

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

In re:

CASE NO. 8:05-bk-10322-CPM  
Chapter 13

DEBORAH S. BURGESS,

Debtor.

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ORDER OVERRULING DEBTOR'S OBJECTION  
TO CLAIM OF LINO AND CAROL MELLO  
(CLAIM NO. 7)

THIS CASE came on for a preliminary hearing on October 5, 2005 on the *Debtor's Objection to Claim of Lino and Carol Mello (Claim No. 7)* (docket no. 16) (the "Objection") and the Mellos' response thereto (docket no. 19). Present before the Court were a representative of Joel B. Fein, P.A. on behalf of the debtor and Michael S. Edenfield on behalf of the Mellos.

The Objection alleges that the Mellos' claim is a duplicate of that filed by Inland Southeast Brandon, LLC ("ISB"), claim no. 6. The record reflects without dispute that, as between the debtor and the Mellos, (i) ISB alleged the Mellos' to be co-obligors with the debtor on the debtor's obligation to ISB and that the Mellos paid ISB \$25,000.00 on that obligation, thereby reducing the amount the debtor owes ISB; (ii) the Mellos incurred attorney's fees and costs in connection with their defense of an action brought by ISB against the Mellos and the debtor on the debtor's obligation; and (iii) the defense of the action was caused by an alleged failure of the debtor to pay ISB on a lease obligation.

Section 502(e)(1)(B) of the Bankruptcy Code requires disallowance of "any claim for reimbursement or contribution of an entity that is liable with the debtor on ... the claim of a creditor," but only "to the extent that such claim for reimbursement or contribution is contingent at the time of allowance or disallowance of such claim for reimbursement or contribution." Accordingly, it is without dispute that the Mellos are entitled to claim \$25,000.00 for reimbursement or contribution.

With respect to that portion of the Mellos' claim comprising attorney's fees, the Court deferred ruling pending the submission, by November 4, 2005, of authority in support of the parties' respective positions.

The Court having considered the record, it is thereupon

ORDERED that the Objection is overruled. The Mellos' claim no. 7 is allowed in two parts as follows: First, in the amount the Mellos paid to ISB on account of the debtor's obligation, \$25,000.00. See 11 USC §502(e)(1)(B). Second, in an amount of reasonable attorney's fees and taxable costs incurred pre-petition in connection with their defense of the action brought by ISB, which amount shall be determined by the Court. See *Hiller Group, Inc. v. Redwing Carriers, Inc.*, 779 So. 2d 602, 604 (Fla. 2d DCA 2001) ("[u]nder Florida law, an indemnitee is entitled to indemnification not only for the judgment entered against it, but also for attorney's fees and court costs"); *Unisys Corp. v. Frank H. Poe, Inc.*, 576 So. 2d 874, 875 (Fla. 3d DCA 1991) ("indemnitee entitled to reasonable attorney's fees and costs as a part of damages for which indemnitor is liable"); *Baxter's Asphalt & Concrete, Inc. v. Liberty County*, 406 So. 2d 461, 467 (Fla. 1st DCA 1981), *quashed on other grounds*, 421 So. 2d 505 (Fla. 1982) ("[w]here the wrongful act of the defendant has involved the claimant in litigation with others, and has placed the claimant in such relation with others as makes it necessary to incur expenses to protect its interests, such costs and expenses, including reasonable attorney's fees upon appropriate proof, may be recovered as an element of damages"). By separate order, the Court will set for a final evidentiary hearing the amount of reasonable attorney's fees to be allowed to the Mellos as part of their allowed claim. The Court encourages but does not require the parties to participate in mediation concerning the amount allowable as attorney's fees to the Mellos. See Local Rule 9019-2.

DONE AND ORDERED in Chambers at  
Tampa, Florida on November 22, 2005.

/s/ Catherine Peek McEwen  
Catherine Peek McEwen  
United States Bankruptcy Judge

Copies furnished:

Debtor

Debtor's counsel

Michael S. Edenfield

Inland Southeast Brandon, LLC