

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION**
Electronically Filed

- FILING A PROOF OF CLAIM WITH RESPECT THERETO);
- B. THE DEBTORS AND THEIR PROPERTY MAY BE FOREVER
DISCHARGED FROM ANY AND ALL INDEBTEDNESS OR LIABILITY
WITH RESPECT TO OR ARISING FROM SUCH CLAIM;
- C. YOU WILL NOT RECEIVE ANY DISTRIBUTION IN THESE CHAPTER
11 CASES ON ACCOUNT OF THAT CLAIM; AND
- D. YOU MAY NOT BE PERMITTED TO VOTE ON ANY CHAPTER 11
PLAN FOR THE DEBTORS ON ACCOUNT OF THESE BARRED
CLAIMS OR RECEIVE FURTHER NOTICES REGARDING SUCH
CLAIM.

See Docket No. 261.

Key-Way did not timely file any administrative claim with this Court and to this day has never filed an administrative claim or requested leave of the Court to file an untimely administrative claim for the administrative expenses claimed herein. For this reason alone, Key-Way's motion must be denied.

ARGUMENT

I. The Debtors Have No Obligation to Pay Key-Way's Administrative Expense Claim.

As set out above, Key-Way potentially had an administrative expense claim for the services provided to the Debtors between June 16, 2019 and September 30, 2019. However, for whatever reason, Key-Way did not comply with the Court's "Bar Date" Order by filing a timely administrative expense claim prior to October 18, 2019. In addition, Key-Way never sought leave from this Court to extend the deadline for filing its administrative expense claim. Key-Way

simply ignored the deadlines established by the Court's "Bar Date" Order and waited in excess of two years to now come forward alleging that it is owed money.

As required by the "Bar Date" Order, the Debtors gave notice to all persons/entities who might have claims subject to the "Bar Date" Order. (See Docket No. 261). This notice clearly advised entities such as Key-Way that the failure to timely file an administrative expense claim could bar such claim in the future and that the Debtors could be discharged from any liability for payment of any such claims. ARC would assert that such is the case in this instance, Key-Way is now barred from making this claim and the Debtors are now discharged from any liability for Key-Way's claim.

ARC would point out to the Court that all of the "vendor" or "trade" payables that were timely filed as administrative expense claims and approved by the Court as being owed by the Debtors have now been paid by ARC. However, because Key-Way never had this claim approved as a timely filed administrative expense claim, the Debtors had no obligation to pay the claim. Because, the Debtors have no obligation to pay Key-Way's claim, ARC doesn't either.

II. Key-Way Does Not Have a Direct, Third-Party Claim Against ARC.

Key-Way does not have a direct, third-party claim against ARC. Additionally, Key-Way is not a third-party beneficiary of the Sales Agreement between the Debtors and ARC for the Debtors' Perry County Assets. "No stranger to a contract may sue for its breach unless the contract was made for his benefit." *Sexton v. Taylor County*, 692 S.W.2d 808, 809 (Ky. App. 1985).

The only claim that Key-Way may have is directly against the Debtors for the work performed after the bankruptcy petition was filed. Once Key-Way has a valid, recognizable

claim against the Debtors, the Debtors can then enforce the provisions of the Sales Agreements against ARC and demand payment of that obligation. However, because Key-Way has not followed the deadlines established by this Court, it does not have a valid claim against the debtors and, thus, there is no payment obligation that would flow to ARC.

WHEREFORE, ARC prays for an appropriate Order denying Key-Way's Motion to Compel.

Respectfully submitted,

/s Billy R. Shelton
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was electronically filed this the 14th day of December, 2021, with the clerk of court by using the CM/ECF system which will send a notice of electronic filing to all parties designated to receive electronic service in this matter.

/s Billy R. Shelton
BILLY R. SHELTON, ESQ.

