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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No. 02-93549-D-11
) Docket Control No. MTH-1
)
DAVID E. ROBINETTE and)
MARGIE L. ROBINETTE,)
)
)
Debtors.)
_____)

MEMORANDUM DECISION

Western Asset Recovery, Inc. ("WAR"), has filed a Motion for Allowance and Payment of Attorneys Fees, bearing Docket Control No. MTH-1 (the "Motion"). For the reasons set forth below, the Motion will be granted in part and denied in part.

I. INTRODUCTION

On April 28, 2003, this court entered an order (the "Employment Order") in the above-captioned chapter 11 Case No. 02-93549 (the "Case"). The Employment Order authorizes David and Margie Robinette, as debtors in possession (the "Debtors"), to employ George Rose ("Rose") and WAR as their general contractor in the chapter 11 case.

On September 19, 2003, the court entered an order in the Case (the "Confirmation Order") that confirmed the Debtors' plan of reorganization, under which the bankruptcy estate would continue in existence post-confirmation. At some point, a dispute arose between the Debtors, on the one hand, and WAR and

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1 Rose, on the other, regarding performance under the Real Property
2 Development Agreement (the "Development Agreement"), the terms
3 and conditions of which were presented to the court in connection
4 with the Debtors' application to approve WAR's and Rose's
5 employment. This dispute resulted in the initiation on November
6 16, 2004 of Adversary Proceeding No. 04-9161 (the "Adversary"),
7 in which the Debtors named Rose and WAR as defendants.

8 On January 11, 2005 and January 26, 2005, Rose and WAR filed
9 two motions in the Case, bearing, respectively, Docket Control
10 Nos. WPC-4 and WPC-5 (collectively, the "Claim Motions"). By way
11 of the Claim Motions, WAR and Rose sought allowance and payment
12 of administrative claims against the Debtors' continuing
13 bankruptcy estate, generally on account of services rendered
14 under the Development Agreement. The Debtors contested the Claim
15 Motions. On March 24, 2005, the court entered orders
16 administratively consolidating the Claim Motions with the
17 Adversary Proceeding (hereinafter, the Claim Motions, after
18 consolidation, and the Adversary Proceeding will be referred to
19 collectively as the "Consolidated Proceedings").

20 After trial in the Consolidated Proceedings, the court on
21 January 27, 2006 entered judgment in the Adversary Proceeding in
22 favor of WAR and Rose. The judgment authorized WAR to file a
23 motion, in the Adversary, for recovery of attorneys' fees and
24 costs in connection with the Consolidated Proceedings. On the
25 same date, the court also entered orders in the Case to resolve
26 the Claim Motions and which also authorized WAR to file a motion,
27 in the Adversary, to seek recovery of its attorneys' fees and
28 costs incurred in connection with the Consolidated Proceedings.

1 WAR filed the Motion on February 28, 2006.¹ By way of the
2 Motion, WAR requests an award of attorneys' fees and costs in the
3 aggregate sum of \$114,357.62. On March 28, 2006, the Debtors
4 filed timely opposition to the Motion.² Pursuant to Local
5 Bankruptcy Rule 9014-1(f)(1)(iii), the record closed with the
6 filing of WAR's reply on April 5, 2006, and the court heard oral
7 argument on the Motion on April 12, 2006. The court has
8 considered the various pleadings and supporting documents filed
9 by both parties in this matter, and the arguments and statements
10 of counsel.

11 II. ANALYSIS

12 This court has jurisdiction over the Motion pursuant to 28
13 U.S.C. sections 1334 and 157(b)(1). The Motion is a core
14 proceeding under 28 U.S.C. section (b)(2)(A) and (B).

15 In the Motion, WAR seeks allowance and payment of attorneys'
16 fees and costs that relate not just to the Consolidated
17 Proceedings, but also to other matters handled by counsel on
18 behalf of WAR and Rose in connection with the chapter 11 case.
19 WAR argues that subsections(b)(3)(D) and (b)(4) of 11 U.S.C.
20 section 503 permit such allowance and payment, on grounds that
21 such fees and costs are available to it as a creditor making a
22 substantial contribution in the chapter 11 case. The Debtors
23 dispute WAR's contentions, and argue that an award of attorneys'

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26 1. WAR filed the Motion in both the Adversary and the Case
(bearing the same Docket Control No. in each).

27 2. The Debtors filed opposition only in the Adversary.
28 Inasmuch it was necessary to file the Motion only in the Adversary,
the court deems the Debtors' opposition papers filed in Adversary to
have been filed in the Case as well.

1 fees and costs under the Development Agreement must be restricted
2 to fees and costs incurred in litigating the question of whether
3 the breached the Development Agreement.

4 In general, the court accepts the Debtors' position, and is
5 not persuaded that compensation under 11 U.S.C. section 503(b)(3)
6 or (4) is appropriate in the circumstances of this case. The
7 court invited WAR to request an award of attorneys' fees and
8 costs, as the prevailing party in a dispute regarding the
9 parties' respective rights under the Development Agreement. The
10 parties bargained for terms under the Development Agreement, and
11 those terms include a specific provision to govern attorneys fees
12 and costs:

13
14 In the event either party brings any suit or other
15 proceeding with respect to the subject matter or
16 enforcement of this Agreement, the prevailing party
shall, in addition to such other relief as may be
awarded, be entitled to recover reasonable attorneys'
fees, expenses and costs of litigation incurred.

17 This provision, which was included in the contract drafted
18 by WAR and Rose, refers specifically to a proceeding with respect
19 to enforcement of the Development Agreement (not to any other
20 matters), and to fees, expenses, and costs of litigation (not to
21 fees and costs for other activities such as monitoring the
22 chapter 11 case). The contract could have been more broadly
23 drafted, for example to provide for recovery of fees and costs
24 associated with the Debtors' chapter 11 case, but it was not.

25 Given the terms of the Development Agreement discussed
26 above, the court will restrict the award to fees and costs
27 related to services rendered by counsel in the Consolidated
28 Proceedings, since only those proceedings involved the

1 enforcement of terms of the Development Agreement. The only fees
2 and costs subject to award are thus those incurred after November
3 16, 2004, the date on which the Debtors filed the Adversary.

4 In addition to arguing that reimbursable fees and costs are
5 restricted to the matters set forth in the Development Agreement,
6 the Debtors also argue that various services included in the
7 billing statements submitted by counsel should not be approved
8 because the descriptions of these services lack the specificity
9 that is necessary for allowance of attorneys' fees and costs
10 under Federal Rule of Bankruptcy Procedure 2016.

11 While the court does not find that Rule 2016 is specifically
12 applicable to the Motion, it does find that a number of services
13 that were billed by counsel are inappropriately grouped together,
14 or are described in such general terms, so as to make it
15 impossible for the court to determine whether such services
16 relate to the Consolidated Proceedings or instead to other
17 matters that are not subject to award. In making this finding,
18 the court is mindful of the fact that the Employment Order
19 expressly makes WAR's compensation subject to 11 U.S.C. section
20 330, which requires detailed disclosures to the court for
21 approval, and that the reimbursement of its attorneys' fees under
22 the Development Agreement can be considered a component of such
23 compensation. The court is also mindful of the fact that the
24 Confirmation Order makes WAR's compensation subject to court
25 review as reasonable.

26 As a consequence, the court finds that WAR, as the moving
27 party, bears the burden of demonstrating the reasonableness of
28 the compensation and its relationship to the Consolidated

1 Proceedings. Where the court cannot reasonably determine the
2 relationship of any services to the Consolidated Proceedings
3 because of the grouping of services on the billing statements or
4 because the description of services is too general, it will not
5 include the fees for such services in the award to WAR.

6 Using the standards stated above, the court has reviewed the
7 billing statements that were submitted by counsel, and has
8 determined where counsel has demonstrated that services and costs
9 relate to the Consolidated Proceedings and where it has not.
10 Also as noted above, the court has determined that only fees and
11 costs incurred after November 16, 2004 are subject to award.

12 Attached hereto as Exhibit 1 are copies of the billing
13 statements that counsel submitted with the Motion. The court
14 will award to WAR those fees and costs which have been
15 underlined, and will not award the balance. The fees and costs
16 awarded are summarized as follows:

Attorney	Hours & Rate	Fees	Costs	Total
Wylie P. Cashman	236.8 hrs. (\$200/hour)	\$47,360.00	\$5,297.40	\$52,657.40
Michael T. Hertz	39.1 hours (\$235 per hour)	\$9,188.50	\$397.40	\$9,585.90
Totals				\$62,243.30

23 III. CONCLUSION

24 For the reasons set forth above, the court will enter an
25 granting the Motion in part and denying it in part, with an award
26 to WAR as set forth above.

27 Dated: April 24, 2006

28 /s/
ROBERT S. BARDWIL
United States Bankruptcy Judge