

The document below is hereby signed.

Signed: March 01, 2011.



S. Martin Teel, Jr.
S. Martin Teel, Jr.
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re)
)
FUSION CUISINE, INC.,) Case No. 10-00821
) (Chapter 11)
Debtor.) **Not for Publication in**
) **West's Bankruptcy Reporter**

MEMORANDUM DECISION AND ORDER RE
MOTION TO APPROVE SALE AND ITS PROVISION FOR PAYMENT OF
SECTION 506(c) PROCEEDS TO ONLY THE TRUSTEE'S FEES AND EXPENSES

The trustee has filed a motion to approve a sale of estate property to the landlords of the debtors' premises and for approval of a settlement of claims held by those landlords against the estate, including secured claims. The consideration the landlords are paying includes a \$30,000.00 "Cash Payment." The order approving the sale would direct that "\$30,000.00 of the Cash Payment represents a carveout pursuant to 11 U.S.C. § 506(c) and may be applied by the Trustee towards *his* fees and expenses." (Emphasis added.)

Some decisions hold that a § 506(c) surcharge recovery cannot properly be paid to an individual administrative creditor, but can only be recovered for the estate's benefit. See

Ungaretti & Harris LLP v. Steinberg (In re Resource Tech. Corp.), 356 B.R. 435, 444-45 (Bankr. N.D. Ill. 2006); see also *Ford Motor Credit Co. v. Reynolds & Reynolds Co. (In re JKJ Chevrolet, Inc.)*, 26 F.3d 481, 484 (4th Cir. 1994) (surcharge is payable to the estate, "as an unencumbered asset for distribution to the unsecured creditors . . . [p]ursuant to the distribution rules of § 726(a) [and] the priority rules of . . . § 507").

It is thus

ORDERED that the trustee show cause at the hearing tomorrow or beforehand why the court ought approve a provision for a carveout of § 506(c) only for the benefit of the trustee's fees and expenses (as opposed to the proceeds of the § 506(c) surcharge being available for payment of all chapter 7 administrative claims on a *pro rata* basis in accordance with the priority rules of § 507).

[Signed and dated above.]

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