

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re:)
)
THE BENTLEY FUNDING GROUP, LLC.) Case No. 00-13386-SSM
) Chapter 11 (Involuntary)
Debtor)

MEMORANDUM OPINION

An evidentiary hearing was held in open court on December 13, 2001, on the objection filed by Fredric Spain and James A. Jeffery to the scheduled claim of petitioning creditor Fernando Gomez in the amount of \$206,000. The objecting parties and the creditor were each present in person and were represented by counsel. For the reasons stated, the claim will be allowed only in the amount of \$10,702.38, and the balance will be disallowed.

Background

_____The Bentley Funding Group, LLC (“Bentley”) is a Virginia limited liability company that was formed in late 1997 to develop approximately 173 acres of land in a mixed-use development known as “River Oaks” located in the Woodbridge area of Prince William County, Virginia. Bentley has three classes of members, designated as Classes A, B, and C, with each class being represented by its own manager. Class A consists of Peter Denger and Peter Horvat, each of whom owns a 33.5% membership interest. Class B consists of Fernando Gomez, James A. Jeffery, Edgar Reilly and Fredric L. Spain, each of whom own a 7.0% membership interest. Finally, Class C consists of Kenneth Young, who owns a 5.0%

membership interest.¹ Only the Class A members were required to invest money in the proposed development. The Class B members had identified the project and had brought it to the table, but neither they nor the Class C member were required to invest any of their own money. The Class A manager was and remains Peter Horvat. The Class B manager was originally Fernando Gomez, but in October 1998, Edgar Reilly became the Class B manager. The Class C manager was and remains Kenneth Young.

The purchase of the River Oaks property had been financed by a note secured by a first-lien deed of trust. When the note went into default, it was purchased by SK&R Group, L.L.C. (“SK&R”), which then scheduled a foreclosure sale. At that point, three of Bentley’s members (Horvat, Denger, and Gomez) and two entities (TBR Associates and Glem Management) controlled by Horvat and Denger filed an involuntary chapter 11 petition against Bentley in this court on August 11, 2000, thereby invoking the automatic stay and stopping the foreclosure. Although the petition was originally contested, the opposition was withdrawn, and an order for relief was entered on September 5, 2000.

After SK&R’s motion for relief from the automatic stay was denied, Bentley eventually reached a settlement under which all but 22 acres of the River Oaks property was sold to SK&R in full satisfaction of the sums due under the deed of trust. As part of the purchase, SK&R also paid \$300,000 to the debtor and paid or assumed various liabilities connected with the project, including the claims of the general contractor and the bonding company. A plan

¹ The operating agreement for Bentley provides that, after an initial aggregate distribution of \$5 million, the percentages would be adjusted to 28.5% each for Denger and Horvat and 9.5% each for Gomez, Spain, Reilly and Jeffery.

was then confirmed (over the objections of Spain and Jeffery) on May 31, 2001, that provided for the continued operation of the company for the purpose of developing and selling the remaining 22 acres.² Under the plan, no payment was to be made on account of “insider” unsecured claims, including the claim of Gomez; rather they were effectively recharacterized as equity contributions.

Gomez’s claim arises principally under Bentley’s December 19, 1997, Operating Agreement and under a purported April 27, 2000, Company Resolution. The operating agreement (which was signed by all the members, including Gomez, Spain and Jeffery) designated the four Class B members as “Advisors” to the managers. Their role, according to Gomez, was to “spearhead” the development of the River Oaks project. The Operating Agreement provides for compensation of the advisors in the following terms:

The Advisors will receive compensation in the total amount of \$15,000.00 per month, divided equally among the Advisors, for the period from February 15, 1998 to February 14, 1999, payable in advance on the fifteenth day of each month beginning on February 14, 1998; thereafter the Advisors will not receive any compensation except as agreed to by a Majority of the Members (acting by Classes). The compensation will be full and complete compensation and reimbursement for their services rendered to an in behalf of the Company and expenses incurred, including, but not limited to travel and office expenses. After February 14, 1999, the Managers and Advisors will be reimbursed for their actual, reasonable, expenses incurred in conduct of the Company’s business.

² Spain and Jeffery, joined by Reilly, have since filed an adversary proceeding to revoke the order of confirmation. A motion for dismissal of the adversary proceeding, which the court has elected to treat as a motion for summary judgment, is currently under advisement.

Gomez Ex. F at ¶ 16.3; Spain & Jeffery Common Ex. 6, at ¶ 16.3. (emphasis added). Once the project was underway, it appears that the actual job of acting as “project manager” was rotated among the Class B members, with Spain fulfilling that role for 5 months, Gomez for the next 3 months, and then Reilly for the final 4 months. Apparently there were early discussions among the Class B members that the project manager would receive the lion’s share (\$6,000.00) of the monthly compensation, with the other Class B members receiving \$2,000.00 each, and \$3,000.00 being reserved for contingencies. These discussions, however, never advanced to the point of a written agreement.

In any event, the issue of how the compensation should have been divided became somewhat academic, since the Class A members (who were responsible for funding it) only provided a few payments. Gomez’s testimony on this point was confusing and difficult to follow. At one point, he seemed to say that only \$45,000.00 (three months gross compensation) had been funded by the Class A members, of which he received \$18,000.00. At a later point in his testimony, however, he testified he was owed \$15,000.00 as his proportionate share of four months that had not been paid. A memo identified by Gomez on cross-examination as one that he had prepared in late September 1998 (Spain & Jeffery Ex. 9), seems to reflect that he had received \$17,000.00 through July and that the August and September compensation had not been paid.

In any event, Gomez acknowledged that this component of his claim was not mentioned at a Rule 2004 examination taken by SK&R at the outset of the chapter 11 case, when SK&R was challenging the *bona fides* of the involuntary filing. See Spain & Jeffery Common Ex. 1,

at 116-164. His explanation at trial was that he had simply overlooked it at the time the involuntary petition was filed and the Rule 2004 examination was conducted.

As noted, the Operating Agreement provided that any compensation of the advisors *after* February 14, 1999, required agreement “by a Majority of the Members (acting by Classes).” To support his claim for compensation after February 14, 1999, Gomez offered in evidence a copy of a “Company Resolution,” dated April 27, 2000, bearing the purported signatures of Denger, Horvat, and Young. The resolution states in relevant part:

In recognition of the services performed by Fernando Gomez since February 14, 1999[,] as an advisor in the management of the affairs of the River Oaks subdivision, the following Managers hereby agree to compensate Fernando Gomez with a fee of \$9,000 per month for his advice, counsel, and assistance to the Managers. This fee is retroactive to February 14, 1999, and shall continue until the Managers, voting by majority, determine to end such compensation.

Gomez Ex. B.

According to Gomez, after the compensation period under the operating agreement had expired, Horvat, Denger and Young asked him to continue as project manager. There is no evidence of any discussions at that time as to what the compensation arrangement would be. Gomez testified that as project manager he met with contractors, hired the project engineer, retained a law firm to provide legal advice, negotiated a contract with a large developer for 140 lots, had discussions with another developer, periodically met with real estate brokers, and made efforts (after the original acquisition and construction loan matured) to obtain additional secured financing. Gomez testified that Denger and Horvat ultimately agreed that he should receive a \$9,000.00 monthly “fee” for his services (exclusive of expenses). As part

of the discussions, Gomez agreed that he would forego any claim for a sales commission on any sales contracts that he negotiated for Bentley. Notwithstanding the Company Resolution, no compensation was ever paid, and Gomez therefore asserts that he has a valid claim of \$9,000.00 per month for the period from February 15, 1999, through August 2000 (the month the chapter 11 petition was filed) for a total of \$171,000 in post-February 14, 1999, compensation.

Gomez further testified that the Company Resolution – which he drafted – had blanks for three signatures (Horvat, Denger, and Young) but was originally signed only by Horvat, the Class A manager, and by Denger, who was the other Class A member but not a manager. Gomez testified that Young’s signature was not really necessary, because Denger signed for Young, the Class C manager, under a power of attorney. The signature of Denger, however, makes no reference to his signing under a power of attorney. For example, Denger does not sign on the signature line provided for Young, nor does he indicate by the use of words such as “for” or “by” or “attorney in fact” that he is signing in a representative capacity for Young. Additionally, no copy of the purported power of attorney was offered in evidence, nor did Gomez call Young as a witness to testify to such a power of attorney.³ Given the total

³ When asked on cross-examination why he had not produced the power of attorney at trial, he testified that he thought he had “submitted” it. As it turns out, a document which purports to be a copy of a power of attorney from Young to Horvat and Denger dated July 23, 1998, was included among documents that Gomez’s attorney belatedly produced to Spain and Jeffery’s attorney on November 20, 2001. For whatever reason, however, it was not included among Gomez’s trial exhibits and was not marked, authenticated, or introduced at the hearing. Accordingly, it cannot be considered part of the record.

lack of any corroborating evidence, the court is unable to find that Denger signed as attorney in fact for Young.⁴

Gomez further testified that, although he did not specifically request Young to sign the Company Resolution, he faxed an information copy (bearing Horvat's and Denger's signatures) to Young a month or two later, and that Young then returned the fax to Gomez with his (that is, Young's) original signature backdated to April 27, 2000. Accordingly, if one accepts Gomez's testimony, there were two counterparts of the Company Resolution with one or more original signatures: one bearing the original signatures of Horvat and Denger (but no signature by Young) and another bearing the original signature of Young and the faxed signatures of Horvat and Denger. Astonishingly, however, Gomez was unable to produce at trial a counterpart bearing *any* original signatures, even though he testified that he maintained all of Bentley's records in his home.⁵ Nor did he call either Horvat or Young to authenticate their signatures on the purported copy he offered as evidence. Given the ease with which doctored copies can be produced on modern photocopying machines, and further given the suspicious circumstances surrounding its purported execution, the court is unable to find that the Company Resolution is an authentic document.

Gomez also testified that, during the period he was acting as advisor and as project manager, he incurred numerous expenses (most of them travel-related) on Bentley's behalf.

⁴ Additionally, while Young could plainly have given a Denger power of attorney to act with respect to his (Young's) *economic* interest, it is far from clear that he could legally delegate his fiduciary duties as a *manager* of the company.

⁵ The copy offered in evidence at trial bears a fax date stamp of September 16, 2001, more than a year after the original document was purportedly executed.

When originally questioned at a Rule 2004 examination conducted by SK&R concerning his claim, he produced a one-page summary that listed "Personal Expenses as Project Manager for BFG from Feb, 1999 to Aug 2000" in the amount of \$29,577.00, with no detail.⁶ Gomez Ex. A. At trial, he additionally asserted a claim to expenses for the period prior to February 1999. Specifically, he testified that he was entitled to reimbursement of \$3,102.37 in expenses incurred in 1997 and \$69.26 for January 1998, which would bring the total expense claim to \$32,748.63. For the most part, the claimed expenses through April 1998 are supported by receipts or other supporting documents (such as credit card statements). The claimed expenses of \$16,215.24 for 1999, however, are not supported by any receipts except for \$615.87 in expenses for December 1999. Similarly, the claimed expenses of \$14,685.93 for 2000 are not supported by any receipts except for a single \$86.51 expense.

Finally, Gomez testified that he had maintained an office for Bentley (with its own telephone line) in his Ridgewood, New Jersey, residence from November 1997 to August 2000. He testified that there was a general agreement among Bentley's managers to pay him for the use of the space; however, acknowledged that no lease or other writing was ever signed by Bentley agreeing to pay rent. Gomez did not call any of the managers to testify as to an oral agreement to pay rent, nor is there any evidence that Bentley was ever actually invoiced for rent prior to the filing of the chapter 11 petition. Gomez nevertheless asserts that he is entitled to rent at the rate of \$600.00 per month, for a total rent claim of \$20,400.

⁶ This figure does not entirely square with other summaries that were offered at trial and that appear to total \$29,953.72 for that same period.

Discussion

I.

In a chapter 11 case, the listing of a claim on the debtor's schedules constitutes prima facie evidence of the validity and amount of such claim, unless the claim is scheduled as disputed, unliquidated or contingent. Fed.R.Bankr.P. 3003(b)(1). Additionally, unless a claim has been scheduled as disputed, unliquidated or contingent, or has not been scheduled at all, a creditor in a chapter 11 case is not required to file a proof of claim in order for the claim to be allowed. Fed.R.Bankr.P. 3003(c). Ordinarily, a party objecting to a claim has the initial burden of presenting sufficient probative evidence to overcome the prima facie effect of the filing or scheduling. *See In re C-4 Media Cable South, L.P.*, 150 B.R. 374, 377 (Bankr. E.D. Va. 1992). Once the objecting party has done so, the burden of proof shifts to the creditor to establish the validity and amount of its claim. *Id.* In the present case, the court ruled that Gomez, as a sanction for failure to provide timely discovery, would not be able to rely on a presumption of validity and would have the initial, as well as the ultimate burden of proving his claim. Accordingly, Gomez must show by a preponderance of the evidence that his claim is valid.

II.

As an initial matter, the court notes that the validity and amount of Gomez's claim could arguably be considered moot, since the confirmed plan expressly provided that there would be no payment on insider unsecured claims. While the plan does not explicitly state what would happen to such claims, it was the understanding of the court and all parties at the confirmation hearing that insider claims were not actually being extinguished but were merely

being recharacterized as equity contributions. The plan did not cancel the interests of equity holders, nor did it alter their rights under the Operating Agreement. Thus, although insider creditors would have not have the right to demand immediate payment of their claims, they would nevertheless, upon the winding up of the company, be entitled to whatever distributions their augmented equity contribution would entitle them under Bentley's Operating Agreement. Such a distribution on account of the augmented equity contributions would potentially reduce the distribution otherwise payable to Spain and Jeffery as Class B members. Accordingly, the court concludes that confirmation of the plan did not render the objection to Gomez's claim moot.

III.

That being said, the court must then resolve whether Gomez has carried his burden of proof with respect to the following issues:

- a. That he is owed \$15,000.00 in unpaid advisor compensation for the period from February 15, 1998, to February 14, 1999, under Bentley's Operating Agreement;
- b. That he is owed \$171,000 as project manager compensation for the period from February 15, 1999, to August 2000 based on the April 27, 2000, Company Resolution;
- c. That he is entitled to reimbursement of \$32,748.63 in expenses incurred on Bentley's behalf; and
- d. That he is owed \$20,400 in rent for the Bentley office he maintained in his home from November 1997 to August 2000.

The total amount claimed comes to \$239,148.63, which exceeds the \$206,000 scheduled claim. Since Gomez did not file a proof of claim, the scheduled claim controls – and thus

limits – the claim which may be allowed.⁷ See 9 Collier on Bankruptcy ¶ 3003.03[3], at 3003-7 (Lawrence P. King, ed., 15th ed. rev. 1997). Accordingly, keeping this limitation in mind, the court will consider each of the components of the claim in turn.

A. The \$15,000.00 Advisor Compensation

The Operating Agreement clearly supports Gomez’s entitlement to a one-fourth share (or \$3,750.00) of the \$15,000.00 monthly “compensation” the Class B members were to receive as advisors to the managers during the first twelve months of Bentley’s operation. The difficulty lies in determining what amounts Gomez actually received since, as noted, his testimony on this point was confusing, to say the least. If one attempts to reconcile the testimony by assuming (based on the September 1998 memo) that Gomez actually received \$17,000 through July 1998, and by assuming (based on his trial testimony) that he eventually received another \$18,000, then he would appear to have received a total of \$35,000.00. This would leave \$10,000 unpaid of a total \$45,000 due (\$3,750 times 12 months). Gomez’s calculation of \$15,000.00 due for the final four months ignores the fact that he apparently received *more* than his proportionate share for the first eight months. Although he testified that the earlier unequal distributions were the result of an oral agreement among the advisors adjusting the compensation they were to receive under the operating agreement, the terms of the agreed adjustment are at best murky, were never reduced to writing, and were not corroborated by the testimony of any other member. Accordingly, the court, in calculating the claim, has little choice but to follow the provisions of the Operating Agreement. In this

⁷ Gomez’s counsel conceded this point at the evidentiary hearing.

connection, Gomez has the burden of proof with respect to his claim, and any ambiguity or uncertainty in the evidence must be construed against him. Accordingly, the court concludes that he has established a prima facie claim only to \$10,000.00 in unpaid advisor compensation.

Spain and Jeffery assert, however, that Gomez is not entitled to even this reduced amount. They argue that by not mentioning it at his Rule 2004 examination, and by not including it as part of the total claim reflected on the involuntary petition, he effectively waived entitlement to the unpaid advisor compensation (which no other Class B member has made a claim for). As a factual matter, however, the court is unable to find that a waiver occurred in this case. Rather, all that appears is that Gomez, in compiling what he felt he was owed by Bentley, simply neglected to include the unpaid portion of the agreed compensation. For the reasons already stated, the failure to file a proof of claim limits the *total* claim that may be allowed, but there is no reason why it should limit any particular component of the claim. Accordingly, \$10,000.00 in unpaid compensation will be allowed, subject to the ultimate \$206,000.00 cap.

B. The \$171,000 in Project Manager Compensation

The most problematic – and certainly largest – component of Gomez’s claim is his assertion that he is entitled to \$171,000 in compensation for his continued service as project manager during the period from February 15, 1999 to August 2000. In response, Spain and Jeffery argue that the \$171,000 should be disallowed because it is based on a Company Resolution that was invalid under paragraph 16.3 of Bentley’s Operating Agreement, which required approval by the majority of members, voting by classes. Specifically, they contend that even if Horvat signed the Company Resolution on behalf of Bentley’s Class A

membership, Young's signature, on behalf of Bentley's Class C membership, is either (a) not authentic, or (b) was executed too late (i.e., after the fact). Accordingly, they submit that the Class majority required to compensate Gomez after February 14, 1999, was never present.

As discussed above in connection with the findings of fact, the court concludes that Gomez has failed to carry his burden of proving that the purported Company Resolution is authentic. No copy bearing original signatures has ever been produced, and the circumstances of its execution – three and a half months before the involuntary filing (with no notice to the Class B members) and fourteen months after Gomez purportedly commenced performance of his duties as project manager – are suspicious, to say the least. Because Gomez has failed to carry his burden of proving that the Company Resolution is authentic, the court need not reach the issue of whether the language of the Operating Agreement would have allowed retroactive approval of compensation in any event.

At the hearing, Gomez's attorney argued that, even if the court did not find the Company Resolution to be valid, Gomez would nevertheless be entitled to reasonable compensation for his post-February 14, 1999, work on Bentley's behalf under a theory of *quantum meruit*. Virginia law governs this issue,⁸ and in Virginia it has been said that “[t]o avoid unjust enrichment, equity will effect a ‘contract implied in law,’ requiring one who accepts and receives the services of another to make reasonable compensation for those services.” *Po River Water & Sewer Co. v. Indian Acre Club of Thornburg, Inc., et al.*, 255 Va. 108, 495 S.E.2d 478 (1998) (citing *Marine Dev. Corp. v. Rodak*, 225 Va. 137, 142-44,

⁸ See Gomez Ex. F at ¶ 32.1; Spain & Jeffery Common Ex. 6, at ¶ 32.1.

300 S.E.2d 763, 765-66 (1983); *Ricks v. Sumler*, 179 Va. 571, 577, 19 S.E.2d 889, 891 (1942); *Hendrickson v. Meredith*, 161 Va. 193, 200, 170 S.E. 602, 605 (1933)). Here, Gomez testified that he performed various services for Bentley as its project manager during the time period in question. The *value* of those services, however, is highly questionable, given that most of Gomez's efforts consisted of unsuccessful efforts to sell the project. More importantly, Gomez was not an outside professional or tradesman performing services for Bentley at its request, but rather was an equity holder acting on his own behalf primarily to promote and protect the value of his own interest in Bentley. Furthermore, application of *quantum meruit* is only appropriate in the *absence* of a contract. Here, there was a contract – the Operating Agreement – and it was quite specific that after February 14, 1999, Bentley's Advisors were not to receive “*any compensation except as agreed to by a Majority of the Members (acting by Classes).*” (emphasis added). For that reason, the court declines to approve a claim for post-February 14, 1999, compensation under the alternate theory of *quantum meruit*.

C. The \$32,748.63 in Expenses

Gomez, as noted, testified that he is entitled to reimbursement of \$29,577 in expenses allegedly incurred on behalf of Bentley from February 1999 through August 2000, as well as \$3,171.63 in expenses incurred prior to that period. Spain and Jeffery disagree, arguing that (a) there was an understanding between all Class B members that any expenses incurred prior to February 15, 1998, would not be reimbursed by the debtor; (b) paragraph 16.3 of Bentley's Operating Agreement expressly prohibited compensation for any “expenses” incurred by Bentley's advisors between February 15, 1998, and February 14, 1999, beyond the \$15,000

shared advisor compensation; and (c) the \$16,214 in expenses that Gomez claims for 1999 are unsubstantiated.⁹ For the reasons that follow, the court finds that Gomez is entitled to only \$702.38 for expenses incurred on Bentley's behalf.

1. December 19, 1997 through February 14, 1998.

Gomez first alleges a total expense claim of \$3,484.94 for the period prior to February 14, 1998 (the date from which the Class B members would be entitled to compensation as Bentley's Advisors).¹⁰ Spain and Jeffery argue that there was an understanding among all Class B members that any expenses incurred during this period would not be reimbursed. No testimony was offered, however, to support such an understanding.¹¹ Nevertheless, the court concludes that the very structure of the Operating Agreement is inconsistent with Gomez's claim for reimbursement of pre-February 14, 1998, expenses. The agreement plainly provides that the "compensation" to be paid to the Class B members for the post-February 14, 1998, period as Bentley's advisors included all expenses. While the agreement does not specifically address the period prior to February 14, 1998, it must be remembered that the Class B members invested no cash in Bentley; rather their aggregate 28% equity interest was in exchange for their having identified the project. Any expenses incurred in promoting the deal

⁹ See Gomez Ex. E at Bate Stamp No. 0119, for a list of these expenses.

¹⁰ The court has calculated this figure by taking the claimed amounts for 1997 (\$3,102.37), January 1998 (\$69.26) and February 1998 (\$312.00), since all of the February 1998 expenses were incurred prior to February 15th.

¹¹ The court assumes that Spain and Jeffery intended to present their own testimony in support of this assertion. However, when they failed to return on time after the lunch recess, the court closed the evidentiary record and proceeded to oral argument.

and keeping it alive until the Class A members – who were to provide the needed financing – were on board would simply have been part of what was being contributed in exchange for the Class B membership interests.¹² For that reason, the court concludes that Gomez has failed to carry his burden of establishing his claim for such expenses.

2. February 15, 1998, through February 14, 1999.

Gomez appears to assert a total expense claim of \$2,578.65 for the period February 15, 1998, to February 14, 1999, during which the Class B members were entitled to compensation as Bentley's advisors.¹³ Spain and Jeffery argue that (a) paragraph 16.3 of Bentley's Operating Agreement expressly prohibits reimbursement for any expenses incurred by Bentley's advisors beyond the aggregate \$15,000 shared advisor stipend between February 15, 1998, and February 14, 1999; and (b) the expenses claimed for 1999 and 2000 are largely unsubstantiated. They are correct. First, the Operating Agreement, which Gomez freely

¹² Although no testimony was presented as to the exact details surrounding Bentley's formation, it appears from a reference in the Operating Agreement that the Class B members had obtained a contract for the purchase of the land, which they assigned to Bentley in exchange for their equity interest:

The Class B members have assigned to the Company all of their right and interest in the Agreement to Purchase the Property subject to the obligations of the purchaser therein and the Company has assumed all such obligations. *The Class B Members will not be credited with any amount as a Capital Contribution as a result of such assignment.*

Spain & Jeffery Common Ex. 6 at Ex. A n.1 (emphasis added).

¹³ This figure was calculated by taking the claimed expenses for March 1998 through January 1999 plus a pro-rata (50%) portion of the claimed expenses for February 1999. The February 1998 expenses were excluded, since they were all incurred prior to February 15th.

signed, expressly states that the \$15,000 shared advisor stipend “will be full and complete compensation *and reimbursement for ... services rendered to and in behalf of the Company and expenses incurred, including, but not limited to travel and office expenses.*” See Gomez Ex. F at ¶ 16.3; Spain & Jeffery Common Ex. 6, at ¶ 16.3 (emphasis added). Additionally, none of the 1999 expenses allegedly incurred during the compensation period are supported by receipts or other contemporaneous evidence, but only by a summary prepared after the fact. Accordingly, the court concludes that Gomez has failed to carry his burden of establishing his claim for such expenses.

3. February 15, 1999 through August 11, 2000.

Gomez presented at trial claimed expenses of \$29,630.00 for the period from March 1999 through August 2000 during which he was acting as project manager. Gomez Ex. D; Gomez Ex. E at Bates stamp 119.¹⁴ As stated previously, Gomez’s claimed expenses for 1999, with the exception of \$615.87 incurred in December of that year, are not supported by any evidence other than his own self-serving summaries and must therefore be disallowed. For the period from January 2000 through August 2000, Gomez likewise presents only a summary, with but a single expense of \$86.51 being supported by a receipt and credit card statement. The summary, which was clearly prepared after the fact, lists only a gross dollar figure for each month and contains no indication of the payees or the nature of the payment. Gomez Exh. D. Accordingly, the court gives it no weight. However, as noted, Gomez did

¹⁴ The amounts shown on the two summaries cannot be completely reconciled. For the purpose of this discussion, the court has used the highest amount claimed for a particular month.

provide receipts for \$702.38 in expenses for the post-February 14, 1999, period. *See* Gomez Ex. E at Bates stamp 120-123.¹⁵ These appear to have been reasonably incurred on Bentley's behalf, and will therefore be allowed, since the Operating Agreement expressly permits the advisors to be reimbursed for any "actual, reasonable, expenses incurred [after February 14, 1999] in conduct of the Company's business." *See* Gomez Ex. F at ¶ 16.3; Spain & Jeffery Common Ex. 6, at ¶ 16.3.

D. The \$20,400 Rent Claim

The final component of Gomez's claim consists of "rent" in the amount of \$20,400 for the office he maintained for Bentley in his home during the period from November 1997 to August 2000. In response, Spain and Jeffery submit there was never any agreement by Bentley's managers or members to reimburse Gomez for the office space, and that as a result, this portion of Gomez's claim must be disallowed. Having considered the matter, the court concludes that Spain and Jeffery's position is correct. As stated previously, Gomez has the burden of proving by a preponderance of the evidence that he is entitled to this portion of his claim. However, all he has offered is his own self-serving testimony that there was a general agreement among Bentley's managers to pay him for the use of Bentley's office space. No written agreement or memorandum of agreement was ever signed memorializing that alleged understanding, and no other person testified that such an understanding existed. Indeed, it is noteworthy that Horvat and Reilly, two of Bentley's three Class managers, were present at the evidentiary hearing but were not called by Gomez to corroborate this portion of his claim.

¹⁵ The receipt and credit card statement at Bates stamp 0122 and 0123 evidence the same expense. The postal receipt at Bates stamp 0121 is illegible.

Accordingly, because Gomez has failed to prove that he is entitled to the \$20,400 in claimed rent, this portion of his claim will be disallowed.

IV.

For the reasons stated, a separate order will be entered allowing \$10,702.38 of Gomez's scheduled \$206,000 claim, and disallowing the balance.

Date: January 23, 2002 _____ */s/ Stephen S. Mitchell*
Alexandria, Virginia Stephen S. Mitchell
United States Bankruptcy Judge

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