UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re	)	Case No. 03-02804
	)	Chapter 11
PUMEHANA PARTNERS, a Hawaii general partnership,	)	
	)	Re: Docket No. 258
Debtor.	)	
	)	

MEMORANDUM DECISION REGARDING OBJECTION TO PROOF OF CLAIM NO. 3 OF MCCULLY ASSOCIATES

This decision concerns a dispute between two partnerships, Pumehana Partners ("Pumehana") and McCully Associates ("McCully"), which are owned by the same people. Pumehana and McCully each own various parcels of real estate which are leased to commercial and residential tenants. For many years, McCully provided property management services to Pumehana. McCully never requested and Pumehana never made any payment to McCully for these services. Pumehana is now in bankruptcy and McCully is under state court receivership. The receiver filed proof of claim no. 3 which consists of several separate claims. The portion of the claim at issue here involves fees of $268,273.79 claimed for management services rendered by McCully to Pumehana during the period 1987 to October 2002.

Background

On September 22, 2003, general partners Alexander Marn and Eric Marn filed an involuntary chapter 11 petition against Pumehana. The court ordered the appointment of a chapter 11 trustee on January 9, 2004. On March 8, 2004, Pumehana, through its general partner Eric Marn, filed an objection to McCully's claim. An evidentiary hearing was held on November 1-3, 2004. The parties agree that there was no express agreement for payment. I requested both parties to file supplemental memorandums on the limited issue of whether McCully has a right to payment for the property management services provided under an "implied contract" type theory.

After reviewing the supplemental briefs submitted by both parties, I conclude that McCully does not have a right to payment under an "implied contract" type theory. The management fee portion of the claim is hereby disallowed and the objection with respect to that portion of claim no. 3 is sustained.

Discussion

There is no dispute that McCully in fact provided all of the management and administrative services which Pumehana required. There is also no dispute that Pumehana was aware that McCully provided the services. What is in dispute is whether it would be unjust to allow Pumehana to retain the benefit conferred by

McCully without requiring payment. Because there was no written or oral agreement regarding payment of services, a quasi-contract claim must prevail in order for payment to be warranted.

Quantum meruit, quasi-contract, and implied-in-law contract are equivalent terms for an equitable remedy. 26 Williston on Contracts § 68:1 (4th ed. 2004). The terms are used to characterize claims for the redress of unjust enrichment and enable a party to seek enforcement of a claim and recover for a benefit conferred in the absence of an express contract. A critical component of a quasi-contract claim is the claimant's expectation of compensation. See Welsh v. Woods, 386 P.2d 886, 887 (Haw. 1963). Courts have generally allowed quasi-contractual recovery for services rendered when one party confers a benefit on another with a reasonable expectation of payment. Id. Thus, an obligation to pay, ordinarily, will not be implied in fact or by law if it is clear that there was indeed no expectation of payment, that a gratuity was intended to be conferred, that the benefit was conferred officiously, or that the question of payment was left to the unfettered discretion of the recipient. Osborn v. Boeing Airplane Co., 309 F.2d 99, 102 (9th Cir. 1962).

To establish a quasi-contract, the plaintiff must prove all three of the following: that (1) a benefit was conferred, (2) the recipient was aware that a

benefit was received and; (3) under the circumstances, it would be unjust to allow retention of the benefit without requiring the recipient to pay for it. See 3 Corbin, Contracts § 561 (1963 and Supp. 1992). "Injustice," the third prong, requires that one of the following be true: (1) the plaintiff had a reasonable expectation of payment; (2) the defendant should reasonably have expected to pay; or (3) society's reasonable expectations of security of person and property would be defeated by nonpayment. See 1 Corbin, Contracts 19A (Supp. 1992).

The evidence shows that over a long course of dealing, McCully provided management services to Pumehana and never requested or received any payment for the services. Eric Marn, a partner of both Pumehana and McCully, testified that the limited partners of McCully voted that McCully would not require Pumehana to pay a management fee. There is no evidence that McCully expected to receive compensation at the time it rendered the services.

Similarly, there is no evidence that Pumehana reasonably should have expected to pay for these services. To the contrary, the evidence shows that both McCully and Pumehana intended that Pumehana would not pay for McCully's services because the owners of McCully and Pumehana were the same, there was no business reason to have McCully charge Pumehana fees, and general excise taxes would have been payable on the fees.

McCully's receiver points to a statement by Alex Marn, another partner of both McCully and Pumehana, that there was no agreement between the parties that McCully would manage Pumehana's properties for free. The absence of an agreement for free services does not logically imply that payment was required.

McCully's receiver asserts that the creditors of McCully were prejudiced by Pumehana's failure to pay for McCully's services because money which could have and should have been used to pay McCully's debts was kept out of McCully's hands. The receiver argues that in order to avoid unjust enrichment of Pumehana's creditors, Pumehana must compensate McCully for the management services. This argument boils down to the "Robin Hood" principle of justice - that one should take from the rich and give to the poor. This argument has at least two fatal flaws. First, our legal system has never adopted the Robin Hood rule. Second, Pumehana has creditors too, and there is no reason to believe that Pumehana's creditors are richer or somehow less deserving of payment than McCully's creditors.

Conclusion

McCully Associates had no expectation of payment for the management services it provided to Pumehana Partners and therefore cannot recover under a theory of implied contract, quasi-contract, or quantum meruit. The objection to

claim no. 3 is sustained with respect to the portion for property management fees. A scheduling conference shall be held on February 4, 2005, at 2:00 o'clock p.m. to consider the remaining issues presented by the objection.

DATED: Honolulu, Hawaii, January 10, 2005.

/s/ Robert J. Faris
United States Bankruptcy Judge