

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

IN RE:

CASE NO.

SPECTRASITE HOLDINGS, INC.

02-03631-5-ATS

DEBTOR

ORDER DENYING APPLICATION FOR COMPENSATION

The matter before the court is the application for allowance of compensation and reimbursement of expenses filed by attorneys for equity security holders. A hearing took place on April 23, 2003, in Raleigh, North Carolina.

SpectraSite Holdings, Inc. filed a petition for relief under chapter 11 of the Bankruptcy Code on November 15, 2002. The filing was a "prepackaged" chapter 11 in which the debtor's disclosure statement and plan of reorganization had been negotiated prepetition and were filed either along with or within days of the filing of the petition. The case proceeded at record speed, with the confirmation hearing scheduled for January 28, 2003.

On December 4, 2002, Trawick H. Stubbs, Jr. of Stubbs & Purdue, P.A. and Vincent F. O'Flaherty of Niewald, Waldeck & Brown, on behalf of Peter R. Orr and the Peter R. Orr Revocable Trust, filed a motion to appoint an equity security holders committee that contended that numerous transactions identified in the disclosure statement and plan required further scrutiny. There was subsequently a substitution of parties seeking the committee appointment, but counsel remained the same. Ultimately, the motion was denied, but the court agreed that there were some issues that required further scrutiny and an examiner was appointed to review the transactions. The examiner presented his final report on January 24, 2003, finding that the transactions were fair and reasonable and identifying no evidence of wrongdoing by the debtor.

Mr. Stubbs and Mr. O'Flaherty now seek reimbursement of fees and expenses from the estate pursuant to 11 U.S.C. § 503(b), contending that their services, which they contend ultimately resulted in the appointment of an independent examiner, rendered a substantial contribution to the chapter 11 case. The debtor opposes the application, contending that rather than contributing to the estate, the motions filed by the equity security holders depleted the estate and distracted the debtor from its efforts to

achieve confirmation without incident. The bankruptcy administrator similarly opposed the application, noting that an incidental benefit to the estate is not enough to justify a § 503(b) claim.

The court agrees that the appointment of the examiner was important to the case and to confirmation even if it added to the debtor's expense. The examiner's report gave the court the confidence to approve the plan on an expedited basis. The court likely would have appointed an examiner whether or not the equity security holders filed their motion, however. Here, the court finds that the contribution to the estate by counsel was incidental, not tangible. Consequently, the application for fees and expenses is **DENIED**.

SO ORDERED.

DATED: April 24, 2003

s/ A. Thomas Small
A. Thomas Small
Bankruptcy Judge