

FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:
SUNERGY CALIFORNIA LLC,
Debtor.
Case No. 21-20172
RKF GLOBAL, PLLC, an Illinois
Professional Limited Liability
Company,
Plaintiff,
Adv. No. 23-02025
DCN No. NH-1
v.
NUTI HART LLP, a California
Limited Liability Partnership,
GREGORY C. NUTI, a California
Resident, CHRISTOPHER H. HART, a
California Resident, HANK
SPACONE, a California Resident
and Post-Confirmation
Trustee, and JEFFREY PEREA, a
California Resident and Chapter
11 Trustee,
Defendants.

CHRISTOPHER M. KLEIN, Bankruptcy Judge:

Special counsel employed under 11 U.S.C. § 327(e) by the
debtor before it was ousted from debtor-in-possession status took
so much umbrage at objections to its \$447,658.50 fee application
that it sued the chapter 11 trustee, the post-confirmation
trustee, and counsel for abuse of process, fraud, conspiracy,
promissory estoppel, and breach of contract, demanding damages
measured by any fees that are disallowed plus punitive damages
for the insult and trial by jury. The doctrine of conflict
preemption spells doom for special counsel.

Congress has provided in the Bankruptcy Code a comprehensive
system for employing and paying professionals for services in the
administration of bankruptcy estates. Bankruptcy Code §§ 326-331

1 The United States trustee and the liquidating trustee each
2 objected to \$25,606.00 of the Gonzalez fee application for the
3 period after the chapter 11 trustee was appointed as not
4 permitted in light of Lamie v. U.S. Trustee, 540 U.S. 526 (2004).

5 The liquidating trustee also objected to Gonzalez fees for:
6 lack of benefit to the estate; untruthful schedules and statement
7 of financial affairs; inaccurate monthly operating reports;
8 improper listing of prepetition obligations as postpetition
9 accounts payable; and the dubious relationship with RKF.

10 This court bifurcated the Gonzalez fee contest and ruled
11 that fees are not available to § 327(a) DIP counsel for services
12 rendered after appointment of a chapter 11 trustee. In re Sunergy
13 California LLC, 646 B.R. 840 (Bankr. E.D. Cal. 2022). The
14 Bankruptcy Appellate Panel affirmed. No. 22-1230, (9th Cir BAP
15 2023). The rest of the Gonzalez fee application is pending.

16 Plaintiff RKF was employed as § 327(e) special counsel to:
17 represent Sunergy in five lawsuits (including its Ninth Circuit
18 appeal challenging an arbitration award in favor of DEPCOM Power,
19 Inc.); coordinate state cases; and "draft[] and review[]
20 contracts in the regular course of business, and provide[] legal
21 advice and counseling that would be customarily required for any
22 supply chain and transactionally based business similar to
23 Debtor."¹ Dkt. 59 at p. 4.

24 The Chapter 11 trustee, concluding that liquidation was
25 appropriate, elected not to pursue litigation over unsecured
26

27
28 ¹Debtor and Debtor-In-Possession's Application for an Order
to Employ RKF PLLC as Special Counsel For Litigation and
Selection [sic] Transaction Work, Dkt. 59, at p. 4.

1 claims, including the DEPCOM Power appeal. Hence, he did not
2 require RKF's special counsel services.

3 Plaintiff RKF filed a fee and cost application for
4 \$447,668.60 for services as special counsel under § 327(e).

5 The United States trustee and the liquidating trustee
6 objected to the RKF fees on multiple grounds focused on § 330
7 standards, disclosure requirements, and whether RKF overstepped
8 the bounds of its § 327(e) employment. Those objections remain to
9 be adjudicated in the contested RKF fee application.

10 RKF counterattacked by filing an adversary proceeding and
11 demanding a jury trial. In its Complaint against the respective
12 trustees and counsel, RKF alleges six common-law counts: (1)
13 Abuse of Process by post-confirmation trustee and trustee's
14 counsel; (2) Fraud by trustee's counsel; (3) Conspiracy to Commit
15 Fraud by chapter 11 trustee, post-confirmation trustee, and
16 trustees' counsel; (4) Promissory Estoppel of chapter 11 trustee
17 and trustee's counsel; (5) Breach of Oral Contract by chapter 11
18 trustee; and (6) Breach of Oral Contract by trustees' counsel.

19 RKF demands: (1) compensatory damages based on all lost
20 income not awarded on its fee applications; (2) other unspecified
21 compensatory damages; (3) punitive damages for abuse of process;
22 and (4) other just and equitable relief.

23 RKF objected to a bankruptcy judge hearing and determining
24 the adversary proceeding and moved to withdraw the reference. The
25 District Court denied the motion.

26

27

Analysis

28 The Defendants move under Civil Rule 12(b)(6) to dismiss for

1 failure to state a claim on which relief can be granted. Although
2 this court agrees that the complaint fails to state a claim, the
3 defect is so basic that it warrants invoking Civil Rule 12(b)(1)
4 lack of subject-matter jurisdiction.

5 For reasons to be explained, Congress has preempted all of
6 the common-law causes of action alleged in the pleadings. The
7 common-law counts are inextricably intertwined with a pending
8 disputed fee application and conflict with the comprehensive
9 federal scheme for compensating professionals employed to
10 represent bankruptcy estates. Without jurisdiction, Civil Rule
11 12(h)(3) requires that the adversary proceeding be dismissed.

12
13 I

14 Procedural Posture

15 Familiar Civil Rule 12 standards govern motions to dismiss.
16 Fed. R. Civ. P. 12(b), incorporated by Fed. R. Bankr. P. 7012(b).

17 Facts alleged by Plaintiff RKF in the complaint are assumed
18 to be true. Facts asserted by Defendants are disregarded.

19 Although the Motion to Dismiss was accompanied by factual
20 assertions that provoked evidentiary objections from RKF and a
21 motion to strike, this court is ignoring the Defendants' factual
22 assertions as it considers this Rule 12 motion.²

23 To be clear, this court is excluding consideration of
24 matters outside the pleadings. It relies only on allegations in
25

26 ²Itching to play a litigation game, RKF says its evidentiary
27 objections and its motion to strike must be resolved before
28 addressing other Rule 12 issues. It is not necessary to dive down
that rabbit hole. The offending information may become evidence
in the Rule 9014 contested matter regarding RKF's fees.

1 the complaint, as amplified by the docket of the chapter 11 case
2 that is incorporated by allegations in the pleadings.

3 RKF's non-argumentative factual assertions in Complaint
4 paragraphs 4-125 are viewed in the light most favorable to RKF as
5 non-moving party against the backdrop of the docket of the
6 chapter 11 case that necessarily forms part of the pleadings.
7 Fed. R. Civ. P. 12(d), incorporated by Fed. R. Bankr. P. 7012(b).

8 9 II

10 Conflict Preemption

11 Congress has power under the Supremacy Clause of the
12 Constitution to displace state law. Fidelity Fed. Sav. & Loan
13 Ass'n v. De la Cuesta, 458 U.S. 141, 152-53 (1982); cf. Glacier
14 NW, Inc. v. Int'l Bhd. Teamsters, Local No. 174, 598 U.S. ____,
15 slip op. at 2 (June 1, 2023) ("bedrock rule ... that federal law
16 preempts state law when the two conflict.").

17 The species of preemption divide into express preemption and
18 implied preemption; implied preemption subdivides into conflict
19 preemption and field preemption. See Stengel v. Medtronic, Inc.,
20 704 F.3d 1224, 1230 (9th Cir. 2013) (en banc).

21 22 A

23 The focus here is conflict preemption. To discern conflict,
24 one must understand the congressional purpose and the statutory
25 framework surrounding it. Stengel, 704 F.3d at 1231, quoting
26 Medtronic, Inc. v. Lohr, 518 U.S. 470, 485-86 (1996).

27 Conflict preemption exists either: (1) where a state
28 requirement actually conflicts with a federal requirement, making

1 impossible compliance with both requirements; or (2) where a
2 state requirement “stands as an obstacle to the accomplishment
3 and execution of the full purposes and objectives of Congress.”
4 Stengel, 704 F.3d at 1231, quoting Hines v. Davidowitz, 312 U.S.
5 52, 67 (1941). See also De la Cuesta, 458 U.S. at 153.

6 A state law may pose an obstacle to a federal statute in
7 various ways. What constitutes a “sufficient obstacle is a matter
8 of judgment, to be informed by examining the federal statute as a
9 whole and identifying its purpose and intended effects. Crosby v.
10 Nat’l Foreign Trade Council, 530 U.S. 363, 372-73 (2000); Chamber
11 of Commerce v. Bonta, 62 F.4th 473, 482-85 (9th Cir. 2023).

12 Even if Congress has not occupied all of the field, state
13 law is preempted to the extent of any conflict with a federal
14 statute. Crosby, 530 U.S. at 372; Savage v. Jones, 225 U.S. 501,
15 533 (1912).

17 B

18 Statute and Intended Effect

19 The Congressional scheme for compensating professionals
20 employed by bankruptcy estates is embodied primarily in
21 Bankruptcy Code §§ 326 through 331, and is implemented by Federal
22 Rules of Bankruptcy Procedure 2014 through 2016.

24 1

25 Employment

26 For a bankruptcy estate to employ a professional under
27 § 327(a), there must be an application for employment disclosing
28 all of the applicant’s connections with the debtor, creditors,

1 and other parties in interest. Fed. R. Bankr. P. 2014(a).

2 The disclosures enable the court to evaluate whether the
3 professional holds or represents an interest adverse to the
4 estate and is a "disinterested person." 11 U.S.C. § 327(a).³

5 Special counsel employment § 327(e) applicable to RKF
6 provides that an attorney (who need not be a "disinterested
7 person") that has represented the debtor may be employed for a
8 specified special purpose, other than to represent the trustee in
9 conducting the case, if in the best interest of the estate and if
10 the attorney does not represent or hold any interest adverse to
11 the estate with respect to the matter on which the attorney is to
12 be employed. 11 U.S.C. § 327(e).

13 Attorneys representing a debtor, regardless of whether
14 employed under § 327, must file a statement of compensation paid
15 or agreed to be paid and the source of such compensation. 11
16 U.S.C. § 329; Fed. R. Bankr. P. 2016(a).

17 The law of the Ninth Circuit is that these disclosure
18 requirements are applied strictly with a view to whether there

19 _____
20 ³The term "disinterested person" is defined at § 101(14):

21 The term "disinterested person" means a person that --

22 (A) is not a creditor, an equity security holder, or an
insider;

23 (B) is not and was not within 2 years before the date of
the filing of the petition, a director, officer, or employee
of the debtor; and

24 (C) does not have an interest materially adverse to the
25 interest of the estate or of any class of creditors or
equity security holders, by reason of any direct or indirect
26 relationship to, connection with, or interest in, the
debtor, or for any other reason.

27 11 U.S.C. § 101(14). The terms "creditor," "equity security
28 holder," "insider," and "person" are also defined in the
Bankruptcy Code. 11 U.S.C. §§ 101(10), (17), (31), & (41).

1 has been "full, candid, and complete disclosure." Courts have not
2 hesitated to deny fees in their entirety for noncompliance. Neben
3 & Starrett, Inc. v. Chartwell Fin. Corp. (In re Park-Helena
4 Corp.), 63 F.3d 877, 881 (9th Cir. 1995) ("disclosure rules are
5 applied literally, even if the results are sometimes harsh").
6

7 2

8 Compensation

9 Congress prescribed compensation rules at § 330(a) that are
10 explicit about what is allowed and what cannot be allowed.

11 Compensation must be reasonable and for actual, necessary
12 services and expenses, based on the nature, extent, and value of
13 such services, taking six factors into account: (1) time spent;
14 (2) rates charged; (3) necessity to case administration or
15 benefit at the time rendered; (4) reasonableness of time
16 commensurate with complexity, importance and nature of the issue
17 or task; (5) demonstrated skill or experience in bankruptcy
18 field; and (6) reasonableness of compensation based on customary
19 compensation charged by comparably skilled practitioners in cases
20 not under title 11.⁴ 11 U.S.C. § 330.

21 _____
22 ⁴Subsections 330(a)(1)-(3) provide in relevant part:

23 (a)(1) ... the court may award to ... a professional person
24 employed under section 327 or 1103 --

25 (A) reasonable compensation for actual, necessary
26 services rendered by the ... attorney and by any
27 paraprofessional person employed by any such person; and

28 (B) reimbursement for actual, necessary expenses.

(2) the court may ... award compensation that is less
than the amount of compensation that is requested.

(3) In determining the amount of reasonable compensation
to be awarded to ... [a] professional person, the court
shall consider the nature, the extent, and the value of such

1 No compensation can be allowed for: (1) unnecessary
2 duplication of services; (2) services not reasonably likely to
3 benefit the debtor's estate; and (3) services not necessary to
4 the administration of the case. 11 U.S.C. § 330(a)(4).

5 Fee applications are governed by Rule 2016(a). There must be
6 a detailed statement of the services rendered, time expended,
7 expenses incurred, and amount requested.

8 Regardless of whether there objections to an application for
9 fees, the court has an independent duty to assure itself that the
10 compensation requested is warranted in fact and law. In re
11 Scoggins, 517 B.R. 206, 221 (Bankr. E.D. Cal. 2014), citing In re
12 Busy Beaver Bldg Ctrs., Inc., 19 F.3d 833, 841 (3d Cir. 1994).

13 Rule 9014 "contested matter" procedure governs disputes
14 regarding fees for professionals employed pursuant to § 327.

15 The Bankruptcy Rules Advisory Committee appointed pursuant
16 to the Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, has been
17

18 services, taking into account all relevant factors,
19 including ---

20 (A) the time spent on such services;

21 (B) the rates charged for such services;

22 (C) whether the services were necessary to the
23 administration of, or beneficial at the time at which the
24 service was rendered toward the completion of, a case under
25 this title;

26 (D) whether the services were performed within a
27 reasonable amount of time commensurate with the complexity,
28 importance, and nature of the problem, issue, or task
addressed;

(E) with respect to a professional person, whether the
person is board certified or otherwise has demonstrated
skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the
customary compensation charged by comparably skilled
practitioners in cases other than cases under this title.

11 U.S.C. §§ 330(a)(1)-(3).

1 obstacle to accomplishment of the purpose of Congress that
2 warrants imposition of conflict preemption.

3
4 III

5 § 1334(e) (2) Does Not Affect the Conflict Preemption Analysis

6 In 2005, Congress amended § 1334(b), which provides
7 District Courts with “original but not exclusive jurisdiction” of
8 “civil proceedings” arising under title 11 or arising in or
9 related to cases under title 11, to exclude from § 1334(b) new
10 subsection § 1334(e) (2). 28 U.S.C. § 1334(b).

11 New subsection 1334(e) (2) grants District Courts “exclusive”
12 jurisdiction of “claims or causes of action that involve
13 construction of section 327 ... or rules relating to disclosure
14 requirements under section 327.” 28 U.S.C. 1334(e) (2).⁵

15 New subsection 1334(e) (2) does not affect the fee
16

17
18 ⁵The § 1334(b) and § 1334(e) amendments provide:

19 § 1334(b): Except as provided in subsection (e) (2), and
20 notwithstanding any Act of Congress that confers exclusive
21 jurisdiction on a court or courts other than the district
22 courts, the district courts shall have original but not
exclusive jurisdiction of all civil proceedings arising
under title 11 or arising in or related to a case under
title 11.

23 28 U.S.C. § 1334(b).

24 § 1334(e): The district court [and its Bankruptcy Court
25 ‘unit’] in which a case under title 11 is commenced or is
26 pending shall have exclusive jurisdiction - ... (2) over all
27 claims or causes of action that involve construction of
section 327 of title 11, United States Code, or rules
relating to disclosure requirements under section 327.

28 28 U.S.C. § 1334(e) (2).

1 application process under § 330 for which the relevant
2 jurisdictional grant is 28 U.S.C. § 1334(a).

3 Since the time of original enactment in 1984, 28 U.S.C.
4 § 1334(a) has provided that the District Court has “original and
5 exclusive jurisdiction” of all “cases” under title 11. Hence,
6 original and exclusive jurisdiction over employment and
7 compensation has been integral to § 1334(a) from the outset.

8 The “case” for purposes of § 1334(a) refers to all matters
9 of administration of the case. The “case” includes employment and
10 compensation of the estate’s professionals, which have been
11 treated as administrative, not legal, in nature ever since the
12 Supreme Court settled the question in 1908. In re Wood &
13 Henderson, 210 U.S. at 258; Hale, 509 F.3d at 1147.

14 While new § 1334(e) (2) did not affect the grant of original
15 and exclusive jurisdiction in § 1334(a), Congress must have meant
16 something. The rule against superfluties dictates that courts
17 interpret words of a statute so that effect is given to all
18 provisions and no part will be inoperative or superfluous. Hibbs
19 v. Winn, 542 U.S. 88, 101 (2004).

20 The Collier treatise explains there are occasions in which
21 it is alleged that either § 327 or the attendant disclosure rule
22 has not been obeyed and that someone has suffered damages as a
23 consequence of that failure. If litigation raising the question
24 is filed in a state court or in a different district court:

25 By stating that the district court has exclusive
26 jurisdiction [over] any litigation that involves the
27 interpretation of § 327, § 1334(e) (2) mandates that the
28 litigation must be tried in the district (or bankruptcy)
court in which the bankruptcy case is pending, rather than
state court or some other district court.

1 Collier on Bankruptcy ¶ 3.01 (2023).

1 The sparse case law confirms the Collier view that
2 § 1334(e) (2) serves a channeling function. In re Triguee
3 Foundation, Inc., 2016 Westlaw 3971734 (Bankr. D. D.C. 2016); In
4 re BHI Int'l, Inc., 2012 Westlaw 2847829 (Bankr. D. D.C. 2012).

5 It follows that § 1334(e) (2) does not affect the application
6 of the doctrine of conflict preemption in this case.⁶

7 8 Conclusion

9 All of the causes of action in the RKF complaint are
10 inextricably intertwined with compensation for RKF as special
11 counsel employed under § 327(e). They conflict with the
12 comprehensive scheme of Congress for compensating such
13 professionals and are preempted.

14 RKF's exclusive remedy is by way of its contested fee
15 application under § 330. In the course of its prosecution of that
16 fee application, it will be able to present all of the facts that
17 it believes support the adversary proceeding that is preempted.
18 As explained above, the trial of the contested fee application as
19 a Rule 9014 "contested matter" will feature the due process
20 characteristic of the trial of an adversary proceeding.

21 The RKF adversary proceeding "stands as an obstacle to the
22 accomplishment and execution of the full purposes and objectives
23 of Congress" in Bankruptcy Code § 330. There being no
24 jurisdiction, this adversary proceeding is DISMISSED.

25 Dated: June 27, 2023


United States Bankruptcy Judge

26 ⁶Preemption does not leave RKF without redress for improper
27 objection to its fee application. Rule 9011(b) has teeth. E.g.,
28 In re Estate of Taplin, 641 B.R. 236, 245-49 (Bankr. E.D. Cal.
2022). Similarly, RKF could oppose fee requests by trustees and
counsel. Although distasteful, judges can police misbehavior.