



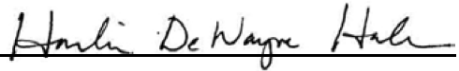
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 15, 2015


United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re: §
§
NNN 3500 Maple 26, LLC, *et al*, § Case No. 13-30402-hdh11
§ (Jointly Administered)
§
Debtors. §

**ORDER DENYING REQUEST FOR PAYMENT
OF ADMINISTRATIVE EXPENSE CLAIM**

On this date, the Court considered the *Request for Payment of Administrative Expense Claim* [Docket No. 902] (the "Application") filed on June 30, 2014 by CWCapital Asset Management LLC, solely in its capacity as Special Servicer for U.S. Bank National Association, as Trustee, successor-in-interest to Bank of America, N.A., as Trustee for the Registered Holders of Wachovia Bank Commercial Mortgage Trust, Commercial Mortgage Pass-Through Certificates, Series 2006-C23 (hereinafter referred to as "CWCAM"). CWCAM seeks allowance of the post-petition fees, costs, and other amounts due under its Loan Documents¹ (the "Requested Fees and Costs") of its counsel, Venable LLP ("Venable") and Perkins Coie LLP ("Perkins Coie"),

¹ The term Loan Documents has the meaning given to it in the Application.

as an administrative expense in the above-captioned, jointly-administered bankruptcy cases pursuant to 11 U.S.C. §§ 503(b)(3)(D) and (b)(4). CWCAM contends that it is entitled to reimbursement because it made a substantial contribution in the cases and provided a direct, tangible, and substantial benefit to the debtors' estates. The jointly-administered debtors in the above-captioned bankruptcy cases (the "Debtors") filed the *Debtors' Objection to CWCAM's Request for Payment of Substantial Contribution Claim* [Docket No. 1198] (the "Objection"), arguing that CWCAM has presented insufficient evidence that it made a "substantial contribution" in the cases required for an administrative claim for professional fees. CWCAM then filed its *Reply in Support of Trust's Request for Payment of Administrative Expense Claim* [Docket No. 1241] (the "Reply"), asserting that its actions in the cases, as shown by the pleadings filed, readily constitute a showing of substantial contribution under relevant case law in the Fifth Circuit. The Court held a hearing on this matter on March 31, 2015 (the "Hearing"). Having considered the Application, the Objection, the Reply, and the argument and evidence presented at the Hearing, the Court is of the opinion that CWCAM's Application should be denied for the reasons set forth below.

I. CWCAM's Request for Payment in the Application

The Application describes itself as a contingent request for allowance of the post-petition fees and costs and other amounts due under its Loan Documents of Venable and Perkins Coie, as an administrative expense pursuant to 11 U.S.C. § 503. CWCAM has also filed the *Trust's Application Pursuant to 11 U.S.C. § 506(b) for Interest, Fees, Costs and Charges* [Docket No. 1168], which sought allowance of the Requested Fees and Costs as part of CWCAM's secured claim.

On June 10, 2015, this Court entered its *Order Regarding (I) the Trust's Application Pursuant to 11 U.S.C. § 506(b) for Interest, Fees, Costs and Charges and (II) the Reorganized Debtors' Objection to Trust's Prepetition Secured Claim* [Docket No. 1356] (the "506(b) Order"). Pursuant to the 506(b) Order, CWCAM now has an allowed secured claim for the majority of the Requested Fees and Costs. The only Requested Fees and Costs that were not allowed as part of CWCAM's secured claim were found to be unreasonable in the 506(b) Order.

II. Legal Standard for a Substantial Contribution Claim

Taken together, 11 U.S.C. §§ 503(b)(3) and (4) require a court to allow an administrative expense claim for actual, necessary expenses of a creditor who makes a substantial contribution in a case under chapter 11, as well as for the reasonable professional fees incurred for services rendered by the attorney of such creditor. *See Hall Fin. Group, Inc. v. DP Partners, Ltd. P'ship (In re DP Partners, Ltd. P'ship)*, 106 F.3d 667, 671 (5th Cir. 1997).

While there is no statutory definition, the United States Court of Appeals for the Fifth Circuit has defined "substantial contribution" to mean "a contribution that is considerable in amount, value, or worth." *DP Partners*, 106 F.3d at 673. A creditor's motive in taking actions that benefit the estate is of little relevance in the determination. *Id.* However, a creditor's services must "foster and enhance, rather than retard or interrupt the progress of reorganization." *In re Energy Partners, Ltd.*, 422 B.R. 68, 80 (Bankr. S.D. Tex. 2009) (quoting *DP Partners*, 106 F.3d at 673). In determining whether an entity has provided a substantial contribution under section 503(b)(3)(D), bankruptcy courts have broad discretion and should consider each set of facts on "a case-by-case basis." *DP Partners*, 106 F.3d at 673.

An entity attempting to prove that it has made a substantial contribution must do so by a preponderance of the evidence. *Energy Partners*, 422 B.R. at 80. Courts in the Fifth Circuit

consider a number of factors in determining whether a party's efforts have effected a substantial contribution in a case. *In re Mirant Corp.*, 354 B.R. 113, 132 (Bankr. N.D. Tex. 2006), *aff'd*, 308 F. App'x 824 (5th Cir. 2009). Factors include: 1) whether the services involved in the contribution provided a benefit to the estate; 2) whether the services involved in the contribution were undertaken just for the applicant alone or for the benefit of all parties in the case; 3) whether the applicant would have undertaken the same approach absent the expectation of compensation from the bankruptcy estate; 4) whether the benefit conferred through the applicant's contribution exceeds the cost which the applicant seeks to assess against the estate; 5) whether the efforts of the applicant were duplicative of efforts undertaken by statutory fiduciaries; 6) whether the applicant profited from the situation or rather faced substantial loss if it had not undertaken the approach that it did; and 7) whether the applicant had a negative effect on the case. *Id.* at 132-35.

III. Evaluating CWCAM's Application

As an initial matter, the Application is moot with respect to the portion of the Requested Fees and Costs that have already been allowed as part of CWCAM's secured claim pursuant to the 506(b) Order.

For the reasons more fully stated in the 506(b) Order,² the Court specifically found all of the remaining Requested Fees and Costs that were not allowed as part of CWCAM's secured claim in the 506(b) Order to be unreasonable. The Court will not grant a substantial contribution claim for fees and costs that it has already determined were unreasonable. The services related to the disallowed fees and costs 1) did not provide a benefit to the estates; 2) were undertaken for CWCAM's benefit alone; and 3) had a negative effect on the bankruptcy cases.

² The Court incorporates the findings of fact from the 506(b) Order into the present order.

The Court additionally notes that even if it were to evaluate the entirety of the Requested Fees and Costs under the standard of section 503(b)(3)(D), CWCAM has failed to present sufficient evidence to support its substantial contribution claim. While the Debtors' property was ultimately sold at foreclosure for an excellent price, CWCAM has not shown that this result was obtained because of its efforts rather than because of a general interest in the property or because of the efforts of the many other parties involved.

IT IS THEREFORE ORDERED that the Application is **DENIED**.

End of Order