

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

<i>In re</i>	Chapter 11
QUANTUM FOODS, LLC, <i>et al.</i> ,	Case No. 14-10318 (KJC)
Debtors.	(Jointly Administered)
	Re: Docket No. 1258
	Hearing Date: December 9, 2015 at 1:30 p.m. Objection Deadline: October 21, 2015 at 4:00 p.m.

**OBJECTION OF ADMINISTRATIVE CLAIMANT TYSON FRESH MEATS, INC. TO
APPLICATION TO EMPLOY FGМК, LLC AS EXPERT CONSULTANT
AND WITNESS FOR THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS *NUNC PRO TUNC* TO AUGUST 11, 2015**

Administrative Claimant Tyson Fresh Meats, Inc. (“Tyson”) by and through its undersigned counsel hereby submits its Objection to the Application to Employ FGМК, LLC as Expert Consultant and Witness for the Official Committee of Unsecured Creditors *Nunc Pro Tunc* to August 11, 2015 (D.I. 1258).

Introduction

1. Tyson objects to the proposed employment of FGМК, LLC (“FGМК”) as an expert consultant and witness because the Debtors’ estates are administratively insolvent and adding yet another professional will further dilute (not increase) any potential monies available for distribution to administrative claimants.

2. Tyson further objects to the proposed retention of FGМК because, given the administrative insolvency of Debtors’ cases, there is a strong likelihood that they will likely be converted to Chapter 7 or dismissed which will result in the dissolution of the Committee and the disengagement of FGМК.

3. Finally, in the event the Court is inclined to grant the Committee's application to employ to FGMK, Tyson requests that such employment be expressly conditioned on FGMK's agreement that (a) any compensation it may ultimately be awarded will only be paid the same *pro rata* amount that other allowed administrative claimants receive and (b) that no monies shall be paid to FGMK until it is certain what funds are actually available to disburse to allowed administrative expense claimants such as Tyson.

Tyson's Allowed Administrative Expense Claim

4. On July 15, 2014, this Court entered its *Order Allowing Administrative Expense Claim of Tyson Fresh Meats, Inc. Pursuant to 11 U.S.C. § 503(b)(1)(A)* (D.I. 536). Pursuant to that order this Court granted Tyson an allowed administrative expense claim pursuant to 11 U.S.C. § 503(b)(1)(A) in an aggregate amount of \$2,603,841.09 for product Tyson supplied to Quantum post-petition. *Id.*

5. To date Tyson has not received any distribution on its allowed administrative expense claim.

6. Despite having sold substantially all of their assets over a year ago, the Debtors have not proposed any plan of liquidation and there is no indication that they intend to do so any time soon.

Debtors' Monthly Operating Reports

7. On September 14, 2015, the Debtors filed their Monthly Operating Report for the reporting period from June 13, 2015 through July 10, 2015 (hereinafter the "June – July MOR"). (D.I. 1226).¹

¹ Tyson informally requested that the Debtors clarify various items on the June – July MOR, but the Debtors refused to provide any additional information stating that Tyson would have to seek information about the June – July MOR through formal discovery in Adversary No. 15-50254. Given Debtors' refusal to provide even basic information regarding the June – July MOR, Tyson has served discovery requests in that adversary action seeking documents

8. On October 16, 2015, the Debtors filed their Monthly Operating Report for the reporting period from July 11, 2015 through August 7, 2015 (hereinafter the “July – Aug MOR”). (D.I. 1279).

9. Based upon both the June – July MOR and the July – Aug MOR, it strongly appears that the Debtors’ estates are administratively insolvent. Page 8 of the July – Aug MOR sets forth the Consolidated Balance Sheet of the Debtors as of August 7, 2015. As can be seen from that document, all of the assets and liabilities are held by Quantum Foods, LLC (“Quantum”). (D.I. 1279, p. 8).

Decreasing Assets

10. The Committee initiated numerous avoidance action claims in October 2014. Exhibit “A” to this Objection identifies the gross claims and settlements reported to date. Of the \$15,864,711 in gross claims, the Committee has recovered \$1,351,240 or 8.5%

11. Based upon the various Rule 9019 motions that have been filed to approve compromises, it appears the Committee’s counsel retains 25% of the settlement amounts for its contingency fee. Stated differently, the “net” recovery from the preference actions to date is \$1,013,430 (which figure is the “net” figure after deducting the 25% contingency fee).

12. It is not immediately clear from the July – Aug MOR where all this cash is going. But one thing is for certain: it is not being saved to pay administrative expense claimants such as Tyson. According to the July – Aug MOR, the Debtors have a mere \$23,891 in cash. (D.I. 1279, pp. 5 and 8)

13. The Consolidated Balance Sheet from the July – Aug MOR lists the following major assets:

and information relating to the June – July MOR. Tyson is currently awaiting the Debtors’ responses to those discovery requests.

Prepaid Expenses and Deposits	\$6,486,715
Due From Crossroads Treatment LLC	\$4,231,869
Due From Member	\$7,547,812
Loan Costs (Net of Accumulated Amortization)	\$4,167,483

(D.I. 1279, p. 8)

14. Presumably, the \$6.486 million in Prepaid Expense and Deposits included the full deposit provided by Raging Bull Acquisition Company LLC. However, the estate recently compromised its claims with Raging Bull and received some unspecified amount of monies which, presumably, is less than the book value of \$6.486 million. (*See* D.I. 1241.)

15. The stated value of the next three major assets appear valuable on paper: (1) Due from Crossroads Treatment LLC, \$4,231,869; (2) Due from Member, \$7,547,812; and (3) Loan Costs (Net of Accumulated Amortization), \$4,167,483. (D.I. 1279, p.8).

16. However, it is striking to note that both the amounts Due from Crossroads Treatment LLC and Due from Member have remained unchanged during the pendency of the Debtors' bankruptcy proceedings. (*See* Quantum Foods LLC's Schedule B, D.I. 227, p. 34.)

17. Moreover, apparently only \$276,018 of the Loan Costs (Net of Accumulated Amortization) has been collected since the inception of the bankruptcy proceedings. *Compare* Quantum Foods LLC's Schedule B, D.I. 227, p. 34 (which notes loan costs net at \$4,443,501) with the July – Aug MOR (D.I. 1279, p. 8) (noting loan costs net of \$4,167,483.)

18. The fact that these three alleged "assets" have remained essentially unchanged for over a year and a half while all other assets have been liquidated strongly suggests that these

alleged “assets” are in reality nominal book values which will ultimately yield little if any substantive value to the Debtors’ estates.

19. The June – July MOR reported total assets of \$22,837,946. (D.I. 1226, p. 8). This figure decreased by \$82,592 to \$22,755,354 for the July – Aug MOR. (D.I. 1279, p. 8).

Increasing Liabilities

20. The Consolidated Balance Sheet of the July – Aug MOR identifies two major areas of liabilities: (1) Liabilities Not Subject to Compromise (totaling \$35,861,469) and (2) Liabilities Subject to Compromise (totaling \$21,779,475). (D.I. 1279, p. 8).

21. With respect to the first section (i.e. Liabilities Not Subject to Compromise) the Consolidated Balance Sheet indicates that \$22,583,753 is owed on the DIP Loan. (D.I. 1279, p. 8). Surprisingly, the June – July MOR reported the debt on the DIP Loan as being \$21,865,540. (D.I. 1226, p. 8). In other words, the indebtedness under the DIP Loan increased by \$718,213 from the June – July MOR to the July – Aug MOR.

22. In similar fashion, the total liabilities for the June – July MOR were \$57,264,183 (D.I. 1226, p.8), and that indebtedness worsened in the July – August MOR rising by \$394,716 to \$57,640,944. (D.I. 1279, p. 8.) In other words, the Quantum estate is becoming *more* insolvent with the passage of time with the indebtedness under the DIP Loan rising by more than \$700,000. It is very puzzling why Quantum’s indebtedness is significantly increasing even though the Debtors have previously liquidated substantially all of their tangible assets.

23. In the section entitled “Liabilities Not Subject to Compromise,” the July – Aug MOR indicates that accounts payable are \$5,566,516. (D.I. 1279, p. 8). As can be seen from page 10 of the July – Aug MOR, this \$5.566 million figure is the net total unpaid post-petition

debts. (D.I. 1279, pp. 8, 10.) This \$5.566 million figure would include Tyson's allowed administrative expense claim of \$2.6 million.

24. Strikingly, the \$5.566 million in unpaid post-petition accounts payable stands in sharp contrast to the \$5.9 million which has been paid for professional fees and services since the inception of this case. (*Compare* D.I. 1279, pp. 4, 6, 8 and 10.)

The Debtors are Administratively Insolvent

25. The Debtors' total assets of \$22,755,354 is just \$171,601 more than the \$22,755,354 that is owed under the DIP Loan. (D.I. 1279, p. 8). When the \$5.566 million in unpaid post-petition accounts payable is added, the Debtors' estates become administratively insolvent.

26. Of course (and as noted above), the big bulk of the Debtors' alleged "assets" appear to be nothing more than nominal book values which will yield little (if any) actual return to the estate. If that is correct then the Debtors are severely administratively insolvent.

The Application to Employ FG MK Should not be Approved

27. There are several compelling reasons why the application to employ FG MK should not be approved.

28. First, the Debtors simply do not have monies to pay any additional professionals. As noted above, despite the fact that the Committee has apparently collected over \$1 million, the Debtors have less than \$24,000 in cash on hand. The Committee seeks application of FG MK *nunc pro tunc* to August 11, 2015. Doing so will only add additional administrative expense claims and further dilute any potential distributions to allowed administrative claimants such as Tyson.

29. If the Debtors are woefully administratively insolvent (as appears to be the case), then they have no ability to fully compensate professionals engaged. Indeed engagement by the Committee of a professional when the estate does not have sufficient resources to compensate the professional is unfair to such professional because there is a high degree of likelihood that the estate will never be able to fully compensate the professional for services rendered.

30. As a practical matter, this case appears to be administratively insolvent meaning that a Chapter 11 plan can never be confirmed. As such, there is a high degree of likelihood that the case will be converted to Chapter 7 or dismissed. The official Committee of Unsecured Creditors would be dissolved under either of those scenarios. In that event, the Committee would no longer be prosecuting avoidance actions and thus there would be no need for the engagement of any expert by the Committee.

31. Furthermore, Tyson agrees with the arguments raised by the Acting United States Trustee who has also objected to the motion to employ. (*See* D.I. 1285.)

32. If the application to employ FGМК is granted, then any fees which may be due FGМК will be on par with the \$5.566 million in unpaid post-petition claims (including Tyson's allowed administrative expense claim of \$2.6 million). Accordingly, in the event the Court is inclined to grant the Committee's application to employ to FGМК, Tyson requests that such employment be expressly conditioned on FGМК's agreement that (a) any compensation it may ultimately be awarded will only be paid the same *pro rata* amount that other allowed administrative claimants receive and (b) that no monies shall be paid to FGМК until the estate knows for certain what funds are actually available to disburse to allowed administrative expense claimants such as Tyson.

WHEREFORE, for the foregoing reasons Tyson requests that this Court deny the relief requested by the Committee. In the event the Court is inclined to allow the Committee to engage FGMK, then Tyson requests that such employment be conditioned on FGMK's express agreement that (a) any compensation it may ultimately be awarded will only be paid the same *pro rata* amount that other allowed administrative claimants receive and (b) that no monies shall be paid to FGMK until the estate knows for certain what funds are actually available to disburse to allowed administrative expense claimants such as Tyson.

Dated: October 21, 2015

Respectfully submitted,

/s/ Matthew P. Austria

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