearing, the Trustee's

¹ A full history of this case is outlined in the Court's Order entered in this case on September 12, 2007.

professionals had incurred more than \$60,000 in fees administering these cases. Yet, he has only been able to recover \$15,000 for the estate. Having financed the case thus far, and finding that he is unlikely to recover any more funds for the estate, the Trustee seeks to close these cases.

David Baird, an investor in Seertech, indeed one of many defrauded investors, objected to the Trustee closing the case.² Baird indicated that the Debtor's officers appeared to be continuing their fraudulent activities. He argued that maintaining the bankruptcy case and requiring the Trustee to further pursue Bachinsky and Sauvante was necessary to curb this fraud.

While the Court can understand Baird's frustration, this Court is not willing to require the Trustee to run this rabbit any further. Such activities can be undertaken by the investors post-bankruptcy and at their cost and direction. There is no discharge in this business bankruptcy case, and neither Bachinsky nor Sauvante are in bankruptcy. The investors are not prohibited from proceeding against either these companies or their principals in an appropriate forum. The Court simply cannot require the Trustee and his professionals to continue to work without pay or prospect of payment.

² Other objections were lodged by investors following the hearing.

At the close of hearing, Baird reminded the Court of an earlier Consent Order entered in Adversary Proceeding No. 06-3287 wherein the Trustee agreed to turnover the books and records of the Debtor to a group of investors, termed the Rescission Group. That Order was entered on September 20, 2007.

This prompted discussion about another recent Order pertaining to the books and records. On April 28, 2008, Sauvante filed a Motion for Turnover of the Books and Records in the Rolltronics and Voltaflex bankruptcy cases. (These cases were consolidated into the Seertech bankruptcy.) Unaware of the terms of the aforementioned Consent Order, and without objection, Sauvante's motion was granted. The Court reasoned that because the Trustee had no need for these records after bankruptcy, and otherwise the records would be destroyed, the principals could claim these records, at the end of the bankruptcy case and at their cost. An Order to this effect was entered on May 1, 2008. Given the previous Consent Order, that Order was improvidently entered and must be vacated.

For the above reasons and those stated on the record, the Court:

1. **OVERRULES** Baird's objection to the Trustee's Motion to Close the bankruptcy cases.

2. **VACATES** its Order granting turnover to Sauvante. Turnover to the Rescission Group shall be in accordance with the

aforementioned Consent Order, and at the sole cost of the Rescission Group. Turnover shall be completed within thirty (30) days from entry of this Order. Thereafter, if attempts have not been made, the Trustee may destroy or abandon the books and records.

3. **GRANTS** the Trustee's Final Application for Compensation and Fees.

4. Grants the Trustee's Motion to close the bankruptcy case and Final Report.

SO ORDERED.

This Order has been signed electronically. The judge's signature and court's seal appear at the top of the Order.

United States Bankruptcy Court