

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 11

MAURA E. LYNCH,

Case No.: 15-74795-ast

Debtor.

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**ORDER DENYING MOTION TO ADJOURN**

Pending before the Court is the motion filed by Debtor seeking an adjournment of hearings scheduled on final fee applications (the “Adjournment Motion”) of SilvermanAcampora LLP (“SA”) and McBreen & Kopko (“M&K”), both former chapter 11 debtor’s counsel to Maura E. Lynch (the “Debtor”). For the reasons herein, the Adjournment Motion is denied.

On November 9, 2015 (the “Petition Date”), Debtor filed a petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). At that time, she was represented by M&K.

On March 30, 2016, M&K filed an emergency motion to withdraw as Debtor’s counsel. [dkt item 171]

On April 11, 2016, SA filed a motion to substitute in the place of M&K as Debtor’s counsel. [dkt item 177]

On April 15, 2016, the Court entered an Order terminating the retention of M&K and authorizing the retention of SA as Debtor’s counsel. [dkt item 178]

On November 10, 2016, SA filed an interim application for compensation (the “Interim Application”). [dkt item 296] By Order dated December 21, 2016, the Court awarded SA fees and expenses totaling \$115,000 which, net of the retainer received, resulted in the Debtor being required to pay interim fees in an agreed amount of \$90,000 (the “Fee Order”). [dkt item 315]

On February 17, 2017, SA filed an emergency application to withdraw as Debtor's counsel and a request that this Court compel Debtor to pay the awarded fees pursuant to the Fee Order. [dkt item 333] On March 7, 2017, acting *pro se*, Debtor filed an opposition to SA's emergency motion ("Debtor's Opposition"). [dkt item 344] On March 10, 2017, the Court granted SA's emergency motion by Order, which also directed Debtor to pay SA the previously awarded \$90,000 within 5 business days. [dkt item 348]

On March 21, 2017, Debtor filed her Application for Entry of an Order Authorizing Employment and Retention of White & Wolnerman, PLLC as Counsel to the Debtor ("WW"). [dkt item 353]<sup>1</sup>

The Court conducted a case status conference on March 22, 2017 (the "Status Conference"). WW appeared as proposed counsel to Debtor, at which time the Court stated the circumstances under which WW's retention would be approved, and stated the necessity of Debtor meeting the deadlines the Court had set for Debtor to obtain confirmation of a plan of reorganization. Pursuant to directives of this Court as discussed at the Status Conference, on April 13, 2017, SA filed its Second and Final Application for Compensation as Former Bankruptcy Counsel for Debtor ("SA's Final Application") [dkt item 369], and M&K filed its First and Final Application for Compensation as Former Bankruptcy Counsel for Debtor ("M&K Final Application" and together with SA's Final Application the "Final Applications"). [dkt item 370]

On April 19, 2017, the Court issued a contested matter scheduling order (the "Scheduling Order") [dkt item 373], which scheduled hearings on the Final Applications for May 10, 2017, and set forth specific dates for prehearing submissions by the parties incident thereto (the "Submission Deadlines"); these included deadlines for the filing of objections to the Final Applications,

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<sup>1</sup> Subsequently, on March 29, 2017, as directed by the Clerk of the Court, Debtor refiled her Application to Employ WW. [dkt item 363]

affidavits of direct testimony, exhibits, briefs, and proposed findings of fact and conclusions of law by no later than May 3, 2017.

On May 1, 2017, Debtor filed the Adjournment Motion [dkt item 383], through which she requested that the Court adjourn the hearings on the Final Applications, without specifically mentioning the Submission Deadlines. By e-mail to the parties, the Court directed that any party opposing the Adjournment Motion file an opposition by May 5, 2017, but did not modify the Scheduling Order or the Submission Deadlines. On May 3, 2017, the day the affidavits of direct testimony and exhibits were due to the Court, WW filed a letter asking for clarification as to whether the Submission Deadlines applied, notwithstanding the Court not having modified same. [dkt item 386]

SA and M&K met the Submission Deadlines. [dkt items 388, 389, 390, 391, 393, 394, 396] Debtor did not meet the Submission Deadlines – she did not file a timely objection to the Final Applications, nor did she file any witness affidavits.

Interested party Stephen Vaccaro filed a timely objection to the Final Applications. [dkt item 392]

On May 5, 2017, SA and M&K filed objections to the Adjournment Motion. [dkt items 399, 400]

On May 8, 2017, WW filed its Motion to Withdraw as Debtor’s counsel, citing to, among other things, Debtor’s and WW’s divergent views as to how to represent her interests in connection with the Final Applications and again requesting the Court grant the Adjournment Motion. [dkt item 401]

## **Discussion**

### ***Analysis of Debtor’s Adjournment Request***

Debtor's grounds for seeking an adjournment are unavailing. This case has already been marred by significant delays, and has been pending for 18 months with limited progress being made towards confirmation of a plan. WW states the following as its reasons for requesting an adjournment:

This request is being made as the Debtor, as well as her newly-appointed counsel, requires additional time to analyze the Fee Applications in order to either create a dialogue among the Debtor and her former counsel for settlement purposes or, alternatively, to properly prepare objections to the Fee Applications. Moreover, there is no urgency to these Fee Application requests at this time. To the contrary, and given the many other matters requiring the attention of the Debtor and her counsel, adjourning the Fee Applications is in the best interests of the Debtor and the bankruptcy estate.

[dkt item 383]

Rule 16(b)(1), as incorporated by Bankruptcy Rule 7016, mandates that a federal court issue a pre-trial scheduling order to control the proceedings before it. Rule 16(b)(3)(A) provides that a scheduling order "must limit the time to join other parties, amend the pleadings, complete discovery and file motions." FED. R. CIV. P. 16(b)(3). This Court issued the Scheduling Order under the parameters of Federal Rule 16.

Once the court has issued a scheduling order, Rule 16 requires that the party seeking to modify the pretrial schedule demonstrate "good cause" and obtain the court's consent to the modification. FED. R. CIV. P. 16(b)(4). "Whether good cause exists turns on the diligence of the moving party." *Holmes v. Grubman*, 568 F.3d 329, 335 (2d Cir. 2009) (internal quotation marks and citations omitted). The moving party must demonstrate that "the deadline cannot reasonably be met despite the diligence of the party seeking the extension." *Parker v. Columbia Pictures Indus.*, 204 F.3d 326, 340 (2d Cir. 2000). "Moreover, if the moving party has had a sufficient opportunity to obtain the evidence sought during the discovery period, an extension should not be granted." *Mendlesohn v. Barre (In re Servo Corp. of Am., Inc.)*, Case No. 12-76993, Adv. Pro. No.

14-08048, 2015 Bankr. LEXIS 519, at \*8 (Bankr. E.D.N.Y. Feb. 20, 2015); *see also Wingates, LLC. v. Commonwealth Ins. Co. of Am.*, 21 F. Supp. 3d 206, 215 (E.D.N.Y. 2014) (collecting cases) *aff'd*, 626 F. App'x 316 (2d Cir. 2015). For the reasons explained above, Debtor has failed to meet her burden of “good cause” to modify the Scheduling Order under Rule 16(b)(4).

The SA Final Application was preceded by the Interim Application, which was heard on December 7, 2016, at which time Debtor did not state that she had any objections to the request. The Court adjourned the balance of the hearing on the Interim Application to February 15, 2017, at which time Debtor had not remitted \$90,000 to SA pursuant to the Fee Order. The Court further adjourned the balance of the hearing on the Interim Application to March 22, 2017. Debtor’s first and only objection to the Interim Application was filed *pro se* on March 7, 2017. At the hearing on SA’s emergency motion to withdraw, Debtor stated she did have objections to the Interim Application, which the Court advised would be handled in the context of a final hearing. In any event, the bulk of the SA application has been pending for several months.

As to both Final Applications, as the Court stated at the March 22 Status Conference, the Court has issued several orders establishing a deadline for Debtor to obtain confirmation of a plan of reorganization, the last of which, signed January 13, 2017, provides:

ORDERED, that Debtor shall obtain approval of a disclosure statement by June 16, 2017, and shall obtain confirmation of a plan of reorganization by July 24, 2017; and it is further

ORDERED, that any unexcused failure to comply with the foregoing paragraph of this Order shall constitute cause for immediate conversion of the case to Chapter 7 or dismissal pursuant to 11 U.S.C. § 1112 without a further hearing;

While it remains unclear if Debtor will be able to meet either of these immutable deadlines, the liquidation of large administrative claims is a necessary part of determining feasibility of any plan that might be pursued. There is no good reason at this juncture to


further delay determination of the fees incurred by the first two law firms to act as Debtor's counsel.

Based on the foregoing, it is hereby

**ORDERED**, that the Adjournment Motion is denied.

**Dated: May 9, 2017**  
**Central Islip, New York**



  
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**Alan S. Trust**  
**United States Bankruptcy Judge**