


SO ORDERED.

SIGNED this 24th day of June, 2015.




LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In re:)	
)	
Earl Pickett Enterprises, Inc.,)	Case No. 12-81284
)	
Debtor.)	
_____)	

**ORDER OVERRULING OBJECTION BY EARL PICKETT TO
ADMINISTRATIVE CLAIM OF BRYANT-DURHAM SERVICES, INC.**

THIS MATTER came before the Court for hearing on May 28, 2015, in Durham, North Carolina upon the Objection by Earl Pickett, individually, to the Administrative Claim of Bryant-Durham Services, Inc. Brian J. Schoolman, counsel for Bryant-Durham Services, Inc. ("Bryant-Durham"), and Charles Carpenter, counsel for Earl Pickett, appeared at the hearing. After considering the objection, the response to the objection, the evidence presented at the hearing, and the arguments of counsel, this Court makes the following findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

BACKGROUND

Earl Pickett Enterprises, Inc. (the "Debtor") filed a voluntary petition for relief in this Court under Chapter 11 of the United States Bankruptcy Code on August 29, 2012. On August 30, 2012, an order was entered designating Earl Pickett as the person to act on behalf of the

corporate Debtor. The Debtor operated as a debtor in possession until September 9, 2013, at which point John Paul H. Cournoyer was appointed as Chapter 11 Trustee (the “Trustee”).

The Trustee filed a Plan of Reorganization for the Debtor, which was confirmed by an order dated March 12, 2015. Paragraph 3.1.4 of the Plan of Reorganization provided for an administrative claim of Bryant-Durham in the amount of \$10,167.74 for post-petition labor and materials involved in heating and refrigeration equipment work and repairs of the convenience stores owned by the Debtor. Paragraph 12.1 of the Plan of Reorganization, as amended by Paragraph 30 of the order confirming the plan, provided for a March 13, 2013 deadline for filing objections to claims.

On March 12, 2015, Mr. Pickett filed an objection to this administrative claim, stating “The City of Durham has rejected its work. Bryant-Durham has already been paid \$35,000. Therefore, its claim of \$10,000 should be denied.” Bryant-Durham filed a response to the objection, indicating that it had furnished electrical and mechanical contracting repairs and other services at the Debtor’s stores located at 1423 East Club Boulevard (“East Club”) and 412 South LaSalle Street (“LaSalle Street”). Bryant-Durham indicated that had been paid \$34,999.00 by the Debtor for work performed in February and March of 2013, but that it was owed an additional \$10,167.74 for various services and equipment. Bryant-Durham asserted that any delay in permitting was caused by actions and/or inactions of the Debtor.

At the hearing, Bryant-Durham presented the testimony of Harold Liberty, its HVAC Commercial Manager. In addition, Bryant-Durham admitted into evidence invoices which have already been paid by the Debtor totaling \$34,999.00, plus the detailed work proposals as support for these invoices as Exhibit 1. This amount included a total of \$23,914.00 for the LaSalle Street location for both electrical and refrigeration work (two invoices), and a total of \$11,085.00 for

repairs and work done on various coolers/refrigeration units at the East Club location (two invoices).

As to the \$10,167.74 that Bryant-Durham asserts is still owed by the Debtor, \$3,191.74 of this amount is for servicing work to various freezers, coolers, or some other refrigeration equipment in March, April, May, and July 2013 at both the LaSalle Street and East Club locations. Bryant-Durham admitted six unpaid invoices reflecting this work into evidence as Exhibit 2. The remaining \$6,976.00 is for the installation of twinned furnaces at the East Club location. An invoice and a copy of the work proposal were admitted as Exhibit 3. The work proposal reflects that this work was to be performed in accordance with “the latest applicable Code regulations.” The furnaces at the East Club location failed their initial mechanical and electrical inspections on June 14, 2013, for various reasons. Bryant-Durham provided invoices (Exhibit 6) detailing the work it performed for no charge in September 2013 in order to remedy the previously failed mechanical and electrical inspections. Bryant-Durham provided evidence (Exhibits 4 and 5) that both the electrical and mechanical work at the East Club location have now passed their respective inspections.

In support of the objection, counsel for Mr. Pickett argued that Bryant-Durham’s work was generally not done in a workmanlike, competent manner and that the Debtor had to hire someone else to do the work. Also, Mr. Pickett testified and presented three exhibits. The first exhibit was a copy of a handwritten invoice, dated June 10, 2013, for repairs at the East Club location in the amount of \$6,500.00; a copy of the business card of Todd Fletcher of Restaurant Services/NC LLC was attached to the invoice. The second exhibit was a copy of two cash receipts, No. 064036 and No. 064049, each signed by Todd Fletcher. The first receipt was dated June 10, 2013, in the amount of \$3,250.00 and the second was dated June 18, 2013, also in the

amount of \$3,250.00. According to Mr. Pickett, these receipts represent payment for the work done by Todd Fletcher on June 10, 2013; half of the \$6,500.00 balance was paid upfront on June 10, 2013, and the remaining balance was paid on June 18, 2013. None of the invoices or receipts indicate that Mr. Fletcher performed any work after the mechanical and electrical inspections at the East Club location were failed on June 14, 2013. The third exhibit was another copy of a cash receipt [No. 064037, dated April 3, 2013] by Todd Fletcher in the amount of \$10,500.00 with notations of repairs, including the replacement of compressors, for refrigeration units at the LaSalle Street location.¹ The notations on the copies of the cash receipts are both difficult to read and cryptic. Todd Fletcher did not testify.

DISCUSSION

Bryant-Durham's claim for work done during the pendency of the Debtor's case is an administrative claim under 11 U.S.C. § 503(b)(1)(A) as "actual, necessary costs and expenses of preserving the estate." The costs and expenses of preserving an estate are not restricted to the categories specified in § 503 but include other necessary costs and expenses incurred in running a business during the pendency of a Chapter 11 case. In re Coastal Carriers Corporation, 128 B.R. 400, 404 (Bankr. D. Md. 1991). Mr. Pickett does not dispute that repairs and replacements of HVAC and refrigeration equipment for its convenience stores are actual, necessary business costs during the pendency of the Debtor's Chapter 11 case. The ultimate burden of persuasion, after an objection to administrative expense is made, is on the applicant to establish its entitlement to an award under 11 U.S.C. § 503(b) by a preponderance of the evidence. In re FAMCO, Inc., No. 99-51952C-11W, 2001 WL 1700023, at *2 (Bankr. M.D.N.C. April 2, 2001).

¹ Mr. Pickett gave no explanation as to why payments totaling \$23,500.00 were made in cash rather than by checks from the debtor in possession account.

The Court finds that Bryant-Durham has proven the amount and validity of its administrative claim in the amount of \$10,167.74 by a preponderance of the evidence. In support of its claim Bryant-Durham provided thorough documentation of the work it performed, as well as the testimony of Harold Liberty, its HVAC Commercial Manager. Mr. Liberty's testimony reflected his direct and comprehensive knowledge of the locations, the equipment at issue, the work performed, and the circumstances surrounding the various attempted inspections. In addition, the evidence reflects that the two furnace units have now passed the electrical and mechanical inspections.

Mr. Pickett testified in a very general way as to how various pieces of equipment serviced or replaced by Bryant-Durham were working and what issues the Debtor was having with the equipment at the two locations. His comments included statements such as "work didn't hold up," "work didn't pass inspection," "[furnace] units weren't working properly," and "weren't putting heat out." When pressed, he was unable to more specifically describe the issues with Bryant-Durham's work. His description of communications with Bryant-Durham regarding requests for work under possible warranties was very vague. He did not specifically describe or pinpoint any instance in which Bryant-Durham refused to honor a warranty for its work.

There were numerous units involved in these locations. The LaSalle Street location had an electrical surge that resulted in many electrical and mechanical issues with regard to its equipment, which is why Bryant-Durham was originally called in to assess the damage. For each occasion that Bryant-Durham performed work, the documentation is clear that additional work and repairs on any newly discovered equipment or wiring malfunctions was excluded. Only specific parts that had been replaced were under warranty and there was never a "blanket" or "package" warranty for all of the equipment previously worked on in the stores.

One instance of contention at the hearing centered on a notation on Todd Fletcher's receipt that he had replaced a compressor on the "9 door" unit and on the "5 door" unit. One of Bryant-Durham's proposals (included with Exhibit 1) specifically described replacement of a compressor on the 9 door unit and a compressor on the 5 door unit. Without Mr. Fletcher's testimony, however, this receipt is not probative; Mr. Liberty testified that the 9 door unit had two compressors. In addition, there is a possibility that having to replace the compressor on the 5 door unit was attributable to another cause. Moreover, if the same compressors were indeed at issue, then it appears Mr. Fletcher performed work on them despite being under warranty by Bryant-Durham at the time. Although the receipts show Mr. Fletcher did work on April 3 and on June 10, 2013, Bryant-Durham was also being called in to perform work as its invoices in Exhibit 2 are dated from March to July 2013. To the extent the receipts presented by Mr. Pickett carry any weight, they do not support a finding that Mr. Fletcher contributed to the passing of any inspections as they reflect work performed prior to the failed inspections on June 14, 2013.

After reviewing the evidence, the court concludes that Bryant-Durham performed services for the Debtor in September 2013 in order to remedy the previously failed mechanical and electrical inspections. Both the electrical and mechanical work performed have since passed inspection and there is no persuasive evidence to show that work was completed by any party other than Bryant-Durham in the time since the failed inspections on June 14, 2013. Bryant-Durham is entitled to its claim in the amount of \$6,976.00 for the installation of twinned furnaces at the East Club location. As to the \$3,191.74 total of the six invoices from March 2013 to July 2013, and the work reflected by the invoices totaling \$34,999.00, the court finds no persuasive evidence that this work was not performed or performed improperly.

Based upon the foregoing, the Objection by Earl Pickett to the Administrative Claim of Bryant-Durham is overruled and the claim is allowed as an administrative claim in the amount of \$10,167.74 for services performed during the pendency of this Chapter 11 case.

END OF DOCUMENT

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12-81284 C-11
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