

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ORIGINAL FILED

NOV 28 2016

BANKRUPTCY COURT
OAKLAND, CALIFORNIA

William J. Lafferty, III
U.S. Bankruptcy Judge

Re: Fox Ortega Enterprises Inc., d/b/a Premier Cru, DEBTOR

CASE No. 16-40050, Chapter 7

MEMORANDUM RE: MOTION TO ALLOW LATE FILED PROOF OF CLAIM

Please see attached Memorandum dated October 24, 2016 regarding Motion to Allow Late Filed Proof of Claim by Creditor Michael Palmieri.

Please also see attached copy of letter dated May 31, 2016 from Kornfield, Nyberg, Bendies & Kuhner, attorney's representing John Fox. This letter was the first notice that made Mr. Palmieri aware of the bankruptcy proceedings for the DEBTOR.

Mr. Palmieri spoke with Mark Bostik, Counsel to the Trustee, on November 15, 2016 and informed Mr. Bostik of the letter dated May 31, 2016. Mr. Bostik advised Mr. Palmieri that based on this information, that Mr. Bostik had no objection to allowing the late filing of Mr. Palmieri's claim.

Please therefore reconsider the Motion.

Date: November 23, 2016

Respectfully submitted,

By:




Michael Palmieri
5123 Kingston Way
San Jose, CA 95130
michaelp1usa@hotmail.com

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The following constitutes the order of the court.
Signed October 21, 2016


William J. Lafferty, III
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re

Fox Ortega Enterprises, Inc.,

Debtor.

No. 16-40050

Chapter 7

MEMORANDUM RE: MOTION TO ALLOW LATE FILED PROOF OF CLAIM

On October 17, 2016, Creditor Michael Palmieri filed the *Motion to Allow Late Filed Proof of Claim Pursuant to Federal Rules of Bankruptcy Procedure 3004* (doc. 422) (the "Motion"). The Motion requests that this Court deem the proof of claim filed by Mr. Palmieri (POC # 2318) as a timely-filed unsecured claim.

Having reviewed the Motion, the Court cannot determine whether Mr. Palmieri gave notice to any parties in interest, including the Chapter 7 Trustee Michael Kasolas, in accordance with applicable bankruptcy rules. Therefore, the Court will not render a decision on the Motion. If Mr. Palmieri would like the Court to reconsider the Motion, the Court hereby requests that he properly notice and serve the Motion. Under the circumstances, the Court also suggests that Mr. Palmieri contact Mr. Kasolas for more information regarding the claims process.

END OF MEMORANDUM

KORNFIELD, NYBERG, BENDES & KUHNER

A PROFESSIONAL CORPORATION

IRVING J. KORNFIELD (1936-2000)

May 31, 2016

Eric A. Nyberg
Writer's Email: E.Nyberg@Kornfieldlaw.com

Michael Palmieri
5123 Kingston Way
San Jose, CA 95130

**Re: John Eugene Fox, Chapter 7 Case No.: 16-40340 WJL 7
Palmieri vs. Fox Ortega Enterprises and John Eugene Fox, Small Claims
Court Case No.: RS15797243**

Dear Mr. Palmieri:

Please be advised that John Fox filed an individual Chapter 7 bankruptcy case on February 8, 2016. Mr. Fox's bankruptcy case is pending in the United States Bankruptcy Court for the Northern District of California as Case No. 16-40340 WJL 7.

Your filing of the small claims action against Mr. Fox violates the automatic stay of 11 U.S.C. § 362. Further, you are stayed by operation of 11 U.S.C. § 362 from further prosecuting the small claims action against Mr. Fox. You need to notify the court that the action is stayed and you will not be proceeding any further against Mr. Fox.

If you do not dismiss the action against Mr. Fox and continue to prosecute it, Mr. Fox will be entitled to pursue you for violation of the automatic stay and seek to recover his damages from you for willfully violating the automatic stay.

Finally, I do not represent it, but Fox Ortega Enterprises has also filed a Chapter 7 bankruptcy.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Kornfield, Nyberg, Bendes & Kuhner, P.C.


ERIC A. NYBERG

EAN:lk
cc: John Fox

1 Michael Palmieri
2 5123 Kingston Way
3 San Jose, CA 95130
4 michaelplusa@hotmail.com

ORIGINAL FILED

OCT 17 2016

BANKRUPTCY COURT
OAKLAND, CALIFORNIA

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5 **IN THE UNITED STATES BANKRUPTCY COURT**
6 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
7 **OAKLAND DIVISION**

8 **IN RE:**

9 **Fox Ortega Enterprises, Inc.,**
10 **d/b/a Premier Cru,**

11 **Debtor.**

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CASE NO. 16-40050-WJL

12 **MOTION TO ALLOW LATE FILED PROOF OF CLAIM**
13 **PURSUANT TO FEDERAL RULES OF BANKRUPTCY PROCEDURE 3004**

14 **HONORABLE WILLIAM J. LAFFERTY, III**
15 **UNITED STATES BANKRUPTCY JUDGE:**

16 COMES NOW Michael Palmieri ("**Palmieri**"), a creditor in the above-referenced case, and
17 files this Motion to Allow Late Filed Secured Proof of Claim pursuant to Federal Rules of
18 Bankruptcy Procedure 3004 (the "**Motion**"), and would state as follows:

- 19 1. Fox Ortega Enterprises, Inc. (the "**Debtor**") filed its Chapter 7 case on January
20 8, 2016.
- 21 2. Palmieri was given notice of the Debtor's bankruptcy case at an address that
22 was no longer valid as of May 2013. The address on file was for a mail forwarding service company
23 that returns mail to the sender when they are no longer the servicing agent. Accordingly, the Debtor
24 would have received a return notice for Palmieri. Since Palmieri did not receive timely notification
25 of the bankruptcy, Palmieri was not able to file his proof of claim prior to the bar date.
- 26 3. Contemporaneously with this filing, Palmieri filed his unsecured proof of
27 claim in the amount of \$16,172.25 (Proof of Claim No. 2318).

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MOTION TO ALLOW LATE FILED PROOF OF CLAIM
PURSUANT TO FEDERAL RULES OF BANKRUPTCY PROCEDURE 3004

4. Accordingly, Palmieri requests an order from this Court deeming the proof of claim filed by Palmieri, as a timely filed unsecured claim.

WHEREFORE PREMISES CONSIDERED, Palmieri requests an order from this Court deeming the proof of claim filed by Palmieri, as a timely filed unsecured claim.

Date: October 10, 2016.

Respectfully submitted,

By: /s/ Michael Palmieri
Michael Palmieri
5123 Kingston Way
San Jose, CA 95130
michaelp1usa@hotmail.com

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1 Michael Palmieri
2 5123 Kingston Way
3 San Jose, CA 95130
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7 **IN THE UNITED STATES BANKRUPTCY COURT**
8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
9 **OAKLAND DIVISION**

10 **IN RE:**

11 **Fox Ortega Enterprises, Inc.,**
12 **d/b/a Premier Cru,**

13 **Debtor.**

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CASE NO. 16-40050-WJL

14 **ORDER GRANTING MOTION TO ALLOW LATE FILED PROOF OF CLAIM**
15 **PURSUANT TO FEDERAL RULES OF BANKRUPTCY PROCEDURE 3004**

16 **HONORABLE WILLIAM J. LAFFERTY, III**
17 **UNITED STATES BANKRUPTCY JUDGE:**

18 After considering the Motion to Allow Late Filed Secured Proof of Claim pursuant to Federal
19 Rules of Bankruptcy Procedure 3004 (the "**Motion**") filed by Creditor Michael Palmieri, and
20 appearing that such Motion is proper, and for good cause,

21 **IT IS ORDERED that:**

22 Proof of claim number 2318 filed by Michael Palmieri is a timely filed unsecured claim.

23 ****END OF ORDER****

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25 ORDER GRANTING MOTION TO ALLOW LATE FILED PROOF OF CLAIM
26 PURSUANT TO FEDERAL RULES OF BANKRUPTCY PROCEDURE 3004