

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

FILED  
at \_\_\_\_\_ O'clock & \_\_\_\_\_ min. \_\_\_\_\_ M  
JUN 20 2006  
United States Bankruptcy Court  
Columbia, South Carolina (DC)

IN RE:

David Allen Westerlund and  
Mable Jeane Westerlund,

Debtor(s).

C/A No. 05-10097-JW

Chapter 7

JUDGMENT

Based upon the Findings of Fact and Conclusions of Law made in the attached order of the Court Debtors' Application for Allowance of Claim as an Administrative Expense pursuant to 11 U.S.C. § 503(b) and 11 U.S.C. § 507(a)(1) and Distributable pursuant to 11 U.S.C. §§ 726(a)(1) and (b) is denied.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
June 20, 2006

ENTERED

JUN 21 2006

L.O.

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

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Chapter 7

**ORDER**

**ENTERED**

**JUN 21 2006**

**L.O.**

This matter comes before the Court upon an Application for Allowance of Claim as an Administrative Expense Pursuant to 11 U.S.C. § 503(b) and 11 U.S.C. § 507(a)(1) and Distributable pursuant to 11 U.S.C. §§ 726(a)(1) and (b)<sup>1</sup> ("Application") filed by David Allen Westerlund and Mable Jeane Westerlund (collectively, the "Debtors"). Debtors filed the Application pursuant to § 506(b) to assert an administrative expense claim for the payment of \$3,875.67 in expenses associated with the sale of their home during the course of this case. The Chapter 7 Trustee filed an objection to Debtors' Application.

Debtors initially filed this case under Chapter 11 of the bankruptcy code on September 6, 2005. The Court, however, upon a motion by the United States Trustee, converted Debtors' case to a case under Chapter 7 on February 8, 2006. While the case was under Chapter 11, Debtors served as debtors-in-possession. Prior to the conversion of the case, Debtors sold their residence for \$1,135,000.00. Pursuant to the contract of sale that Debtors negotiated as debtors-in-possession, Debtors were required to vacate their residence and have it cleared and swept clean to close the sale. During the course of Debtors' move out of their residence, Debtors incurred \$3,875.67 in "extraordinary

<sup>1</sup> Since this case was filed before the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (2005) (codified in scattered sections of 11 U.S.C.) ("BAPCPA"), the Court shall only refer to the version of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*) in effect prior to the effective date of the BAPCPA.

moving expenses” associated with their duty to completely clear the residence and have it swept clean.

Debtors contend that the \$3,875.67 moving expenses were actual and necessary expenses which benefited the bankruptcy estate. Section 503(b)(1)(A) of the Bankruptcy Code provides in relevant part administrative expenses include “the actual, necessary costs and expenses of preserving the estate.”<sup>2</sup> The Fourth Circuit has cautioned that “[s]ince there is a general presumption in bankruptcy cases that all of a debtor’s limited resources will be equally distributed among creditors, § 503 must be narrowly construed.” In re Merry-Go-Round Enters., Inc., 180 F.3d 149, 157 (4th Cir. 1999). In order for a claim to qualify as an actual and necessary administrative expense under § 503(b)(1)(A), the claimant must prove that their claim arises out of a post-petition transaction with the debtor-in-possession or the trustee and that the transaction directly and substantially benefited the estate. In re Southern Soya Corp., 251 B.R. 302, 308 (Bankr. D.S.C. 2000) (citing In re Merry-Go-Round Enters., Inc., 180 F.3d at 157 and other cases). Accordingly, Debtors, as claimants, bear the burden of proving their entitlement to assert an administrative expense against the estate by a preponderance of the evidence. Id. In this case, however, the Court finds that Debtors are not entitled to be reimbursed the \$3,875.67 in moving costs as an administrative expense because (1) the

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<sup>2</sup> The Court believes that Debtors assert their administrative expense claim pursuant to 11 U.S.C. § 503(b)(1)(A) because they cite to Southern Soya Corp., a case which provides administrative expense priority to certain claims pursuant to 11 U.S.C. § 503(b)(1)(A). Furthermore, because the other provisions of § 503(b) do not specifically describe a debtor’s entitlement to administrative expense treatment, the Court concludes that Debtors can only utilize 11 U.S.C. § 503(b)(1)(A) to obtain administrative expense treatment of the moving expenses at issue in this case. See e.g., 11 U.S.C. § 503(b)(3) (allowing administrative expense treatment for costs and expenses incurred by a creditor, indentured trustee, equity security holder, committee representing creditors or equity security holders, or custodian of property superseded under 11 U.S.C. § 543).

estate does not appear obligated to reimburse Debtors for the moving expenses that they paid and (2) the moving expenses do not appear to be actual and necessary.

In this case, Debtors presume that because their efforts and expenses to accomplish the sale were beyond that normally required of debtors and therefore, in their view, extraordinary, they are entitled to be reimbursed as an administrative expense from estate assets that are presently payable to creditors. In order to assert a claim against the estate, however, Debtors must have some right to demand payment from the assets of the estate. See 11 U.S.C. § 101(5) (“claim means-right to payment... or right to an equitable remedy for breach of performance if such breach gives rise to a right to payment....”). Despite the broad definition of claim utilized by the Bankruptcy Code, under the facts of this case, Debtors have not demonstrated that they have a right to payment from the estate or that they are entitled to an equitable remedy for breach of performance that gives rise to payment.

As Chapter 11 debtors-in-possession, Debtors had a fiduciary duty to maximize benefits to their creditors. Debtors further determined their duties under the sale contract at the time of its negotiation. To establish a right to be reimbursed, Debtors should have included such a right in the sales contract noticed to interested parties, or otherwise received the Court’s approval prior to the sale. The Court also notes that the main purposes of granting administrative expense status to certain expenses of a debtor is to “induce *creditors* and *landlords* to continue doing business with the debtor or to enter into new loans or contracts.” In re Southern Soya Corp., 251 B.R. at 308. In the absence of an established right to payment, the Court cannot conclude that Debtors are entitled to

be reimbursed for the extraordinary moving expenses from the assets of the estate. Finally, the equities do not favor Debtors' recovery of payments before their creditors.

Secondly, Debtors have not demonstrated that the extraordinary moving expenses were "actual, necessary costs and expenses of preserving the estate" pursuant to § 503(b)(1)(A). Moving expenses appear to be incidental to Debtors' duty to deliver their residence pursuant to the terms of the contract of sale that they negotiated. Accordingly, the Court concludes that Debtors are not entitled to assert an administrative expense claims against the estate for the "extraordinary moving expenses" that they incurred.

Therefore, in light of the foregoing, Debtors' Application is denied.

**AND IT IS SO ORDERED.**

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
June 20, 2006