

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:)
)
STONECRAFTERS, LTD.,) CASE NO. 96-30422 (ASD)
)
DEBTOR.) CHAPTER 7

MICHAEL J. DALY,)
CHAPTER 7 TRUSTEE for)
STONECRAFTERS, LTD.,)
)
PLAINTIFF,)
vs.) ADV. PRO. NO. 96-3202
)
AMERICAN STONECRAFTERS, INC.,) Re: Doc. I. D. No. 23
)
DEFENDANT.)

**MEMORANDUM OF DECISION
AND
ORDER DENYING BALANCE OF DEFENDANT’S MOTION TO COMPEL**

By Motion to Compel (hereafter, the “Motion”), Doc. I. D. No. 23, the Movant-Defendant, American Stonecrafters, Inc. (hereafter, “American”), seeks an order of this Court pursuant to Bankruptcy Code Sections 105 and 361, Motion at 1, 3, compelling Michael J. Daly, the duly appointed Chapter 7 trustee (hereafter, the “Trustee”), *inter alia*, to remove certain property of the bankruptcy estate – e.g., machinery, equipment and inventory (hereafter, the “Property”) – from its premises, and requiring the Trustee to compensate it for costs associated with storage of the Property.¹ At the July 7, 1997 hearing on the Motion (hereafter, the “Hearing”), American prosecuted the Motion as a

¹The Motion sought compensation in the amount of “the reasonable rental value of one-half (½) the American Stonecrafters manufactory (½ of \$2,300)” Motion at 3. At the Hearing American modified its compensation demand, seeking \$2500.00 per month.

request for the allowance of an administrative expense priority claim for “actual, necessary costs and expenses of preserving the estate” pursuant to Section 503(b)(1)(A).² At the conclusion of the Hearing the Court orally denied the Motion in all respects but for the administrative expense compensation request. On July 11, 1997, the Court entered an Order, Doc. I. D. No. 34 (hereafter, the “Order”), evidencing the oral ruling at the Hearing, and further determining, *inter alia*,

the amount of \$840.00/month commencing as of May 12, 1997, and applicable for each following month, or part thereof, that the said estate property remains on the Movant’s property . . . [for the storage of property of the estate including the machinery and inventory of Stonecrafters, Ltd. at 378 North Cherry Street Extension] is determined to be an allowed administrative expense as an actual and necessary cost and expense of preserving the estate pursuant to Section 503(b).

Implied in the Order is a denial of Section 503(b) relief for pre-May 12, 1997 costs. This Memorandum and Order makes that implication explicit.

At the Hearing, American established only that the Property was “using up space, utilities, and other things that otherwise would be used by American in its production”, see remarks of counsel for the Movant, Tr. at page 1, thereby incurring costs borne by it. Moreover, counsel for American conceded that “what it costs . . . in proportion to his loss of use is not what the Court is supposed to take into effect [in the 503(b) calculus].” Tr. at

55. The Court agreed stating:

there is no *direct* relationship between the evidence presented and the costs that are actual and necessary costs and expenses of preserving the estate; that is, the loss, for example to [American] Stonecrafters is not – does not mirror, in any precise way, the actual and necessary costs and expenses of

²American first noticed Section 503(b) as a basis for its Motion in its *Brief in Support of Motion to Compel Trustee to Pay Rent and/or Use and Occupancy* (hereafter, “American’s Brief”), Doc. I. D. No. 28, filed June 17, 1997.

preserving the estate, as that phrase is used within section 503(b).

Tr. at 66 (emphasis added).

Nevertheless, the Court took the matter under advisement stating, *inter alia*,

If the evidence presented provides a basis upon which the Court can calculate the 503(b) expense . . . [t]hen I will calculate, however imprecise and imperfect that calculation may be based upon the record of the evidence in this case, the amount of those costs and expenses.

If the evidence presented does not provide a basis, or if the evidence presented is deemed to be irrelevant to a determination of that issue, I, of course, will not be able to calculate a figure and will deny the motion on that basis.

Tr. at 67.

Having now reviewed the Motion, American's Brief, and the evidence presented at the Hearing, the Court determines there is no basis in the record for granting American administrative expense priority status pursuant to Section 503(b)(1)(A) for the outstanding pre-May 12, 1997 balance of the costs and expenses claimed in the Motion. First, as noted in the Order, American "in significant respect, was responsible for the estate property being located on its premises prior to the petition date." American initially took possession of the Property by its own pre-petition conduct³ undertaken in its own self-interest. Second, American initially asserted ownership of the Property, then offered to purchase it, withdrawing that offer on May 12, 1997. Third, while there was some delay in removing the Property from American's premises, the Trustee's actions were consonant with his fiduciary duties and responsibilities to the estate, and American was compensated after May 12, 1997. Fourth, the majority of the expenses claimed by American were costs which it would

³Section 503(b) by its terms is limited to "services rendered after the commencement of the case".

have had to pay regardless of whether the Property was maintained on its premises.⁴ In short, there is no evidence to permit this Court to approve a Section 503(b) administrative expense status, or even attempt to engage the Section 503(b) calculus, for costs allegedly incurred *prior* to May 12, 1997. Accordingly, and for these reasons,

IT IS HEREBY ORDERED that the unresolved balance of the Motion – seeking administrative priority status pursuant to Section 503(b) for costs and expenses incurred prior to May 12, 1997, is **DENIED**.⁵

BY THE COURT

DATED: January 21, 2003

Albert S. Dabrowski
United States Bankruptcy Judge

⁴Several of the claimed expense items, e.g. long distance telephone expense, had no relationship to the Property.

⁵As noted at the Hearing, American did not prosecute its Motion pursuant to Sections 105 and 361 as cited therein, thereby abandoning those statutes as a basis for the claimed relief. Even if not abandoned, there is no basis for relief thereunder in the record or otherwise.