

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

In re:

TRIMURTI INVESTMENTS, INC.,

Case No. 6:12-bk-5071-ABB

Chapter 11

Debtor.

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ORDER

This matter came before the Court on the Motions by The Riverwatch at City Centre Commercial Condominium Association, Inc. (“Riverwatch”) for Relief From Automatic Stay or For Adequate Protection (DE 66) and to Approve Payment of Administrative Expenses (DE 67). Riverwatch seeks the allowance and payment of an administrative expense claim in the amount of \$43,978.08. The claim is based on the expenditures Riverwatch claims are post-petition and includes \$16,601.72 for general monthly dues, \$1,296.97 for general monthly cleaning services to maintain the Debtor’s condominium units and common areas, and \$26,079.39 for a special assessment for mold remediation services. Riverwatch alternatively seeks relief from stay to pursue *in rem* lien rights for the same amount. (DE 66).

A hearing was held on June 20, 2012, and the Court directed the parties to conduct discovery. Arguments were heard on July 9, 2012, from Riverwatch and the Debtor. The parties filed additional briefs. (DE 113 and DE 114). The Court makes the

following findings and conclusions after reviewing the pleadings and evidence, hearing live argument and being otherwise fully advised.

Background

Riverwatch at City Centre (“Riverwatch”) is a commercial condominium building and condominium association, comprised of unit owners and governed by a board of directors, in Jacksonville. The Debtor’s assets include 18.82% of the condominiums in the building. Debtor is currently occupying the building and maintains property and liability insurance on its individually owned units.

The Debtor received an email from Riverwatch on March 28, 2012, with an attached invoice for general dues in the amount of \$38,311.65 for the entire month of April. The invoice was marked due upon receipt.

Mold was discovered in the building around December 2011, solely within units not owned by the Debtor. Riverwatch obtained estimates at the end of March and beginning of April, 2012, for mold remediation and sent an email and letter to all property owners notifying them of the mold discovery on April 2, 2012. This notification included a mold removal pro rata spreadsheet showing the per owner cost of the \$136,990.37 mold remediation estimate.

The Debtor received an email with attached invoice from Riverwatch on April 4, 2012, for general cleaning services in the amount of \$2,993.00 for the entire month of April. The invoice was marked due upon receipt.

Debtor filed its bankruptcy petition on April 17, 2012, and received an email the same day from Riverwatch notifying property owners of a lower estimate for mold remediation from a different company, in the amount of \$110,000.00, attaching an

updated pro rata spreadsheet showing per owner cost. An April 16, 2012, invoice was attached to the email assessing Debtor \$26,079.39 for a mold remediation special assessment. The invoice was marked due upon receipt.

The Riverwatch Board of Directors approved the \$110,000.00 special assessment for mold remediation on April 18, 2012, stating owners were to pay their portion of the assessment within 14 days after receiving notice . The mold remediation service took place sometime between April 18, 2012, and May 7, 2012.

Debtor received an email from Riverwatch on May 7, 2012, notifying Debtor the mold remediation work had been successfully completed and payment in the amount of \$26,079.39 was due immediately. An invoice was again attached.

Debtor's counsel and Debtor received an email on May 8, 2012, from Riverwatch with invoices for prorated amounts of general dues in the amount of \$17,878.77 and general cleaning in the amount of \$1,397.00 for dues and services from April 17, 2012 to April 30, 2012.¹ These invoices are both marked due upon receipt.

Riverwatch filed the pending Motion for Relief from Stay and Motion for Administrative Expenses on June 12, 2012. (DE 66 and DE 67).

Discussion

Riverwatch is seeking payment of administrative expenses, based upon the general dues, general cleaning and mold remediation special assessment are actual and necessary costs of preserving the Debtor's estate pursuant to §503(b) of the Bankruptcy Code. Riverwalk alternatively is seeking relief from the automatic stay to pursue its *in rem* lien rights against the Debtor for non-payment of post-petition assessments.

¹ These amounts are more than Riverwatch is currently seeking which is \$16,601.72 for general dues and \$1,296.97 for general cleaning.

Debtor objects to the expenses as arising before the petition date and no actual or concrete benefit was provided to the Debtor or the estate. The issue is whether Riverwatch's claim satisfies the standard for administrative expense as required by § 503(b).

Section 503(b) 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 for services rendered after the commencement of the case. The expenses must confer a "concrete benefit to the debtor's estate" to be payable on a priority basis as an administrative expense. *In re Sports Shinko*, 333 B.R. 483, 490 (Bankr. M.D. Fla. 2005)(quoting *In re Beverages Cannery Intern. Corp.*, 255 B.R. 89, 92 (Bankr. S.D. Fla. 2000). "The claimant must show that the claim arose from a post-petition transaction and that the transaction actually benefitted the estate." *In re Section 20 Land Group, Ltd.*, 261 B.R. 711, 715 (Bankr. M.D. Fla. 2000)(citing *in re Finevest Foods, Inc.*, 159 B.R. 972, 975 (Bankr. M.D. Fla. 1993).

The Court has reviewed the evidence and the parties' briefs and finds Riverwatch has established the claimed expenses were for services rendered post-petition and has demonstrated the costs claimed were actual, necessary costs and expenses of preserving the estate, conferring a concrete benefit to the Debtor and the bankruptcy estate according to 11 U.S.C. §503(b).

The Debtor continues to occupy the units for which the expenditures were made. The monthly condominium assessments paid for insurance, security, fire safety, elevator maintenance and trash removal. The general cleaning services were provided for the common areas as well as the Debtor's own units. The mold remediation cleaning was an

approved special assessment to all unit owners according the board and bylaws of the building.

Debtor maintains the expenses arose pre-petition because invoices marked due upon receipt were sent to the Debtor prior to the petition date for the services which were completed post-petition. This is not material. Riverwatch is seeking expenses for services rendered after the petition date which preserved and protected estate assets. See *In re Sport Shinko*, 333 B.R. at 493-498. A service provider has to actually provide the services for the Debtor to be responsible for the service expenses.

Had the general cleaning or the mold remediation not actually taken place or if Riverwatch had failed to provide the required services, Debtor would not have been responsible to pay for these expenses, even if invoiced at the beginning of April, because the services would not have been provided.

The time Debtor actually became responsible for payment was when the services were rendered. The expenses sought arose post-petition and resulted from actions taken by Riverwatch which created benefit to the Debtor and the estate according to 11 U.S.C. §503(b).

Riverwatch is entitled to the allowance of an administrative expense claim. The following amounts constitute the reasonable, actual and necessary costs and expenses of preserving the estate: (i) \$16,601.72 for post-petition monthly condominium expenses; (ii) \$1,296.97 for post-petition cleaning services; (iii) \$26,079.39 post-petition special assessment for mold remediation services.

Riverwatch incurred reasonable costs of \$43,978.08 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).

The granting of Riverwatch's Motion for Administrative Expenses (DE 67) has rendered its Motion for Relief from Stay moot (DE 66).

ORDERED, ADJUDGED AND DECREED that Riverwatch's Motion for Administrative Expenses (DE 67) is **GRANTED**; and it is further

ORDERED, ADJUDGED AND DECREED that Riverwatch is entitled to an administrative claim in the amount of \$43,978.08 pursuant to 11 U.S.C. §503(b) and 507(a)(2); and it is further

ORDER, ADJUDGED AND DECREED that Riverwatch's Relief From Automatic Stay or For Adequate Protection (DE 67) is **DENIED** as moot.

Dated this 26th day of July, 2012.

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