

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

In re:) Chapter 11
)
Tricida, Inc.,¹) Case No. 23-10024 (JTD)
)
Debtor.) **Related Docket No. 714**

**LIQUIDATING TRUSTEE’S OBJECTION TO MOTION FOR RELIEF
FROM ORDER SUSTAINING THE LIQUIDATING TRUSTEE’S
OBJECTION TO CLAIM NO. 196 FILED BY IRYNA DRAPCHAK**

Jackson Square Advisors, solely in its capacity as liquidating trustee of the Tricida Liquidating Trust (the “Liquidating Trustee”) established in the above-captioned matter, by and through its undersigned counsel, hereby submits the Liquidating Trustee’s Objection to the *Motion for Relief from Order Sustaining the Liquidating Trustee’s Objection to Claim No. 196 filed by Iryna Drapchak* (the “Motion”) [DI 714]. In support of this Objection, the Liquidating Trustee states as follows:

Background

1. Ms. Drapchak filed the Motion on September 18, 2024. Pursuant to the Motion, Ms. Drapchak seeks relief from the Court’s *Order Sustaining the Liquidating Trustee’s Objection to Claim No. 196 filed by Iryna Drapchak* (the “Order”) [DI 708]. Ms. Drapchak filed Claim 196 as a priority claim in the amount of \$8,144.00 pursuant to Bankruptcy Code Section 507(a). The Liquidating Trustee filed its *Objection to Claim No. 196 filed by Iryna Drapchak* (the “Claim Objection”) [DI 692]. The Notice of the Claim Objection set August 14, 2024 as the deadline to file responses to the Claim Objection. The Liquidating Trustee’s claims and noticing agent served

¹ The Debtor in this chapter 11 case, together with the last four digits of the Debtor’s federal tax identification number, is Tricida, Inc. (2526). The Debtor’s service address is 2108 N Street, Suite 4935, Sacramento, CA 95816.



Ms. Drapchak with the Claim Objection via electronic and First-Class Mail on July 15, 2024 [DI 696]. Ms. Drapchak did not file a response to the Claim Objection.

Objection

I. Ms. Drapchak is not entitled to relief from the Order pursuant to Fed. R. Civ. P. 60.

2. Ms. Drapchak requests relief from the Order pursuant to Rules 60(b)(2) and 60(b)(6) of the Federal Rules of Civil Procedure, made applicable to this proceeding pursuant to Bankruptcy Rule 9024, but neither of these rules provides a basis for Ms. Drapchak's request for relief from the Order.

3. Rule 60(b)(2) gives courts discretion to order relief for a party if there is "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)." Fed. R. Civ. P. 60(b)(2).

4. Ms. Drapchak asserts that she has discovered new evidence and states that "[t]his evidence highlights the extent of my financial dependency on the Agreement with Tricida, Inc., proving that services I rendered were substantial and essential to the Debtor's business." Objection p. 2. But Ms. Drapchak doesn't specifically identify any new evidence. Moreover, it's difficult to believe that Ms. Drapchak just discovered new evidence related to Ms. Drapchak's relationship with the Debtor, which terminated at least 21 months ago. And even if even the asserted new evidence is, in fact, new, neither evidence that Ms. Drapchak was financially dependent on the Agreement with Tricida nor evidence that the services Ms. Drapchak were substantial and essential to the Debtor's business is relevant to the issue of whether Ms. Drapchak is entitled to a priority claim pursuant to Section 507(a)(4) of the Bankruptcy Code.

5. Rule 60(b)(6) gives courts discretion to order relief for a party for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6). Such relief "is available only in cases

evidencing extraordinary circumstances.” *Martinez–McBean v. Government of Virgin Islands*, 562 F.2d 908, 911 (3d Cir. 1977).

6. Ms. Drapchak does not address any extraordinary circumstances justifying relief under Rule 60(b)(6). Ms. Drapchak does not assert that she did not receive notice of the Claim Objection or that some unforeseeable circumstance occurred justifying her failure to file a response by the objection deadline. Rather, Ms. Drapchak simply missed the August 14, 2024 deadline to respond to the Claim Objection and further failed to respond to the Claim Objection during the ensuing 13 days until the hearing.

7. Because Ms. Drapchak cannot satisfy the requirements of Rule 60(b)(2) or Rule 60(b)(6), the Court should deny Ms. Drapchak’s request for relief from the order.

II. Ms. Drapchak is not entitled to a priority claim pursuant to Section 507(a)(4) of the Bankruptcy Code.

A. Ms. Drapchak’s claim is not entitled to priority under Section 507(a)(4)(A).

8. Section 507(a)(4) of the Bankruptcy Code provides as follows:

(a) The following expenses and claims have priority in the following order:

(4) Fourth, allowed unsecured claims, but only to the extent of \$12,850 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor’s business, whichever occurs first, for—

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or

(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor’s business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

11 U.S.C. § 507(a)(4).

9. Section 507(a)(4)(A) applies only to payment of “wages, salaries, or commissions, including vacation, severance, and sick leave pay”. 11 U.S.C. § 507(a)(4)(A). Ms. Drapchak was not an employee of the Debtor and, accordingly, cannot be owed wages or salaries, and Claim 196 does not include “vacation, severance, or sick leave pay. And Ms. Drapchak is not seeking payment of a commission.

10. Ms. Drapchak argues that she was an employee of the Debtor. *See* Motion pp. 4 – 5. That is not the case. Section 1.3 of the Investigator Service Agreement (the “Agreement”) attached to the Motion as Exhibit A, expressly provides that Ms. Drapchak is an independent contractor: “It is the express intention of the parties that Investigator [Ms. Drapchak] is an Independent Contractor.” Agreement Section 1.3.

11. Nonetheless, Ms. Drapchak further states that she was, or should be treated, as an employee of the debtor because she provided essential services to the Debtor:

[T]he services I provided under the Investigator Service Agreement were critical to the Debtor’s business operations and compliance with FDA regulations, which are critical for the continuation and success of the Debtor’s core business activities. These services were akin to the work of an employee, and the compensation I am owed represents the value of my labor, which should be treated with the same priority as wages under Section 504(a)(4)(A).

Objection p. 3. But none of these are factors that merit consideration under the express language of Section 504(a)(4).

12. The only thing that the Court should consider is whether Ms. Drapchak was an employee of the Debtor. *See In re Ecosmart, Inc.*, 2015 WL 9274245 *8 (Bankr. C.D. Cal. December 18, 2015) (holding that “under 11 U.S.C. § 507(a)(4), prepetition claims of independent contractor individuals are not entitled to priority claim status unless they meet the standards of 11 U.S.C. § 507(a)(4)(B). Accordingly, this Court should rule that Ms. Drapchak is not entitled to a priority claim under Bankruptcy Code Section 507(a)(4)(A).

B. Ms. Drapchak's claim is not entitled to priority under Section 507(a)(4)(B).

13. Bankruptcy Code Section 507(a)(4)(B) affords priority treatment to

sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

11 U.S.C. § 507(a)(4)(B) (emphasis added).

14. Ms. Drapchak does not assert that her claim is for the payment of sales commissions. Rather, Ms. Drapchak essentially admits that her claim is not for sales commissions:

My work, while not directly involved in sales, was critical to the success of the Debtor's clinical trials, which are inherently tied to the Debtor's ability to generate future revenue. Thus, while my claim may not fit the literal definition of a sales commission, it should be considered under the broader intent of this provision, which is to prioritize claims that on closely tied to the Debtor's financial operations.

Objection p. 4.

15. The Court, however, cannot expand this section contrary to the express language of Section 507(a)(4)(B) to include Ms. Drapchak's claim. *See In re Klaas*, 858 F.3d 820, 828 (3d Cir. 2017) ("We begin with the plain language of the statute, and if its meaning is plain, we "make no further inquiry unless the literal application of the statute will end in a result that conflicts with Congress's intentions.") (quotations omitted)). The plain language of Section 507(a)(4)(B) could not be clearer—it only applies to claims for sales commissions. Ms. Drapchak has not advanced any explanation as to how Section 507(a)(4)(B) conflicts with Congress's intentions. Accordingly, this Court should rule that Ms. Drapchak is not entitled to a priority claim under Bankruptcy Code Section 507(a)(4)(B).

CONCLUSION

WHEREFORE, the Liquidating Trustee respectfully requests that this Court enter an order denying the Motion and granting to the Liquidating Trust such other relief as the Court deems just and proper.

Date: October 4, 2024
Wilmington, DE

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Capacity as Liquidating Trustee for the Tricida
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