NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT

BAP NO. MW 12-013

Bankruptcy Case No. 11-43424-MSH

FORMATECH, INC.,
Debtor.

BARRY C. RICHMOND,
Appellant,

v.

SOVEREIGN BANK and
DAVID M. NICKLESS, Chapter 7 Trustee,
Appellees.

Appeal from the United States Bankruptcy Court
for the District of Massachusetts
(Hon. Melvin S. Hoffman, U.S. Bankruptcy Judge)

Before
Lamoutte, Kornreich, and Cabán,
United States Bankruptcy Appellate Panel Judges.

Barry C. Richmond, Esq., on brief for Appellant.
Bertin C. Emmons, Esq., on brief for Appellee, Sovereign Bank.

January 8, 2013

Per Curiam.

Barry C. Richmond ("Richmond") appeals from the bankruptcy court order reducing his fee request. For the reasons set forth below, we **DISMISS** this appeal as **MOOT**.

BACKGROUND

On August 12, 2011, the debtor, Formatech, Inc. ("Formatech"), filed a voluntary petition for chapter 11 relief in the United States Bankruptcy Court for the District of Massachusetts.[1] Five days later, Formatech filed a request to employ Richmond as its attorney. Richmond served this request, along with his affidavit, and a proposed form of order on the United States Trustee and no other party.

On September 6, 2011, the bankruptcy court denied the request "without prejudice for failure to serve the motion in accordance with [Fed. R. Bankr. P.] 2002." Two days later, Formatech filed a second, identical request to employ Richmond. Richmond served this request upon the 20 largest creditors, the United States Trustee, Sovereign, and several other creditors. Like the first one, the second request did not specify a commencement date for Richmond's employment. The bankruptcy court granted the second request on September 9, 2011.

Formatech sold it assets on January 5, 2012, with all proceeds to go to the secured parties. Prior to that sale, Formatech filed a motion to surcharge the collateral under § 506(c) for all fees and expenses Richmond incurred.[2] The bankruptcy court denied this motion. We

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[1] As of the petition date, Sovereign Bank ("Sovereign") held a first priority lien on all of Formatech's assets, securing a claim in the amount of $1,082,919.00. Massachusetts Growth Capital Corporation held a junior lien on the same assets.

[2] Unless otherwise indicated, the terms "Bankruptcy Code," "section" and "§" refer to Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq., as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 37.

dismissed Formatech's appeal for lack of standing because the case was converted to chapter 7 before the appeal was taken. See Formatech, Inc. v. Sovereign Bank (In re Formatech), No. 12-012 (B.A.P. 1st Cir. Dec. 7, 2012).

The present appeal stems from Richmond's application for compensation in which he sought fees in the amount of $66,481.25 and expenses in the amount of $3,374.99 for the period running from the commencement of the case through January 23, 2012.[3] Noting that all of Formatech's assets were subject to Sovereign's lien, he asked that the full amount of his fees and expenses be deducted from the proceeds of the sale. Without charging Sovereign, the bankruptcy court allowed Richmond's request, minus $20,350.00 for the 74 hours rendered prior to the second employment request and $1,100.00 for duplication of services.

On appeal, Richmond maintains that the bankruptcy court erred when it reduced his fee award by the value of services rendered before the second employment request.[4] Sovereign urges us to affirm.

DISCUSSION

We may hear appeals from final judgments, orders, and decrees and, with leave of court, from interlocutory orders and decrees. See 28 U.S.C. §§ 158(a), (b), and (c). The order allowing Richmond's fees and expenses is a final order because it determined his entire compensation. See Iannochino v. Rodolakis (In re Iannochino), 242 F.3d 36, 43-44 (1st Cir. 2001). However, our jurisdiction does not rest on finality alone. Mootness will deprive us of jurisdiction to

[3] Richmond's compensation was calculated at $275.00 per hour. His total request of 241.75 hours included 212.00 hours he contributed and the 29.75 hours Freya Shoffner contributed at the same hourly rate.

[4] Richmond does not address the reduction of $1,100.00 for duplication of services.

review a final order; and, because mootness is a threshold issue, we may determine it sua sponte. See GE Capital Franchise Fin. Corp. v. Richardson (In re Newport Creamery, Inc.), 295 B.R. 408, 417 (B.A.P. 1st Cir. 2003). Mootness is present when no meaningful relief is available on appeal. See In re Cont'l Mortgage Investors, 578 F.2d 872, 877 (1st Cir. 1978).

We are unable to fashion meaningful relief because no source exists for the payment of Richmond's fees and expenses in any amount. This is so for two reasons: first, Richmond has acknowledged that the Formatech estate is without resources; and, second, there is no longer a possibility that the estate will be enhanced from the proceeds of the sale because no timely appeal was taken from our order dismissing the appeal of the bankruptcy court's denial of Formatech's § 506(c) motion.

CONCLUSION

For the foregoing reasons, this appeal is hereby **DISMISSED** as **MOOT**.