

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

IN RE: PICCADILLY RESTAURANTS, LLC, ET AL., DEBTORS	* CASE NO. 12-51127 * * (JOINT ADMINISTRATION)¹ * * CHAPTER 11 * * JUDGE ROBERT SUMMERHAYS
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**OBJECTION TO 503(b)(9) CLAIM OF SIMON ROOFING AND
SHEET METAL CORPORATION**

NOW INTO COURT, through undersigned counsel, come the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”),² who submit this Objection to the 503(b)(9) Claim of Simon Roofing and Sheet Metal Corporation, (“Simon Roofing”) and in support thereof, show as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

II. BACKGROUND

2. On September 11, 2012, the Debtors filed for relief in this Court under chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

¹ Jointly administered with *In re Piccadilly Food Service, LLC*, 12-51128 (Bankr. W.D. La. 2012), and *In re Piccadilly Investments, LLC*, 12-51129 (Bankr. W.D. La. 2012).

² The debtors in these Chapter 11 cases include Piccadilly Restaurants, LLC, Piccadilly Food Service, LLC, and Piccadilly Investments, LLC.

3. No trustee or examiner has been appointed. However, an Official Committee of Unsecured Creditors was appointed in these Chapter 11 cases on October 23, 2012.

4. The Debtors' bankruptcy cases are being jointly administered for procedural purposes only, pursuant to Bankruptcy Code § 105(a) and Bankruptcy Rule 1015(b). (Dkt. No. 43).

5. On October 2, 2012, the Debtors filed a Motion for an Order Establishing Procedures for the Assertion, Resolution, and Satisfaction of the Claims Asserted Pursuant to Bankruptcy Code Section 503(b)(9). (Dkt. No. 165).

6. The Court granted that Motion on November 2, 2012. (Dkt. No. 275).

7. Pursuant to the Court's order, to submit a valid 503(b)(9) claim, a vendor was required (a) to prepare a Proof of 503(b)(9) Claim that set forth the value of the goods that the claimant contended the Debtors had received within 20 days prior to the Petition Date, and (b) attach documentation to that Proof of 503(b)(9) claim, including invoices, receipts, bills of lading and the like, that identified the goods on which the 503(b)(9) claim was based. Id.

8. All Proof's of 503(b)(9) Claims were required to be filed and served, so as to be received by the Debtors' counsel no later than the 120th day after the Petition Date, i.e., January 9, 2013, at the following address: Jones, Walker, Waechter, Poitevent Carrere, and Denegre, LLP, 201 St. Charles Ave., 49th Floor, New Orleans, Louisiana 70170, Attn: Mark A. Mintz. Id.

9. Following this 503(b)(9) claim submission deadline, the Debtors were allowed until March 11, 2013, to file objections to 503(b)(9) claims with the Court. Id.

10. Simon Roofing's 503(b)(9) claim was received by Debtors' counsel on November 19, 2012. See Exhibit A.

11. Pursuant to the Court's order of November 2, 2012, the Debtors' now tender this objection to Simon Roofing's 503(b)(9) claim.

III. LAW AND ARGUMENT

A. Legal Standards Governing Objections

12. Section 503(b)(9) of the Bankruptcy Code provides that after notice and a hearing there shall be an allowed administrative expense for:

[T]he value of any goods received by the debtor within the 20 days before the date of the commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.

13. This Court's order of November 2, 2012, Establishing Procedures For the Assertion, Resolution, Allowance and Satisfaction of Claims Asserted Pursuant to Bankruptcy Code Section 503(b)(9), and the text of Section 503(b)(9) collectively provide several requirements that any 503(b)(9) claim must satisfy before it may be deemed valid.

14. A creditor bears the burden to establish that its 503(b)(9) claim satisfies all of these requirements. In re WETCO Restaurant Group, LLC, No. 07-51169, 2008 WL 1848779, at *2 (Bankr. W.D. La. Apr. 23, 2008).

15. A valid 503(b)(9) claim must be based on the Debtors' receipt of "goods" from the creditor, not services. Cf. In re Pilgrim's Pride Corp., 421 B.R. 231, 239-40 (Bankr. N.D. Tex. Sept. 16, 2009). "Goods" is not defined in the Bankruptcy Code, but courts generally utilize the definition of goods used by the Uniform Commercial Code. See 4 Collier on Bankruptcy ¶ 503.16 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2012); In re Deer, No. 06-02460-NPO, 2007 WL 6887241, at *1-2 (Bankr. S.D. Miss. June 14, 2007).

16. The Uniform Commercial Code defines "goods" as all things that are movable at the time of identification to a contract of sale or when a security interest attaches; this "goods"

definition does not include general intangibles. See Uniform Commercial Code § 2-103(k) and 9-102(44).

17. Where a creditor asserts a 503(b)(9) claim based on the Debtors' alleged receipt of a mixture of goods and services, the 503(b)(9) claim is only valid, if at all, to the extent a specifically identified, quantified portion of the claim is tied to the receipt of goods alone, separate and apart from the provision of services. See In re Pilgrim's Pride Corp., 421 B.R. at 237 and n.7.

18. Section 503(b)(9) states that in order to qualify for allowed administrative expense treatment, goods must be "received by the debtor" "within the 20 days before the date of the commencement of a case." The Debtors' bankruptcy cases commenced on September 11, 2012. Thus, only 503(b)(9) claims based on goods received by the Debtors on August 22, 2012, through and including September 10, 2012, (the "Statutory 20-Day Period") are valid.

19. Finally, as noted previously, pursuant to this Court's order of November 2, 2012, all Proof's of 503(b)(9) Claims were required to be filed and served, so as to be received by the Debtors' counsel no later than the 120th day after the Petition Date, i.e., January 9, 2013, at the following address: Jones, Walker, Waechter, Poitevent Carrere, and Denegre, LLP, 201 St. Charles Ave., 49th Floor, New Orleans, Louisiana 70170, Attn: Mark A. Mintz. Any 503(b)(9) claim received by Debtors' counsel after that date is untimely.

B. Objection To Simon Roofing's 503(b)(9) Claim

20. Through its 503(b)(9) claim, Simon Roofing seeks \$16,935.13. See Exhibit A.

21. This claim warrants a partial objection.

22. Attached to the claim are three invoices and additional documentation concerning each invoice.

23. Invoice 232247 is for a service provided to the Debtors, not for goods received by the Debtors, and thus falls outside of the ambit of 503(b)(9).

24. Invoices 231883 and 231974 are for a mixture of goods and services. The exhibits to these invoices specifically identify that \$5,711.00 of the sum total due under the invoices was attributable to materials alone, i.e., goods as opposed to services. The remainder of the amount due was costs charged for labor, i.e., services.

25. Accordingly, Simon Roofing's claim for 503(b)(9) administrative expenses should be limited to \$5,711.

IV. CONCLUSION

26. For the foregoing reasons, the Debtors' pray that the Court sustain the Debtors' Objection and deny Simon Roofing's claim for an allowed 503(b)(9) administrative expense to the extent it exceeds \$5,711. The Debtors' also request all other general and equitable relief to which they may be entitled.

/s/ Mark A. Mintz

R. PATRICK VANCE (#13008)
ELIZABETH J. FUTRELL (#05863)
MARK A. MINTZ (#31878)
TYLER J. RENCH (#34049)
Jones, Walker, Waechter, Poitevent,
Carrère & Denègre, L.L.P.
201 St. Charles Avenue, 51st Floor
New Orleans, Louisiana 70170
Telephone: (504) 582-8000/Direct: 582-8194
Direct Facsimile: (504) 589-8194
Email: pvance@joneswalker.com
Email: efutrell@joneswalker.com

PATRICK L. McCUNE (#31863)
Jones, Walker, Waechter, Poitevent,
Carrère & Denègre, L. L. P.
Four United Plaza
8555 United Plaza Blvd.
Baton Rouge, Louisiana 70809
Telephone: (225) 248-2150
Facsimile: (225) 248-3350
Email: pmccune@joneswalker.com
**Attorneys for Piccadilly Restaurants, LLC
Piccadilly Food Service, LLC and
Piccadilly Investments, LLC**