



3. On August 11, 2008, Smyrna Rebar, Inc. (“Smyrna”) filed a proof of claim with the Court. See Claims Register, Claim No. 29 (the “Claim”). The Claim asserts a non-priority general unsecured claim in the amount of \$10,000,000 for an alleged breach of contract. On July 10, 2008, Smyrna filed a motion for relief from the automatic stay to proceed with its appeal of a judgment that the Superior Court entered in favor of the Debtor in the amount of approximately \$5.8 million for Smyrna’s breach of contract, plus interest accruing from April 17, 1999. On July 15, 2008, the Court granted the relief requested.

4. On July 13, 2009, the Debtor filed the Objection. The Debtor objects to the Claim because (a) the Claim is contingent and unlikely; (b) the Claim asserts an amount not due to Smyrna; and (c) the Claim fails to provide documentation sufficient to support the Claim.

5. On August 10, 2009, Smyrna filed *Smyrna Reebars’s [sic] Opposition to Debtor’s Objection to Proof of Claim No. 29 Filed by Smyrna Rebar, Inc.*

6. After a hearing conducted on August 19, 2009, the Court entered the Order, which provides, in relevant part, as follows:

The August 19, 2009 hearing on the Debtor’s objection to Claim No. 29 of Smyrna Rebar, Inc. [Docket No. 1032] is continued generally pending a decision by the Massachusetts Appeals Court on the prepetition judgment that the Debtor has against Smyrna Rebar, Inc. in the case docketed as Appellate Docket 2008-p-0059. Within thirty (30) days after the entry of such a decision, the Debtor shall request a hearing date with this Court regarding the objection to Claim No. 29 of Smyrna Rebar, Inc.

Order, ¶ 3.

7. On September 11, 2009, the Massachusetts Appeals Court (the “Appeals Court”) entered its decision on Smyrna’s appeal. See *Smyrna Rebar, Inc. v. Modern Continental Constr. Co., Inc.*, 2009 WL 2901186 (Mass. App. Ct. Sept. 11, 2009) (unpublished disposition) (a copy of the Appeals Court’s decision is attached as Exhibit A). The Appeals Court ruled in favor of

the Debtor in all respects, specifically affirming the judgments below. Smyrna Rebar, 2009 WL 2901186 at \*8.

8. The Appeals Court also found that numerous contentions set forth in Smyrna's appeal fell "below the standard of appellate argument," and awarded appellate fees and costs to the Debtor, stating that:

After much work, we conclude that in large part Smyrna has pursued an appeal merely for the sake of an appeal. As a result of these various unsupported contentions and their infliction of unnecessary substantial work upon the opposing party and the court, we determine that the sanction of attorney's fees for a frivolous appeal, as authorized by Mass.R.A.P. 25, as amended 378 Mass. 925 (1979), is applicable.

Id.

9. Based upon the foregoing, the Debtor respectfully requests that this Court schedule a hearing on the Objection for a date and time that is convenient to this Court's calendar.

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**WHEREFORE**, the Debtor respectfully requests that this Court enter an Order: (a) granting the motion; (b) scheduling a hearing on the Objection to a date and time that is convenient to the Court's calendar; and (c) granting to the Debtor such other and further relief as the Court deems just and proper in the circumstances.

Respectfully submitted,

MODERN CONTINENTAL  
CONSTRUCTION CO., INC.,

By its attorneys,

Dated: September 17, 2009

/s/ Christian J. Urbano  
Harold B. Murphy (BBO #326610)  
D. Ethan Jeffery (BBO #631941)  
Christian J. Urbano (BBO #644471)  
HANIFY & KING, PROFESSIONAL CORPORATION  
One Beacon Street, 21st Floor  
Boston, MA 02108  
Tel: (617) 423-0400  
Fax: (617) 556-8985  
Email: [cju@hanify.com](mailto:cju@hanify.com)