

ORDER ENTERED ON:
12-19-02
[Signature]
DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
BRIDGEPORT DIVISION

In re

BRIDGEPORT JAI ALAI, INC., D/B/A
SHORELINE STAR GREYHOUND PARK
& ENTERTAINMENT COMPLEX,

Debtor.

Chapter 11

Case No. 96-51183

PAUL WEINTRAUB

Plaintiff,

v.

AP 00-05116

BRIDGEPORT JAI ALAI, INC., and
A. ROBERT ZEFF,

Defendants.

APPEARANCES:

Stephen R. Bellis, Esq.
The Pellegrino Law Firm, P.C.
475 Whitney Ave., P.O. Box 1835
New Haven, CT 06508-1835

Attorney for plaintiff
Paul Weintraub

James G. Verrillo, Esq.
Zeisler & Zeisler, P.C..
Bridgeport, Connecticut 06605

Attorney for defendant
Bridgeport Jai Alai, Inc.

Charles M. Needle, Esq.
Zeldes, Needle & Cooper
1000 Lafayette Blvd., P.O. Box 1740
Bridgeport, CT 06601-1740

Attorney for defendant
A. Robert Zeff

MEMORANDUM AND ORDER
ON EMPLOYMENT CONTRACT CLAIM

Alan H.W. Shiff, Chief Judge:

On July 16, 1996, the debtor-defendant Bridgeport Jai Alai commenced this chapter 11 case. On January 26, 1998, defendant creditor A. Robert Zeff's plan of reorganization

was confirmed. The parties have filed a stipulation of facts, which is attached as an appendix, in which they agree on the issue, to wit, whether the plaintiff's claim for salary and benefits due under a prepetition employment contract should be paid as an administrative expense.¹

BACKGROUND

On August 18, 1994, the plaintiff entered into a three year employment contract with the debtor, under which the plaintiff agreed to continue to serve as its CFO, by *inter alia*, obtaining funding for the operation of a dog track.² The plaintiff fully satisfied his duty to obtain funding, and the debtor began operating as a dog track in November, 1995.

After the commencement of this bankruptcy case, the plaintiff performed post

¹If the claim is treated as an administrative expense, he will be paid in full. If it is a prepetition unsecured claim, he will receive a distribution of 25.92 %, the pro rata share that each member of the unsecured class is entitled to under the confirmed third amended chapter 11 plan.

² The contract provided in relevant part

14. RETIREMENT PAYMENT: At the expiration or termination of this Agreement . . . , provided, however, that the Company obtains Funding, in consideration for the number of years of loyal and faithful employment with the Company the Company shall make the following payments, and provide the following benefits, to Executive:

(a)Two months compensation for each year Executive has worked for the Company, to be made in seven equal [annual] payments . . . If this Agreement is not renewed . . . the compensation referred to in the this subsection shall be based upon Executive's compensation of \$200,000 per year. . . .

See complaint. At the September 24, 2002 hearing, the court memorialized its previous May 15, 2002 conclusion that the employment contract was unambiguous. Accordingly, Bridgeport Jai Alai's proffer of parol evidence, see Dkt. # 37, was denied. *Hearing record* at 2:43, 3:13, 4:24.

petition duties as CFO. On December 5, 1996, he filed a proof of claim³ in the amount of \$937,898 plus interest, for unpaid salary and benefits. On September 27, 2000, he commenced this adversary proceeding, seeking a determination that that amount constituted a post petition administrative expense. See *Complaint*, § 507(a)(1); § 503(b)(1). The parties have stipulated that:

During the bankruptcy period, [the plaintiff], as Treasurer, Chief Financial Officer, and Controller of the [debtor], performed services for the benefit of the [debtor]. He prepared monthly financial reports for the Trustee, prepared financial projections for the [debtor], working with the Creditors' Committee and their accounting firm to review all records and financial reports of the [debtor], reviewed creditors' claims for accuracy and merit, attended meetings with Creditors' Committee to assist in the negotiations of creditors' claims, worked with the [debtor]'s bankruptcy counsel on the Plan of Reorganization, assisted the new General Manager in the day-to-day operations, and handled annual required filings with the Connecticut State Gaming Division.

Stipulation at ¶ 11.

DISCUSSION

The parties dispute whether the plaintiff's claim for retirement and medical benefits vested prepetition. It is concluded that they were, because those benefits were contingent on the funding event, which occurred prepetition. The plaintiff could have, but did not, make a demand for those benefits upon the occurrence of the funding event.⁴

It is further concluded that the issue of whether the plaintiff would be entitled to the

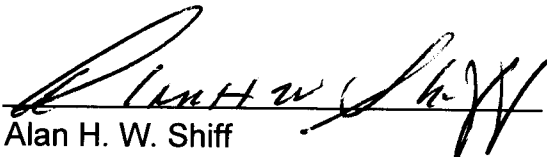
³ It is observed that while the plaintiff's proof of claim filed under §501(a) necessarily asserted a *prepetition* obligation, see 11 U.S.C. §§ 101(5) and 101(10(A)), he subsequently asserted that the same obligation reflected a *post petition* administrative expense. See § 503(a).

⁴The plaintiff's assertion that his claim for retirement benefits is analogous to one for severance is not persuasive. Unlike the payments at issue in the plaintiff's cited cases, his retirement benefits accrued over time. See *Amalgamated, supra*, 789 F.2d at 104. But even if the analogy applied, "it appears to be the general rule that when severance pay . . . represents compensation for the employee's past services it is not an administrative expense entitled to priority." *Id.*

payment of any administrative expense related to a post petition cost of living adjustment and a salary increase is contingent in the first instance upon whether the employment contract was assumed.⁵ Since it was not, see *Stipulation* at ¶ 13, the plaintiff's claim for such allowance is denied. However, the plaintiff may have an independent claim for an administrative expense to establish a quantum meruit award.⁶ The record is insufficient to establish the justification and value of that claim, if any.

SO ORDERED.

Dated at Bridgeport, Connecticut, December 19, 2002.


Alan H. W. Shiff
Chief United States Bankruptcy Judge

⁵See § 365, which authorizes a debtor in possession to assume or reject an executory contract, and § 365(a)(d)(2), which gives creditors the opportunity to move for the establishment a bar date for a debtor's assumption or rejection. It is noted that the plaintiff made no such motion.

⁶Code section 503(b)(1)(A) provides that allowed administrative expenses include "the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case." A creditor claiming an administrative expense has the burden of demonstrating that it has conferred an actual and necessary benefit to the estate. *Nostas Associates v. Costich, (In re Klein Sleep Products, Inc.)*, 78 F.3d 18, 23 (2nd Cir. 1996). Such claims are "narrowly construed and sparingly granted." *Id.* See also *Trustees of Amalgamated Insurance Fund v. McFarlin's, Inc.*, 789 F.2d 98, 100 (2nd Cir. 1986). "A debt is not entitled to priority simply because the right to payment arises after the debtor in possession has begun managing the estate." *Amalgamated* at 101.

APPENDIX

STIPULATED FACTS

1. Claimant Paul Weintraub ("Weintraub") is a certified public accountant, and is seventy-three years of age.
2. Debtor Bridgeport Jai Alai, Inc. is the predecessor in interest to Shoreline Star Greyhound Park and Entertainment Complex LLC, referred herein as "the Company."
3. Through a series of mergers and other corporate transactions, Bridgeport Jai Alai, Inc.'s assets, liabilities and operations were taken over and assumed by Shoreline Star Greyhound Park and Entertainment Complex LLC in January 1999.
4. Weintraub has been employed continuously by the Company since 1976, when he was hired as the Company's treasurer and controller.
5. In 1976, The Company received a jai alai license from the State of Connecticut, which permitted the Company to operate a jai alai pari mutuel business.
6. On August 18, 1994 Weintraub entered into a three-year written employment contract with the Company (the "Contract"), pursuant to which Weintraub maintained his positions as the Company's treasurer and controller, and also was made the Company's chief financial officer. . . .
7. In November 1995, the Company began operating a dog track, in lieu of a jai alai.
8. On or about July 16, 1996, the Company filed for Chapter 11 bankruptcy.
9. After the Company's bankruptcy filing, Weintraub continued to fulfill and fulfilled all of his obligations as treasurer, chief financial officer and controller of the Company, pursuant to the Contract.
10. Accordingly, during the period the Company was in bankruptcy, Weintraub was the only financial officer of the Company.
11. During the bankruptcy period, Weintraub, as Treasurer, Chief Financial Officer, and Controller of the company, performed services for the benefit of the company. He prepared monthly financial reports for the Trustee, prepared financial projections for the company, working with the Creditors' Committee and their accounting firm to review all records and financial reports of the company, reviewed creditors' claims for accuracy and merit, attended meetings with Creditors' Committee to assist in the negotiations of creditors' claims, worked with the company's bankruptcy counsel on the Plan of Reorganization, assisted the new General Manager in the day-to-day operations, and handled annual required filings with the Connecticut State Gaming Division.
12. On or about December 5, 1996, Weintraub filed a proof of claim (Claim Number 57) against the Company for \$937,898.00 in the above-referenced bankruptcy proceeding.
13. In August, 1997, Weintraub's three-year Contract expired, and the Company did not renew it, assume or reject said contract.
14. To date, Weintraub remains the treasurer, chief financial officer and controller of the Company.
15. Weintraub claims he is owed the following. The amounts are agreed upon by the

parties, the entitlement to which is disputed by the Company:

\$300 -- car expenses for June 1996, pursuant to the Contract ¶ 3;

\$5,501 -- cost of living increase, for the period August 18, 1996 through August 18, 1997, pursuant to the Contract ¶ 3;

\$17,500 -- continuation of medical benefits, pursuant to the Contract ¶ 14;

\$89,583 -- increase in base compensation from \$150,000 to \$200,000, for the period November 1, 1995 through August 18, 1997, pursuant to the Contract ¶ 3;

\$700,000 -- retirement payment pursuant to the Contract ¶ 14; and

interest on such amounts from the date of each respective breach of the Contract to date.

16. On December 29, 1997, the Court entered a Stipulation, wherein the Company and Zeff jointly and severally agreed to pay the Proof of Claim as allowed by the Court

In Re: Paul Weintraub v. Bridgeport Jai Alai, Inc. et al.

Case No: 96 - 51183
Adversary No: 00 - 05116

CERTIFICATE OF MAILING

The undersigned Clerk in the Office of the United States Bankruptcy Court hereby certifies that a copy of the document attached hereto was mailed this date to:

Stephen R. Bellis 475 Whitney Avenue
P.O. Box 1835
New Haven, CT 06508, Plaintiff's Attorney

James G. Verrillo Zeisler and Zeisler
558 Clinton Avenue
P.O. Box 3186
Bridgeport, CT 06605, Defendant's Attorney

Office of the United States Trustee
Copy of Order placed in court mailbox

Charles M. Needle Zeldes Needle & Cooper
P.O. Box 1740
Bridgeport, CT 06601-1740, Attorney for A. Robert Zeff

Dated: 12/19/02

By: krf