

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF MICHIGAN

In re:

INTERLOGIC OUTSOURCING, INC.,

Debtor.

Case No. DG 20-00325

Hon. Scott W. Dales

Chapter 11

ONESOURCE VIRTUAL, INC.,

Plaintiff,

Adversary Pro. No. 20-80109

v.

INTERLOGIC OUTSOURCING, INC., and  
PRIMEPAY, LLC,

Defendants.

MEMORANDUM OF DECISION AND ORDER

PRESENT: HONORABLE SCOTT W. DALES  
Chief United States Bankruptcy Judge

On July 30, 2021, the court entered a Memorandum of Decision and Order (the "MDO," [ECF No. 63](#)) through which it explained its decision to enter judgment abstaining from the further exercise of jurisdiction over the dispute between OneSource Virtual, Inc. ("OneSource") and PrimePay, LLC ("PrimePay"). OneSource has timely filed OneSource Virtual, Inc.'s Motion for Reconsideration (the "Motion," [ECF No. 65](#)), urging the court to reconsider the MDO, at least in one limited respect related to a footnote expressing concerns about its attorneys' candor to the court. The court has reviewed the Motion, PrimePay, LLC's Opposition to OneSource Virtual, Inc.'s Motion for Reconsideration ([ECF No. 68](#), the "Response"), and OneSource Virtual, Inc.'s Reply in Support of Its

Motion for Reconsideration (ECF No. 70, the "Reply"). The court does not require oral argument.

Through the Motion, which seeks to strike a single footnote in the MDO apparently without otherwise challenging the decision to abstain,<sup>1</sup> OneSource reports that its counsel, Jamil N. Alibhai, Esq., and John R. Humphrey, Esq., did not conceal from their adversaries the Asset Purchase Agreement Between Crystal Solutions, Inc., and OneSource Virtual, Inc., dated as of Sept. 15, 2015 (the "APA"), in which OneSource's predecessor-in-interest under the APA evidently acknowledges that Interlogic Outsourcing, Inc. ("IOI") fully performed under the agreement at the heart of this dispute. PrimePay opposes the Motion, in part by arguing that OneSource's filing of a Notice of Appeal (ECF No. 66) deprives the court of jurisdiction to consider it.

First, the court rejects the argument in PrimePay's Response that the filing of OneSource's Notice of Appeal deprives the court of jurisdiction to resolve the Motion, largely for the reasons OneSource advances in its Reply.<sup>2</sup> Because the Notice of Appeal is not yet "effective," and will not become effective until the court enters an order resolving the Motion, the court cannot give it the jurisdictional effect that PrimePay seeks. *See Fed. R. Bankr. P. 8002(b)(2)*. PrimePay's reliance on *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 59 (1982), and similar authorities that predate the current version of *Fed. R. Bankr. P. 8002*, is misplaced. *Griggs*, for example, relied on an earlier version of *Fed. R. App. P. 4(a)(4)* which treated a premature notice of appeal as a "nullity." Similarly, when

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<sup>1</sup> The first and last paragraphs of the Motion take aim at footnote 14 of the MDO, and in between those bookends the court perceives no substantial effort to apply the usual standards governing abstention or reconsideration. To the extent the Motion seeks to challenge the decision to abstain, the court rejects the challenge and continues to regard abstention as appropriate under the circumstances.

<sup>2</sup> OneSource cites *Fed. R. App. P. 4* rather than its substantially similar bankruptcy analog, *Fed. R. Bankr. P. 8002*, but the gist of OneSource's argument on this point is persuasive.

the Sixth Circuit in *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't of Nat. Res.*, 71 F.3d 1197, 1203 (6th Cir. 1995), noted that the filing a notice of appeal divests the trial court of jurisdiction, it had no occasion to consider the text of Fed. R. Bankr. P. 8002(b)(2) (with its treatment of premature notices of appeal) as it was addressing the scope of a trial court's authority after remand from the Supreme Court and the Sixth Circuit. In any event, the court today is not modifying the Judgment in an Adversary Proceeding (ECF No. 64) that will eventually be subject to OneSource's appeal.

Second, the court accepts the representation that PrimePay and IOI have long been aware of the APA and the disclosure schedules thereto, and acknowledges that it was laboring under the misimpression that OneSource had only recently revealed that document to PrimePay. The Motion also explains counsel's view that the representations of Crystal Solution are of "limited relevance" or "not relevant," a point that the court will not concede.<sup>3</sup> In any event, the Motion undermines to some extent the adverse inference the court drew against counsel based on the APA's dual reference to IOI's having "fully performed."<sup>4</sup>

In deference to the reputational concerns of Messrs. Alibhai and Humphrey, the court is issuing today's opinion to make clear that it never made a finding that either attorney violated his duty of candor, but simply gave its reasons for reserving jurisdiction

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<sup>3</sup> In federal court, evidence is "relevant" if it has "any tendency to make a fact more or less probable than it would be without the evidence" and "the fact is of consequence in determining the action." Fed. R. Evid. 401. Arguing that the disclosure schedules to the APA, which represent that the principal obligations under the key agreement in this dispute were "fully performed," are "not relevant" to the issues under 11 U.S.C. § 365 is clearly an overstatement that continues to strain credulity.

<sup>4</sup> The court did not rely on the APA in reaching the decision to abstain, as that document has a bearing on the merits of the very dispute the court declined to resolve when it entered the MDO.

to do so in a separate proceeding, if so moved.<sup>5</sup> It is certainly fair to say that the attorneys' exceedingly zealous advocacy has adversely affected their credibility with the court, but the court made no formal finding of a breach of ethics. This clarification has no effect on the court's decision to abstain.

As for the concerns of Messrs. Alibhai and Humphrey that they may have to explain footnote 14 to aggressive adversaries for the rest of their careers if it is not stricken, the statement smacks of hyperbole and impracticality. Like counsel, the court can only explain, not erase, prior utterances, or actions for that matter. We all must live with our professional reputations which, while fragile, take their shape over an entire career, regardless of whether an unflattering or frank footnote is stricken or stands.

Here, although Messrs. Alibhai and Humphrey have not attempted to explain why their client failed to file a proof of claim under **11 U.S.C. § 365(g)** and **502(g)** after arguing throughout this proceeding that the Transfer Agreement is an executory contract, they have squarely addressed the court's concerns about the previously supposed nondisclosure of the APA.

Attorneys in possession of damning evidence against their clients do not have an ethical obligation to broadcast it under **M.C.R. 3.3**, as Messrs. Alibhai and Humphrey correctly contend through the Motion. Nevertheless, the court's footnotes (8 and 14) in the MDO illustrate the reputational risks of not addressing adverse evidence early and directly, even if the strategic decision may ultimately be protected under the rules of professional responsibility. The court and counsel have different expectations with respect to transparency, trust, and other hallmarks of a healthy relationship among advocates and

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<sup>5</sup> The court regards the Motion as a timely response to the invitation in the MDO at footnote 14.

between advocates and the court. Although counsel admitted to practice *pro hac vice* would be well-advised to practice as if their admission were more durable (*i.e.*, with an eye on their local reputations), there is room for varying approaches to transparency and trust in the joints of the ethics rules.

Finally, it bears repeating that OneSource has not meaningfully challenged the court's decision to abstain, though of course it may do so when the Notice of Appeal ripens.

NOW, THEREFORE, IT IS HEREBY ORDERED that (A) the Motion is GRANTED to the extent it seeks clarification that (i) the court did not find Messrs. Alibhai and Humphrey in breach of their formal duty of candor under **M.C.R. 3.3** and **(ii)** Messrs. Alibhai and Humphrey did not conceal the APA from opposing counsel; and (B) the Motion is DENIED in all other respects.

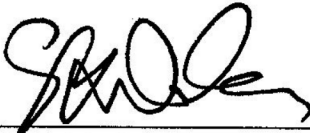
IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Memorandum of Decision and Order pursuant to Rule 9022 and LBR 5005-4 upon Jamil N. Alibhai, Esq., John R. Humphrey, Esq., Darius Gambino, Esq., and Steven L. Rayman, Esq.

END OF ORDER

**IT IS SO ORDERED.**

Dated September 1, 2021



  
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Scott W. Dales  
United States Bankruptcy Judge