UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re	:	Chapter 7
	:	
FRENCH CREEK MILLWORK,	:	Bankruptcy No. 03-18330DWS
	:	
Debtor.	:	

MEMORANDUM OPINION

BY: DIANE WEISS SIGMUND, Chief Bankruptcy Judge

Before the Court is the Motion of Quaker City Auctioneers, Inc. ("Quaker") for leave to Join Gloria M. Satriale, Trustee (the "Trustee") of the Estate of French Millwork and the Estate of French Millwork (the "Estate") in the State Action (the "Motion"). I had previously held in connection with the motion of Jack G. Kearton ("Kearton") that leave of this court was not required to maintain a personal injury action against Quaker in the Court of Common Pleas of Philadelphia County ("State Action") arising from an injury he received during the auction of the Debtor's assets. In response, Quaker filed the Motion to enable it to assert its cross claim against the Estate. Quaker does not contend that the Trustee is personally liable but rather that the Estate, not it, is liable for Kearton's injury.[1] Quaker did not seek to make an evidentiary record but rather relies on certain documents attached

[1] The pleadings speak of the "Trustee/Estate" as being liable. However, the assertion of liability is directed at the Estate, i.e., a post-petition claim.

to its pleading. The Trustee made no objection to the proffer.[2] Rather the parties presented their legal positions in memoranda that were filed post-hearing. Based thereon, the Motion is granted.

BACKGROUND

On June 27, 2003 I entered an Order authorizing the Trustee to employ Quaker in connection with its proposal for the auction sale of the assets of French Creek Millwork ("Debtor") at 735 Fox Chase, Highland Industrial Park, Coatesville, PA (the "Auction Site"). Exhibit C to Reply of Quaker City Auctioneers to Trustee's Answer to Motion ("Quaker's Reply") which outlines the advertising and scope of work Quaker would do (the "Proposal") is the only document that has been offered to delineate the responsibilities Quaker assumed.

During the course of the auction Kearton, a registered bidder, was injured by a falling steel rod. The rod was not part of the assets being sold. Kearton sued Quaker in the State Court alleging that Quaker was in control of the Auction Site and was negligent by not discovering the dangerous condition and realizing that it provided an unreasonable risk to invitees such as Kearton. Exhibit B to Motion, State Action Complaint ¶ 9. Quaker contends that the Trustee, not it, was in control of the Auction Site. The parties agree that the Auction Site is owned by the Lancaster Development Company ("Landlord").[3] The Trustee denies responsibility, stating that the lease by which the Debtor occupied the

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[2] In any event, my review of the documents indicates that they are documents of which I may take judicial notice. Fed.R.Evid. 201.

[3] The Motion initially averred that the Estate owned the Auction Site, and the Trustee makes much of that averment in refuting her responsibility. Quaker has amended its statement about ownership but affirmed its view that the Trustee was in control of the Auction Site nonetheless.

Auction Site expired by its own terms on May 31, 2003, one day after the filing of the petition and that the Landlord was granted relief from stay to terminate whatever possessory rights the Debtor retained. Quaker, however, points to the court-approved Stipulation dated July 24, 2003 between the Trustee and Landlord resolving the Landlord's motion for relief which allowed the Trustee to conduct the auction sale and stayed any action in furtherance of the relief from stay granted until the sale was concluded. Exhibit A to Quaker Reply.

DISCUSSION

Quaker seeks to join the Trustee/Estate in the State Action to enable a court to determine who is responsible for Kearton's injury. The Trustee is prepared to let the Debtor be joined to the extent of its insurance, the existence of which he has not determined,[4] but opposed joinder of the Trustee/Estate due to the potential of a claim against the Estate proceeds earmarked for creditors. While an understandable position, she provides no legal authority that would insulate the Estate from a lawsuit if a claim is stated. Quaker has stated such a claim, i.e., the Trustee retained legal control of the Auction Site and her negligence in securing it was responsible for the injury. Quaker avers that she, not it as her agent whose duties were limited to those outlined in the Proposal, is liable.

I turn first to the Trustee's argument that she is not responsible for any injury occurring at the Auction Site because the lease was terminated by its own terms before the

[4] From the record made, I cannot determine what was contemplated should there be damages arising from the holding of the auction. Was Quaker required to have insurance to protect the Estate against any harm during the event? It would appear that the Trustee should at a minimum investigate whether there is extant insurance coverage in the Debtor's name. If so, the insurance company may defend and foreclose any costs being incurred by the Estate.

sale and the automatic stay was lifted to allow the Landlord to terminate any possessory rights the Debtor retained. I leave to the State Court, which will determine liability, whether the lease termination absolves the Estate from liability for actions taken while it was lawfully on the premises conducting an auction sale by agreement with the Landlord. However, as a matter of bankruptcy law, the fact that the Landlord had relief from stay to remove the Debtor from the property is irrelevant since the Stipulation with the Landlord expressly allowed the Trustee to utilize the Auction Site to conduct the sale of the Debtor's personal property.

The thrust of the Trustee's alternative argument is that joinder would be without purpose because even if the Trustee/Estate were found liable, there could be no administrative expense claim arising from the cross-claim. An administrative expense must be an actual and necessary cost of preserving the estate. 11 U.S.C. § 503(b)(1)(A). According to the Trustee, neither the joinder in the State Action nor payment of Quaker on account of the personal injury claim is an actual and necessary cost of preserving the estate because there is no benefit conferred. Needless to say, to the extent the Trustee is correct that the Estate is insulated from liability absent a benefit to the estate, there would be no advantage to Quaker from joinder. On the contrary, there would be prejudice to the Estate from the costs of litigation. Thus, the questions appears to be whether Quaker has stated an administrative expense claim against the Estate.[5]

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[5] It is beyond the scope of this memorandum opinion to assess the legal basis of Quaker's (continued...)

The Trustee's statement of the law regarding the allowability of an administrative expense claim, while accurately quoting the statute, is too narrow and fails to recognize the well established body of law that a cost may be entitled to administrative expense status as an "actual, necessary" cost of preserving the estate even though the cost does not confer an actual benefit to the estate. This principle was enunciated by the United States Supreme Court in Reading v. Brown, 391 U.S. 471, 88 S.Ct. 1759 (1968), a case decided under the Bankruptcy Act, which remains good law under the Bankruptcy Code. Al Copeland Enterprises, Inc. v. State of Texas (In re Al Copeland Enterprises, Inc.), 991 F.2d 233, 239 (5th Cir. 1993).

In Reading, the Supreme Court held that the claims of neighboring property owners arising out of a catastrophic fire caused by the negligence of an employee of the trustee were entitled to administrative priority. The Court reasoned that as a matter of fundamental fairness, the fire claimants "should collect ahead of those creditors for whose benefit the continued operation of the business (which unfortunately led to the fire instead of the hoped-for rehabilitation) was allowed." 391 U.S. at 478, 88 S.Ct. at 1763. It rejected the trustee's position, also advanced here, that the claimants could assert their claims against available insurance (i.e., the receiver's bond). While recognizing the dilemma such a rule imposes on innocent creditors, it concluded that they should not escape the consequences by

(...continued)
cross-claim. Whether Quaker or the Trustee or neither had a duty of care to Kearton so as to be found liable for his injury is a question for the State Action. Nor, as discussed below, is this Court an appropriate jurisdiction over Quaker's counterclaim to determine the ultimate issue. Rather I focus on whether Quaker can assert a claim against the Trustee/Estate based on the allegations of its Motion.

imposing them on another equally innocent party. See also In re B. Cohen and Sons Caterers, Inc., 143 B.R. 27 (E.D. 1992).[6]

As Reading teaches, an estate representative's post-petition tort will give rise to a claim under section 503(b)(1) without regard to a demonstrable benefit to the estate being established. Moreover, an argument can be made that as the auction sale was being conducted for the benefit of the estate, Kearton's presence as a business invitee intending to bid did confer a benefit. There is no unfairness to treating him better than the unsecured creditors in the distributive scheme.

Finally the Trustee has argued that if I conclude that the Trustee/Estate may be sued that I nonetheless should deny the Motion because the "'related to' jurisdiction provided under 28 U.S.C. Section 1334(b) requires this Court to determine the Movant's claims as they would profoundly determine the funds available for distribution in this case." Memorandum of Law in Support of Trustee's Answer at 3 (unnumbered). Not only is this a misstatement of the law (i.e., "related to" jurisdiction does not require the assumption of jurisdiction), it makes no sense in this case. Had Kearton sued the Trustee/Estate this court would be precluded from adjudicating the personal injury tort claim by reason of 28 U.S.C. § 157(b)(5). Such claims shall be tried in the district court in which the bankruptcy case is

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[6] In Cohen, the appellant attended a function at the debtor's catering establishment and was injured when she slipped and fell. She sued the debtor but the bankruptcy court refused to accord her claim administrative expense status because she had not conferred a benefit on the estate. The district court, *citing* Reading, disagreed concluding that tort claims which arise during the Chapter 11 case are actual and necessary costs of the proceeding rather than debts of the estate. Moreover, the court found that the claim did arise from a situation conferring a benefit upon the debtor. The claimant was a business invitee present at the request of a party who was paying the debtor for the catering services. Thus, her presence was a benefit to the debtor and the claim arose as a result of her presence.

pending or the district court in which the claim arose. The Trustee seems to believe that the State Court Action could go forward without the additional defendant. I am not certain how since Quaker's position is that the Trustee/Estate is liable, not it. Although I question the advantages the Trustee perceives for his cause from a bankruptcy forum,[7] it appears in any event that the matter would be withdrawn to the district court. While the Trustee states that a resolution could be reached in this court "in a much more abridged way under 11 U.S.C. Section 502," he does not explain how this is so. In short, I see no reason not to allow the action to proceed in the State Court where all parties will be before the court on this quintessential state law issue.

Based on the foregoing reasons, the Motion is Granted. Kearton may join the Trustee/Estate in the State Court Action. An Order consistent with the foregoing Memorandum Opinion shall be entered.

DIANE WEISS SIGMUND
Chief U.S. Bankruptcy Judge

Dated: October 12, 2005

[7] The Trustee assumes that in adjudicating this dispute this court would have more of an interest in protecting creditors than the State Court, inferring therefrom that the outcome would be better here. The outcome will be based on the merits of the dispute without regard to its impact on distributions to other creditors.

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In re	:	Chapter 7
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FRENCH CREEK MILLWORK,	:	Bankruptcy No. 03-18330DWS
	:	
Debtor.	:	

ORDER

AND NOW, this 12th day October 2005, upon consideration of the Motion of Quaker City Auctioneers, Inc. ("Quaker") for leave to Join Gloria M. Satriale, Trustee (the "Trustee") of the Estate of French Millwork and the Estate of French Millwork (the "Estate") in the State Action (the "Motion"), after notice and for the reasons stated in the accompanying Memorandum Opinion;

It is hereby **ORDERED** that the Motion is **GRANTED**.

DIANE WEISS SIGMUND
Chief U.S. Bankruptcy Judge

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