

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

In re:	)	
	)	Chapter 11
	)	
LL Flooring Holdings, Inc., <i>et al.</i> , ¹	)	Case No. 24-11680 (BLS)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	Re: Docket No. 692

**LIQUIDATING TRUSTEE’S OBJECTION TO APPLICATION OF
META PLATFORMS, INC. FOR ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE EXPENSE CLAIM, AND RESERVATION OF RIGHTS**

Steven Balasiano, solely in his capacity as the liquidating trustee (the “Liquidating Trustee”) of the LL Flooring Liquidating Trust (the “Liquidating Trust”) appointed in the above-captioned cases (the “Chapter 11 Cases”), by and through his undersigned counsel, hereby files this objection (the “Objection”) to the *Application of Meta Platforms, Inc. for Allowance and Payment of Administrative Expense Claim, and Reservation of Rights* [Docket No. 692] (the “Application”) filed by Meta Platforms, Inc. (“Meta”).² In support of this Objection, the Liquidating Trustee respectfully states as follows:

¹ The Debtors in these chapter 11 cases, along with the last four (4) digits of their respective tax identification numbers, are as follows: LL Flooring Holdings, Inc. (0817); LL Flooring, Inc. (9199); Lumber Liquidators Leasing, LLC (N/A); LL Flooring Services, LLC (5960); and Lumber Liquidators Foreign Holdings, LLC (4568). The address for correspondence related to the Debtors and/or the Liquidating Trust is c/o LL Flooring Liquidating Trust, 27 Crimson King Drive, Bear, DE 19701.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Application or the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Claims of (A) Critical Vendors, (B) Lienholders, (C) Import Claimants, and (D) 503(b)(9) Vendors; (II) Authorizing the Debtors to Pay Prepetition Customs Duties; and (III) Granting Related Relief* [Docket No. 14] (the “Critical Vendor Motion”).

Preliminary Statement

1. The Application filed by Meta presumes its desired result – that Meta’s claim for \$332,987.59 is an administrative expense claim under the Bankruptcy Code. However, calling it an “Administrative Claim” throughout the Application does not make it one. Meta’s claim is actually for *pre-petition* advertisement services provided to the Debtors, which Meta fails to disclose in the Application. The Trade Agreement between the parties confirms the pre-petition nature of Meta’s claim – “[t]he balance of [Meta’s] aggregate *prepetition claim(s)* against the Debtors in these Chapter 11 cases (net of any setoffs, credits or discounts), is \$332,987.59.”

2. Through the Application, Meta seeks to elevate this pre-petition claim into an administrative expense claim by virtue of the parties’ entry into the post-petition Trade Agreement. Yet the Application ignores clear and express language in the Critical Vendor Motion, Critical Vendor Order and Trade Agreement that Meta’s critical vendor status and entry into the Trade Agreement does not change the priority of the pre-petition claim or constitute allowance of the pre-petition claim. The Application also fails to cite any caselaw in support of Meta’s position. Meta was paid in full for all post-petition services provided to the Debtors, and the Application fails to articulate any benefit that the pre-petition advertisement services provided to the Debtors’ estate. Accordingly, the Application should be denied, and Meta’s claim should be reclassified as a general unsecured claim.

Background³

A. The Chapter 11 Cases

3. On August 11, 2024 (the “Petition Date”), LL Flooring Holdings, Inc. and its affiliated debtors in the above-captioned Chapter 11 Cases (collectively, the “Debtors”) each commenced a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

4. As discussed in the *Declaration of Holly Etlin in Support of Chapter 11 Petition and First Day Papers* [Docket No. 11], the Debtors filed the Chapter 11 Cases to continue their pre-petition marketing process and pursue a sale of substantially all of the Debtors’ assets as a going concern while conducting store closing sales at certain underperforming stores.

B. Meta Provides Advertisement Services to the Debtors

5. Prior to the Petition Date, Meta provided certain advertisement services to the Debtors on the META Self-Serve Ads Platform (the “Advertisement Services”).⁴ Meta historically invoiced the Debtors for its Advertisement Services on the first business day of the month following the month such Advertisement Services were provided. The invoices issued to the Debtors included net-30 payment terms.

³ The facts set forth herein are based upon the information known to the Liquidating Trustee and his advisors, and the Liquidating Trustee reserves the right to conduct discovery in connection with Meta’s Application. *See Stipulation by and Between Meta Platforms, Inc. and LL Flooring Liquidating Trust Regarding Briefing Schedule on Meta’s Application for Allowance and Payment of Administrative Expense Claim, the Liquidating Trust* [Docket No. 990-1].

⁴ Upon information and belief, the parties did not have a contract with respect to the Advertisement Services.

6. On August 1, 2024, Meta issued an invoice in the amount of \$288,733.57 for pre-petition Advertisement Services provided to the Debtors in July 2024. The Debtors did not pay this invoice, and it remained unpaid as of the bankruptcy filing.

7. After the bankruptcy filing, Meta issued the following invoices to the Debtors: (i) on September 1, 2024, Meta issued an invoice in the amount of \$354,016.25 for both pre- and post-petition Advertisement Services provided to the Debtors in August 2024,⁵ (ii) on September 30, 2024, Meta issued an invoice with a \$152.10 credit, and (iii) on October 1, 2024, Meta issued an invoice in the amount of \$190,006.15 for post-petition Advertisement Services provided to the Debtors in September 2024. Upon information and belief, the Debtors received no other invoices from Meta after the bankruptcy filing.

8. After the bankruptcy filing, the Debtors made weekly payments on account of post-petition Advertisement Services provided by Meta, including: (i) \$160,000.00 on August 23, 2024; (ii) \$69,762.00 on September 4, 2024; (iii) \$80,000.00 on September 13, 2024; (iv) \$60,000.00 on September 19, 2024; and (v) \$75,000.00 on September 26, 2024. All post-petition services were paid in full. In fact, the Debtors inadvertently *overpaid* Meta by \$25,145.95 for post-petition Advertisement Services, which Meta has not returned to the Debtors or their estates. Instead, Meta apparently applied the post-petition payments to its unpaid pre-petition invoices.

C. The Debtors Enter into a Trade Agreement with Meta, and Meta Discontinues Advertisement Services

9. In connection with its bankruptcy filing, the Debtors filed the Critical Vendor Motion requesting authority to pay the pre-petition claims (defined in the Critical Vendor Motion

⁵ The September 1, 2024 invoice included services that straddled the Petition Date. Upon information and belief, \$124,254.25 of this invoice is attributable to pre-petition Advertisement Services and \$229,762.00 is attributable to post-petition Advertisement Services.

as “Specified Trade Claims”) of certain service providers whose services were deemed critical to the Debtors’ operations as they entered bankruptcy and pursued a going concern sale. *See* Critical Vendor Motion ¶ 8.

10. On September 4, 2024, the Court entered an order approving the Critical Vendor Motion on a final basis [Docket No. 210] (the “Critical Vendor Order”).

11. Pursuant to the Critical Vendor Order, the Debtors were authorized, but not directed, to pay the pre-petition Specified Trade Claims and permitted to impose conditions on the payment of those claims. Critical Vendor Order ¶¶ 2-4. The Critical Vendor Order also approved a form Trade Agreement for critical vendors to execute. *See id.* ¶ 4. As noted in the Critical Vendor Motion, “[t]he Debtors’ entry into a Trade Agreement ***shall not change the nature or priority of the underlying Specified Trade Claims.***” Critical Vendor Motion at 14 n.8 (emphasis added). Similarly, the Critical Vendor Order expressly reserved all rights relating to the validity and priority of pre-petition claims of critical vendors:

Nothing in the Motion or this Final Order or the relief granted (including any actions taken or payments made by the Debtors pursuant thereto) shall be construed as . . . (ii) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors’ or any other party in interest’s ability to contest the same on any ground permitted by bankruptcy or applicable nonbankruptcy law; . . . [or] bestowing any additional rights on any third party[.]

See Critical Vendor Order ¶ 17.

12. If a critical vendor fails to comply with the terms of the Trade Agreement, or fails to continue providing services on customary trade terms, the Debtors may terminate the Trade Agreement together with any other benefits to the Specified Trade Claimant. *See id.* ¶ 6.

13. Upon information and belief, the Debtors deemed Meta a critical vendor as the Debtors needed the Advertisement Services in connection with the going concern sale and store

closing sales at locations that were not part of the sale to F9 Investments, LLC (“F9”). As such, the Debtors and Meta entered into a Trade Agreement (the “Meta Trade Agreement”).⁶ Among other things, the Meta Trade Agreement required Meta to continue providing Advertisement Services on customary trade terms to the Debtors. In return, the Debtors agreed to pay Meta its \$332,987.59 “aggregate prepetition claim[]” (the “Meta Prepetition Trade Claim”). See Trade Agreement ¶¶ 2, 3. The Debtors’ failure to pay the Meta Prepetition Trade Claim may result in the suspension of services provided by Meta. See *id.* ¶ 3. The Meta Trade Agreement confirmed that “[t]he [Meta] Prepetition Trade Claim does not constitute a claim allowed by the Court in this case.” See *id.* ¶ 2.

14. Notably, the Meta Trade Agreement stated:

The Debtors further acknowledge and agree that all services provided by [Meta] to the Debtors ***after the Petition Date***, including all services provided under this Trade Agreement, are critical to the Debtors, that the estates of the Debtors receiving services from META shall be jointly and severally liable for the expense therefor, and that the expense of the estates therefor shall be an actual, necessary cost and expense of preserving the estates of the Debtors, and that the Debtors will treat all such amounts as Chapter 11 administrative expense priority claims in the Chapter 11 Cases for all purposes.

See *id.* ¶ 4 (emphasis added).

15. Upon information and belief, Meta ceased providing Advertisement Services to the Debtors before the Meta Trade Agreement was executed and did not resume providing Advertisement Services after the Meta Trade Agreement was executed. The Debtors did not pay

⁶ A copy of the Meta Trade Agreement is attached to the Application as Exhibit A. While the form Trade Agreement was sent to Meta shortly after the bankruptcy filing, the parties did not finalize and execute the Meta Trade Agreement until October 11, 2024 given Meta’s extensive comments to the form approved by the Court under the Critical Vendor Order.

Meta the Meta Prepetition Trade Claim, prompting Meta to file the Application seeking allowance and payment of the Meta Prepetition Trade Claim as an administrative expense.

D. Meta's Scheduled and Asserted Claims

16. On September 30, 2024, the Debtors filed their statements of financial affairs ("SOFAs") and schedules of assets and liabilities ("SOALs", and together with the SOFAs, the "Schedules") and later amended the Schedules on October 3, 2024 and October 31, 2024. *See* Docket Nos. 369-378, 405-406, 515.

17. The Debtors' Schedules list Meta with a \$288,733.57 general unsecured claim, presumably for the unpaid August 1, 2024 invoice for pre-petition Advertisement Services provided to the Debtors in July 2024. *See* Docket No. 370, Schedule No. 2656860.

18. Meta did not file a proof of claim in the Chapter 11 Cases before the November 1, 2024 general bar date. *See* Docket No. 408.

19. On December 18, 2024, Meta filed the Application seeking allowance and payment of the \$332,987.59 Meta Prepetition Trade Claim as an administrative expense claim pursuant to section 503(b)(1)(A) of the Bankruptcy Code based on the Meta Trade Agreement.

E. The Debtors Sell Their Assets, and the Court Confirms the Debtors' Liquidating Plan

20. After a fulsome marketing process, the Debtors sold substantially all of their assets, including through the sale of their distribution center, the going concern sale to F9 and store closing sales at underperforming stores. The distribution center and going concern sales closed on September 30, 2024. *See* Docket No. 387. The going out of business sales for underperforming stores and stores that were not acquired by F9 continued through November 2024.

21. Thereafter, the Court entered an order (the "Confirmation Order") approving the Debtors' chapter 11 plan of liquidation (as amended, the "Plan"). *See* Docket Nos. 668, 701. The

effective date of the Plan occurred on December 20, 2024 (the “Effective Date”). *See* Docket No. 718.

22. Upon the Effective Date, pursuant to the terms of the Plan and Confirmation Order, the Liquidating Trust was established, and Steven Balasiano was appointed as the trustee and administrator of the Liquidating Trust. *See* Confirmation Order ¶¶ 87, 92; Plan, Art. IV.C. Pursuant to his appointment, the Liquidating Trustee was granted authority to, among other things, object to Claims, including Administrative Claims. *See* Confirmation Order ¶ 92; Plan, Art. IV.C.5(d).

Objection

A. Meta Cannot Meet its Heavy Burden to Establish Entitlement to an Administrative Expense Claim

23. Section 503(b)(1) of the Bankruptcy Code permits allowance of administrative expense claims for “the actual, necessary costs and expenses of preserving the estate.” 11 U.S.C. § 503(b)(1). This section is intended to limit priority to claims that are truly actual and necessary to avoid “the estate being consumed by administrative expenses” and to “preserve[] the estate for the benefit of creditors.” *In re Marcal Paper Mills, Inc.*, 650 F.3d 311, 315 (3d Cir. 2011).

24. It is well-settled in the Third Circuit that an 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.” *In re Energy Future Holdings Corp.*, 990 F.3d 728, 741 (3d Cir. 2021) (internal quotation marks and citations omitted). Importantly, the benefit to the estate “must be actual, not hypothetical.” *Id.* at 742. The creditor has the “heavy burden of demonstrating that such expenses qualify as an administrative expense.” *Id.* at 741.

25. Here, Meta has not met its heavy burden. The administrative expense claim that Meta seeks to allow is actually the Meta Prepetition Trade Claim for *pre-petition* services provided to the Debtors. Generally, pre-petition services provided to a debtor prior to the bankruptcy filing do not provide an actual benefit to the estate. *See In re Norwalk Furniture Corp.*, 418 B.R. 631, 634 (Bankr. N.D. Ohio 2009) (holding that professional services provided to debtor prior to bankruptcy filing could not have conferred a direct benefit upon the debtor's estate because by definition no bankruptcy estate existed); *In re Hechinger Inc. Co. of Delaware*, 298 F.3d 219, 226 (3d Cir. 2002) (stating that section 503(b)(1)(A) refers to services rendered after the commencement of the case that are needed for the purpose of preserving the estate, which does not exist pre-petition and cannot be preserved until it comes into existence). The Meta Trade Agreement recognized this concept and confirmed that services provided by Meta to the Debtors “after the Petition Date” (but not before the Petition Date) shall be actual, necessary costs and expenses of preserving the estates and treated as chapter 11 administrative expense priority claims.⁷ *See* Meta Trade Agmt. ¶ 4. The Application ignores this requirement and fails to articulate the benefit that Meta's pre-petition services provided to the estate. That is not surprising as Meta provided no post-petition benefit for which it has not been paid. Indeed, Meta has been paid in full (and in fact, overpaid) for all post-petition services provided to the Debtors and therefore has no valid administrative expense claim.

⁷ While the Application quotes portions of this provision, it conveniently omits the most important part – that “all services provided by [Meta] to the Debtors *after the Petition Date*, including all services provided under this Trade Agreement, are critical to the Debtors . . . and that the expense of the estates therefor shall be an actual, necessary cost and expense of preserving the estates of the Debtors, and that the Debtors will treat all such amounts as Chapter 11 administrative expense priority claims in the Chapter 11 Cases for all purposes.” *Compare* Meta Trade Agmt. ¶ 4 (emphasis added) *with* Meta Application ¶ 19 (“[T]he services provided by Meta to the Debtors ‘are critical to the Debtors,’ and constituted ‘actual, necessary cost and expense of preserving the estates of the Debtors.’”).

26. Recognizing this, Meta argues in the Application that the Meta Prepetition Trade Claim was somehow elevated to administrative expense status vis-à-vis the Meta Trade Agreement entered into by the parties post-petition. *See* Meta Application ¶ 22. However, Meta’s argument is belied by the express language in the Meta Trade Agreement and the Critical Vendor Motion and Order, which is conspicuously absent from the Application. The Meta Trade Agreement only contemplates administrative expense priority for post-petition services provided by Meta. *See* Meta Trade Agmt. ¶ 4. Moreover, the Critical Vendor Motion informed critical vendors that entry into a critical vendor agreement shall not change the nature or priority of their underlying pre-petition claim. *See* Critical Vendor Motion at 14 n.8. Likewise, the Critical Vendor Order states that any actions taken by the Debtors – i.e., entering into a Trade Agreement – shall not be construed as an admission as to the validity, priority or character of any claim. *See* Critical Vendor Order ¶ 17(ii). In addition to ignoring the express language in the documents, Meta cites no authority to support the conversion of its pre-petition general unsecured claim into an administrative expense claim. To do so would be inequitable and in conflict with one of the core tenants of the Bankruptcy Code. Indeed, elevating Meta’s pre-petition general unsecured claim to priority status to be paid ahead of other general unsecured creditors would undermine the principle of equality of distribution among similarly situated creditors. *See In re WR Grace & Co.*, 729 F.3d 332, 343 (3d. Cir. 2013) (citing *Bequier v. IRS*, 496 U.S. 53, 58 (1990)) (stating that “[e]quality of distribution among creditors is a central policy of the Bankruptcy Code” and “creditors of equal priority should receive pro rata shares of the debtor’s property”).

27. For the foregoing reasons, the Court should decline Meta’s invitation to treat its pre-petition claim for pre-petition services provided to the Debtors differently than other general

unsecured creditors and reclassify Meta's asserted administrative expense claim as a general unsecured claim in the amount of \$332,987.59.

Reservation of Rights

28. The Liquidating Trustee reserves the right to further object to the Application on any additional factual or legal grounds. Without limiting the generality of the foregoing, the Liquidating Trustee reserves the right to amend this Objection, file additional papers in support thereof or in opposition to the Application and take other appropriate actions, including without limitation to: (a) respond to any allegation or defense that may be raised in a response by or on behalf of Meta; (b) object further to any claim for which Meta provides (or attempts to provide) additional documentation or substantiation; (c) object further to the Application based on additional information that may be discovered on further review by the Liquidating Trustee or through discovery; and (d) seek avoidance and/or recovery of the \$25,145.95 in post-petition overpayments made by the Debtors to Meta.

Notice

29. The Liquidating Trustee will provide notice of this Objection to the following parties or their respective counsel, if known: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to Meta; and (c) all parties who have filed a post-Effective Date renewed request for notices pursuant to Bankruptcy Rule 2002. The Liquidating Trustee submits that, in light of the nature of the relief requested, no other or further notice need be given.

Conclusion

WHEREFORE, the Liquidating Trustee respectfully requests that the Court (i) deny Meta's Application and (ii) reclassify Meta's asserted \$332,987.59 administrative claim to a general unsecured claim.

Dated: March 27, 2025
Wilmington, Delaware

/s/ Michael E. Fitzpatrick

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