



**SO ORDERED.**

**SIGNED this 04 day of May, 2012.**

  
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Randy D. Doub  
United States Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WILMINGTON DIVISION**

**IN RE:**

**MILLWORK SPECIALTIES, INC.,  
DEBTOR**

**CHAPTER 7  
CASE NO. 09-07010-8-RDD**

**ORDER GRANTING APPLICATION FOR  
ALLOWANCE AND PAYMENT OF AN ADMINISTRATIVE EXPENSE**

Pending before the Court is the Application of Redhill Properties, LLC for Allowance and Payment of an Administrative Expense (the "Application") filed by Redhill Properties, LLC on October 14, 2011 and the Response and Objection to Administrative Expenses filed by Stephen L. Beaman the Chapter 7 Trustee, on November 28, 2011 (the "Response"). The Court conducted a hearing on April 25, 2012 in Wilson, North Carolina to consider the Application and the Response.

Millwork Specialties, Inc. (the "Debtor") filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") on August 19, 2009. The Debtor's case was converted to a case under Chapter 7 of the Bankruptcy Code on May 10, 2011.

In the Application, Redhill Properties, LLC ("Redhill") seeks payment pursuant to two leases for nonresidential real property assumed by the Debtor in the Chapter 11 Plan of Reorganization (the "Plan") confirmed by this Court on April 20, 2010. The Plan assumes the lease for real property at

6260 Ocean Highway SW, Sunset Beach, North Carolina (“Sunset Beach Property”) at the rental rate of \$12,000.00 per month and the lease of 2530 James B. White Highway, Whiteville, North Carolina (“Whiteville Property”) at the rental rate of \$8,000.00 per month. The Debtor operated as a debtor-in-possession throughout the Chapter 11 case and made use of the Sunset Beach and Whiteville Properties to manufacture doors and windows. When the Debtor’s case was converted and the Court appointed the Chapter 7 Trustee, the Debtor’s operation ceased and the properties were primarily used to store the assets of the Debtor before they were liquidated by the Trustee. The Trustee occupied the Sunset Beach and Whiteville Properties for storage until July 2011. At that point, the Trustee rejected the lease pursuant to 11 U.S.C. § 365(a).

The Application requests payment for rent for the months of June and July 2011 for both but reduces the rental rate from \$12,000.00 to \$8,000 for the Sunset Beach Property and from \$8,000.00 to \$3,500.00 for the Whiteville Property. Redhill seeks a total of \$23,000.00 in rent for June and July 2011 as an administrative expense pursuant to 11 U.S.C. 503(b)(7).

The Bankruptcy Code provides for the payment, as an administrative expense, for “the actual, necessary costs and expenses of preserving the estate.” 11 U.S.C. § 503(b)(1)(A). Such expenses include claims resulting from “a nonresidential real property lease previously assumed under section 365, and subsequently rejected . . . .” 11 U.S.C. § 503(b)(7).

Approval of actual expenses requires a finding that the claim arises from a post-petition transaction between a creditor and the debtor-in-possession. *Merry-Go-Round Enter. Inc. v. Simon DeBartolo Group, L.P.*, 180 F.3d 149, 157 (4th Cir. 1999). To qualify as necessary expenses, the consideration supporting the claimant’s right to payment must be beneficial to the debtor-in-

possession in the operation of business. *Id.* The party claiming entitlement to an administrative expense bears the burden of proving the administrative claim is actual and necessary. *Id.*

The Court finds Redhill is entitled to \$23,000.00 as an administrative expense for the use Sunset Beach and Whiteville Properties under nonresidential real property leases previously assumed under § 365 and subsequently rejected. The Court finds the expenses were actual and necessary to the continuation of the Debtor's operation at the time that the leases were assumed.

When a lease assumed under a confirmed plan is rejected pursuant to § 365 after the bankruptcy case has been converted under 11 U.S.C. § 1112, then the rejection is deemed to have occurred immediately before the date of the conversion. 11 U.S.C. § 365(g)(2)(B)(i); *Klein Sleep Prod., Inc. v. Costitch*, 78 F.3d 18, 26 (2nd Cir. 1996). In the present case, the Debtor assumed the lease with Redhill in the Plan confirmed on April 20, 2010. The Debtor's case was subsequently converted to a Chapter 7 case on May 10, 2011. The Chapter 7 Trustee rejected the leases approximately two months later. Therefore, applying § 365(g)(2)(B)(i), the Court must treat the rejections as if they occurred immediately prior to the conversion of the Debtor's case from Chapter 11. Any claims arising from the rejection of the leases must be classified as a Chapter 11 administrative expense. *Klein Sleep Prod., Inc.*, 78 F.3d at 26 (finding "[w]hen a reorganization case is converted to a liquidation proceeding after the lease has been assumed but before it is rejected, breach is deemed to have occurred immediately before the conversion"); *see also Merry-Go-Round Enter. Inc.*, 180 F.3d at 156 (holding claims from a post-conversion breach of a post-petition commercial lease entered into by a Chapter 11 debtor receive treatment as a Chapter 11 administrative expense).

Therefore, the Application is **GRANTED**. Pursuant to § 365(g)(2)(B)(i), Redhill's claim shall be classified as a Chapter 11 administrative expense in the amount of \$23,000.00 and is subordinated to Chapter 7 administrative expenses pursuant to 11 U.S.C. § 726(b).

**SO ORDERED.**

**END OF DOCUMENT**



SO ORDERED.

SIGNED this 04 day of May, 2012.

  
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Randy D. Doub  
United States Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WILMINGTON DIVISION**

**IN RE:**

**MILLWORK SPECIALTIES, INC.,  
  
DEBTOR**

**CHAPTER 7  
CASE NO. 09-07010-8-RDD**

**ORDER GRANTING IN PART AND DENYING IN PART APPLICATION  
FOR ALLOWANCE AND PAYMENT OF AN ADMINISTRATIVE EXPENSE**

Pending before the Court is the Application for Allowance and Payment of an Administrative Expense filed by Emory G. Worley on October 20, 2011 (the "Application") and the Response and Objection to Administrative Expenses filed by Stephen L. Beaman the Chapter 7 Trustee, on January 23, 2012 (the "Response"). The Court conducted a hearing on April 25, 2012 in Wilson, North Carolina to consider the Application and the Response.

Millwork Specialties, Inc. (the "Debtor") filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") on August 19, 2009. The Debtor's case was converted to a case under Chapter 7 of the Bankruptcy Code on May 10, 2011.

In the Application, Emory G. Worely, requests reimbursement of expenses paid on behalf of the Debtor and loans to the Debtor in the amount of \$17,767.69. Mr. Worley made payments on behalf of the Debtor to its suppliers in the amount of \$2,767.69 to insure fulfillment of customer

orders. Mr. Worley also made a loan to the Debtor in the amount of \$15,000.00 on August 9, 2010, which the Debtor used for payment of employee payroll taxes.

The Chapter 7 Trustee objected to the approval of the administrative expenses on the basis that the expenses constitute an extension of credit to the Debtor without approval from the Court. However, the Bankruptcy Code allows the trustee to “obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under section 503(b)(1) . . . as an administrative expense. 11 U.S.C. § 364(a).<sup>1</sup> Therefore, the Court finds Mr. Worley is entitled to an administrative expense claim for funds used by the Debtor in the ordinary course of the Debtor’s business.<sup>2</sup>

The Bankruptcy Code provides for the payment, as an administrative expense, for “the actual, necessary costs and expenses of preserving the estate.” 11 U.S.C. § 503(b)(1)(A). Approval of actual expenses requires a finding that the claim arises from a post-petition transaction between a creditor and the debtor in possession. *Merry-Go-Round Enter. Inc. v. Simon DeBartolo Group, L.P.*, 180 F.3d 149, 157 (4th Cir. 1999). To qualify as necessary expenses, the consideration supporting the claimant’s right to payment must be beneficial to the debtor in possession in the operation of business. *Id.* The party claiming entitlement to an administrative expense bears the burden of proving the administrative claim is actual and necessary. *Id.*

In the present case, the Court finds the payments to suppliers totaling \$2,767.69 on behalf of the Debtor were made in the ordinary course of business pursuant to § 364(a). Furthermore, the

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<sup>1</sup>Although this section refers to the “trustee,” the rights granted to the trustee are also extended to debtors-in-possession. 11 U.S.C. § 1107(a).

<sup>2</sup>Neither Mr. Worley nor the Chapter 7 Trustee presented evidence that the payments Mr. Worley made on behalf of the Debtor were secured by any asset, tangible or intangible, of the Debtor. Therefore, the payments and loan are presumed to be unsecured.

payments were actual and necessary expenses of preserving the estate as they were the product of post-petition transactions beneficial to the Debtor's operation of business in that they allowed the Debtor to purchase materials for use in the Debtor's business. Therefore, the Court finds the payments to suppliers on behalf of the Debtor are allowable administrative expenses. The payments were made during the pendency of the Chapter 11 case. As such, Mr. Worley is entitled to Chapter 11 administrative expenses in the amount of \$2,767.69.

The Court finds the \$15,000.00 loan to the Debtor for payment of employee payroll taxes was not in the ordinary course of the Debtor's business. Payroll taxes are an essential cost of conducting business and it should never be ordinary or customary for an agent of a debtor to personally provide for their payment. *See In re Lite Coal Min. Co.*, 122 B.R. 692, 695 (Bankr. N.D.W.Va. 1990) (finding loans made to a debtor for payment of payroll taxes and other day-to-day expenses over a period of two years did not constitute unsecured debt incurred in the ordinary course of business). Inability of the Debtor to independently pay payroll taxes is a significant sign that the Debtor will be unable to propose a feasible plan of reorganization. Where credit is extended out of the ordinary course of business and prior court authorization was not obtained, the lender may be relegated to an unsecured claim. *In re Ohio Valley Amusement Co.*, No. 03-50356, 2008 WL 5062464 at \*7 (Bankr. N.D.W.Va. 2008) (quoting 3 *Collier on Bankruptcy* ¶ 364.03[2] (Alan N. Resnick & Henry J. Sommer, eds., 15th ed. rev. 2008)). Therefore, the \$15,000.00 loan does not constitute an allowable administrative claim under § 503(b)(1) and shall be allowed as an unsecured claim.

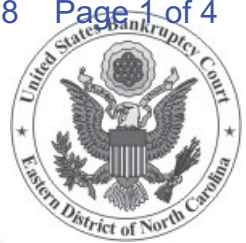
Accordingly, the Application is **GRANTED** in part and **DENIED** in part. Emory G. Worley shall be entitled to a Chapter 11 administrative expense claim in the amount of \$2,767.69 under §

503(b)(1)(A) and is subordinated to Chapter 7 administrative expenses pursuant to 11 U.S.C. § 726(b). The \$15,000.00 amount is allowed as an unsecured claim.

**SO ORDERED.**

**END OF DOCUMENT**





SO ORDERED.

SIGNED this 04 day of May, 2012.

  
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Randy D. Doub  
United States Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WILMINGTON DIVISION**

**IN RE:**

**MILLWORK SPECIALTIES, INC.,  
  
DEBTOR**

**CHAPTER 7  
CASE NO. 09-07010-8-RDD**

**ORDER GRANTING IN PART AND DENYING IN PART APPLICATION  
FOR ALLOWANCE AND PAYMENT OF AN ADMINISTRATIVE EXPENSE**

Pending before the Court is the Application for Allowance and Payment of an Administrative Expense filed by Russell K. Worley on January 25, 2012 (the "Application") and the Response and Objection to Administrative Expenses filed by Stephen L. Beaman the Chapter 7 Trustee, on January 23, 2012 (the "Response"). The Court conducted a hearing on April 25, 2012 in Wilson, North Carolina to consider the Application and the Response.

Millwork Specialties, Inc. (the "Debtor") filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") on August 19, 2009. The Debtor's case was converted to a case under Chapter 7 of the Bankruptcy Code on May 10, 2011.

In the Application, Russell K. Worley, requests payment for unpaid wages in the amount of \$89,598.11 as an administrative expense. Mr. Worley filed proof of claim number 92 in the Debtor's bankruptcy case seeking payment of \$89,598.11. At the hearing, Mr. Worley presented no evidence

as to the time worked or the services rendered for the Debtor. However, Mr. Worley represented to the Court that he was employed by the Debtor during the pendency of the Chapter 11 case. Additionally, the Court approved the employment of Mr. Worley as General Manager and President of the Debtor pursuant to E.D.N.C. LBR 4002-1(c)(1)(A) in the Order Approving Compensation and Employment of Officer entered on October 7, 2009. In that order, the Court authorized compensation of Mr. Worley in the amount of \$4,320.00 to be paid on a bi-weekly basis as well as payment of premiums for dental insurance, use of a company cell phone, and use of a company vehicle.

In the Response, the Chapter 7 Trustee argues the Application should be denied because Mr. Worley's act of foregoing wages is akin to a capital contribution from Mr. Worley, who holds a membership interest in the Debtor, and is not entitled to administrative priority. Furthermore, the Chapter 7 Trustee argues that should the Application be granted, any expenses should be treated as Chapter 11 administrative expense claims because all services were rendered prior to the conversion of the Debtor's case to Chapter 7.

The Bankruptcy Code provides for the payment, as an administrative expense, for

(1)(A) the actual, necessary costs and expenses of preserving the estate, including—  
(i) wages, salaries, and commissions for services rendered after the commencement of the case;

11 U.S.C. § 503(b)(1)(A)(i). Approval of actual expenses requires a finding that the claim arises from a post-petition transaction between a creditor and the debtor-in-possession. *Merry-Go-Round Enter. Inc. v. Simon DeBartolo Group, L.P.*, 180 F.3d 149, 157 (4th Cir. 1999). To qualify as necessary expenses, the consideration supporting the claimant's right to payment must be beneficial to the debtor-in-possession in the operation of business. *Id.* The party claiming entitlement to an

administrative expense bears the burden of proving the administrative claim is actual and necessary.

*Id.*

Based on the plain language of the § 503(b)(1)(A)(i), the Court finds the unpaid wages of Mr. Worley should be treated as administrative expenses and not capital contributions as the Chapter 7 Trustee suggests. While Mr. Worley failed to present any evidence at the hearing, the Court finds expenses for wages of the General Manager and President were actual and necessary to preserving the bankruptcy estate. Under the Fourth Circuit standard, Mr. Worley has an actual claim based on the Court authorization of the employment and compensation of Mr. Worley as an officer of the Debtor through the Order Approving Compensation and Employment of Officer entered on October 7, 2009. The order evidences a post-petition transaction between Mr. Worley and the Debtor. Such expenses were also necessary in that employment and wages of the General Manager and President of the Debtor was essential to the operation of the Debtor's business.

However, the Court finds Mr. Worley failed to prove the amount requested was necessary to the Debtor's operation of business. Mr. Worley provided no evidence of wages received or taxes withheld to allow for calculation of the amount owed to him. There was no evidence presented regarding the number of hours Mr. Worley devoted to the Debtor's business. In addition, Mr. Worley's efforts to effect a successful reorganization failed. Therefore, the Court must make its own determination on the paucity of evidence presented regarding the benefit the Debtor received. The Court finds Mr. Worley failed to show the Debtor received a benefit equivalent to the \$89,598.11 requested or that such an amount was necessary to the Debtor's operation of business. Therefore, the Court finds a reduction of the administrative expenses by fifty percent to be reasonable under the circumstances.

Accordingly, the Application for Allowance and Payment of an Administrative Expense is **GRANTED** in part and **DENIED** in part. The Court finds Mr. Worley is entitled to a Chapter 11 administrative expense claim in the amount of \$44,799.06 for the actual and necessary expenses of preserving the Debtor's estate during the pendency of the Chapter 11 case. Such a claim is subordinated to Chapter 7 administrative expenses pursuant to 11 U.S.C. § 726(b). The remaining portion of the claim, \$44,799.06, is allowed as an unsecured claim.

**SO ORDERED.**

**END OF DOCUMENT**