

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

Case No. 6:06-bk-00456-ABB
Chapter 11

EMERALD COVE VILLAS, LLC,

Debtor.

ORDER

This matter came before the Court on the Application for an Administrative Claim and to Authorize Debtor-in-Possession to Pay Royall Construction of Florida I, Inc. Those Funds Expended to Preserve, Protect and Maintain the Construction Site (Doc. No. 175) (“Application”) and the Amended Application for an Administrative Claim (Doc. No. 270) (“Amended Application”) filed by Emerald Cove Villas, LLC, the Debtor and Debtor-in-Possession herein (“Debtor”) seeking payment of an administrative expense claim allegedly held by Royall Construction of Florida I, Inc. (“Royall Construction”). The creditor Bythebridge, LLC (“Bythebridge”) filed an Objection (Doc. No. 196) to the Application. An evidentiary hearing was held on December 15, 2006 at which counsel for the Debtor, counsel for Royall Construction, counsel for Bythebridge, and counsel for the United States Trustee appeared.

The parties were directed to submit post-trial statements setting forth their respective positions as to the administrative claim amount to be allowed, if any. Statements were submitted by the Debtor, Royall Construction, Bythebridge, and the United States Trustee. The Court makes the following findings and conclusions after reviewing the pleadings and evidence, hearing live testimony and argument, and being otherwise fully advised in the premises.

Hardin J. Royall, Jr. (“Mr. Royall”) is the central figure in this case. He is the Manager of the Debtor and caused the Debtor to file for bankruptcy protection on March 14, 2006 after Trustmark National Bank ceased funding the Debtor’s town home development project in Panama City Beach, Florida. Mr. Royall wholly owns Serenity, LLC, which owns fifty percent of the equity interests of the

Debtor.¹ He is the President of Royall Construction and is the principal and/or owner of several other entities including Royall Construction of Central Florida, Inc. (“RCCF”), which entity apparently funded the amounts sought in the Debtor’s Application and Amended Application.

The Debtor’s major assets on the Petition Date included parcels of real property, purchase contracts for town homes, and various rights and interests related to the development of the properties. Mr. Royall asserted from the onset of this case the Debtor intended to keep the properties as a viable asset and develop them. The Debtor was not able to move forward with the development project and merely maintained the status quo of the properties. The Debtor sought authorization to sell its assets at auction (Doc. No. 148) and virtually all of its assets were sold at auction pursuant to the Order entered on September 14, 2006 (Doc. No. 220).²

The Debtor contends Royall Construction incurred costs to preserve and protect the Debtor’s construction site “with the expectation and agreement that [Royall Construction] would recover an administrative claim for preserving the estate.”³ The Debtor originally asserted an administrative expense claim of \$110,113.84 in its Application for expenses incurred by Royall Construction and reduced the claim to \$68,110.93 in its Amended Application. The Debtor did not seek authorization to engage a Royall entity, or any entity, to incur such costs. The Amended Application is made and submitted on behalf of all entities owned and controlled by Mr. Royall.

Section 503(b)(1) of the Bankruptcy Code provides, after notice and a hearing, for the allowance of the actual and necessary costs and expenses of preserving the estate as an administrative expense. The Debtor and Royall Construction contend costs of \$68,110.93, consisting of twenty-one cost categories, incurred by Royall Construction were for the preservation of the estate and constitute an administrative expense. The Debtor did not follow proper procedures in incurring the post-petition expenses, but has established some of the expenditures preserved assets of the estate. Payment

¹ Bythebridge owns the remaining fifty percent of the equity interests of the Debtor.

² The Order was revised by the Order entered on October 17, 2006 (Doc. No. 282) to remedy a scrivener’s error. The sale closed and the firm of Gronek & Latham, LLP, the closing agent, is holding the sale proceeds in escrow.

³ Doc. No. 175 at ¶ 3.

of reasonable costs related to preservation of estate assets is appropriate.

The following amounts constitute the reasonable, actual and necessary costs and expenses of preserving the estate: (i) \$2,337.52 for the field trailer; (ii) \$807.75 for temporary toilets; (iii) \$4,463.05 for temporary fencing; (iv) \$13,300.00 for guard/security service⁴; (v) \$1,015.77 for temporary electric; (vi) \$1,957.67 for general liability insurance; and (vii) \$5,595.64 for the project manager, field secretary, and accounting personnel. The largest component of Royall Construction's Amended Application is personnel expenses.⁵ The amount of \$5,595.64 represents ten percent of the total expenses requested for these three personnel categories. Royall Construction made a good faith effort to preserve the status quo at the project site in order to achieve maximum marketability of the assets. It incurred personnel expenses in connection with protecting and preserving the estate assets. Royall Construction is entitled to reimbursement of a reasonable percentage of its personnel expenses.

Royall Construction incurred reasonable costs of \$29,477.40 in preserving property of the estate and is entitled to an administrative expense claim of said amount pursuant to 11 U.S.C. § 503(b)(1). Royall Construction's allowed administrative claim of \$29,477.40 shall be paid from the sale funds held in escrow by Gronek & Latham, LLP.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that Royal Construction is hereby awarded an allowed administrative expense claim of \$29,477.40 pursuant to 11 U.S.C. § 503(b); and it is further

ORDERED, ADJUDGED and DECREED that said administrative expense claim shall be paid from the sale funds held in escrow by Gronek & Latham, LLP within fourteen days of the date this Order becomes a final nonappealable order; and it is further

ORDERED, ADJUDGED and DECREED that Mr. Royall and any and all entities owned or controlled by Mr. Royall, including, but not limited to RCCF, are hereby barred from asserting claims for the costs contained in the Application and the Amended Application.

Dated this 29th day of December, 2006.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge

⁴ This figure is based upon the testimony of Sammy Spice regarding the reasonable cost of security during March through August, 2006.

⁵ Royall Construction requests payment of \$34,413.57 for the project manager, \$8,148.82 for the field secretary, and \$13,394.04 for accounting, for a total of \$55,956.43 for these expense categories.