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ATTORNEYS FOR ORIGIN BANK

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
THE LASALLE GROUP, INC., *et al.*[1],	§	Case No. 19-31484-sgj11
	§	
Debtors.	§	Jointly Administered
	§	

OBJECTION BY ORIGIN BANK TO MOTION FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSES PURSUANT TO 11 USC § 503(b)(1) FILED BY TLG FAMILY MANAGEMENT, LLC

TO THE HONORABLE STACEY G.C. JERNIGAN, UNITED STATES BANKRUPTCY JUDGE:

COMES NOW Origin Bank ("Bank") and files this Objection to the *Motion for Allowance and Payment of Administrative Expenses Pursuant to 11 USC § 503(b)(1)* [Docket No. 304] ("Motion") filed by TLG Family Management, LLC ("TLGFM").

I. Initial Statement

1. The Debtor, The LaSalle Group, Inc. ("LaSalle"), commenced this bankruptcy case, along with four (4) affiliated companies on May 2, 2019. The affiliated companies are referred to as the "RealCos" in the Motion (*See* Motion at fn 1).

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: The LaSalle Group, Inc. (0143); West Houston Memory Care, LLC (2760); Cinco Ranch Memory Care, LLC (2716); Pearland Memory Care, LLC (5311); and Riverstone Memory Care, LLC (5407). The Debtors' mailing address is 545 E. John Carpenter Freeway, Suite 500, Irving, Texas 75062.

2. LaSalle has no income and no business operations. LaSalle's assets largely consist of small equity interests in a number of entities which own memory care facilities, as well as debts owing to LaSalle from some of these entities. These facilities - referred to in the Motion as "OpCos" - are generally managed by TLGFM on a fee basis, and they own and operate memory care facilities (*See* Motion at fn 2).

3. The four (4) "RealCos" are the affiliated debtors which also own and operate memory care facilities. The RealCos are debtors in the following cases which are administratively consolidated with the LaSalle bankruptcy case:

Debtor	**Case No.**
West Houston Memory Care, LLC	19-31484
Cinco Ranch Memory Care, LLC	19-31485
Pearland Memory Care, LLC	19-31488
Riverstone Memory Care, LLC	19-31493

4. Each of the RealCos owns a memory care facility. LaSalle has filed a *Motion* [Docket No. 244] to approve a sale process relating to the real estate owned by three (3) of the above RealCos (West Houston, Cinco Ranch and Pearland) with Cushman & Wakefield acting as the broker. An *Order* [Docket No. 270] was entered granting the sale motion. Unfortunately, to date, this sale process has not yielded any qualified bids. It appears unlikely that there is any equity in any of the facilities owned by the RealCos or that LaSalle's equity interests in the RealCos have any value.

5. As noted above, LaSalle's chief assets consist of small equity interests in the OpCos and debts owed to LaSalle by some of the OpCos. These equity interests and intercompany debts are subject to a perfected security interest in favor of Origin securing a debt of approximately $16 million.

6. The Movant, TLGFM, is a related entity 100% owned by Mitch Warren. As suggested by its name, TLGFM is an entity used by the Warren family to manage the affiliated OpCos on a fee basis. Although there is no management contract between LaSalle and TLGFM, LaSalle's SOFA reflects that TLGFM and Mitch Warren received a number of prepetition transfers from LaSalle that potentially constitute either fraudulent or preferential transfers totaling many hundreds of thousands of dollars.

7. LaSalle will not be able to reorganize as it has no income or business activities. The LaSalle bankruptcy case will be resolved, likely in the near future, by either conversion to a Chapter 7 liquidation or dismissal. Any potential allowance of the TLGFM's Motion would be premature until the LaSalle estate is able to assert the avoidance claims as offsets.

8. Moreover, as reflected on the face of the Motion, TLGFM's contracts to provide accounting and management services are with the various OpCos. The accounting services in question were provided to and for the benefit of the OpCos and not to or for the benefit of LaSalle. LaSalle has an appointed CRO who prepares LaSalle's Monthly Operating Reports. With no income or operations, and an appointed CRO, it is unclear exactly what services TLGFM performs for LaSalle.

9. The Motion seeks to recover "extra-contractual accounting costs attributable to the LaSalle Group, Inc.," including both direct and indirect costs. From the face of the Motion, the indirect "extra-contractual" accounting costs all appear to be attributable to the OpCos and not LaSalle. For example, the majority of the extra-contractual accounting work deals with the preparation and analysis of 13-week cash flow statements. Since LaSalle has no cash flow, this is clearly an exercise undertaken for the benefit of one or more of the OpCos and not LaSalle.

II. <u>Avoidable Transfers to TLGFM and Mitch Warren</u>

10. Prior to the filing of the bankruptcy case by LaSalle, LaSalle was owned and controlled by Mitch Warren. Except for a small managing member interest held by LaSalle, TLGFM was originally owned by Mr. Warren and his father, Melvin Warren. As of the petition

date, TLGFM was 100% owned by Mr. Warren. As reflected below, LaSalle's *Statement of Financial Affairs* ("SOFA") [Docket No. 109] reflects multiple transfers by LaSalle to Mr. Warren and TLGFM during the year preceding bankruptcy.

11. LaSalle's SOFA in items 4.1751 through 4.1767 reflect over a million dollars in transfers from LaSalle to TLGFM during the year preceding the filing of LaSalle's bankruptcy case as follows:

SOFA Item	**Date**	**Amount ($)**
4.1751	05/01/2019	314,000
4.1752	04/30/2019	60,000
4.1753	04/23/2019	1,000
4.1754	04/02/2019	10,000
4.1755	01/31/2019	40,000
4.1756	01/28/2019	50,000
4.1757	12/27/2018	104,000
4.1758	12/03/2018	7,000
4.1759	10/17/2018	55,000
4.1760	10/09/2018	110,000
4.1761	10/05/2018	43,000
4.1762	10/03/2018	90,000
4.1763	09/25/2018	11,000
4.1764	09/17/2018	130,000
4.1765	08/30/2018	10,000
4.1766	07/18/2018	70,000
4.1767	06/28/2018	15,000
	Total	**$1,120,000**

Each of these are described as "Intercompany Loans".

12. LaSalle's SOFA also reflects a number of transfers to Mitch Warren shortly before the bankruptcy case was filed. The chart below reflects transfers made by LaSalle to Mr. Warren within one year of the petition date:

Transfer Date	Description	Amount ($)
04/24/2019	Distribution	100,000
04/02/2019	Distribution	62,500
03/14/2019	Distribution	25,000
02/26/2019	Shareholder Loan	50,000
02/13/2019	Shareholder Loan	5,000
01/08/2019	Shareholder Loan	5,000
12/31/2018	Shareholder Loan	10,000
06/13/2018	Distribution	10,000
06/04/2018	Distribution	10,000
	Total	**$277,500**

As reflected above, these transfers are reflected as either equity distributions or shareholder loans to Mr. Warren.

13. Of equal significance, LaSalle owned a 5% managing member interest in TLGFM. This gave LaSalle control over TLGFM which, as its name implies, was a management vehicle to allow the members of the Warren family to manage the affiliated properties for substantial management and accounting fees. LaSalle's SOFA reflects in item 4.1081 that LaSalle assigned its 5% managing member interest to Mitch Warren on April 1, 2019. The alleged consideration for this was a credit by Mr. Warren of approximately $178,000 against a debt allegedly owed to him by LaSalle. This transfer is highly significant as it divested LaSalle

of control over the entity (TLGFM) which managed the related OpCos and RealCos and vested this control in Mr. Warren. Under the control of Mr. Warren, TLGFM is only able to assert the Motion based on the transfer of the managing member interest from LaSalle to Mr. Warren which gave him control over TLGFM.

14. In a disturbing pattern of pre-petition conduct, Mr. Warren distributed $187,500 to himself from LaSalle, and also transferred to himself the managing member interest in TLGFM, both after he had retained bankruptcy counsel for LaSalle. At his deposition, Mr. Warren testified that he had retained the law firm of Haynes & Boone on March 12, 2019 to address the feasibility of a bankruptcy filing on behalf of LaSalle and related entities. Consequently, at the time the managing member interest in TLGFM was transferred to Mr. Warren, LaSalle had already engaged bankruptcy counsel in contemplation of a bankruptcy filing by LaSalle. Likewise, Mr. Warren also distributed to himself $187,500 from LaSalle after retaining bankruptcy counsel for LaSalle.

15. Based on the above, LaSalle has substantial potential claims against both TLGFM and Mr. Warren, individually, to recover potentially fraudulent or preferential transfers. Indeed, under the circumstances, Mr. Warren should clearly return to LaSalle the $187,500 in equity distributions he paid to himself after retaining bankruptcy counsel.

16. In addition, the managing member interest in TLGFM, which gives Mr. Warren control over TLGFM, was fraudulent or preferentially transferred from LaSalle to Mr. Warren after bankruptcy counsel was retained.

III. TLGFM's Contracts for Accounting Services

17. The Motion is supported by the *Declaration of Erica Bramer* [Docket No. 305] ("Bramer Declaration"), the interim chief financial officer of TLGFM. According to both the Motion and the Bramer Declaration, TLGFM has both marketing and accounting services agreements and management agreements with each of the RealCos' Debtors: Cinco Ranch, West Houston, Pearland and Riverstone. These agreements provide for TLGFM to be paid,

from the RealCos' Debtors, a 2% accounting fee and a 5% management fee. These are straight fees calculated based upon gross revenues of the facility.

18. TLGFM is believed to have similar accounting services and management agreements with the various OpCos also based on the same 2% and 5% accounting and management fees.

19. Neither the Motion nor the Bramer Declaration reflects that LaSalle is party to any contract with TLGFM. Consistent with this, Schedule G in LaSalle's bankruptcy schedules does not reflect any contract between LaSalle and TLGFM. Consequently, there is no basis for TLGFM to assert a claim against LaSalle based upon these contracts with the RealCos or the OpCos. Whatever accounting services were provided by TLGFM were provided to the OpCos or RealCos pursuant to agreements between them and TLGFM.

IV. LaSalle Has No Income or Business Operations

20. According to Mr. Warren's testimony, all of the personnel of the OpCos and the RealCos' Debtors are employees of LaSalle. TLGFM allegedly provides the money to LaSalle for the payment of the salaries of these employees. The latest *Monthly Operating Report* ("MOR") [Docket No. 275] for the period ending June 30, 2019 reflects that Mr. Warren is paid a monthly salary of $43,750 per month or $525,000 per annum from TLGFM through the accounting and management fees charged to the various OpCos.

21. However, LaSalle itself has no income and no business operations and no potential to reorganize. There has been no significant "restructuring" effort at the LaSalle level as all operations and income are generated by the OpCos and the RealCos. Whatever "orderly liquidation or restructuring" TLGFM contemplates as to LaSalle, this will take place at the OpCo/RealCo level where TLGFM has fixed fee contracts with each individual facility. LaSalle's interests in the OpCos is limited to small equity interests and debts owed to LaSalle by some of the OpCos. LaSalle has no responsibility to pay TLGFM's "extra-contractual" accounting or management fees as either an equity owner of or creditor in the various OpCos. Whatever

indirect benefit this may provide to LaSalle will not support the allowance of an administrative claim.

V. The Request for an Administrative Claim Against LaSalle

22. TLGFM asserts an administrative claim against LaSalle in the amount of $86,111 for "extra-contractual accounting costs." This tacitly confirms that TLGFM has no contract with LaSalle. Indeed, in numerous places in the Motion, TLGFM admits that the services it provides are to the OpCos/RealCos based on a 5% management fee and a 2% accounting fee, both calculated based on the facility's gross revenue (Motion, paras. 1, 10, 15, 16 and 22). Consequently, TLGFM's contracts are with, and the accounting services at issue were provided to, the OpCos and the RealCos, not LaSalle. TLGFM agreed to provide accounting services for a monthly fee equal to 2% of the gross receipts of each facility. The contracts themselves provide no basis for TLGFM to assert any type of "extra-contractual fee" against anyone, much less someone (like LaSalle) which is not a party to the contract.

23. Indeed, it is unclear exactly what extra-contractual services and benefits were being provided by TLGFM to LaSalle. Karen Nicolaou has acted as the CRO of the Debtor since the petition date. The Debtors have filed an *Application for Entry of an Order (I) Authorizing the Retention and Employment of Harney Management Partners, LLC as Financial Advisor and (II) Designating Karen G. Nicolaou as Chief Restructuring Officer for the Debtors Effective Nunc Pro Tunc to the Petition Date* [Docket No. 116]. As reflected in this application, the scope of the services provided by Ms. Nicolaou to the Debtors, as the CRO, are broad and are described in paragraph 14 of the application. As CRO, Ms. Nicolaou in effect acts as the management of LaSalle.

24. In view of the role of Ms. Nicolaou as CRO of LaSalle, it is unclear what role remains to be played, or should be played, by TLGFM in relation to an entity which has no income and no business operation. Indeed, LaSalle's monthly operating reports (MORs) each reflect Ms. Nicolaou as both the responsible party and as the preparer of the MORs in her

capacity of the CRO. The monthly operating reports for the four (4) RealCos likewise reflect Ms. Nicolaou as both the responsible party and the preparer of the MOR, in her capacity as CRO.

25. The $86,111 administrative claim for extra-contractual costs asserted by TLGFM against LaSalle consists of two (2) increments. The first is described as “TLGFM extra contractual costs attributable to LaSalle Group, Inc.” and totals $30,870.88. In support of this, TLGFM attaches a chart which asserts that a portion of the cost of six (6) of TLGFM’s employees should be allocated on a percentage basis to LaSalle. There are several problems with this claim. First, LaSalle has no contract to pay accounting costs to TLGFM or to reimburse TLGFM for the costs of these employees. Moreover, the Motion never explains what accounting services or benefits are being provided by TLGFM to an entity which has no income or business operations. Indeed, even the MORs filed on behalf of LaSalle and the four (4) PropCos were prepared by Ms. Nicolaou as the CRO.

26. Second, the specific accounting services or benefits which were allegedly provided to or for the benefit of LaSalle by these employees are not identified. All that is reflected is that the cost of these employees is allocated to LaSalle without any identification of the services allegedly provided to, or the benefit conferred upon, LaSalle. Moreover, it is impossible to ascertain whether the alleged accounting services were rendered to the benefit of LaSalle itself, or one of the RealCo Debtors, or one of the OpCos.

27. Third, there is no explanation as to how the allocation of employee costs to LaSalle was determined. For example, Sarah Brodbeck is alleged to devote 75% of her time to the “Communities” (a reference to the OpCos/RealCos) and 25% to the LaSalle bankruptcy. There is no explanation as to what these services were, how the allocation was derived, or the basis for allocating them to the LaSalle bankruptcy.

28. The second part of the allocation is $55,240 allegedly attributable to outsourced extra contractual accounting costs attributed to LaSalle. This is supported by two (2) pages of

time entries on behalf of several individuals and their reflected billing rates. The individuals are unidentified, along with their professional affiliations and how their billing rates are derived.

29. The extra-contractual accounting services for which TLGFM seeks recovery involves professional time entries by the following persons at the billing rates reflected below:

Professional	**Billing Rate**
Myles McComack	400
Varun Devulapalli	200
Erica Bramer	400
David Warnock	200

All four (4) persons were, at the time the services were provided, affiliated with the BVA Group's office in Dallas, Texas. BVA Group is a professional service firm providing valuation, accounting and other turn-around consulting services. Mr. McComack and Ms. Bramer are partners in the firm. Ms. Bramer acts as the interim chief financial officer for TLGFM and is the declarant in the Bramer Declaration.

30. If these individuals were contemplated to act as professionals providing professional services to or for the benefit of LaSalle, then these professionals should have been retained by LaSalle as estate professionals pursuant to the applicable provisions of the Bankruptcy Code. TLGFM cannot seek to allocate to LaSalle a portion of the fees incurred by it to its own professionals as an "extra-contractual expenses" without ever retaining such professionals through the LaSalle bankruptcy case.

31. However, a review of the services at issue demonstrates that they were provided to the OpCos and the RealCos, and not to LaSalle. This includes the following:

a. Approximately 42 of the 62 entries relate to 13-week cash flow projections or cash flow forecasts. LaSalle has no income or cash flow and consequently has no need of any such cash flow projections. Preparing such forecasts obviously makes sense as to the various OpCos and the RealCos. However, LaSalle has no need of such services;

b. There are eight (8) other entries that deal with cash forecasts and other entries for Stillwater properties. The Stillwater properties are a group of approximately seven (7) OpCos which are currently subject to a foreclosure proceeding by Stillwater Asset Group as the secured creditor. TLGFM is believed to be working with Stillwater to retain the management contracts on these properties. These entries clearly reflect accounting services provided at the OpCo/RealCo's level, and not to LaSalle. Moreover, LaSalle's small equity interests in the Stillwater properties have no value; and

c. A number of the time entries refer to responding to requests relating to the Houston RealCo facilities, something which likewise does not involve accounting services at the LaSalle level. Likewise, LaSalle's small equity interests in the three (3) Houston properties have no value.

32. These time entries confirm that the accounting services in question were performed in relation to the operating OpCos and RealCos, and not at the LaSalle level. As to each of the OpCos and RealCos, TLGFM has an obligation to provide both management and accounting services for a flat fee equal to 7% of the gross revenue of each facility. The Motion never explains by what mechanism TLGFM is able to charge these accounting services to LaSalle on an "extra-contractual" basis.

33. LaSalle is a small equity owner in some of the OpCos and a creditor of some of the other Opcos. The potential indirect benefit to LaSalle as the owner of small equity interest or as a creditor of an OpCo is not sufficient to support the award of an administrative expense claim against LaSalle. Accordingly, accounting services provided by TLGFM to the OpCos pursuant to contracts with the OpCos does not translate into an allowed administrative claim against LaSalle based on some potential indirect benefit to LaSalle.

34. Indeed, the issue of whether there is even an indirect benefit to LaSalle must be

addressed on a property-by-property/Opco-by-Opco basis. For example, LaSalle's equity interests in the seven (7) Stillwater properties has no value. Likewise, LaSalle's equity interests in the four (4) RealCos has no value. The Motion never explains how accounting services provided in relation to these entities, where LaSalle is out of the money, provides any benefit to LaSalle.

35. The Motion fails to demonstrate any direct, quantifiable benefit to LaSalle and, as a consequence, fails to state a basis for an administrative claim.

VI. Offset of Avoidable Transfers

36. TLGFM received over a million dollars in potentially avoidable transfers from LaSalle during the year preceding the petition date. No administrative claim should be allowed to TLGFM until these claims have been analyzed and investigated by a disinterested third-party.

37. Mr. Warren owns 100% of TLGFM and exercises control over TLGFM. He who seeks equity must do equity. If Mr. Warren desires for the Court to grant his company (TLGFM) an administrative claim, he should do the right thing and return to LaSalle the $187,500 in equity distributions he paid to himself from LaSalle after retaining bankruptcy counsel.

Prayer for Relief

WHEREFORE, Origin Bank respectfully requests that this Court enter an order denying the Motion and granting such other relief as is just and appropriate.

Dated: August 29, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically and was served upon all parties that are registered or otherwise entitled to receive electronic notice in this bankruptcy case via ECF electronic notice and via email upon the parties listed below on the 29th day of August 2019.

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