

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
Bluestem Brands, Inc.,	)	
	)	Case No. 20-10566 (MFW)
	)	
Debtors.	)	Rel. Docs. 919, 942,
	)	946, 947, 952, 956, 957,
	)	962
	)	

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**MEMORANDUM OPINION**<sup>1</sup>

Before the Court are Motions for Allowance and Payment of Administrative Claims filed by Prati Kreations ("Prati") and DPI Fashions Private Limited ("DPI"), respectively, as well as Prati's Motion for Reconsideration of the Order Disallowing or Reclassifying Claim No. 1085. The Plan Administrator filed objections to the Motions on the ground that the claims are time-barred or, alternatively, do not satisfy administrative priority status under section 503(b)(1)(A) of the Bankruptcy Code (the "Code"). For the reasons stated below, the Court will overrule the Plan Administrator's Objections and grant the Motions.

I. BACKGROUND

On March 9, 2020 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Code. Prior to filing bankruptcy, the Debtors placed several orders for

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<sup>1</sup> This Memorandum Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure, which is made applicable to contested matters by Rule 9014.

goods with two foreign vendors based in India, Prati and DPI (collectively "the Vendors"). In February 2020, the Vendors placed the goods with a shipping carrier bound for the Debtors. Some of the goods under these orders, which are the subject of this dispute, were received by the Debtors post-petition: \$79,211.85 of Prati's goods and \$33,657.53 of DPI's goods.

DPI timely filed general unsecured proofs of claim, Nos. 247 and 259, for its shipments. Prati timely filed a proof of claim for a part of its shipments (\$24,527.07) which alleged priority under section 503(b)(9) ("Claim No. 1085"). Claim No. 1085 was reclassified as a general unsecured claim on August 3, 2020, when Prati failed to respond to the Debtors' First Omnibus (Substantive) Objection to Claims. (D.I. 654.)

Prati filed its Motion for Allowance of an Administrative Claim for \$79,211.85 on December 8, 2020, and DPI filed its Motion for Allowance of an Administrative Claim for \$33,657.53 on March 3, 2021. (D.I. 919 & 947.) Neither Motion was filed before the Bar Date of September 27, 2020. Prati also filed a Motion to Reconsider the Court's order reclassifying Claim No. 1085 as a general unsecured claim, and that amount is included as part of Prati's Administrative Claim. (D.I. 942.)

The Plan Administrator filed objections to the Vendors' Motions. (D.I. 946 & 947.) The Vendors filed Replies. (D.I. 956 & 957.) The Court heard oral argument on April 22, 2021,

after which the Court took the matter under advisement. With the Court's permission, the Vendors filed a Letter on April 26, 2021, addressing new authority cited by the Plan Administrator in oral argument. (D.I. 962.)

## II. JURISDICTION

The Court has jurisdiction over these contested matters. 28 U.S.C. §§ 1334(b) & 157(b)(2)(B) (giving bankruptcy courts jurisdiction over the allowance of claims asserted against the estate). The Court may enter a final order on issues integral to allowance of claims. Stern v. Marshall, 564 U.S. 462, 499 (2011).

## III. DISCUSSION

### A. Standard of Review

#### 1. Section 503(b)(1)(A) Administrative Status

Section 503(b)(1)(A) of the Code grants administrative status to claims for "the actual, necessary costs and expenses of preserving the estate . . . ." 11 U.S.C. 503. See In re O'Brien Env't Energy, Inc., 181 F.3d 527, 532-33 (3d Cir. 1999). The burden of proof is on the claimant to establish that the goods or services provided actually benefitted the estate and were necessary to preserve the value of the estate's assets. Id.

## 2. Late-Filed Claims

Section 503(a) of the Code provides that an entity may “tardily file” a request for payment of an administrative expense “if permitted by the court for cause.” Many courts apply the “excusable neglect” standard under Rule 9006(b)(1) in determining whether “cause” exists under section 503(a). Fed. R. Bankr. P. 9006. See, e.g., In re AMF Bowling Worldwide, Inc., 520 B.R. 185, 196 (Bankr. E.D. Va. 2014); In re Bridgeview Aerosol, LLC, No. 09 B 41021, 2010 WL 2465401, at \*2 (Bankr. N.D. Ill. June 16, 2010).

## 3. Reconsideration of Disallowed/Reclassified Claim

Similarly, section 502(j) of the Code provides that a claim that was disallowed may be “reconsidered for cause.” Courts apply the “excusable neglect” standard under Federal Rule of Civil Procedure 60(b) in determining whether to reconsider a claim under section 502(j).<sup>2</sup> See In re Inacom Corp., Civ. A. 04-390-GMS, 2004 WL 2283599, at \*2 (D. Del. Oct. 4, 2004) (applying excusable neglect standard to reconsideration of previously disallowed claim); U.S. v. Motor Freight Express (In re Motor Freight Express), 91 B.R. 705, 711 (Bankr. E.D. Pa. 1988) (applying excusable neglect standard in reconsidering an administrative claim previously classified as a priority claim).

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<sup>2</sup> Rule 9024 of the Federal Rules of Bankruptcy Procedure incorporates Federal Rule of Civil Procedure 60(b) in contested matters.

#### 4. Excusable Neglect

The Supreme Court identified four factors for determining excusable neglect: "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship., 507 U.S. 380, 395 (1993) (adopting test applied by lower court to consideration of creditor's late-filed claim). See also, In re Am. Classic Voyages Co., 405 F.3d 127, 133 (3d Cir. 2005) (affirming denial of request to file late claim because creditor had not established excusable neglect); In re O'Brien Envtl. Energy, Inc., 188 F.3d 116, 126-27 (3d Cir. 1999) (concluding that creditor had met the Pioneer standards and remanding for consideration of late-filed claim).

#### B. Reconsideration/Late-filed Claims

Although both Administrative Claims were filed after the bar date, the Plan Administrator only argued that DPI's was time-barred. The Plan Administrator did, however, object to Prati's Motion for Reconsideration. Because the issues raised by the Motions and the Plan Administrator's objections apply the excusable neglect standard, the Court considers them together.

1. Prejudice to the Debtor

The Vendors argue that there is no prejudice to the estate by considering their claims. They contend that they filed proofs of claim that contained sufficient information to put the Debtors on notice that they had incurred administrative expenses. Although their proofs of claim did not include delivery receipts, they did include invoices for goods that the Debtors acknowledged they received post-petition.

In similar circumstances, Courts have recharacterized proofs of claim as requests for payment of administrative expenses. See In re Hemingway Transp., Inc., 993 F.2d 915, 928-29 (1st Cir. 1993) (recharacterizing a timely filed proof of claim as a request for payment of an administrative claim); In re Fas Mart Convenience Stores, Inc., 320 B.R. 587, 593-94 (Bankr. E.D. Va. 2004) (same, if the proof of claim describes an administrative expense in substance); In re Cardinal Indus., Inc., 151 B.R. 838, 841 (Bankr. S.D. Ohio 1992) (treating filed proof of claim as a formal request for an administrative expense, in the interest of judicial economy). But see In re Taco Bueno Rests., Inc., 606 B.R. 289, 301-03 (Bankr. N.D. Tex. 2019) (denying late-filed application for administrative expense, despite claimant's timely filed proof of claim that asserted a claim for post-petition rent).

The Court agrees with the analysis of the Courts which recharacterize timely filed proofs of claim as administrative claims if they contain sufficient facts to put the debtor on notice that they are administrative claims.

The Court concludes that in this case, the Vendors' claims meet that standard. Therefore, the Court finds that there will not be any prejudice to the estate if it considers the late-filed administrative claims of the Vendors or reconsiders its order classifying part of Prati's claim as a general unsecured claim. The Debtors had notice of the facts relevant to the Vendors' claims, because they both filed proofs of claim. Although neither claim attached proof of delivery of the goods, the Debtors' notice of the general bar date did not require that evidence. (D.I. 220.) Further, the Debtors' records reflected that they received the goods at issue post-petition.

Therefore, the Court finds that this factor favors considering the merits of those claims.

## 2. Length of Delay and Impact on Proceedings

The Court finds that the length of delay of two to five months between the Administrative Claims Bar Date and the filing of the Vendors' Motions is not sufficient to warrant denying them. The Court notes that the claims reconciliation process is still ongoing and distributions to creditors have not begun. See O'Brien, 188 F.3d at 130; Inacom, 2004 WL 2283599, at \*4.

Therefore, this factor favors considering the merits of the claims.

### 3. Reason for Delay

The Vendors argue that they are Indian companies unfamiliar with U.S. bankruptcy law and should not be penalized for failing to timely appreciate that they were entitled to administrative claims for goods delivered post-petition, and that such claims require the filing of a request or motion for payment rather than a proof of claim on Form 410.

The Plan Administrator responds that the Vendors conduct business with various international merchants, are well-versed in international transactions, and had no issues timely filing proper proofs of claim, which at the very least evidences their competency to understand the general mechanics of the Debtors' bankruptcy case and to navigate the claims agent website. The Plan Administrator contends that the Vendors should have been able to file their administrative claims timely. The Plan Administrator further argues that it properly served notice of the objection to Prati's general unsecured claim on the email addresses and physical addresses listed by Prati on its proof of claim. (D.I. 453.) Therefore, it argues that Prati's failure to timely respond to that objection should preclude it from doing so now.

Prati asserts that it has no record of receiving the



objection. Prati argues that the presumption that it received the objection which was mailed to its address should not apply to international mail delivery, especially during a global pandemic. It also notes there were numerous delays in the U.S. Postal Service caused by the pandemic, as well as the additional burden on that system caused by the use of mail-in ballots during the national election.

The Court finds that the claimants are foreign vendors lacking knowledge of the intricacies of U.S. bankruptcy law who (though able to file proofs of claim, pro se) did not appreciate the necessity to file requests for allowance of administrative claims. See Pioneer, 507 U.S. at 392 (finding that even if the reason for delay was in the control of the movant, it is not dispositive).

Even if Prati did receive the objection and the Vendors received notice of the Administrative Claim Bar Date, however, the Court concludes that it does not preclude the Court from considering the merits of their administrative claims under the Pioneer standard.

Therefore, the Court finds that this factor supports consideration of the administrative claims.

#### 4. Good Faith

The Plan Administrator does not question the good faith of the Vendors, and the Court finds that the Vendors, by filing

their unsecured proofs of claim, pro se, made a good faith effort to apprise the Debtors in a timely fashion that they had administrative claims for goods delivered post-petition. The Vendors should not be penalized for failing to appreciate the priority status of their claims or the necessity to file requests for administrative claims rather than proofs of claim.

Applying the Pioneer factors, the Court concludes that the Vendors meet the standard for consideration of their late-filed administrative claims, and for granting Prati's Motion for Reconsideration, "for cause" under sections 503(a) and 502(j). "[T]he lack of any [alleged or demonstrated] prejudice to the [Debtors] or to the interests of efficient judicial administration, combined with the good faith of [the claimants] and counsel, weigh strongly in favor of permitting the tardy claim[s]." Pioneer, 507 U.S. at 397-98.

C. Merits of the Administrative Claims

Finding "cause" to consider the late-filed administrative claims under the excusable neglect standard, the Court will address whether goods physically received post-petition warrant administrative status under section 503(b) (1) (A).

The Plan Administrator argues that the Vendors are not entitled to administrative claims under section 503(b) (1) (A) because that section requires that the claim arise from a transaction with the debtor-in-possession that benefitted the

estate. The Plan Administrator argues that claims arising from contracts that had been fully performed by the Vendors (by delivery of their goods to the carrier) at the time the bankruptcy case commenced are not executory contracts and, therefore, do not constitute a transaction with the debtor-in-possession.

In support, the Plan Administrator cites several cases. See, e.g., In re Energy Future Holdings Corp., 990 F.3d 728, 741-42 (3d Cir. 2021) (noting that “[a]n administrative expense claim is entitled to priority under Section 503(b)(1)(A) if: (1) there was a post-petition transaction between the claimant and the estate, and (2) those expenses yielded a benefit to the estate.” (internal quotations omitted)); O’Brien, 181 F.3d at 532-33 (“For a claim in its entirety to be entitled to first priority under [§ 503(b)(1)(A)], the debt must arise from a transaction with the debtor-in-possession . . . . [and] the consideration supporting the claimant’s right to payment [must be] beneficial to the debtor-in-possession in the operation of the business.” (quoting Cramer v. Mammoth Mart, Inc., (In re Mammoth Mart, Inc.), 536 F.2d 950, 954 (1st Cir. 1976)); In re Women First Healthcare, Inc., 332 B.R. 115, 123 (Bankr. D. Del. 2005) (“To establish an administrative claim under this section, there must be (1) a post-petition transaction between the claimant and the estate and (2) a benefit to the estate.”) (citing O’Brien, 181 F.3d at 532-33)).

The Plan Administrator argues that the Vendors' claims cannot constitute transactions with the debtor-in-possession because their contracts were completed pre-petition when the Vendors delivered their goods to the shipper. The Plan Administrator relies on the Uniform Commercial Code (the "UCC") which provides that title and risk of loss pass from the seller to the buyer when the goods are placed with the carrier. UCC §§ 2-319, 2-320, 2-401(2), 2-504, 2-509(1)(a). See, e.g., In re Mayer Pollock Steel Corp., 157 B.R. 952, 963 (Bankr. E.D. Pa. 1993) (disallowing § 503(b)(1)(A) administrative claim, despite the physical receipt of goods post-petition, because the seller's placement of goods with the common carrier transferred risk of loss to the buyer, and thus, completed the transaction for the sale of goods pre-petition); In re Nevins Ammunition, Inc., 79 B.R. 11, 17 (Bankr. D. Idaho 1987) (same).

The Vendors respond that most of the cases cited by the Plan Administrator are not persuasive because they dealt with situations that were obviously post-petition transactions. See Energy Future, 990 F.3d at 741-42 (dispute as to administrative status of breakup fees owed under post-petition merger agreement); O'Brien, 181 F.3d at 532-33 (dispute as to administrative status of breakup fees contained in post-petition purchase agreement which court had not approved); Women First, 332 B.R. at 123, 125 (awarding administrative expense for actions

taken by winning bidder in preparation for purchase of debtors' assets, prior to the rescission of the sale order, to the extent those actions benefitted the estate). They argue that those cases did not hold, as the Plan Administrator suggests, that a post-petition transaction was a requirement of an administrative claim.

The Vendors argue, instead, that the Third Circuit decision in Marin Motor Oil controls this case. In re Marin Motor Oil, Inc., 740 F.2d 220, 224-25 (3d Cir. 1984). In Marin Motor Oil, the Third Circuit held that in determining allowance of a reclamation claim asserted under section 546(c) for goods sold, 'receipt' of goods under the UCC was the moment the debtor or its bailee physically possessed the goods rather than the moment title passes (by delivery to the common carrier). Id. See also In re World Imports, Ltd., 862 F.3d 338, 342 (3d Cir. 2017) (holding that 'receipt' of goods was the date of physical receipt rather than the date title passes for purposes of administrative priority under § 503(b)(9)). The Vendors argue that those cases acknowledged that even if title is transferred on delivery of goods to the carrier, a seller retains the right to stop delivery under section 2-705 of the UCC until the goods are physically received by the debtor.

The Plan Administrator counters that Marin Motor Oil and World Imports are distinguishable from the instant case because

they dealt with reclamation under section 546(c) or administrative expenses under section 503(b)(9), not administrative status under section 503(b)(1)(A). Marin Motor Oil, 740 F.2d at 224-25; World Imports, 862 F.3d at 342. The Plan Administrator notes that sections 546(c) and 503(b)(9) both include the term "received" while section 503(b)(1)(A) does not. Therefore, the Plan Administrator argues that the date goods are "received" is germane to reclamation and section 503(b)(9) claims, but not to section 503(b)(1)(A) claims.

The Court starts with the language of section 503(b)(1)(A), which provides that administrative status shall be allowed for "the actual, necessary costs and expenses of preserving the estate . . . after the commencement of the case." 11 U.S.C. § 503(b)(1)(A). Therefore, the Court concludes that the correct standard for determination of an administrative claim under that section is simply whether the Vendors provided a benefit to the estate post-petition. It does not require that there be a post-petition contract. In this case, it is undisputed that the Vendors' goods were physically received by the Debtors after commencement of the bankruptcy cases and were beneficial and necessary to preserving the estate, as the Debtors resold those goods and used the proceeds.

The Court finds the cases cited by the Plan Administrator do not support its argument that an administrative claim requires a

post-petition contract. None of those cases held that administrative claims can only arise under an executory contract at the commencement of the case or a contract entered into post-petition with the debtor-in-possession. While those cases involved executory or post-petition contracts, the courts were not asked to decide whether the lack of such a contract prohibited the allowance of an administrative expense. See Energy Future, 990 F.3d at 741-42; O'Brien, 181 F.3d at 532-33; Women First, 332 B.R. at 123, 125.

Instead, the Court concludes that Marin Motor Oil and World Imports are more akin to the facts of this case because both dealt with the sale and receipt of goods. See Marin Motor Oil, 740 F.2d at 224-25; World Imports, 862 F.3d at 342. In those cases, the Third Circuit held that a contract for the sale of goods is governed by the UCC under which the rights of buyers and sellers are not entirely determined by the date title passes. Under the UCC, the Court noted that sellers of goods retain the right to stop delivery or reclaim the goods, even after the passage of title, until the buyer physically receives the goods. Id.

As a result, in Marin Motor Oil, the Third Circuit concluded that goods physically received by the debtor with the relevant reclamation period were entitled to priority under section 546(c), even though the goods were delivered to the carrier

before that date. Marin Motor Oil, 740 F.2d at 224-25.

Similarly, in World Imports, the Third Circuit held that goods physically received by the debtor within twenty days before the bankruptcy petition were entitled to administrative priority under section 503(b)(9) even though they were delivered to the carrier before that period. World Imports, 862 F.3d at 342. The Court finds that there is no good reason to give a claim for goods physically received on or after the bankruptcy filing a lower priority than a claim for goods received before the filing date.

Although section 503(b)(1)(A) does not use the word "received" (as do sections 503(b)(9) and 546(c)), the Court does not find that distinction relevant. Section 503 accords administrative status to many types of claims; it does not deal exclusively with the sale of goods, as do sections 503(b)(9) and 546(c). Therefore, it is not surprising that its language is broader.

As noted, the test for an administrative claim under section 503(b)(1)(A) is whether the goods or services provided post-petition actually benefitted or preserved the estate. Because the goods sold by the Vendors were physically received and sold by the Debtors after the commencement of the case, the Court concludes that they satisfy that test. See, e.g., In re S. Montana Elec. Generation & Transmission Co-op., Inc. No. 11-



62031-11, 2013 WL 85162, at \*5 (Bankr. D. Mont. Jan. 8, 2013) (finding that the portion of an asserted § 503(b)(9) claim representing goods delivered post-petition should be treated as a § 503(b)(1)(A) claim).

Therefore, the Court concludes that the Vendors are entitled to administrative claim status under section 503(b)(1)(A) for the goods physically received by the Debtors post-petition.

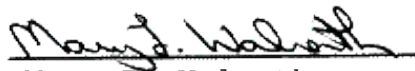
#### IV. CONCLUSION

For the foregoing reasons, the Court will grant Prati's Motion to Reconsider Claim No. 1085 and its Motion for Allowance of an Administrative Claim in the amount of \$79,211.85. The Court will also allow DPI's Motion for Allowance of an Administrative Claim in the amount of \$33,657.33.

An appropriate Order is attached.

Dated: July 27, 2021

BY THE COURT:



Mary F. Walrath  
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
Bluestem Brands, Inc.,	)	
	)	Case No. 20-10566 (MFW)
	)	
Debtor.	)	Rel. Docs. 919, 942,
	)	946, 947, 952, 956, 957
	)	

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**ORDER**

**AND NOW** this **27th** day of **JULY 2021**, upon consideration of the Motion for Reconsideration of Order Disallowing or Reclassifying Claim No. 1085 filed by Prati Kreations, the Motions for Allowance and Payment of Administrative Claims filed by Prati Kreations and DPI Fashions Private Limited, and the Plan Administrator's Objections thereto, and after hearing oral argument and reviewing the additional case law presented by the parties, it is hereby:

**ORDERED** that the Motion for Reconsideration of Order Disallowing or Reclassifying Claim No. 1085 filed by Prati Kreations is **GRANTED**; and it is further

**ORDERED** that the Motion for Allowance and Payment of Administrative Claims filed by Prati Kreations is **GRANTED**; and it is further

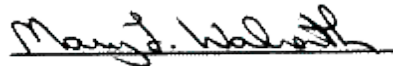
**ORDERED** that Prati Kreations shall have an **ALLOWED** administrative claim in the amount of \$79,211.85; and it is further

**ORDERED** that the Motion for Allowance and Payment of Administrative Claims filed by DPI Fashions Private Limited is **GRANTED**; and it is further

**ORDERED** that DPI Fashions Private Limited shall have an **ALLOWED** administrative claim in the amount of \$33,657.53; and it is further

**ORDERED** that the Debtors are authorized and directed to remit payment to the Vendors on the administrative claims within thirty (30) days of the entry of this Order.

BY THE COURT:



Mary F. Walrath  
United States Bankruptcy Judge

cc: Charles Brown, Esquire<sup>1</sup>

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<sup>1</sup> Counsel shall distribute a copy of this Order to all interested parties and file a Certificate of Service with the Court.

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