

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
(Eastern Division)

In Re:)	
)	
MODERN CONTINENTAL)	Chapter 11
CONSTRUCTION CO., INC.,)	Case No. 08-14558 (WCH)
)	
Debtor.)	

SCHEDULE F CREDITOR MOTION TO APPROVE SETOFF OF \$9, 693.03

Now comes Schedule F Creditor Smyrna Rebar Co. Inc. (hereinafter "Smyrna") and hereby requests this Honorable Court allow the amount of \$9, 693.03, the amount Modern Stipulates it owes Smyrna on its schedule F be set off against the amount of \$11, 737.36 the amount Smyrna stipulates it owes Modern. As reasons therefore, Smyrna states the following.

For over ten years of protracted litigation in the State Courts of the Commonwealth of Massachusetts, and as recently as February of 2009, Modern's trial counsel has argued Smyrna is owed nothing. Modern admits now in its Bankruptcy petition that it owes Smyrna money. (See relevant portion of Schedule F EX A appended hereto)

Smyrna sought leave of this court for relief from stay to pursue its appeal of what Smyrna considers an erroneous state court ruling after Modern's trial counsel in the state matter filed a suggestion of bankruptcy in the Massachusetts Appeals Court. The Honorable Hillman, J. allowed the motion for relief from stay as well as Smyrna's

Motion for a 2004 examination. Smyrna also has a claim for \$10,000,000.00 that it does not waive as a result of filing this motion.

WHEREFORE, because:

1. Modern indicates in its petition it owes Smyrna \$ 9, 693.03;
2. Smyrna admits it owes Modern \$11, 737.36 pursuant to NOCV2003-01218;
3. The setoff of \$9, 693.03 does not prejudice any other creditors;
4. It is an expedient way of dealing with some of the minor debt listed by Modern's Counsel.

Smyrna Requests this Honorable Court allow this motion in the amount \$9, 693.03. This amount shall be credited to Debtor for the purposes of satisfying the debt, or any portion thereof, owed to Modern by Smyrna as referenced in the Norfolk Superior Court Docket NOCV2003-01218. In the alternative, if Modern now disputes the amount listed in its schedule F of \$9, 693.03 as inaccurate, Smyrna Requests that the court schedule an evidentiary hearing on Smyrna's proof of claim.

Respectfully Submitted,
Smyrna Rebar Co., Inc.
By its attorney,

/s/ Thomas A. Dougherty

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Date: 4/24/09

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
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In Re:)
)
MODERN CONTINENTAL) Chapter 11
CONSTRUCTION CO., INC.,) Case No. 08-14558 (WCH)
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Debtor.)

PROPOSED ORDER ON
SCHEDULE F CREDITOR MOTION TO APPROVE SETOFF OF \$9, 693.03

After hearing it is hereby ORDERED as follows:

1. Debtor has listed Smyrna Rebar Co. Inc. as a creditor in the amount of \$9, 693.03;
2. Creditor Smyrna Rebar stipulates that it owes Debtor pursuant to Norfolk Superior Court Docket NOCV2003-01218 \$11, 737.36.;
3. The allowing of the setoff would not prejudice any other creditor and benefits the bankrupt's estate;
4. The amount of \$9, 693.03 is to be credited against the debt Smyrna owes to the Bankrupt Modern as referenced in Norfolk Superior Court Docket NOCV2003-01218;
5. Smyrna's proof of claim is not waived and an evidentiary hearing is to be held on _____;

Hillman, J.

Date:

EXA

B6F (Official Form 6F) (12/07) - Cont.

In re Modern Continental Construction Co., Inc. Case No. 08-14558
 Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
 (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O M M U N I T Y	Husband, Wife, Joint, or Community			C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H	W	J C				
Account No. 50497 Smyrna Rebar, Inc. 186 Lincoln Street Boston, MA 02111		-			X	X	X	9,693.03
Account No. 50498 Soep Painting Corp 263 Commercial St Malden, MA 02148		-				X		1,277.50
Account No. Son Le Scaccia c/o Paul Meyer, Jr., Esq. 35 East Grassy Sprain Road Yonkers, NY 10710		-			X	X	X	Unknown
Account No. 58578 SOUTH SHORE REBAR P.O. BOX 410 COHASSET, MA 02025		-				X		4,028.00
Account No. 56655 SPRINT/NEXTEL P O BOX 541023 LOS ANGELES, CA 90054		-				X		4,741.99
							Subtotal (Total of this page)	19,740.52

Sheet no. 42 of 51 sheets attached to Schedule of
 Creditors Holding Unsecured Nonpriority Claims

CERTIFICATE OF SERVICE

I, Thomas A. Dougherty certify that a copy of this motion was served via first class mail on all of the interested parties not served electronically as attached to this certificate this date 4/24/2009

/s/ Thomas A. Dougherty

Thomas A. Dougherty

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c/o Michael J. Donato
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California
Agoura Hills, 91301

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Travelers
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