

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

MICHIGAN BIODIESEL, LLC,

Debtor.

Case No. DK 10-05786

Hon. Scott W. Dales

Chapter 11

OPINION AND ORDER
DISALLOWING ADMINISTRATIVE CLAIM

PRESENT: HONORABLE SCOTT W. DALES
United States Bankruptcy Judge

I. INTRODUCTION

Before the Chapter 11 bankruptcy filing of Michigan BioDiesel, LLC (the “Debtor”) and until the appointment on November 22, 2011, of Chapter 11 trustee Thomas R. Tibble (the “Trustee”), Mr. John Oakley served as chief executive officer for the Debtor. Shortly after the Trustee’s appointment, Mr. Oakley, acting *pro se*, filed a request for payment of administrative expenses totaling \$8,668.02 (the “Administrative Claim,” DN 289). This represents compensation in the nature of salary, health insurance, mileage and other expense reimbursement for the month of November, 2011.

Mr. Oakley’s Administrative Claim drew three objections, including one from the United States Trustee (“UST”) and one from the Trustee. The court issued a pretrial order (the “First Pretrial Order,” DN 320) prescribing discovery and other deadlines, and scheduling the controversy for trial.

Mr. Oakley, however, did not file witness or exhibit lists as the court required him to do, and did not participate in the final pretrial conference. Consequently, in accordance with the First Pretrial Order, the court entered a Final Pretrial Order in Contested Matter (DN 486) barring Mr. Oakley from offering documentary evidence and

testimony (other than his own) at the trial. *See* First Pretrial Order at p. 3 (warning parties that failure to comply with pretrial deadlines may result in exclusion of witnesses and exhibits); Final Pretrial Order at p. 2.

The court conducted the trial on September 25, 2012 in Kalamazoo, Michigan. This Opinion and Order sets forth the court's findings of fact and conclusions of law in accordance with Fed. R. Civ. P. 52 and Fed. R. Bankr. P. 7052.

II. JURISDICTION

The court has jurisdiction over the Debtor's Chapter 11 case pursuant to 28 U.S.C. § 1334(a). The case and this contested matter have been referred to the United States Bankruptcy Court pursuant to 28 U.S.C. § 157(a) and LCivR 83.2(a) (W.D. Mich.). This contested matter is a core proceeding because it involves matters affecting the administration of the estate and allowance of an administrative claim against the estate. 28 U.S.C. § 157(b)(2)(A) and (B). The Supreme Court's recent decision in *Stern v. Marshall*, 131 S. Ct. 2594 (2011), involving a bankruptcy court's authority to enter final judgment on a claim by the estate, does not undermine the court's authority to resolve this dispute.

III. ANALYSIS

In order to prevail, Mr. Oakley must show, by a preponderance of the evidence, that his Administrative Claim represents "the actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1)(a); *see also National Union Fire Insurance, Co. v. VP Buildings, Inc.*, 606 F.3d 835,838 (6th Cir. 2010). The Sixth Circuit has said

that a debt qualifies as an “actual, necessary” administrative expense only if (1) it arose from a transaction with the bankruptcy estate and (2) directly and substantially benefited the estate. 11 U.S.C. § 503(b)(1)(A). Mr. Oakley’s consulting or employment arrangement was apparently a prepetition contract that was never formally assumed, *see* 11 U.S.C. §365, though he claims to have performed post-petition. The Trustee did not challenge the Administrative Claim on this ground.

At trial, Mr. Oakley credibly testified that he had a longstanding, prepetition arrangement with the Debtor’s Board of Directors pursuant to which he served as the Debtor’s chief executive. He also asked the court to take judicial notice of the Monthly Statement of Insider Compensation/Payments (the “Compensation Statement”) filed for the period in question. The Compensation Statement, signed by the Trustee, showed that for the month of November Mr. Oakley was to receive \$5,000.00 in salary; \$1,325.00 for health insurance; \$1,592.73 for travel reimbursement; and a total of \$1,520.02 for other miscellaneous expenses such as phone, meetings and parts/supplies. Although the Debtor did not list this agreement on Schedule G, Mr. Oakley’s testimony, performance and monthly compensation statement suggest, and the court finds, that there was an agreement with the pre-bankruptcy debtor that continued to some extent post-petition.¹ This performance, therefore, establishes a transaction with the estate.

As for the “necessary” element of the statute, Mr. Oakley states that it was necessary for someone to oversee the Debtor’s operations. The Trustee and the UST argued that during the time Mr. Oakley was in charge, the estate was not being preserved, and in fact was being harmed by Mr. Oakley when he filed claims for certain tax credits

¹ During trial, Mr. Oakley conceded that the amounts for salary and health insurance on the Compensation Statement should be prorated from the first of the month to the day before the Trustee was appointed. This would equal exactly three weeks.

and gave deep discounts to various customers. Notwithstanding this argument, which goes more to whether Mr. Oakley benefitted the estate than the necessity of his services, the court can see how Mr. Oakley's work was to some extent necessary, if for no other reason than the obvious one —the Debtor needed a chief executive, or at least some manager to run the business post-petition.

The court cannot find, however, that Mr. Oakley's services helped preserve the estate. During the course of the Chapter 11 bankruptcy, Mr. Oakley caused certain dubious tax credit claims to be filed with the IRS, prompting the IRS to file a \$13 Million claim against the Debtor's estate. In addition, Mr. Oakley paid Tall Pine Trading, LLC a substantial portion of those tax refunds without the court's permission, resulting in additional controversy and, ultimately, litigation. Although predating the period for which Mr. Oakley claims compensation, these misadventures inferentially undermine Mr. Oakley's claims that he was a good manager and steward of the Debtor's estate.

Moreover, the Trustee testified that when he took over on November 22, 2011, a contractor, with no license or permits, was doing repair work on the building at substantial expense. After he fired the contractor, the Trustee hired one or more engineers to see if the plant was even operational. The court infers that there was much deferred maintenance under Mr. Oakley's watch.

Mr. Oakley claims there was a benefit to the estate because when he was running the business there was a tremendous profit, even without the tax credits. Every month subsequent to his departure, Mr. Oakley argues, there was a loss. He relies on the monthly operating reports that the Debtor filed with the court. Initially, this appears to be true. Under the Trustee's first operating report filed on February 8, 2012 for the

period ending November 30, 2011, it shows net income of \$2,841,342.48 (DN 295). However, on February 15, 2011, the Trustee filed an Addendum to that report (DN 301) that adjusted the net income down to \$185,800.23. Likewise, for the period ending October 31, 2011, the Trustee, in his Addendum, found a loss of \$51,442.44 (DN 300). Although the court took judicial notice of the monthly filings under Fed. R. Evid. 201, such notice establishes only that the Debtor (and later the Trustee) filed the monthly reports. Indeed, the facts within the reports (involving the Debtor's operations and transactions) are not amenable to judicial notice under Fed. R. Evid. 201(b) because they are neither generally known within the jurisdiction nor readily determined from sources whose accuracy cannot be impugned.

At the hearing, Mr. Oakley did testify that he continued to answer telephone calls for the Debtor, but he offered no specific testimony about what he actually did during the three weeks in November, 2011 for which he seeks recompense. He offered no testimony regarding the reimbursement requests and the possible benefits that his purchases may have bestowed on the estate. For these reasons, and given the unfavorable inferences arising from Mr. Oakley's role in claiming the controversial tax refunds and effecting the Tall Pine payment, the court concludes that Mr. Oakley did not meet his burden of proof. On this record, the court cannot find that there was a substantial benefit or preservation of the bankruptcy estate to support the Administrative Claim.

IV. CONCLUSION AND ORDER

In reaching its decision today, the court has considered the Trustee's evidence and credited his testimony. Nevertheless, the court regards the Trustee's evidence and

presentation at trial more as an effort to establish a right of setoff, since many of the criticisms of Mr. Oakley pertained to transactions and other events predating the relatively short period reflected in the Administrative Claim. Because Mr. Oakley failed to establish his case by a preponderance of the evidence, there is no Administrative Claim to set off against the Trustee's claims, and the court has no occasion to make any findings with respect to the Trustee's claims (beyond the adverse inferences it drew). Accordingly, nothing in this Opinion and Order shall preclude Mr. Oakley from defending against any yet-to-be-filed claims to which the Trustee alluded during trial.

NOW, THEREFORE, IT IS HEREBY ORDERED that Mr. Oakley's Administrative Claim is DISALLOWED.

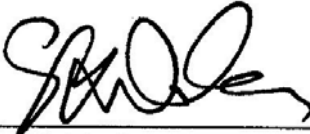
IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Mr. John Oakley (by first class mail), John T. Piggins, Esq., Dean E. Rietberg, Esq., Jerome D. Frank, Esq., Cody H. Knight, Esq., W. Brad Groom, Esq., Thomas R. Tibble, and Ann Marie Uetz, Esq.

END OF ORDER

IT IS SO ORDERED.

Dated October 2, 2012





Scott W. Dales
United States Bankruptcy Judge