

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:	:	Chapter 11
	:	
Philadelphia Newspapers, LLC <i>et al.</i> , ¹	:	Case No. 09-11204 (SR)
	:	
Debtors.	:	Jointly Administered
	:	
	:	

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO
APPLICATION OF REPUBLIC FIRST BANK FOR ALLOWANCE AND PAYMENT
OF ADMINISTRATIVE EXPENSES CLAIM PURSUANT TO 11 U.S.C. § 503(b)**

The Official Committee of Unsecured Creditors (the “Committee”), appointed in the chapter 11 cases of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), hereby objects (the “Objection”) to the application of Republic First Bank (“Republic First”) for allowance of a purported administrative expense claim, filed October 29, 2009 (the “Application”) [Docket No. 1344]. In support of this Objection, the Committee respectfully states as follows:

1. By its Application, Republic First seeks payment of total fees and expenses of \$261,692.29 for doing diligence on a possible non-consensual priming DIP financing to which Republic First never committed, which was never presented to the Court and never had a realistic chance of approval. When added to the \$14,012.50 of fees and expenses paid to Tennenbaum Capital Partners, LLC (“Tennenbaum”, a proposed member of the syndicate that Republic First formed), the total fees and expenses sought by the lenders who considered (but did not commit to) this proposed financing total \$275,704.79. In contrast, at a hearing held on August 11, 2009,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Philadelphia Newspapers, LLC (3870), PMH Acquisition, LLC (1299), Broad Street Video, LLC (4665), Philadelphia Direct, LLC (4439), Philly Online, LLC (5185), PMH Holdings, LLC (1768), Broad Street Publishing, LLC (4574), Philadelphia Media, LLC (0657) and Philadelphia Media Holdings, LLC.

this Court authorized payment of \$100,000 of fees and expenses to these proposed lenders. Authorizing payment of \$100,000 to Republic First was more than fair. It is highly inappropriate for Republic First and Tennenbaum to seek fees equal to approximately 275% of that cap.

2. Republic First's request includes a 1% fee based on possible DIP financing of \$15,000,000 -- i.e., a \$150,000 fee that has nothing to do with any out-of-pocket expenses incurred by Republic First or any risk incurred by this bank. Republic First never committed to provide any financing and the Court certainly never gave any indication that any such fee, or any out-of-pocket expenses in excess of \$100,000, would be approved.

3. In comparison, the total cash consideration that the Debtors propose in their plan to distribute to unsecured creditors is a paltry \$750,000 on account of debts of \$384,000,000 - 534,000,000.² It is unconscionable to propose to pay a sum approximately equal to 33% of the cash to be distributed to unsecured creditors owed hundreds of millions of dollars to a group of prospective lenders who never went at risk, never had a realistic prospect of closing their proposed financing and were warned by the Court not to expect more than \$100,000.

BACKGROUND

4. On July 30, 2009, the Debtors filed a motion seeking authority to pay Republic First a due diligence fee of \$300,000 in connection with a proposed \$15 million non-consensual priming DIP loan to be provided by Republic First and a group of other lenders [Docket No. 822]. That motion was strenuously opposed by the Senior Lenders [Docket No. 858]. At the hearing held on August 11, 2009, the Committee joined in that objection and suggested that the Court authorize payment of only \$100,000. The Court agreed and limited the authorization to

² In their Disclosure Statement dated October 30, 2009, the Debtors estimate that Class 4 General Unsecured Claims will equal approximately \$380 million - 530 million, while Class 5 General Unsecured Trade Claims will equal approximately \$4 million. Disclosure Statement at 11 -12 [Docket No. 1323].

\$100,000 [Docket 903]. At the August 11, 2009 hearing, the Court suggested that if the due diligence fees exceeded \$100,000, it may be necessary for the insider Stalking Horse to fund any excess.

5. On August 21, 2009, the Debtors filed a motion asking the Court to reconsider its August 11, 2009 ruling and urged the Court to increase the cap to \$200,000 (the “Motion for Reconsideration”) [Docket No. 954]. The Debtors’ Motion for Reconsideration was opposed by the Committee [Docket No. 963] and the Senior Lenders [Docket No. 967] in objections filed on August 24, 2009, pointing out among other things that there was no basis to reconsider the Court’s prior ruling. The Court never acted on the Debtors’ Motion for Reconsideration.

6. Thereafter, in connection with the mediation before Judge Fehling, the Debtors dropped any pretense of seeking approval for non-consensual priming DIP financing, but persisted in their contention that they should be able to ask the Court to reconsider its August 11, 2009 ruling so that Republic First and Tennenbaum might be paid more than \$100,000. The Committee and the Senior Lenders were clear that they would continue to oppose any such request. Thus, paragraph 5(a) of the Stipulation and Order that the Court approved on August 28, 2009 [Docket No. 1006] reserved the parties’ rights on this issue. The Debtors only had the temerity to seek reconsideration of their prior request to allow payments up to \$200,000. But Republic First and Tennenbaum now seek total compensation of \$275,704.

ARGUMENT

7. This Application should be denied for several reasons.

8. First, the Application improperly seeks reconsideration of the Court’s August 11, 2009 Order, which limited Republic First’s compensation to \$100,000 [Docket No. 903]. The fact that Republic First does not like the Court’s order or spent more money than the Court

authorized is not a proper basis for reconsideration. As the Third Circuit has held, a motion for reconsideration should be granted only in “exceptional circumstances.” *Lony v. E.I. DuPont deNemours & Co*, 935 F.2d 604, 608 (3d Cir. 1991); *see, also*, 11 Wright, Miler & Kane, *Federal Practice and Procedure* § 2810.1, 124-130 (1995) (“reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly). A motion for reconsideration may be granted only to correct manifest errors of fact or law or to present newly discovered evidence. *Harsco Corp. v. Slotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). A motion for reconsideration may not be used to present a new legal theory or to adduce evidence that could (and should) have been raised in connection with the original motion. *In re Sisson*, 668 F. Supp. 1196, 1197 (N.D. Ill. 1983); *In re Armstrong Store Fixtures Corp.*, 139 B.R. 347, 349 (Bankr. W.D. Pa. 1992). Nor may a motion for reconsideration be used to rehash arguments presented in the original motion or to express the view that the court’s prior decision was wrong. *MGLC Indemnity Corp. v. Weisman*, 803 F.2d 500, 505 (9th Cir. 1986); *In re Armstrong Store Fixtures Corp.*, 139 B.R. at 349. These proscriptions on motions for reconsideration are designed to preclude repetitive arguments and to bring an end to disputes before the trial court. *Park South Tenants Corp. v. 200 Central Park South Associates*, 754 F. Supp. 352, 354 (S.D.N.Y. 1991); *In re Armstrong Store Fixtures Corp.*, 139 B.R. at 349. If a party believes that the court was wrong, its redress is properly by way of appeal rather than a motion for reconsideration. *Database America, Inc. v. Bellsouth Advertising & Publishing Corp.*, 825 F. Supp. 1216, 1220 (D.N.J. 1993).

9. Republic First does not label its Application as a motion for reconsideration, but that is what it is. The Debtors were more forthright on August 21, 2009 when they correctly labeled their effort to get more money to Republic First a motion for reconsideration. Republic

First's effort to revisit the Court's August 11, 2009 ruling is a simple rehash of issues and facts that were well known to Republic First last August. Indeed, at that time, Republic First was able to predict the magnitude of its requested fees with a high degree of accuracy. The Debtors' July 30, 2009 motion sought to pay Republic First and Tennenbaum up to \$300,000, whereas their final requests total \$275,704.79 -- i.e., extremely close to what they predicted but 275% of what the Court authorized. Republic First's ability to predict the magnitude of its diligence fees at the time that the Court first considered this matter should not be too surprising since Republic First explains that when the Debtors contacted it in July, the "Debtors and Republic agreed that Republic would be compensated for its due diligence work in connection with the DIP Facility in the amount of 1% of the DIP facility amount (the 'Bank Due Diligence Fee')." Application at 1. That "Bank Due Diligence Fee" constitutes the lion's share of what Republic First seeks in the current Application. The Debtors may have agreed to pay a 1% due diligence fee, but that is of no significance here given that the Debtors' agreement was not effective without this Court's blessing and this Court expressly declined to approve it.

10. Second, the Application should be denied because it seeks reimbursement of fees that provided no benefit to the Debtors' estates. Republic First never committed to providing any DIP financing. Even without committing to anything, Republic First's out-of-pocket expenses have been covered almost entirely. Pursuant to this Court's prior order, Republic First has already been paid \$100,000 by these estates which was sufficient to cover all but \$11,692.29 of Republic First's out-of-pocket expenses. This authorization of \$100,000 was more than generous to Republic First and when Republic First incurred an additional \$11,692.29 of out-of-pocket expenses, it did so with full knowledge that this Court had not approved this excess. The \$150,000 additional that Republic First seeks is a simple flat 1% fee that has no relationship to

any out-of-pocket expenses incurred by Republic First much less any benefit provided to the estates.

11. The Committee submits that what ever minor benefit to the estates might have been provided by Republic First has been very adequately compensated by the payment of \$100,000, particularly since the standard for allowance of an administrative expense of this sort is very high. Section 503(b) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) provides that “[a]fter notice and a hearing, there shall be allowed administrative expenses, ... including – the actual, necessary costs and expenses of preserving the estate.” 11 U.S.C. § 503(b)(1)(A). While the Bankruptcy Code does not itself elaborate on what constitutes an actual, necessary cost or expense of preserving a debtor’s estate, the Third Circuit has established that “[a] party seeking payment of costs and fees as an administrative expense must ... carry the heavy burden of demonstrating that the costs and fees for which it seeks payment provided an *actual benefit* to the estate and that such costs and expenses were *necessary to preserve the value of the estate assets*.” *Calpine Corp. v. O’Brien Envtl. Energy, Inc. (In re O’Brien)*, 181 F.3d 527, 533 (3d Cir. 1999) (emphasis added).

12. Third, the fees sought by Republic First and Tennenbaum are totally out of synch with the likely recoveries in these cases for unsecured creditors. The fees sought by Republic First and Tennenbaum are almost as high as the total cash that the Debtors’ plan proposes to pay unsecured creditors. When the fees of the Debtors spent in trying to advance this priming DIP are added to the fees of Republic First and Tennenbaum, it is almost certain that the depletion of the estates on this effort will exceed the cash the Debtors propose to pay unsecured creditors in their plan. So why did the Debtors go down this path that was opposed by both the Senior Lenders and the Committee? The obvious answer is that it was supported by current

management and equity. And that is why the Court was spot on when it indicated on August 11 that any sum over \$100,000 to be paid to Republic First or members of its syndicate should be funded by the Stalking Horse. Creditors would be better off by far if the Debtors, Republic First and Tennenbaum had not persisted in this very expensive foray. At a minimum, Republic First should be required to live within the limits set by the Court on August 11, 2009.

CONCLUSION

13. Republic First seeks to be paid a fee for considering providing DIP financing that it never committed to provide. That DIP financing package was extremely unlikely ever to be approved given that it was a non-consensual priming DIP loan that was adamantly opposed by the Senior Lenders, whom the Debtors acknowledged were significantly undersecured. Republic First had to know this. Clearly, Republic First knew at least as of August 11, 2009 that it only had \$100,000 to spend. There is no proper basis to reconsider the Court's prior ruling.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

WHEREFORE, for the reasons stated above, the Committee respectfully requests that the Court deny the relief sought in the Application, and grant such other and further relief as the Court deems just and proper.

Dated: November 16, 2009
Philadelphia, Pennsylvania

Respectfully Submitted,

ECKERT SEAMANS CHERIN & MELLOTT, LLC



Gary Schildhorn (Pa ID #25770)
Ronald S. Gellert (Pa ID #80783)
Brya Keilson (Pa ID #94565)
Two Liberty Place
50 South 16th Street, 22nd Floor
Philadelphia, PA 19102
Telephone: (215) 851-8400
Facsimile: (215) 851-8383

and

Ben H. Logan
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, CA 90071
Telephone: (213) 430-6000
Facsimile: (213) 430-6407

Gerald C. Bender
O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, NY 10036
Telephone: (212) 326-2000
Facsimile: (212) 326-5151

*Counsel for the Official Committee of
Unsecured Creditors of Philadelphia
Newspapers, LLC, et al.*

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO APPLICATION OF REPUBLIC FIRST BANK FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSES CLAIM PURSUANT TO 11 U.S.C. § 503(b) was served this 16th day of November, 2009 on the parties listed below by electronic mail and by the Court's CM/ECF transmission:

Mark K. Thomas
Proskauer Rose LLP
Three First National Plaza
70 W. Madison, Suite 3800
Chicago, IL 60602
Via Electronic Mail

Lawrence G. McMichael
Dilworth Paxson LLP
1500 Market Street
Suite 3500E
Philadelphia, PA 19102
Via Electronic Mail

George M. Conway
Office of the United States Trustee
833 Chestnut Street, Suite 500
Philadelphia, PA 19107
Via Electronic Mail

Andrew J. Flame
Drinker Biddle & Reath LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103-6996
Via Electronic Mail

/s/ Brya M. Keilson

Brya M. Keilson