

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**
Bankruptcy Judge Joseph G. Rosania, Jr.

In re:

DEREK NATHAN SHEAHAN,
SSN: xxx-xx-0900
ANNA M. GILLESPIE-SHEAHAN,
SSN: xxx-xx-3236

Debtors.

Case No. 18-16991-JGR
Chapter 7

**ORDER GRANTING BUECHLER LAW OFFICE, L.L.C.'S
FIRST AND FINAL APPLICATION FOR ALLOWANCE OF FEES
AND EXPENSES AS COUNSEL FOR THE CHAPTER 7 TRUSTEE FOR THE
PERIOD FROM NOVEMBER 6, 2018 THROUGH SEPTEMBER 10, 2019**

Buechler Law Office, L.L.C. filed its First and Final Application for Allowance of Fees and Expenses as Counsel for the Chapter 7 Trustee for the Period from November 6, 2018 through September 10, 2019 on September 11, 2019 (Doc. 61, the "Application"). The Debtors timely objected to the Application on October 2, 2019 (Doc. 71; the "Objection"). The Court has jurisdiction over the matter pursuant to 28 U.S.C. §§ 157(b)(1), 157(b)(2)(A), and 1334.

BACKGROUND

The Court conducted a preliminary hearing on the matter on October 23, 2019, and ordered the parties to file a statement of undisputed facts by November 6, 2019, and supplemental briefs by November 13, 2019.

The Stipulation of Facts filed by the parties on November 4, 2019 (Doc. 79), establishes the following undisputed facts:

1. Jeffrey A. Weinman, is the duly appointed Chapter 7 Trustee for the bankruptcy estate of Derek Nathan Sheahan and Anna Marie Gillespie-Sheahan ("Trustee"), United States Bankruptcy Court for the District of Colorado, Bankruptcy Case No. 18-16991- JGR.

2. Platinum Precision Machining Inc. ("Platinum") is a Colorado Corporation organized under the laws of the State of Colorado on December 30, 2009 by Co-Debtor Anna M. Sheahan.

3. Platinum, since 2018, has not been in good standing in the State of Colorado and is currently delinquent with its annual reports and May 1 annual fees.

4. Platinum is listed on the bankruptcy schedules of Derek Nathan Sheahan and Anna Marie Gillespie-Sheahan, (“Sheahans”) as owing to the bankruptcy estate of the Sheahans the sum of \$116,000.00 for “Funds loaned by Petitioners to Platinum Precision Machining (\$115,000.00 estimated), Earned but unpaid wages of \$1,000.00 (estimated).”

5. The Trustee commenced Civil Action Case Number: 2019CV30124 in Arapahoe County District Court on January 16, 2019, asserting claims against Platinum Precision Machining Inc., a Colorado Corporation, (“Platinum” or “Defendant”) on behalf of the estate of the Debtors for unpaid wages, breach of contract, and unjust enrichment.

6. The Complaint filed sought damages of \$117,250.00, plus costs, which includes \$1,000.00 of unpaid wages to which a statutory penalty of 125% applies, or an additional amount of \$1,250.00, as allowed under C.R.S. § 8-4-109(3)(b)(1) for a total recovery sought of \$117,250.00.

7. The shares of the corporation, Platinum, are owned 49% by co-debtor Nathan Sheehan and 51% by co-debtor Anna Marie Sheahan. The Board of Directors consisted of the two Debtors, who also occupy all the positions of Officers of Platinum.

8. Co-debtor Anna Marie Sheahan is designated as the registered agent for Platinum as reflected on the Colorado Secretary of State’s website.

9. The shares of Platinum are listed in the Debtors’ Schedule A/B, question No. 19, as having an asset value of zero dollars.

10. Platinum is an insolvent corporation on a balance sheet basis. The Trustee has been provided with a balance sheet demonstrating the company’s assets and liabilities as of the filing date. Per the balance sheet, Platinum had assets of \$32,528.05 and liabilities of \$210,165.69.

11. The Debtors indicate in reply to question No. 23 on the Statement of Financial Affairs, “Do you hold or control any property that someone else owns?”, that they are holding funds of \$27,000.00 in a Bank of America account, plus some machinery, and account receivables belonging to a third party - Platinum.

12. The Trustee as Plaintiff effected service of the Summons, Complaint and Exhibits upon Anna M. Sheahan - Registered Agent on January 17, 2019.

13. The Defendant Platinum failed to timely respond to the allegations in the Plaintiff’s Complaint.

14. As a result, on February 11, 2019, the Trustee as Plaintiff filed his Motion for Entry of Clerk’s Default pursuant to Colo.R.Civ.P. 55(a) against the Defendant, a copy of which was mailed to the registered agent for Platinum, Mrs. Sheahan. On March 6, 2019, the Clerk of the Arapahoe County Court entered its Entry of Default.

15. On or about April 26, 2019 the Trustee as Plaintiff filed his Motion for Entry of a Default Judgment in the Plaintiff’s favor and against the Defendant in the sum of

\$117,250.00, a copy of which was mailed to the registered agent for Platinum, Mrs. Sheahan.

16. The damages sought in the Motion for Default were \$116,000.00, which includes \$1,000.00 of unpaid wages to which a statutory penalty of 125% applies or an additional amount of \$1,250.00 as allowed under C.R.S. 8-4-109(3)(b)(1) for a total recovery sought of \$117,250.00.

17. On May 24, 2019 the Court in Arapahoe County entered its default judgment against Platinum in the amount of \$117,250.00 plus costs of \$337.75 for a total Judgment of \$117,587.75.

18. On July 1, 2019 the Trustee as Plaintiff was issued a Writ of Garnishment by the Clerk of the Arapahoe County District Court and had the Writ served upon Bank of America.

19. On July 9, 2019 Bank of America filed a reply to the Writ of Garnishment indicating it was holding \$28,875.34 of funds belonging to the Defendant, Platinum.

20. On August 15, 2019 the Arapahoe County District Court entered its order directing Bank of America to surrender the garnished funds to the Trustee- Plaintiff.

21. The funds of Platinum were delivered to the Trustee and deposited into his Trustee account where they remain at this time.

22. Platinum did not seek to set aside the default judgment entered against it in Arapahoe County District Court.

23. Platinum did not seek to challenge or circumvent the return of the Writ of Garnishment filed by Bank of America.

24. Platinum has not filed any motion or adversary case challenging the right of the Trustee to the garnished funds now held in his trust account.

25. On September 11, 2019 the law firm of Buechler Law Office, L.L.C. as counsel to the Trustee filed its First and Final Fee Application.

26. On October 3, 2019, the Debtors filed an objection to the fee application.

27. The Objection filed by the Debtors does not challenge the reasonableness or propriety of the requested fees and costs but asserts that the funds in the Trustee's account cannot be used for payment of the fees and costs.

28. Platinum did not file an objection to the fee application.

29. The Debtors' estate is not solvent and there will be no surplus available for the Debtors.

ANALYSIS

In general terms, 11 U.S.C. § 541(a) provides that property interests of a debtor become property of the estate upon the filing of a voluntary bankruptcy case. The Debtors owned 100% of the shares of stock in Platinum and were the officers and directors of Platinum. The Debtors also held claims against Platinum for monies loaned to the company in the approximate amount of \$115,000 and a claim for wages owed by Platinum in the approximate amount of \$1,000. The ownership interests in Platinum and the claims against Platinum became property of the estate when the Sheahans filed their Chapter 7 bankruptcy case.

The Debtors' positions as officers and directors of Platinum are not property interests and did not become property of the estate.

11 U.S.C. § 363 authorizes a trustee, after notice and a hearing, to "use, sell, or lease" property of the estate. As the sole shareholder of Platinum, the Trustee could have sought authority to use his 100% ownership of the stock in Platinum, subject to notice to creditors and bankruptcy court approval, to remove the Debtors as officers and directors and substitute himself as an officer or director of Platinum or for any other purpose. He did not.

Instead, the Trustee, exercising his business judgment, sought to collect the debts owed by Platinum to the Debtors that became property of the estate. To that end, the Trustee, acting as a creditor of Platinum, hired counsel, filed a state court lawsuit against Platinum, obtained a default judgment, and garnished Platinum's bank account.

As set forth above, the Debtors' Objection does not contest reasonableness of the fees sought through the Application. The basis of the Objection is that the distribution of assets of Platinum to the Trustee as sole shareholder of Platinum was illegal under Colorado state law. Thus, the Objection represents a collateral attack on the state court judgment and the Trustee's administration of the bankruptcy case. The Objection is overruled.

First, the Debtors' Objection is barred by the *Rooker-Feldman* Doctrine. The doctrine, derived from two Supreme Court Cases, *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923), and *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983), "forbids lower federal courts from reviewing state-court civil judgments." *Mayotte v. U.S. Bank Nat'l Ass'n for Structured Asset Inv. Loan Tr. Mortg. Pass-Through Certificates, Series 2006-4*, 880 F.3d 1169, 1170 (10th Cir. 2018). Observing that some lower courts had applied the *Rooker-Feldman* Doctrine too broadly, the Supreme Court explained its proper application in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005):

Federal district courts, we noted, are empowered to exercise original, not appellate, jurisdiction. Plaintiffs in *Rooker* and *Feldman* had litigated and lost in state court. Their federal complaints, we observed, essentially invited federal courts of first instance to review and reverse unfavorable state-court judgments. We declared such suits out of bounds, *i.e.*, properly dismissed for want of subject-matter jurisdiction.

The *Rooker-Feldman* doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.

Id. at 283–84.

This is precisely what the Debtors attempt through the Objection to the Application. Platinum failed to respond to the state court complaint and, as a result, default judgment entered. The Trustee, exercising his state law remedies as a judgment creditor of Platinum, garnished Platinum’s bank account.

The Debtors, as officers and directors of Platinum, could have defended the Trustee’s lawsuit on behalf of Platinum and made their state law arguments as to the alleged impropriety of the Trustee’s actions in state court. They did not. The attempted end run of the state court judgement through the Objection to the Application is barred by the *Rooker-Feldman* Doctrine. Moreover, the Debtors do not advance any independent federal claim.

Second, the Debtors’ legal argument is flawed. The Debtors’ characterization of the garnishment as a “de facto distribution” to the Trustee as a shareholder lacks merit.

Colo. Rev. Stat. § 7-106-401(c) imposes a restriction on the authorization of distributions by a **board of directors** where such distributions render the corporation insolvent. Specifically:

No distribution may be made if, after giving it effect:

(a) The corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) The corporation’s total assets would be less than the sum of its total liabilities plus (unless the articles of incorporation permit otherwise) the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

The Debtors rely on *Paratransit Risk Retention Group Ins. Co. v. Kamins*, 160 P.3d 307 (Colo. App. 2007) for the proposition that “payments made to sole shareholders that render the business unable to pay debts of the company violates Colo. Rev. Stat. § 7-106-401”.

Paratransit held:

[A] corporation's insolvency alters the dynamics among the corporation, its directors, and its creditors. Directors of an insolvent corporation are deemed to be trustees for the corporation and for its creditors, and therefore, they owe a fiduciary duty to creditors not to divest corporate property for personal benefit, to prefer themselves over other creditors, or to defeat a corporate creditor's claim.

160 P.3d at 319–20.

The Debtors further argue that Colo. Rev. Stat. § 7-106-401 imposes personal liability on a director who votes for or assents to a distribution made in violation of section 7-106-401.

The fundamental flaw in the Debtors' analysis is that the Trustee never was, and never became, an officer or director of Platinum. Under Colorado law, a shareholder, as an owner, does not owe a fiduciary duty to creditors. The fiduciary duty is imposed upon the officers and directors, who are empowered by state law to run the day-to-day operations of the entity and make the business decisions. The only power of a shareholder is to appoint the board of directors. The Debtors ignore the undisputed facts that: (i) the Trustee took no action to remove them as the sole officers and directors of Platinum, (ii) the Trustee exercised no control over Platinum, and (iii) no distributions were authorized by an officer or director of Platinum. The state law restraints upon self-dealing by officers and directors of an insolvent corporation do not apply to the Trustee. The Court notes that in the *Paratransit* case, Mr. Kamins was a director who made a voluntary distribution to himself as the sole shareholder.

The Trustee commenced litigation against Platinum to collect a debt owed by the company in the capacity of a creditor of Platinum. It was the Debtors, in their capacity as officers and directors of the company, who chose not to defend. They cannot now come to this Court seeking relief from that decision.

Finally, the Debtors lack standing to oppose the Application. The Debtors stipulated that the bankruptcy estate is insolvent. Standing has been addressed by the Tenth Circuit Court of Appeals in *Parr v. Rodriguez*:

In the bankruptcy context, we apply a prudential standing requirement that "is more stringent ... than the case or controversy standing requirement of Article III." *C. W. Mining Co. v. Aquila, Inc. (In re C.W. Mining Co.)*, 636 F.3d 1257, 1260 n.5 (10th Cir. 2011) (internal quotation marks omitted). Only a person aggrieved by a bankruptcy court order may seek appellate review of that order. *Id.* at 1260. To qualify as a "person aggrieved," the party must show that his "rights or

interests [are] directly and adversely affected pecuniarily by the decree or order of the bankruptcy court.” *Id.* (internal quotation marks omitted). A debtor does not qualify as a “person aggrieved” by a bankruptcy court order “[u]nless the estate is solvent and excess will eventually go to the debtor, or unless the matter involves rights unique to the debtor,” such as an “exemption of property from the estate.” *In re Weston*, 18 F.3d at 863–64 and 864 n.3.

Parr v. Rodriguez (In re Parr), 732 F. App’x 714, 716 (10th Cir. 2018).

The Debtors lack standing to contest the allowance of the requested fees and expenses.

CONCLUSION

The Debtors’ Objection to Buechler Law Office, L.L.C.’s First and Final Application for Allowance of Fees and Expenses as Counsel for Jeffrey A. Weinman, Chapter 7 Trustee, for the Period from November 6, 2018 through September 10, 2019 (Doc. 71) is OVERRULED. Buechler Law Office, L.L.C.’s Application for Allowance of Fees and Expenses (Doc. 61) is GRANTED. The Trustee is authorized to pay Buechler Law Office, L.L.C.’s fees and expenses in the amount of \$6,924.65.

To the extent that the Trustee’s Brief (Doc. 80) can be construed as a request for the allowance of additional attorney fees incurred in association with the Debtors’ Objection, that request is DENIED under the authorities of *Baker Botts L.L.P. v. ASARCO LLC*, 135 S. Ct. 2158 (2015) and *In re Morreale*, 2019 WL 3385163 (Bankr. D. Colo. July 3, 2019), because defense of fee applications is not a “service” under 11 U.S.C. § 330(a)(1), regardless of the nature of the objection.

Dated this 12th day of December, 2019.

BY THE COURT:



Joseph G. Rosania, Jr.
United States Bankruptcy Judge