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UNITED STATES BANKRUPTCY COURT EASTERN
DISTRICT OF CALIFORNIA

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:

OAKHURST LODGE, INC.,

Debtor.

Case No. 11-17165-A-11

DMS-56

MEMORANDUM REGARDING ELVIN BELL'S REQUEST FOR COMPENSATION

1 Elvin Bell, a marketing and litigation consultant, seeks
2 compensation in the amount of \$176,800 for post-confirmation services
3 rendered to Oakhurst Lodge, Inc. Oakhurst Lodge, Inc. supports his
4 request. Chetankumar Patel, Shaileshkumar Patel and Jack Patel,
5 putative shareholders, oppose the request.

6 **I. FACTS**

7 Oakhurst Lodge, Inc. ("Oakhurst Lodge" or "the motel") owned and
8 operated a motel in Oakhurst, California. Faced with financial
9 headwinds, Oakhurst Lodge filed a Chapter 11 bankruptcy in 2011 and
10 confirmed its plan for reorganization in early 2012. The plan
11 provided for payments to creditors over time from motel operations.
12 The plan retained the protections of the stay by deferring discharge
13 and re-vesting until completion of payments under the plan. 11 U.S.C.
14 §§ 362(c), 1141(b), (d)(1)(A); *Hillis Motors Inc. v. Hawaii Auto*
15 *Dealers' Ass'n.*, 997 F.2d 581, 587 (9th Cir. 1993).

16 In late 2012, Oakhurst Lodge's primary creditor, First-Citizens
17 Bank & Trust ("Bank"), foreclosed its first and/or second deed of
18 trust against the motel, effectively ending the debtor's efforts to
19 reorganize.

20 Oakhurst Lodge filed an adversary proceeding against the Bank for
21 violation of the stay.

22 In 2017, Oakhurst Lodge and the Bank settled the adversary
23 proceeding, subject to court approval, for \$850,000. Finding that the
24 settlement impermissibly modified the confirmed plan under 11 U.S.C. §
25 1127(b), this court declined to approve the settlement.

26 In 2018, the parties again settled the adversary proceeding. The
27 settlement provided that the Bank, or its assignees, would retain the
28 motel but pay Oakhurst Lodge, Inc. \$3,000,000 and waive any further

1 right to payment. Finding that the settlement pays all pre-petition
2 and post-petition creditors according to the terms of the plan and
3 that the only parties whose rights under the plan would be affected,
4 i.e., shareholders, supported the settlement, the court approved the
5 settlement. Second Amended Order, January 31, 2019, ECF # 512 ("the
6 Settlement Order"). The order provided that the settlement will be
7 paid into a blocked account and will be disbursed only upon order of
8 this court and in a manner consistent with the terms of the then
9 confirmed Chapter 11 plan. *Id.*

10 **II. PROCEDURE**

11 Under the terms of the Settlement Order, Oakhurst Lodge has
12 sought court approval for payment of seven post-confirmation
13 creditors, including Elvin Bell ("Bell"). *Id.* at ¶ 8(C). Propriety
14 of payment to five of those creditors is undisputed; the sixth
15 creditor, Alan Shapiro, has withdrawn his request for payment. Only
16 the Bell claim remains unresolved.

17 This motion was originally heard on November 19, 2019. At that
18 time, the court described the motion as "thin," and noted that Bell's
19 claim was not supported by declarations under penalty of perjury and
20 described the supporting documents as "fragmented." The court
21 continued the hearing to January 22, 2020 and ordered Bell to "augment
22 the record with respect to his claim" not later than December 24,
23 2019.

24 Bell has filed a declaration in support of this claim.¹ Bell

25 ¹ The court has reviewed Bell's other submissions. Those include: (1)
26 Opposition, November 28, 2019, ECF # 459; (2) Bell decl., December 5, 2019,
27 ECF # 461; (3) Commentary and Data, December 20, 2018, ECF # 481; (4) Invoice
28 for Services, March 14, 2019, ECF # 546; (5) Letter, dated November 8, 2019,
ECF # 674; and (6) Bell decl., January 14, 2020, ECF # 711. None of these
documents are signed under penalty of perjury, LBR 9014-1(d)(3)(B), and are
not considered in this ruling. The court will also not consider the untimely

1 decl., December 23, 2019, ECF # 699. Steven Marshall, purported
2 shareholder of Oakhurst Lodge, also filed a declaration supporting
3 Bell's request.

4 At the beginning of the continued hearing, the court announced
5 its intention to grant the motion as to Bell. Jack Patel ("Patel"),
6 speaking through counsel Glen Gates, argued against compensating Bell.
7 The court continued the motion and is now ready to rule on the motion.

8 **III. DISUCCSION**

9 Motions for distribution are controlled by the terms of the
10 confirmed plan, Order, December 29, 2012, ECF # 124, as modified by
11 the Settlement Order. The Settlement Order provides for distribution
12 in the following order: (1) unclassified claims, priority tax claims,
13 United States Trustee's Fees, Professional Fees and Secured Claims;
14 (2) pre-petition general unsecured claims; (3) post-confirmation
15 creditor's claims; (4) professional fees due to Donna Standard; and
16 (5) equity holders. Settlement Order ¶ 8, January 31, 2019, ECF #
17 512. Each such distribution shall be made by order after noticed
18 motion supported by admissible evidence. LBR 9014-1(d)(3)(D).

19 Patel interposes three key arguments: (1) any contract for
20 payment was between Steven Marshall and Bell, not Oakhurst Lodge and
21 Bell; (2) Bell has not adequately documented his work or the benefit
22 to the corporation; and (3) Bell's work could not have reasonably
23 benefited the corporation, since it was performed after the motel was
24 lost to foreclosure.

25 **A. Is Oakhurst Lodge, Inc. Bound to a Contract with Bell?**

26 Where an agent enters into a contract on behalf of a principal

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28

declaration by Bell. Bell decl., February 5, 2020, ECF #733. See Order,
November 26, 2020, ECF # 685 (setting deadline of December 24, 2019).

1 and the principal is disclosed, e.g. named in the contract and "not
2 excluded by its terms, and the fact of agency appears, the principal
3 will of course be held liable for the acts of the agent actually or
4 ostensibly authorized." 3 Witkin, *Summary of Calif. Law*, Agency § 168
5 (2019); *Rest.3d*, Agency §§ 6.01, 6.02.

6 Here, it appears that from late 2012 to March 25, 2014, Bell
7 worked under an oral contract. Marshall decl. 3, December 23, 2019,
8 ECF # 700; Bell decl. ¶ 1, December 23, 2019, ECF # 699. On March 25,
9 2014, Marshall sent Bell a letter stating "Oakhurst Lodge is now your
10 client. Please commence your planning of making the Lodge an even
11 better place for guests to stay." The "From" line states "Steve K.
12 Marshall/Oakhurst Lodge, site address, 40302 Highway 41, Oakhurst, Cal
13 93644, President and CEO of Oakhurst Lodge." At least for services
14 rendered on or after March 25, 2014, this minimally meets the
15 disclosed principal standards for a finding of agency where Oakhurst
16 Lodge, Inc. would be liable as the principal.

17 **B. Reasonable Benefit**

18 This court has authority to review professional fees, even after
19 a case has been concluded, under 11 U.S.C. § 329(b); *In re Sundquist*,
20 576 B.R. 858 (Bankr. E.D. Cal. 2017). It has authority to review
21 other fees under state law. Settlement Order ¶ 8(C), January 31,
22 2019, ECF # 512.²

23 Under state contract law the central inquiry is the terms of the
24 contract. A contract's terms must be definite and reasonably certain.
25 1 Witkin, *Summary 11th Contracts* § 137 (2019). The terms of a
26 contract are "reasonably certain if they provide basis for determining

27 ² Because Bell's fees do not pass muster under state contract law, the court
28 need not decide whether he is a professional within the meaning of 11 U.S.C.
§ 327.

1 the existence of a breach for giving an appropriate remedy." *Id.*,
2 citing *Holmes v. Lener*, 74 Cal.App.4th 442, 457 (1999); Rest.2d,
3 Contracts § 33.

4 Here, neither the Bell declaration nor the Marshall declaration
5 provides the terms of the agreement.³ As a result, the court cannot
6 define terms of either the oral or written contract.

7 **C. Adequate Documentation**

8 "For the breach of an obligation arising from contract, the
9 measure of damages, except where otherwise expressly provided by this
10 Code, is the amount which will compensate the party aggrieved for all
11 the detriment proximately caused thereby, or which, in the ordinary
12 course of things, would be likely to result therefrom." Cal. Civ. Code
13 § 3300.

14 Here, Bell has not yet made a prima facie showing of valid
15 contract formation.⁴ Bell has not set forth the terms of the
16 agreements. During oral argument Bell said he had three flat rate
17 contracts, one for \$100,000 and two for \$50,000, that were later
18 converted to hourly compensation. Other than a vague description of
19 work as a "business and development advisor," March 25, 2014, letter,
20 the court is unable to ascertain the work required to earn the flat
21 fee or the hourly fees. Read broadly, Bell's declaration contends
22 that he is owed \$176,800 for hard work, e.g. research, communications
23 with Steven Marshall, marketing, performed over a six-year period.
24 Without more, his statements do not support that he is owed the

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26 ³ At the hearing on November 19, 2019, Bell commented, in unsworn remarks,
27 that his contract was initially on a flat rate basis, e.g. one contract for
28 \$100,000, two contracts for \$50,000 each, and that the fee was later
converted to one with an hourly rate, e.g. \$250-\$300 per hour.

⁴ Prior unsworn submissions are not considered.

1 damages he requests.

2 **IV. Conclusion**

3 As to Elvin Bell, the motion is denied without prejudice and will
4 issue an order from chambers.

5 Dated: February 5, 2020

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7 /s/
Fredrick E. Clement
8 United States Bankruptcy Judge
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