

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

IN RE: ELECTRIVERT, INC.,

Assignor.

Case No. 2015-2769-CB

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OPINION AND ORDER

Gene R. Kohut, assignee for the benefit of assignor Electrivert Inc.'s creditors, has filed an application for interim compensation.

I. Factual and Procedural History

On August 7, 2015, Electrivert, Inc. ("Electrivert") executed an "assignment for the benefit of creditors" under which he assigned all of its non-exempt property to Mr. Kohut pursuant to MCL 600.5201 *et. seq.* ("Assignment"). The purpose of the Assignment is to liquidate all of Electrivert's property for the benefit of its creditors.

To date, Mr. Kohut has allegedly liquidated most of Electrivert's assets into \$170,000.00 in cash, and he is still seeking to collect \$23,000.00 in total accounts receivable. As of September 25, 2015, 30 creditors have filed proof of claims with Mr. Kohut; however, creditors have until November 23, 2015 to file proof of claims.

On September 25, 2015, Mr. Kohut filed his instant application for interim compensation. On October 5, 2015, the Court held a hearing in connection with the application and took the matter under advisement.

## II. Arguments and Analysis

In support of his motion, Mr. Kohut relies on MCL 600.5255, which provides:

The assignee shall receive for his services, such compensation as may be allowed by the court. In the event of an estate being administered by more than 1 assignee or by successive assignees, the court shall apportion the compensation between them according to the services actually rendered so that there shall not be paid to the assignees for the administering of any estate a greater amount than 1 assignee would be entitled to. The court may in its discretion withhold all compensation from any assignee who has been removed for cause. Ten days' notice by mail shall be given to the creditors of all applications for the allowance to the assignee of compensation and expenses, stating the amount of compensation and the items of expenses for which allowance is asked.

## III. Analysis

After reviewing the facts including the nature of the case, as well as the above-referenced statute, the Court is convinced that Mr. Kohut's request for payment is premature. While the statute does not state whether an assignee may apply for compensation before all of his/her duties are completed, the Court is convinced that Mr. Kohut's application is premature in this case. The case appears to be relatively straightforward of likely of short duration. Although none of the existing claim holders have filed an objection to the instant application, there is a possibility that one or more creditors that have yet to come forward may object in the future. As a result, the Court is convinced in this case that approving payment before all creditors are required to come forward renders Mr. Kohut's request untimely.

IV. Conclusion

Based upon the reasons set forth above, Mr. Kohut's application for interim payment is DENIED, WITHOUT PREJUDICE. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

Date: DEC 04 2015

Kathryn A. Viviano  
Hon. Kathryn A. Viviano, Circuit Court Judge