

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

In re:)	Chapter 11
COUNTRY STONE HOLDINGS, INC., <i>et</i>)	
<i>al.</i> , ¹)	Case No. 14-81854
)	(Jointly Administered)
Debtors.)	
)	Hon. Thomas L. Perkins

**OBJECTION TO CLAIM NO. 165 FILED BY BIERI
BROKERAGE CO, INC/BIERI TRUCKING INC.**

The above-captioned debtors and debtors-in-possession (the “Debtors”) hereby submit this objection (the “Objection”) to Claim No. 165 (the “Claim”) filed by Bieri Brokerage Co, Inc/Bieri Trucking Inc (“Bieri”). In support of this Objection, Debtors state as follows:

INTRODUCTION

1. Debtors seek entry of an order reclassifying Bieri’s Claim as a general, unsecured, non-priority claim. The Claim was filed as an Administrative Expense claim for the value of goods received within 20 days of the petition date under 11. U.S.C. § 503(b)(9). However, the documentation appended to the Claim makes clear that the Claim is based upon services provided, not goods received by Debtors as required by § 503(b)(9). Thus, the Claim does not qualify as an Administrative Expense under § 503(b)(9). At most, Bieri has a general, unsecured, non-priority claim.

¹ The Debtors and the last four digits of the Debtors’ United States Tax Identification Number following in parentheses are: Country Stone Holdings, Inc. (7470), Country Stone & Soil, Inc. (0842), Country Stone and Soil of Minnesota, Inc. (8538), Country Stone and Soil of Wisconsin, Inc. (4446), Country Stone, Inc. (8953), Fort Wayne Landscape Supply, Inc. (9116), Green Thumb of Indiana, LLC (81657), Infinity Fertilizers, Inc. (8035), Infinity Lawn and Garden, Inc. (5005), Infinity Seed, Inc. (6096), Millburn Peat Company, Inc. (71650), Quad City Express, Inc. (2687), R & D Concrete Products of Indiana, Inc. (5210), R & D Concrete of Wisconsin, Inc. (22165), R & D Concrete Products, Inc. (7199), Rock Island Contractors, Inc. (0041) and Wilhelm Sand & Gravel, Inc. (5212).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 11 U.S.C. §157(b)(2)(A), (B), and (O).

3. The statutory predicates for the relief requested herein are sections 502 and 503(b)(9) of the Bankruptcy Code and Rule 3007 of the Federal Rules of Bankruptcy Procedure.

BACKGROUND

4. On October 23, 2014, each of the Debtors filed a voluntary petition for relief with this Court under Chapter 11 of the Bankruptcy Code.

5. The Debtors operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

6. On November 5, 2014, the United States Trustee appointed an official committee of unsecured creditors in these cases (the “Creditors’ Committee”). No request has been made for the appointment of a trustee or examiner.

7. On October 29, 2014, the Court entered its Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines (the “Bar Date Order”) which established February 17, 2015, as the bar date for filing proofs of claims in the Debtors’ cases for all claims, including all pre-petition and post-petition general unsecured and secured, priority and nonpriority, and administrative expense claims arising under section 507(a)(4) of the Bankruptcy Code (and all other claims as more fully set forth in the Bar Date Order).

8. On December 16, 2014, Bieri filed its Claim, asserting a right to payment in the amount of \$253,798.59. A copy of the Claim is attached hereto as **Exhibit A**.

9. Bieri states that the basis of its claim under § 503(b)(9) is “services performed”. (*See* Exhibit A at page 1.)

OBJECTION: BIERI’S CLAIM DOES NOT QUALIFY AS AN ADMINISTRATIVE EXPENSE UNDER § 503(b)(9)

10. Section 503(b)(9) of the Bankruptcy Code allows for the payment of administrative expenses after notice and a hearing for “the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor’s business.” 11 U.S.C. § 503(b)(9).

11. Section 503(b)(9) is limited to claims for “goods”, not for services. *Id.*; *see also* 4 COLLIER ON BANKRUPTCY ¶503.16[1] (16th ed. rev. 2014) (“Section 503(b)(9) applies only to vendors of goods, not to vendors of services.”) (“Collier”). Courts have adopted the definition in Article 2 of the UCC for “goods.” *Phillips v. Asset Acceptance*, 736 F.3d 1076, 1082 (7th Cir. 2013) (“sales of services are not subject to UCC § 2-725 because Article 2 is limited . . . to ‘transactions in goods.’”) (“Phillips”); *In re Plastech Engineered Products*, 397 B.R. 828, 836 (Bankr. E.D. Mich. 2008) (“Absent a definition in the Bankruptcy Code or in controlling case law, the Court is persuaded that the best definition for ‘goods’ is the definition provided by the Uniform Commercial Code.”); *In re Goody’s Family Clothing*, 401 B.R. 131, 134 (Bankr. D. Del. 2009) (“Given the near unanimous nationwide adoption of Article 2 of the U.C.C., the Court concludes that the term goods in section 503(b)(9) conforms with the meaning given in UCC 2-105(1); ‘goods’ are something that is moveable.”); *Collier* ¶503.16[1].

12. Freight services are not “goods.” *In re Pilgrim’s Pride*, 421 B.R. 231, (Bankr. N.D. TX 2009) (holding that trucking companies had provided *services* to the debtors rather than *goods*: “Courts cannot read non-existent language into a statute...[i]f Congress had intended to include services within section 503(b)(9) it would have so specified.”); *see also Phillips* 736 F.3d 1082 (holding services are not goods under 810 ILCS 5/2–102).

13. By its own admission, freight “services provided” are the bases for Bieri’s Claim. *See* Exhibit A at page 1. Bieri fails to allege or provide evidence supporting the contention that its Claim is for goods provided in accordance with § 503(b)(9).

14. Accordingly, Bieri’s Claim should be reclassified as a general, unsecured, non-priority claim.

RESERVATION OF RIGHTS

15. The Debtors, on their own behalf and on behalf of their estates and any of their successors and assigns, expressly reserve the right to amend, modify, or supplement this Objection and to file additional objections to the Claim.

WHEREFORE, for the reasons stated above, the Debtors respectfully request that the Court enter an order reclassifying Claim No. 165 filed by Bieri Brokerage Co, Inc/Bieri Trucking Inc. to a general, unsecured, non-priority claim, reserving the Debtors’ rights to bring subsequent objections, and granting such other relief that is just and proper.

Dated: March 10, 2015

Respectfully submitted,

KATTEN MUCHIN ROSENMAN LLP

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