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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED

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NORTHERN DISTRICT OF OHIO  
CLEVELAND

In re: ) Case No. 95-12349  
)  
PARIS CONNECTION BY CAROL, INC., ) Chapter 11  
)  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
)  
)  
) **MEMORANDUM OF DECISION**  
) **REGARDING APPLICATION OF**  
) **EVA GABOR INTERNATIONAL,**  
) **LTD. FOR PAYMENT OF**  
) **ADMINISTRATIVE CLAIM**

This matter is before the Court on the Application of Eva Gabor International, Ltd. ("EGI") for Payment of Administrative Expense. The United States Trustee opposes the Application on the ground that the efforts of EGI's counsel did not go beyond the representation of EGI and did not provide a substantial contribution to the Chapter 11 case as required by the Bankruptcy Code. For the reasons stated below, EGI's Application is granted in part and denied in part.

**JURISDICTION**

This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A),(B),(O).

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**FACTS**

The relevant facts are undisputed, as follows:

On May 30, 1995, Paris Connection By Carol Inc. filed a petition under Chapter 11 of the Bankruptcy Code. On June 7, 1995, Debtors Sawgrass Mills, Inc., Paris Connection - Mall of America, Carol Rae Enterprises, and Fantasy Creations by Carol also filed petitions under Chapter 11 of the Bankruptcy Code. These cases were substantively consolidated by Order entered July 24, 1995. (Docket 25). Creditor EGI filed a plan of reorganization and disclosure statement on September 14, 1995. (Docket 27, 28). On October 13, 1995, an Order was entered confirming the Chapter 11 plan. (Docket 43).

EGI now seeks reimbursement in the amount of \$18,348.60, which apparently represents most or all of its legal fees and expenses incurred with relation to the Chapter 11. The Court held a hearing on the Application on March 10, 1996 at which time EGI's legal counsel appeared and argued, but did not present any testimony. He relied on these facts in support of the Application: EGI, a supplier and a secured creditor of the pre-petition debtor, made the pre-petition decision, subject to its own due diligence, "to go in and become the Debtor." As a result, EGI negotiated an agreement under which it would purchase Debtors' assets and stock, propose a plan and proceed forward as the reorganized debtor. (Exh. A to EGI Application). Additionally, EGI negotiated and drafted post-petition (a) an agreement to hire Debtors' principal as an independent contractor for the reorganized Debtors, and (b) a cash collateral agreement, disclosure statement, and the plan of reorganization.

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EGI also relied at hearing on Exhibit A to the Application, which includes this provision:

The attorney's fees and costs of EGI with respect to the bankruptcy proceedings of the PC Entities [Debtors] shall be reimbursed to EGI by the bankruptcy estates of the PC Entities. It is agreed by the PC Entities and EGI that the same shall constitute a substantial contribution to the said estates within the meaning of 11 U.S.C. § 503.

(Exhibit A, ¶ 7).

At the conclusion of the hearing, the Court granted EGI leave to supplement its Application to indicate (a) which charges related to plan preparation and negotiation, and (b) the names and hourly rates of the professionals listed by initials only in the time records attached to the Application. EGI did file a Supplement breaking out some of the time entries and identifying professional rates ranging from \$75 to \$185 per hour. (Docket 57). The firm charges these rates for all matters, including bankruptcy, except for two clients who are charged a lower rate based on particular circumstances. (Supplement; counsel's statements at hearing).

The court file indicates that Debtors and EGI were in an adversarial position on various matters in the case. In fact, Debtors filed an Objection to the Chapter 11 plan submitted by EGI. (Docket 39).

**DISCUSSION**

EGI's Application is based on 11 U.S.C. § 503(b), which provides in relevant part:

- (b) After notice and a hearing, there shall be allowed administrative expenses . . . including -
  - (3) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by - . . .

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(D) a creditor . . . in making a substantial contribution in a case under chapter 9 or 11 of this title . . .

(4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant.

11 U.S.C. § 503(b)(3), (4). See also Bankruptcy Rule 2016(a). An applicant has the burden of proving entitlement to priority under these sections. *In re Lister*, 846 F.2d 55 (10th Cir. 1988); *In re Jack Winter Apparel, Inc.*, 119 B.R. 629 (D.Ct. E.D. Wisc. 1990). See also *In re United Trucking Service, Inc.* 851 F.2d 159 (6th Cir. 1988) (Claimant has burden to prove entitlement to priority claim under § 503(b)(1)(A)). Priority claims under § 503 are to be “narrowly construed in order to maximize the value of the estate preserved for the benefit of all creditors.” *In re United Trucking Services, Inc.* at 164.

EGI’s Application does not contain any legal argument or authority, other than the reference to § 503(b). At the hearing, however, EGI cited *In re White Motor Corp.*, 831 F.2d 106 (6th Cir. 1987), in support of its request. That case considers whether post-petition expenses related to pre-petition contractual obligations are allowable under § 503(b)(1)(A) as actual and necessary costs and expenses of preserving the estate. Section 503(b)(1)(A) is not the controlling subsection in this matter because EGI’s request falls within the specific terms of subsections 503(b)(3) and (b)(4). Even if that case applied, EGI has not explained how the holding supports this Application. The *White Motor* case does not, therefore, advance EGI’s position. Moreover, to the extent EGI is asserting that the Court is bound by the agreement set forth in Exhibit A

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regarding reimbursement of its fees and expenses, EGI is in error. This Court must independently determine whether a claim is entitled to administrative status, regardless of the Debtors' agreement. *In re United Trucking Service, Inc.* at 161. See *In re White Motor* (Court re-examined whether creditor was entitled to administrative priority claim despite debtor's agreement that claim was entitled to priority).

Section 503(b)(4) provides for payment from the estate of a creditor's reasonable attorney fees and expenses incurred in making a substantial contribution in a Chapter 11 case. A "substantial contribution" is defined as an actual and demonstrable benefit to the estate and the creditors. *In re Lister; Lebron v. Mechem Financial Inc.*, 27 F.3d 937 (3d Cir. 1994). Services which substantially contribute to a case are those which foster and enhance the reorganization process. *In re Consolidated Bancshares, Inc.*, 785 F.2d 1249 (5th Cir. 1986). Generally, creditors are presumed to be acting for their own interests; actions taken by a creditor to further its own interests are not compensable even if they result in an incidental benefit to the estate. *In re Lister; Lebron v. Mechem Financial Inc.*

EGI seeks payment for legal services related to a period beginning pre-petition and continuing after confirmation of the Debtors' plan of reorganization. As noted above, the request appears to include all fees and expenses related to the Chapter 11 case. No attempt has been made to break out fee requests which relate to specific services which provided a substantial benefit as that term has been defined. Even a cursory review of the Application indicates that the bulk of the services were performed solely for the benefit of EGI. Pre-petition services relate to the advisability of an asset purchase by EGI, negotiation strategies, the possibility of a Chapter 11 filing, and various alternatives. Those fees and expenses were incurred in protecting EGI's

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interests as a secured creditor and in pursuing its decision to become the reorganized debtor. The Application also includes post-filing charges related to protection of EGI's interests in cash collateral, tax issues, attendance at the § 341 meeting, and negotiations regarding and preparation of various agreements which appear to relate solely to representation of EGI's interests. EGI has failed to establish that these services substantially benefitted the estate and creditors in general. If any benefit flowed to the estate and to other creditors as a result of EGI's efforts, and none has been established, it was merely incidental to EGI's representation of its own interests.

EGI's efforts in drafting and proposing the plan of reorganization and the disclosure statement warrant different treatment. Preparation of the plan and disclosure statement appears to have provided a substantial benefit to the estate and to creditors because these services advanced a key reorganizational goal. The services did not duplicate services performed by other constituencies in the case, and these costs are normally borne by the debtor. The plan proposed by EGI was subsequently confirmed. Based on these facts, allowance of the fee charges related to these services is appropriate under § 503(b)(4) in an amount which is reasonable based on the time spent, the nature and extent of the services, and the cost of comparable services. After reviewing the file, the time records provided, and the information in the Supplement, the Court finds that fees should be awarded in the amount of \$2797.00. This number is arrived at by starting with the entries identified in the Supplement under Part II, using the September 7, 1995 entry for Robert Wray on the timesheet attached to the Application (2.4 hours) rather than the entry for him on the Supplement (3.7 hours). The Court then deducted the amounts relating to these entries for the reasons stated:

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<u>Date</u>	<u>Attorney</u>	<u>Hours</u>	
8/28/95	Mr. Stahl	.4	There is no corresponding entry for Mr. Meyer relating to this conference or an explanation for its absence.
9/11/95	Mr. Stahl	.5	There is no corresponding entry for Mr. Meyer relating to this conference or an explanation for its absence.
9/12/95	Mr. Stahl	.3	There is no corresponding entry for Mr. Meyer relating to this conference or an explanation for its absence, and the subject matter of the conference is not stated.

In the absence of a more detailed explanation of these services, it is not possible to conclude that they are appropriate charges to the estate. Additionally, a breakdown for expenses related to these services has not been provided and, therefore, the request for expenses is denied.

EGI also requests allowance for fees and costs relating to plan changes and confirmation issues such as balloting and handling of objections. The Application and Supplement do not attempt to identify the specific activities and charges which resulted in a substantial benefit to the estate; EGI instead seeks payment for each and every one of its activities from September 18, 1995 through October 31, 1995. While it is clear that confirmation of EGI's plan benefited the estate, it is not clear that the benefit of EGI's participation was more than incidental to the protection and pursuit of its own interests. Indeed, many of the charges relate to resolving Debtors' Objection to the plan, a circumstance in which EGI's interests arguably conflicted with those of the estate. Finally, many of the entries in this category relate to a variety of issues and services which are lumped together. While a portion of the service may have benefitted the estate, it is impossible to determine which portion of the entry is related to such a service. The

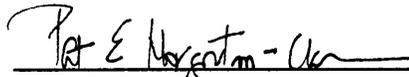
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Court cannot, unaided by EGI, parse out those items which may have provided a substantial benefit. Therefore, EGI has failed to meet its burden of establishing that these fees and costs are related to a substantial contribution in the Chapter 11 case.

**CONCLUSION**

For the reasons stated, EGI'S Application for payment of administrative expenses is granted in part. EGI is allowed an administrative expense in the amount of \$2797.00 pursuant to 11 U.S.C. § 503(b)(4). The remaining charges did not go beyond the appropriate representation of EGI's own interests and are not allowable as an administrative expense. A separate judgment will be entered in accordance with this Memorandum of Opinion.

Date: 17 May 1996

  
\_\_\_\_\_  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

Served on: Lenore Kleinman, Esq. (by mail)  
Glenn Forbes, Esq. (by mail)  
Jerald Meyer, Esq. (by mail)

By: Joyce L. Gordon, Secretary

Date: 5/17/96