

UNITED STATES BANKRUPTCY COURT
for the
DISTRICT OF PUERTO RICO

In re:

Olympic Mills Corporation,
Coachman Incorporated
Debtors

Bk. No. 01-13021 (GAC)
Bk. No. 01-13028 (GAC)
Chapter 7

DCC Operating, Inc.,
Plaintiff

v.

Adv. No. 03-0090-MWV

Luis Rivera Siaca and the Conjugal Society
constituted with his wife Enery Ortiz-Rivera,
Defendants

Carmen D. Conde Torres, Esq.
C. CONDE & ASSOCIATES
and
W. Steven Paleos, Esq.
Attorneys for the Plaintiff

Jaime Sifre-Rodriguez, Esq.
SANCHEZ, BETANCES & SIFRE C.S.P.
and
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John A. Zerbe, Esq., Chapter 7 Trustee

MEMORANDUM OPINION

The Court has before it Plaintiff DCC Operating, Inc.'s Motion for a Partial Final Judgment for Attorneys' Fees and Costs Pursuant to 12 Del. C. § 3584 and PR's Obstinance Doctrine (Ct. Doc. No. 286). The Court also has before it the Defendants' Motions to Dismissals Nos. 3, 4 and 5 (Ct. Doc. No. 236, 237 and 238, respectively).

The Plaintiff, pursuant to its amended Exhibit Vol. I, seeks attorneys' fees and costs in the amount of \$1,300,331.33 plus additional fees and costs incurred after October 31, 2007. This figure was

supplemented to April 2008 in the amount of \$73,621, for a total of \$1,373,952.33. The Plaintiff also asserts that good cause exists to enter a partial final judgment preserving the issues of subsequent fees and costs in the event of appeal.

JURISDICTION

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the “Standing Order of Resolution for Bankruptcy Cases” dated July 19, 1994 (Torruella, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

BACKGROUND

The road to the issue of fees has been long and winding to say the least. The underlying law suit, based on diversity, was filed in the United States District Court for the District of Puerto Rico on November 7, 2001. In the law suit, the Plaintiff alleges that Defendant Luis Rivera Siaca (“Rivera”) breached his obligation as Trustee pursuant to a Subordination and Standby Agreement. On November 26, 2001, Coachman Incorporated, Olympic Mills Corporation, Glamourette/OG, Inc., and nine other subsidiaries of Coachman Incorporated filed for protection under Chapter 11 of the United States Bankruptcy Code. The district court granted the Plaintiff’s motion for summary judgment on the issue of liability but did not make a finding as to damages. The law suit was subsequently transferred to the Bankruptcy Court on April 29, 2003, with the issue of damages to be determined by the Bankruptcy Court. On August 18, 2004, this Court rendered its opinion on Plaintiff’s motion for summary judgment on damages awarding \$2,360,500 in principal, \$1,160,038.51 in interest, and twelve percent per annum in post-judgment interest. The Defendants appealed to the Bankruptcy Appellate Panel and subsequently to the First Circuit Court of Appeals. On January 17, 2007, the First Circuit affirmed both the summary judgment on liability and damages. The court also ordered that the matter be remanded to the Bankruptcy Court on the issue of legal fees. Discovery ensued on the fee issue, including multiple motions by the

Defendants for extensions of time. On February 15, 2008, the Court held a hearing and ruled, on April 28, 2008, that the Court retain jurisdiction to hear the attorney fee issue and also ruled on Defendant's Motions to Dismissal Nos. 1 and 2 (Ct. Doc. Nos. 295 and 296, respectively). On July 21, 2008, this Court heard oral arguments on Plaintiff's motion for partial summary judgment. On that day, the Defendants filed a motion for relief from judgment, which this Court denied. On November 20, 2008, the Defendants appealed to the district court, which the district court dismissed on August 5, 2009. An appeal followed to the circuit, which was dismissed in February 2010, and the circuit issued its mandate in April 2010.

DISCUSSION

The Court will first find that the Plaintiff has filed sufficient information with both the Court and the Defendants to satisfy due process. The Plaintiff's original Exhibits Vol. I-A through Vol. IV-E provide the Court with each and every legal bill for fees and costs for which the Plaintiff seeks reimbursement in this proceeding. These exhibits also include copies of the relevant dockets. These exhibits were supplemented by the Plaintiff's amended Exhibit Vol. I, along with a detailed explanation of the exhibit. These exhibits were then supplemented by an added notice of fees through April 2008 (Ct. Doc. No. 311). The Defendants have also filed the Declaration of Ramon E. Dapena, an attorney with Goldman, Antonetti and Cordova, P.S.C., rendering his opinion as to relevant legal rates in the market area as well as a copy of the United States District Court for the District of Puerto Rico's taxation of costs guidelines. These exhibits, plus the Court's familiarity with most of the proceedings, are sufficient to determine the issue of attorneys' fees.

The Plaintiff, in its motion for partial final judgment, relies on Delaware trust law and Puerto Rico Obstinacy Doctrine for award of attorneys' fees. The Court will first consider Delaware law. The Court, in its April 28, 2008, order, found "[a]ccordingly, the Court finds that the Plaintiff's claims for fees based on breach of trust are substantive, and the Plaintiff may seek fees under section 3584." (Ct. Doc.

No. 296, p. 4.) Generally, the American Rule provides that each party is responsible for paying its own attorneys' fees regardless of the outcome of litigation. However, Delaware law provides courts with discretion to award attorneys' fees in cases relating to trusts. Section 3584 provides in relevant part that:

In a judicial proceeding involving a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

12 Del. C. § 3584.¹ Delaware courts typically only exercise this discretion in cases involving bad faith. Copeland v. Kramarck, 2006 WL 3740617 1, 3 (Del. Ch. 2006). Delaware courts consider the following factors in deciding whether to depart from the American Rule in cases involving bad faith related to trusts: "(i) whether the trustee's breach of duty was fraudulent or in bad faith; (ii) the nature and extent of the wrongful conduct; and (iii) whether the action resulted in a benefit to the trust." McNeil v. McNeil, 798 A.2d 503, 514 (Del. 2002).

The trust involved in this proceeding is derived from the Subordination and Standby Agreement entered into between the Plaintiff and Rivera. Paragraph 4 of the Subordination and Standby Agreement states as follows:

Payments Held in Trust. The Subordinating Creditor will hold in trust and immediately pay over to the Lender, in the same form of payment received, with appropriate endorsements, for application to the Senior Debt any cash amount that the Borrower pays to the Subordinating Creditor with respect to the Subordinated Debt, or as collateral for the Senior Debt any other assets of the Borrower that the Subordinating Creditor may receive with respect to the Subordinated Debt, in each case except with respect to payments expressly permitted pursuant to Section 2 hereof.

See Subordination and Standby Agreement, p. 2. As stated in this Court's April 28, 2008, order:

¹The Defendants, in their sur-reply (Ct. Doc. No. 338), raises the issue for the first time as to whether the retroactive application of section 3584 contravenes the contract clause of the United States Constitution since the statute was enacted after the execution of the subordination agreement in question. Section 10 of the Act amending the Delaware Code relating to trusts specifically states that section 7, which includes section 3584, would be effective "two years after the date of enactment with respect to trusts created on or before the date of enactment." 72 Del. Laws, c. 388, § 10 (2000). The Court accepts the language of the statute and declines to rule on the constitutional issue raised for the first time by the Defendants.

The First Circuit has also recognized that a trust and breach of trust are involved in this case. In re Olympic Mills Corp., 477 F.3d at 3 (stating that Luis Rivera Siaca “appeals a decision of the Bankruptcy Appellate Panel (‘BAP’) subjecting him to over \$3 million in liability for retaining payments in breach of trust”). The First Circuit stated that the Subordination Agreement “required Rivera (1) to hold in trust any cash or collateral received from Coachman in payment of the principal of the subordinated debt, and (2) immediately pay over to DCV the cash or collateral held in trust for application to the senior debt until the senior debt was repaid in full.” Id. at 9.

Ct. Doc. No. 296, p. 3.

Rather than pay over the monies Rivera received as trustee, he appropriated these funds for his own benefit, thus depriving the beneficiary of the trust, the Plaintiff, of the funds to which it was entitled, resulting in prolonged and expensive litigation. Rivera’s conduct evidences all of the factors constituting bad faith leading this Court to believe that justice and equity require an award of fees and costs to the Plaintiff. What started as a relatively simple contract case in the United States District Court for the District of Puerto Rico in 2001 is still pending. The issue of liability was decided by the United States District Court for the District of Puerto Rico on December 16, 2002, and damages ordered by this Court on August 18, 2004.

Plaintiff, in its amended Exhibit Vol. I, as supplemented, seeks total fees and expenses of \$1,373,952.33. These fees include legal bills paid by the Defendants to five law firms, namely:

Redmon, Peyton and Braswell, LLP
William Steven Paleos
Richards, Layton and Finger, P.A.
Rivera Tulla and Ferrer
C. Conde & Associates

They are further broken down by the different stages of the litigation and the bankruptcy case. These stages are:

1. District Court — pre-summary judgment
2. District Court — post-summary judgment
3. Adversary 03-0090 — this case and successor to district court case
4. BAP case 03-0090
5. First Circuit Appeal 03-0090
6. Adversary 03-0042
7. Bankruptcy Case — objection to claim
8. Bankruptcy Case — SP Loan Fee

- 9. Kelley, Drye & Warren, LLP — fee application
- 10. Sanction/Injunction — fees

While the Plaintiff argues that all of the fees are reimbursable under this Court’s inherent power and Delaware law, this Court disagrees and finds that only the fees directly related to Rivera’s breach of trust should be reimbursed under Delaware law.

The Court will first explain the facets of this case that are not reimbursable. Adversary 03-0042 was a complaint brought by the Debtors claiming an interest in the same funds as the Plaintiff claims was its as a result of the breach of trust. The Debtors had separate counsel approved by the Court. Although the Plaintiff alleges that the Debtors were controlled by the Defendants in the bankruptcy case, there is no evidence of that in the record. In fact, the Defendants in the case paid \$400,000 to settle that adversary proceeding. The circumstances did not support holding the Defendants in this case liable for fees attributable to adversary 03-0042. The same reasoning applies to the fees related to the objection to the Plaintiff’s claim, which was brought by the Debtors, the SP loan expenses, which were also the Debtor’s request, the fees of Kelley, Drye & Warren, LLP, which were the 03-0042 adversary, and the sanctions/injunction fees pertaining to a principal of the Plaintiff. A summarized total of alleged litigation abuse fees for facets of this case that are not reimbursable is as follows:

03-0042 Case Fees	\$277,373.88	Expenses	\$20,045.30
Objection to Claim Fees	16,758.94	Expenses	1,771.63
SP Loan Fees	50,142.50	Expenses	11,326.40
Kelley, Drye & Warren, LLP, Fees	990.00	Expenses	5,981.34
Sanction/Injunction Fees	<u>8,112.50</u>	Expenses	<u>598.34</u>
	\$353,377.82		\$34,340.01
Total			<u>\$387,717.83</u>

The Court is next faced with the problem that the Plaintiff has not summarized the total fees for each facet of the case, but only that portion attributed to the litigation abuse. The Plaintiff, in its amended Exhibit Vol. I, has a total of \$847,654.17 designated as litigation abuse out of the total of \$1,300,331.33. This equates to roughly sixty-five percent of the total, leaving thirty-five percent as not being litigation

abuse. Since the Court does not have the total fees per facet of the case, this Court will increase the non-reimbursable total of \$387,717.83 by a factor of thirty-five percent, or \$135,701.24, for a total of \$523,419.07. The Court will deduct this figure from the \$1,373,952.33 in fees and expenses sought, for a rounded balance of \$850,533. It is this amount that justice and equity demand under Delaware law to compensate the Plaintiff for the extended litigation of what this Court believes to be a relatively simple contract action resulting from Rivera's wrongful appropriation of funds that should have gone to the Plaintiff.

Delaware law further requires that the award be reasonable. The Court has reviewed the hourly rates of the attorneys involved for the Plaintiff as well as the expenses incurred. The majority of the legal work for the Plaintiff was handled by Attorney Paleos and Attorney Conde. Both charge an hourly rate of \$250. Despite the Dapena affidavit, this Court finds that the fees are extremely reasonable for the litigation involved in this case and well within the standards of reasonable rates for the District of Puerto Rico. While the Court does not believe this award under Delaware law requires the lodestar analysis, this Court does find that the time spent and the fees charged were both reasonable and necessary under the facts of this case, that the questions raised by this case were novel and difficult, that the attorneys for the Plaintiff had the skill required to perform the legal services necessary for the case, and that the amount of the fees are reasonable for the results obtained. Because of the novelty of the case, the Court does not believe there is a customary fee for similar cases or a comparison to amounts awarded in similar cases.

Another test of reasonableness is that the fees awarded are less than twenty percent of the amount received by the Plaintiff of \$4,257,065.20 with interest. This Court has made its determination under Delaware law and declines the Plaintiff's invitation to also rule under the Puerto Rican Obstinacy Doctrine.

It is also noted that, since the fees have already been paid by the Plaintiff to the various law firms, no allocation is necessary among the law firms as all of the award inures to the Plaintiff. Finally, this Court has before it the Defendants' Motion for Dismissal Nos. 3, 4 and 5 seeking the dismissal of certain

of the attorneys' fees requested. Since this opinion addresses all legal fees and expenses sought by the Plaintiff, the Court hereby dismisses those motions as moot.

This is a partial summary judgment to the extent that it does not prohibit the Plaintiff from requesting additional fees and expenses incurred after the date of this opinion in the event of an appeal.

CONCLUSION

For the reasons mentioned herein, the Court grants the Plaintiff's Motion for Final Judgment for Attorneys' Fees and Costs and awards the Plaintiff \$850,533. As a result, the Court deems moot the Defendants' Motions to Dismissals Nos. 3, 4 and 5. This opinion constitutes the Court's findings and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate final judgment consistent with this opinion.

DATED this 24th day of September, 2010, at Manchester, New Hampshire.

/s/ Mark W. Vaughn
Mark W. Vaughn
Chief Bankruptcy Judge
for the District of New Hampshire
Sitting by designation