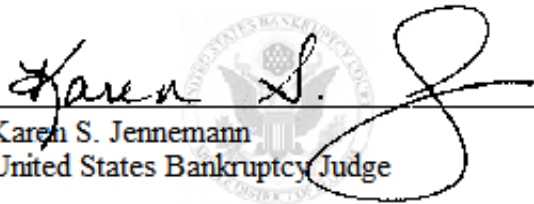


ORDERED.

Dated: September 10, 2021



Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	
)	
Consolidated Land Holdings, LLC,)	Case No. 6:19-bk-04760-KSJ
)	Chapter 11
Debtor.)	Jointly Administered ¹
)	

ORDER DENYING MCREIF’S MOTION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM

This matter came before the Court on June 1, June 30, and August 13, 2021, for consideration of McREIF SubREIT, LLC’s (“McREIF”) Motion for Allowance and Payment of Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b) (the “Motion for Administrative Expense Claim”);² the Objections to the Motion for Administrative

¹ Jointly administered cases: Consolidated Land Holdings, LLC, Case No. 6:19-bk-04760; Land Capital, LLC, Case No. 6:19-bk-04761-KSJ; 100 Berlin Land, LLC, Case No. 6:19-bk-04762-KSJ; 200 STL Land, LLC, Case No. 6:19-bk-04763-KSJ; 204 Fox Land, LLC, Case No. 6:19-bk-04765-KSJ; 205 Wolf Land, LLC, Case No. 6:19-bk-4766-KSJ; 5500 Midland Land, LLC, Case No. 6:19-bk-4768-KSJ; Appleton Land, LLC, Case No. 6:19-bk-04769-KSJ; High Point Land, LLC, Case No. 6:19-bk-04770-KSJ.

² Doc. No. 871. All “Doc. No.” citations refer to pleadings filed in Case No. 6:19-bk-04760-KSJ unless otherwise noted.

Expense Claim³ filed by Lender⁴ and Debtors;⁵ the Response to the Objections;⁶ McREIF's Supplemental Memorandum and filings in support of the Motion for Administrative Expense Claim;⁷ and the Joint Reply filed by Lender and one of the jointly administered Debtors, 100 Berlin Land, LLC ("Berlin Land Debtor").⁸ After reviewing the pleadings and hearing argument from counsel, the Court will deny the Motion for Administrative Expense Claim.

McREIF is a leasehold lender to 100 Berlin Holdings, LLC (the "Cromwell Tenant"), the tenant of the real property owned by Berlin Land Debtor, located in Cromwell, Connecticut (the "Cromwell Property"). On July 22, 2019 (the "Petition Date"), Berlin Land Debtor filed a voluntary petition for Chapter 11 bankruptcy.⁹

Prior to the Petition Date, the Cromwell Tenant operated a Red Lion hotel on the Cromwell Property. Shortly before the Petition Date, however, the Cromwell Tenant closed hotel operations and stopped paying ground rent to the Berlin Land Debtor.

³ Lender's Objection to McREIF SubREIT, LLC's Motion for Allowance and Payment of Administrative Expense Claim, Doc. No. 903; Consolidated Land Holdings, LLC's Notice of Joinder to Lender's Objection to McREIF SubREIT, LLC's Motion for Allowance and Payment of Administrative Expense Claim, Doc. No. 934.

⁴ Wells Fargo Bank, National Association, as trustee for the benefit of the holders of UBS Commercial Mortgage 2017-C3, UBS Commercial Mortgage 2017-C2 and Credit Suisse CSAIL 2017-CX9 Mortgage Trust Commercial Mortgage Pass-Through Certificates ("Lender").

⁵ The term "Debtors" refers to Consolidated Land Holdings, LLC, and its jointly administered debtors.

⁶ McREIF SubREIT, LLC's Response to the Objection of Wells Fargo Bank to Motion for Allowance and Payment of Administrative Expense Claim, Doc. No. 906.

⁷ Affidavit in Support of McREIF SubREIT, LLC's Motion for Allowance and Payment of Administrative Claim Pursuant to 11 U.S.C. § 503(b), Doc. No. 933; McREIF SubREIT, LLC's Supplemental Memorandum in Support of Motion for Allowance and Payment of Administrative Expense Claim, Doc. No. 950; and McREIF SubREIT, LLC's Notice of Filing Supplemental Exhibits in Support of Motion for Allowance and Payment of Administrative Expense Claim, Doc. No. 953.

⁸ Joint Reply of 100 Berlin Land, LLC and Lender to Supplemental Memorandum of McREIF SubREIT, LLC in Support of Its Motion for Allowance and Payment of Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b), Doc. No. 952.

⁹ Case No. 6:19-bk-04762-KSJ, Doc. No. 1. The Court ordered joint administration of the Berlin Land Debtor bankruptcy case with this case. Doc. No. 22.

Under the ground lease between Berlin Land Debtor and the Cromwell Tenant (“Cromwell Ground Lease”), the Cromwell Tenant must pay the rent and the expenses of maintaining the Cromwell Property. McREIF, whose collateral is the Cromwell Ground Lease, began paying the expenses associated with the property in place of the Cromwell Tenant.

McREIF now seeks an award of an administrative expense claim under § 503(b)(1)(A)¹⁰ of the Bankruptcy Code,¹¹ for what it asserts were actual and necessary expenses to preserve an asset of Berlin Land Debtor, the Cromwell Property.¹² In the Motion for Administrative Expense Claim, McREIF states that it has paid certain costs and expenses including electric, gas, water, and receivership funding, totaling \$542,962.79.

Section 503 allows entities to request payment of an administrative expense,¹³ and provides under subsection (b)(1)(A) that “there shall be allowed administrative expenses,” including “the actual, necessary costs and expenses of preserving the estate.”¹⁴ Section 507(a) grants such expenses priority status.¹⁵ “[B]ecause priority claims reduce the funds available for creditors and other claimants,” claims for

¹⁰ The parties acknowledge McREIF is not a creditor of Berlin Land Debtor and, therefore, does not have standing to assert a claim for substantial contribution under § 503(b)(3)(D) of the Bankruptcy Code. Section 503(b)(3)(D) provides only certain entities (a creditor, an indenture trustee, an equity security holder, or an unofficial committee) can assert a claim for substantial contribution. McREIF does not fall within any of these categories. Because it cannot proceed under § 503(b)(3)(D), McREIF argues it has a claim under § 503(b)(1)(A) of the Bankruptcy Code.

¹¹ All references to the Bankruptcy Code refer to 11 U.S.C. § 101, *et. seq.*

¹² Doc. No. 871.

¹³ 11 U.S.C. § 503(a).

¹⁴ 11 U.S.C. § 503(b).

¹⁵ 11 U.S.C. § 507(a)(2); Fed. R. Bankr. P. 9001(11).

administrative expenses must be “strictly construed.”¹⁶ The claimant has the burden of proving, by a preponderance of the evidence, that a claim qualifies as an administrative expense.¹⁷ A party making a claim pursuant to § 503(b)(1)(A) must establish that the expenses are “(1) actual and necessary and (2) have benefited the estate in some tangible way.”¹⁸

McREIF held a leasehold mortgage from the Cromwell Tenant. The Cromwell Ground Lease required the Cromwell Tenant to “pay all costs and expenses” relating to the Cromwell Property. McREIF paid the expenses that the Cromwell Tenant was required to pay. McREIF advanced funds in order to protect its own interest and to protect the property interests of the Cromwell Tenant. Had McREIF failed to pay the expenses, Berlin Land Debtor would be entitled to demand the expense payments from the Cromwell Tenant. So, the obligations for which McREIF seeks an administrative expense award are the actual and necessary expenses of the Cromwell Tenant, not Berlin Land Debtor. Additionally, § 503(b)(1)(A) allows for an administrative expense incurred for “preserving the estate.” And while the payments may have benefited Berlin Land Debtor’s estate, the payments were made to preserve the Cromwell Ground Lease, McREIF’s collateral, and not Berlin Land Debtor’s estate.

¹⁶ *Nat’l Union Fire Ins. Co. v. VP Bldgs., Inc.*, 606 F.3d 835, 838 (6th Cir. 2010) (quoting *In re Federated Dep’t Stores, Inc.*, 270 F.3d 994, 1000 (6th Cir. 2001)); *accord Varsity Carpet Servs. v. Richardson (In re Colortex Indus.)*, 19 F.3d 1371, 1377 (11th Cir. 1994) (“[S]ection 503 priorities should be narrowly construed in order to maximize the value of the estate preserved for the benefit of all creditors.”); *In re Lickman*, 273 B.R. 691, 697 (Bankr. M.D. Fla. 2002) (quoting *Woburn Assocs. v. Kahn (In re Hemingway Transport, Inc.)*, 954 F.2d 1, 5 (1st Cir. 1992)) (recognizing the court is “required to construe strictly and narrowly ‘the Bankruptcy Code provisions governing requests for priority payment of administrative expenses’”).

¹⁷ *In re Durango Ga. Paper Co.*, No. 02-21669, 2021 WL 1259530, at *5 (Bankr. S.D. Ga. Mar. 31, 2021); *Zurich Am. Ins. Co. v. Lexington Coal Co. (In re HNRC Dissolution Co.)*, 371 B.R. 210, 226 (E.D. Ky. 2007).

¹⁸ *In re Lickman*, 273 B.R. at 701.

Accordingly, McREIF has failed to carry its burden of persuasion with respect to its entitlement to an administrative expense claim under § 503(b), and it is

ORDERED:

1. The Objections (Doc. Nos. 903 and 934) are **SUSTAINED**.
2. McREIF SubREIT, LLC's Motion for Allowance and Payment of Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b) (Doc. No. 871) is **DENIED**.

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Attorney Roy S. Kobert will serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.