



ORDERED in the Southern District of Florida on April 1, 2015.

A handwritten signature in black ink, appearing to read "Erik P. Kimball".

Erik P. Kimball, Judge
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

In re:

Case No. 14-29027-EPK

TRIGEANT HOLDINGS, LTD., et al.,

**(Jointly Administered)
Chapter 11**

Debtor.

**AMENDED ORDER ON AMENDED MOTION FOR ALLOWANCE OF
CLAIM FOR INTEREST, FEES, COSTS, AND EXPENSES**

THIS MATTER came before the Court for hearing on February 19, 2015 upon the *Amended Motion of BTB Refining, LLC Pursuant to 11 U.S.C. § 506(b) for Allowance of Claim for Interest, Fees, Costs, and Expenses* [ECF No. 332] (the “Motion”) filed by BTB Refining, LLC (“BTB”). BTB is a secured creditor in the above-captioned jointly administered cases. In the Motion, BTB seeks allowance of interest, fees, costs, and expenses pursuant to 11 U.S.C. § 506(b).

Trigeant Holdings, Ltd., Trigeant, LLC, and Trigeant, Ltd. (collectively, the “Debtors”) filed their *Debtors’ Response in Opposition to Amended Motion Of BTB Refining, LLC Pursuant to 11 U.S.C. § 506(b) for Allowance of Claim for Interest, Fees, Costs, and*

Expenses [ECF No. 367] (the “Response”), arguing that BTB’s claim should be disallowed on various grounds. At the hearing on February 19, 2015, the Court heard oral argument on the Motion and the Response. For the reasons stated below, the Court grants the Motion in part, allowing a claim pursuant to 11 U.S.C. § 506(b) in the amount of \$4,620,623.59.¹

FACTS

Debtor Trigeant, Ltd. owns and has in the past operated a petroleum products refinery located in Corpus Christi, Texas (the “Refinery”). The Refinery represents the bulk of the value of the Debtors’ estates. The Debtors are owned, directly and indirectly, by four related individuals. They are Harry Sargeant II, Dan Sargeant, James Sargeant, and Harry Sargeant III. In general, each of Harry Sargeant II, Dan Sargeant and Harry Sargeant III hold about 29% of the ultimate equity in the Debtors, and James Sargeant holds about 12% of the ultimate equity in the Debtors.

At one time, the Sargeant family harmoniously managed their various entities. Until relatively recently, Harry Sargeant, III managed the Trigeant entities in addition to individually owning and managing BTB and its affiliates. The history of the relationship between BTB and the Debtors has been described in various proceedings by this Court and others. *See, e.g., PDVSA Petroleo S.A. v. Trigeant, Ltd.*, 2012 WL 3249531, at *1-8 (S.D. Tex. 2012) (stating findings of fact and conclusions of law in Texas fraudulent transfer action); ECF No. 289, at 2-5 (sustaining objection to claim for post-judgment interest at contractual rate).

In 2002, Trigeant, Ltd. entered into a supply agreement for crude oil with PDVSA Petróleo (“PDVSA”). Trigeant, Ltd. defaulted on the agreement. In 2006 and 2008 PDVSA obtained arbitral awards against Trigeant, Ltd. Trigeant, Ltd. was unable to pay the 2006

¹ This Order is amended solely to award interest requested by BTB pursuant to 11 U.S.C. § 506(b), which request was not opposed by the Debtors.

award, and so in late 2006 obtained financing from American Capital Financial Services, Inc. (“AmCap”) to enable it to do so.

Under the terms of the AmCap loan agreement, AmCap loaned Trigeant, Ltd. \$22 million secured by a lien on substantially all of Trigeant Ltd.’s assets. The collateral package included a deed of trust on the Refinery as well as related personal property, and a pledge of the equity interests in Trigeant Ltd. itself. Clause 10.4 of the AmCap loan agreement provided AmCap and other participating lenders the right to reimbursement for legal fees and costs in connection with enforcement of the loan documents:

The Borrowers upon demand shall pay or reimburse the Agent and the Lenders for all fees and expenses incurred or payable by the Agent or the Lenders (including reasonable fees and expenses of counsel for the Agent and for the Lenders and charges for services performed for the Lenders by the Agent's auditors) arising in connection with the enforcement of this Agreement or the other Transaction Documents and obligations hereunder or thereunder; provided that, such reimbursement shall be limited to one counsel for the Lenders.

“Credit Agreement,” addendum to Claim 8-1 in Case No. 14-29027-EPK, at p. 59, clause 10.4.

In late 2007, Trigeant, Ltd. defaulted on the AmCap loan and AmCap moved to foreclose on the Refinery. Harry Sargeant, III formed BTB as an acquisition vehicle for the AmCap loan. On December 28, 2007, BTB purchased the AmCap loan at par value.

In the weeks immediately following BTB’s acquisition of the AmCap loan, in late 2007 and early 2008, Trigeant, Ltd. remained in default on the loan. At that time, Trigeant, Ltd. continued to arbitrate with PDVSA on the second of its claims for breach of contract relating to the crude oil purchase agreement.

Harry Sargeant, III, then managing the Trigeant entities and with knowledge of Trigeant Ltd.’s extensive liabilities, thereafter determined to remove Trigeant Ltd.’s most

valuable asset – the Refinery – to BTB. BTB cancelled AmCap’s scheduled foreclosure sale, but did not cure Trigeant, Ltd.’s default under the loan. Instead, BTB lent Trigeant, Ltd. additional funds under a new credit agreement to facilitate refurbishment of the Refinery. In connection with the new loans made by BTB, Trigeant Ltd. granted additional liens on its personal property. BTB then re-set the real property foreclosure sale for March 4, 2008.

During this period, BTB incurred obligations to the law firm of Cahill Gambino LLP in the amount of approximately \$50,000 for work in connection with the purchase of the AmCap loan and the extension of new credit to Trigeant, Ltd. *See* ECF No. 332, Exh. A. The Cahill Gambino LLP invoices filed at Exhibit A to the Motion also include some \$6,000 billed in 2010 in connection with certain litigation.

At the real property foreclosure sale in March 2008, BTB bought the Refinery with a credit bid of approximately \$22 million, the amount due under the AmCap loan. BTB did not provide notice to any creditors of the sale, did not employ a broker, and did not attempt to procure competing bids. About six months later, in September 2008, BTB foreclosed on Trigeant Ltd.’s personal property, this time credit bidding Trigeant, Ltd.’s liability under the 2008 credit agreement with BTB. BTB incurred obligations to the law firm of Fritz, Byrne, Head & Harrison, LLP in the amount of approximately \$7,500 in connection with the two foreclosures. ECF No. 332, Exh. B. The firm’s invoices do not distinguish between billings for the real and personal property foreclosure actions. The invoices also include some \$2,500 billed in 2010 for litigation work in 2009 and in 2011-12.

PDVSA challenged the March real property foreclosure sale as a fraudulent transfer intended to stymie PDVSA’s attempts to collect on Trigeant, Ltd.’s contractual debts. PDVSA sued Trigeant, Ltd., BTB, and Harry Sargeant, III in the United States District Court for the Southern District of Texas in Corpus Christi. Before the District Court (the Honorable Nelva Gonzales Ramos) issued its findings of fact and conclusions of law on

August 7, 2012, PDVSA had obtained a second arbitral award in the principal amount of \$40 million as well as a federal court judgment confirming that award.

The Texas District Court ruled, among other things, that the March 4, 2008 transfer of the Refinery via foreclosure sale was intentionally fraudulent as to PDVSA. In the January 2013 final judgment (the “Ramos Judgment”), Judge Ramos ordered that:

- the real property foreclosure sale was void,
- the AmCap loan was reinstated,
- “all interest, costs, attorney fees, or other amounts due to BTB Refining, LLC under the reinstated Documents are frozen as of March 4, 2008 and will not continue to accrue until such time as this Judgment becomes final and non-appealable or a final mandate issues from the last appellate court of record,” and
- during the appeal/mandate period, BTB could not foreclose on the Refinery, enforce its judgment or judgment lien on the Refinery, or transfer the AmCap loan documents.

See PDVSA Petroleo S.A. v. Trigeant, Ltd., No. 2:09-CV-00038, ECF No. 291 (S.D. Tex. 2013). Both BTB and PDVSA appealed the Ramos Judgment.

In connection with the District Court fraudulent transfer litigation, BTB incurred obligations to Jordan, Hyden, Womble, Culbreth & Holzer P.C. in the amount of \$106,107.32 and to Gardere Wynne Sewell LLP in the amount of \$3,307,014.54.² ECF No. 332, Exhs. C, D.

² The Motion and exhibits also document fees incurred to Levinger PC in the amount of \$40,542.83. At the hearing on February 19, 2015, BTB stated that this data was included in error and that it was not requesting allowance of such fees and expenses in the Motion.

By mid-2012, Harry Sargeant, III was no longer in control of the Trigeant entities. In late 2012, after Judge Ramos had issued her findings of fact and conclusions of law but prior to entry of the Ramos Judgment, BTB entered into a business arrangement with Freepoint Commodities Trading Marketing LLC (“Freepoint”) whereby BTB agreed to lease crude oil storage tanks at the Refinery to Freepoint. At the time, BTB and Freepoint contemplated a more comprehensive usage agreement. In light of the impending return of title to the Refinery to Trigeant Ltd., thereby potentially leaving BTB without the ability to comply with the Freepoint agreement, Trigeant Ltd. joined in the agreement between BTB and Freepoint. In addition, BTB and Trigeant Ltd. entered into a letter of intent stating their agreement to negotiate a more formal lease of the Refinery. Although a lease document was drafted and partly negotiated, no formal lease was ever executed by BTB and Trigeant Ltd.

In the ensuing months, relations between the Sargeant factions deteriorated and BTB, the Trigeant entities, and their various owners began litigating with one another in earnest. BTB sued Trigeant, Ltd. in Harris County, Texas for tortious interference with its business relationship with Freepoint (the “Harris County Action”). BTB alleged that Trigeant’s willful failure to formalize a lease agreement with BTB in violation of the letter of intent resulted in Freepoint abandoning its plans to utilize the Refinery in ways more profitable to BTB. The Harris County Action was stayed by Trigeant Ltd.’s first bankruptcy filing in December 2013, and later again by the present case. BTB incurred obligations to the law firm of Gardere Wynne Sewell LLP in the amount of \$122,246.75 in connection with the Harris County Action. ECF No. 332 Exh. D.

Unable to foreclose on the Refinery itself under the terms of the Ramos Judgment, Harry Sargeant, III opted to exercise BTB’s rights under the reinstated AmCap loan documents to foreclose on the pledge of all equity in Trigeant, Ltd. Thus, in July 2013, BTB

filed a declaratory judgment action in state court in Maryland in an attempt to obtain corporate control of Trigeant, Ltd. (the “Maryland Action”). The Maryland Action was stayed by the filing of an involuntary bankruptcy petition against BTB, and later again by the filing of the present case. BTB incurred obligations to the law firm of Gardere Wynne Sewell LLP in the amount of \$299,279.49 and to the law firm of Steptoe & Johnson LLP in the amount of \$122,294.78 in connection with the Maryland Action, for a total of \$421,574.27. ECF No. 332, Exhs. D, F.

In November, 2013, Trigeant, Ltd. filed its first bankruptcy petition in this Court. During that bankruptcy case, Trigeant, Ltd. made various attempts to challenge BTB’s rights under the AmCap loan, ultimately failing to obtain any lasting relief against BTB. The Court dismissed the case in April, 2014. BTB incurred obligations to the law firm of Gardere Wynne Sewell LLP in the amount of \$567,854.14 and to the law firm of Kozyak Tropin & Throckmorton, LLP in the amount of \$215,545.00 in connection with the first Trigeant bankruptcy, for a total of \$783,399.14. ECF No. 332, Exhs. D, G.

In June 2014, BTB reached a settlement with PDVSA on the parties’ appeal of the Ramos Judgment. In exchange for the mutual dismissal of appeals, BTB agreed to pay PDVSA’s legal fees and PDVSA gave BTB an option to purchase PDVSA’s claim in any subsequent Trigeant bankruptcy. As a result of the settlement, title to the Refinery was confirmed in Trigeant Ltd. without the specter of reversal of the Ramos Judgment. BTB incurred obligations to the law firm of Gardere Wynne Sewell LLP in the amounts of \$707,184.89 in connection with the appeal from the Ramos Judgment and \$327,309.50 in connection with the PDVSA settlement, and to the law firm of Curtis, Mallet-Provost, Colt & Mosle, LLP, counsel for PDVSA, in the amount of \$557,612.70 as part of BTB’s settlement obligation. ECF No. 332, Exhs. D, H.

In July, 2014, Daniel Sargeant, James Sargeant, and Harry Sargeant, II, via their entity Sargeant Trading, Ltd., commenced an involuntary bankruptcy case against BTB. The Court later found that one purpose of the involuntary petition was to prevent an adverse ruling in the Maryland Action. The Court also found that a primary goal of the BTB involuntary bankruptcy was to hinder BTB's prosecution of its claims in the present case. BTB challenged the involuntary petition and in December, 2014 the Court dismissed the case under 11 U.S.C. § 305. BTB incurred obligations to Kozyak Tropin & Throckmorton, LLP in the amount of \$271,630.00 in connection with the involuntary bankruptcy. ECF No. 332, Exh. G.

Meanwhile, in August, 2014, the Trigeant entities filed their own bankruptcies, which are now jointly administered as captioned above. At a hearing on September 23, 2014, counsel for Trigeant, Ltd. stated the Debtors' intention that BTB would receive no payment on its claims in this case because Trigeant, Ltd. allegedly possesses counterclaims against BTB that exceed the total amount of BTB's claims. BTB responded to this threat to its repayment and lien rights with an unsurprisingly aggressive bankruptcy strategy that included a successful challenge to the engagement of Trigeant's initial bankruptcy counsel, and a so far unsuccessful attempt at a competing plan of reorganization for Trigeant Ltd. Through the date of the Motion, BTB incurred obligations to the law firm of Gardere Wynne Sewell LLP in the amount of \$515,828.13 and to the law firm of Kozyak Tropin & Throckmorton, LLP in the amount of \$262,546.00 in connection with the current Trigeant bankruptcy, for a total of \$778,374.13. ECF No. 332, Exhs. D, G.

In the Motion, BTB stated that the Debtors owe BTB, as of February 11, 2015, the date the Motion was filed (i) \$22,565,193.55 in principal on the AmCap loan, (ii) \$2,365,646.05 in accrued interest, and (iii) \$7,641,233.40 in attorneys' fees and other costs. In their Response, the Debtors opposed the request for attorney fees and other costs on

various grounds addressed below. The Debtors did not object to BTB's assessment of interest either in the Response or at the hearing on February 19, 2015. The Debtors waived any objections to BTB's claim of interest under section 506(b).

ANALYSIS

Section 506(b)

Section 506(b) of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, states as follows:

To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose.

In plain language, a claim for attorney fees and costs under § 506(b) must satisfy three *prima facie* elements: (1) the claimant must possess an allowed, over-secured claim; (2) the claimant must have a contractual or statutory basis for its request for fees and costs; and (3) the requested fees and costs must be reasonable. *See In re Welzel*, 245 F.3d 1283, 1286 (11th Cir. 2001).

The first element of § 506(b) is a simple valuation question. In this case, the amount of BTB's claim under the AmCap loan is stated in its Proof of Claim 8-1 (the "Secured Claim") in the amount of \$26,467,607.14, secured by its interest in the Refinery among other assets.³ Under Trigeant, Ltd.'s plan of reorganization and related documents, the sale price for the Refinery is at least \$100 million. The over-secured status of BTB's Secured Claim is not contested.

³ BTB filed substantially identical claims in the related Trigeant bankruptcies. *See* Case No. 14-29030, Claim No. 4-2; Case No. 14-30727-EPK, Claim No. 13-2. The term "Secured Claim" in this order includes the related claims by reference.

The second element of § 506(b) is likewise a straightforward factual question. The AmCap loan agreement, filed as part of BTB's Secured Claim, contains Trigeant, Ltd.'s contractual obligation to reimburse BTB, as successor to AmCap, for legal fees and expenses incurred in enforcement of its rights. There is no dispute as to the existence or general enforceability of the agreement. The Court addresses below the Debtors' arguments relating to specific application of clause 10.4 of the AmCap loan agreement.

Regarding the third element, "[t]o determine whether an oversecured creditor's request for attorney fees under 11 U.S.C. § 506(b) is reasonable, bankruptcy courts employ the federal lodestar approach." *In re Sundale, Ltd.*, 483 B.R. 23, 29 (Bankr. S.D. Fla. 2012) (citing *In re Reorganized Lake Diamond Associates, LLC*, 367 B.R. 858, 875 Bankr. M.D. Fla. 2007)). Under the lodestar approach, the Court considers the number of hours billed and the hourly rates of the claimant's attorneys consistent with the guidance provided in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). The Debtors' objections to the reasonableness of the fees and costs requested are addressed below.

Fees and Costs "Incurred" or "Paid"

The Debtors argue that BTB is not entitled to a claim under § 506(b) because it has not directly paid counsel or directly incurred debts to counsel as required by clause 10.4 of the AmCap loan agreement. In support, the Debtors cite the evidentiary record of the trial in the BTB involuntary bankruptcy, during which a BTB executive testified that certain of the legal fees at issue here were invoiced to and paid by BTB affiliates. *See* ECF No. 367 at 5-6 (citing Case No. 14-26919-EPK, ECF Nos. 110-11, transcript of 12/1/2014 hearing). At the hearing on February 19, 2015, the parties implicitly conceded to the admissibility of evidence from the BTB involuntary bankruptcy trial. When taken as a whole, the evidence presented at that trial does not support the Debtors' argument. While certain of the invoices presently before the Court may have been initially directed to and paid by affiliates

of BTB, BTB remained liable to reimburse its affiliates for such expenditures. There is no dispute that the legal work in question was undertaken on behalf of BTB. BTB indirectly incurred the obligation to pay for that work. Neither the AmCap loan agreement nor the law require the subject fees and expenses be directly billed to or initially paid for by BTB. Accordingly, the Court gives no weight to the Debtors' argument.

Timeliness of the Motion

The Debtors argue that the Motion should be denied as untimely and prejudicial to the Debtors' efforts to confirm their plan of reorganization.

Regarding timeliness, the Debtors cite the fact that the Motion was filed after the claims bar date. While this is true, BTB's timely filed Secured Claim states both BTB's general intention to claim fees and costs pursuant to the terms of the AmCap loan agreement and its reservation of the right to assert all its claims against the Debtors, including all legal or equitable remedies to which it may be entitled. Furthermore, at the hearing on February 19, 2015, the Debtors did not dispute that BTB provided them with actual notice of its intent to file the Motion several months prior. Due process was served. The Motion was timely.

Regarding prejudice, the Debtors claim that the Motion violates the standard articulated by the United States Supreme Court in *Pioneer Inv. Servs. Co. v. Brunswick Associates Ltd. P'ship*, 507 U.S. 380 (1993). The *Pioneer* standard requires the Court to consider "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." To begin with, the *Pioneer* standard applies only when the action in question is tardily pursued. The request before the Court is not late. In any case, the Court finds that BTB acted in good faith and without unreasonable delay in bringing the Motion. In the first five

months of this case, before the Motion was filed, the Debtors and BTB brought before the Court a number of complex matters. Only recently was it reasonable to conclude that the case will proceed to confirmation on only the Debtors' plan, that BTB's claim will be over-secured, and that the amount of BTB's claim under § 506(b) may be material to the confirmation process. If BTB had filed the Motion earlier, the Court might have delayed hearing it until when it actually did. The timing of the Motion does not cause the Court to question BTB's good faith. There was no actual prejudice to the Debtors.

Satisfaction of Debt

The Debtors argue that BTB may not rely on the provisions of the AmCap loan agreement because BTB's foreclosure in 2008 fully satisfied the obligations of Trigeant, Ltd. and the agreement is no longer operative. This argument ignores the unambiguous language of the Ramos Judgment, which explicitly voided the foreclosure sale and reinstated all of the loan documents including the agreement at issue here. The Court gives no weight to this argument.

Ramos Judgment Freeze Period

The Debtors argue that all of the requested fees dating from the foreclosure in March, 2008 to the PDVSA settlement in June, 2014 may not be recovered by BTB pursuant to the terms of the Ramos Judgment. According to the Debtors, the Ramos Judgment "freezes" the effectiveness of clause 10.4 of the AmCap loan agreement, by providing that legal fees "will not continue to accrue until such time as this Judgment becomes final and non-appealable or a final mandate issues from the last appellate court of record." The Debtors argue that this provision is explicit, that the Ramos Judgment is final and now non-appealable, and that BTB thus cannot seek reimbursement of any fees and expenses incurred during the covered period.

The Court does not agree with the Debtors' interpretation of the "freeze" language in the Ramos Judgment. The Debtors ask the Court to view that provision in isolation, without taking into account the entirety of the Ramos Judgment. The Ramos Judgment was entered nearly half a year after Judge Ramos issued her findings of fact and conclusions of law, finding that Harry Sargeant, III, Trigeant, Ltd., and BTB were involved in actual fraud. In addition to voiding the foreclosure sale of the Refinery and reinstating the AmCap loan documents in the hands of BTB, in obvious contemplation of the inevitable appeal, the Ramos Judgment attempts to maintain the *status quo* among the parties as it relates to the loan documents and the Refinery during the period of that appeal. In that context, Judge Ramos enjoined BTB from seeking to charge Trigeant, Ltd. the cost of appealing the Ramos Judgment. The Ramos Judgment did not anticipate the ensuing change in control of Trigeant Ltd. and, more importantly, did not contemplate litigation among the defendants other than the expected appeal from the Ramos Judgment itself. When the other members of the Sargeant family removed Harry Sargeant, III from control of Trigeant, Ltd., they altered the very *status quo ante* that the Ramos Judgment aimed to preserve. This they were entitled to do. It would be absurd, however, to interpret the "freeze" language as extending to costs and expenses reimbursable under the AmCap loan agreement and incurred other than in the appeal obviously contemplated by the Ramos Judgment. To do so would provide a windfall to the Debtors, a result not in any way suggested by the Ramos Judgment. The Court interprets the "freeze" language in the Ramos Judgment as extending only to costs and expenses incurred in connection with the action then before the District Court and its appeal.

Scope of Contractual Provisions

The Debtors also attack the fees and expenses requested based on the legal actions at issue. The Debtors challenge both the contractual support in the AmCap loan agreement

for reimbursement of such fees and expenses and the reasonableness of the fees and costs requested in each instance. The Court addresses these concerns in approximate chronological order of the subject legal actions.

a. AmCap Loan Acquisition

The Court will deny the Motion as to fees and costs incurred by BTB in its acquisition of the AmCap loan. The attached invoice from Cahill/Wink LLP (now known as Cahill Gambino LLP) reflects that much of the claimed expenditure relates to BTB's decision to acquire the loan and negotiating the terms of acquisition. Subsequent expenses relate to the lending of additional funds to Trigeant, Ltd. under a separate credit agreement. A third portion dates to the firm's assistance in 2010 with the PDVSA litigation. The former two activities represent business activities of BTB unrelated to enforcement of its rights under the AmCap loan agreement. The latter is a litigation expense frozen by the Ramos Judgment. None of these fees and expenses will be allowed under § 506(b).

b. Real Property and Personal Property Foreclosures

The Court will deny the Motion as to the fees and costs incurred by BTB in foreclosing on Trigeant, Ltd.'s real and personal property. Judge Ramos ruled that the March, 2008 real property foreclosure constituted an intentional fraudulent transfer under Texas law. In doing so, Judge Ramos specifically found that Harry Sargeant, III was in control of both BTB and Trigeant Ltd. and that finding was a key element of the actual fraud ruling. The foreclosure was voided by the Ramos Judgment and that judgment is final and no longer appealable. It is not reasonable for BTB to now seek to recover fees and expenses in connection with a foreclosure that was found to be, incontrovertibly, an intentionally fraudulent act involving BTB and its principal insider. Reimbursement of such fees and expenses is covered neither by the AmCap loan agreement nor by § 506(b).

According to the uncontroverted statements of the parties, the September, 2008 foreclosure on Trigeant Ltd.'s personal property was effected via BTB's rights under a subsequent credit agreement between BTB and Trigeant, Ltd., not under the AmCap loan agreement. The subsequent credit agreement was not presented to the Court in connection with the Motion, nor does the Motion inform the Court of any relevant provision in that agreement. Absent a contractual basis for reimbursement of such fees and expenses, they may not be allowed under § 506(b).

c. Fraudulent Transfer Litigation and PDVSA Settlement

The Court will deny the Motion as to all fees and expenses relating to the fraudulent transfer litigation in the District Court and on appeal. As previously stated, the Ramos Judgment prohibits reimbursement of such fees and expenses. Even so, as with the foreclosure itself, it is not reasonable for BTB to seek reimbursement of fees and expenses in defending an action, at trial or in an unsuccessful appeal, in which BTB and its control person were found to have effected actual fraud. Such reimbursement is not supported by the AmCap loan agreement or by § 506(b). Likewise, fees and expenses incurred by BTB in connection with the settlement of the appeal with PDVSA are neither appropriate reimbursable expenses under the AmCap loan agreement nor reasonable within the meaning of § 506(b).

d. The Maryland Action

The Court will grant the Motion as to legal fees and expenses incurred in connection with the Maryland Action. BTB pursued the Maryland Action after entry of the Ramos Judgment. As a result of that judgment, the AmCap loan documents had been reinstated, Trigeant, Ltd. remained in default on the loan, and BTB possessed a facially valid, enforceable lien on the equity interest in Trigeant, Ltd. BTB's action to enforce the lien is

not barred by the Ramos Judgment and is a type of remedial action contemplated by the terms of the AmCap loan agreement.

The Court finds that the relevant fees and costs enumerated in the exhibits to the Motion are reasonable under the circumstances, representing a reasonable expenditure of time and based on reasonable hourly rates given the nature of the dispute and the high level of lawyering required by the task.⁴ Pursuant to § 506(b), BTB will have an allowed claim of \$421,574.27 representing legal fees and costs incurred.

e. The Harris County Action

The Court will deny the Motion as to fees and expenses incurred in connection with the Harris County Action. In that action, BTB sued on a tort claim unrelated to enforcement of its rights under the AmCap loan agreement. The requested fees and expenses are not covered by the relevant contractual provision and thus may not be allowed under § 506(b).

f. Trigeant and BTB Bankruptcies

The Court will grant the Motion as to fees and expenses incurred in connection with the first Trigeant bankruptcy, the BTB involuntary bankruptcy, and the current Trigeant bankruptcy case. In the first case, Trigeant, Ltd. directly challenged BTB's rights as lender and agent under the AmCap loan. All of BTB's legal fees and expenses in that case were incurred in connection with defense of its claim and lien rights. By pursuing the BTB involuntary case, those in control of the Debtors attempted to hamstring BTB's attempts to

⁴ In this Order, in each instance where the Court addresses the reasonableness of the fees and costs requested in the Motion and makes a finding consistent with the federal lodestar method, the Court has taken into account both the extreme litigiousness of the parties, including the Debtors and their control persons, and the sophistication of the lawyering presented in this Court and elsewhere. The magnitude of the fees and costs incurred by BTB is reasonable in light of the legal positions and litigation tactics undertaken by their opponents. Those opponents are controlled by the same persons as the Debtors, who lodge objections here.

enforce BTB's rights under the AmCap loan in a planned second Trigeant bankruptcy, the case now before the Court. All fees and expenses incurred by BTB in obtaining dismissal of the involuntary petition against it are appropriately charged as reasonable efforts to enforce its claim and lien rights against the Debtors. Finally, as Trigeant has repeatedly acknowledged, the present cases were filed with the explicit goal, among other things, of obtaining rulings that would prevent any recovery by BTB on its claims against the Debtors. All fees and expenses incurred by BTB in this case are likewise appropriately charged to Trigeant Ltd. under the AmCap loan agreement.

The Court finds that the fees and costs enumerated in the relevant exhibits to the Motion are reasonable under the circumstances. The Court specifically finds that the fees stated therein represent a reasonable amount of time expended for the necessary work and are based on hourly rates that are reasonable in light of the high level of lawyering required to protect BTB's interests. Pursuant to § 506(b), BTB will have an allowed claim of \$1,833,403.27 for legal fees and costs incurred, comprising \$783,399.14 for the first Trigeant bankruptcy, \$271,630.00 for the BTB involuntary bankruptcy, and \$778,374.13 for the present case through the date of the filing of the Motion.

The "One Counsel" Provision

The Debtors oppose the Motion on the grounds that clause 10.4 of the AmCap loan agreement provides that reimbursement rights are "limited to one counsel for the Lenders." The Debtors complain that BTB has retained multiple lawyers. This objection is unfounded for two reasons. First, in the context of this potentially syndicated loan, the reason for the quoted provision is to prevent each loan participant from retaining its own counsel at the borrower's expense, thereby multiplying the potential reimbursement obligation. Instead, clause 10.4 requires that all of the loan participants, defined as Lenders, retain one counsel to represent them all. But the quoted provision does not require that the Lenders retain

just a single lawyer, one person, or even that the same counsel be retained for all matters. BTB retained separate counsel for independent matters based on location and experience. Nothing in clause 10.4 prohibits this. Second, the limitation in clause 10.4 applies to the Lenders and not to the Agent for the AmCap lenders. BTB is both a Lender and the Agent under the AmCap loan agreement. Its right to reimbursement as Agent is not subject to the restriction.

Insufficiency of Gardere Wynne Invoices

The Debtors argue that the invoices provided by the firm of Gardere Wynne Sewell LLP, included at exhibit D to the Motion, are insufficient because they do not reflect the hourly rates of attorneys and do not indicate the party paying the invoices. While the invoices fail to include hourly rates, this does not preclude appropriate analysis by the Court. The invoices contain detailed summaries of the work performed by each person and include a summary of time billed. From this data the Court computes an average billing rate of, in general, between \$400 and \$600 an hour depending on the person performing the task. The Court finds this range of billing rates reasonable in light of the sophistication of the matters at issue and the high level of lawyering necessary to counter the Debtors and their affiliates.

The Court gives no weight to the Debtors' concerns that the invoices do not indicate the identity of the paying party, whether they were paid, or whether they were discounted. The invoices are addressed to BTB via its corporate executive. Whether these invoices were initially paid by an affiliate of BTB has no impact on the decision here as the evidence presented in this case and in the BTB involuntary bankruptcy trial, cited by the Debtors, supports the conclusion that the fees and expenses were incurred by and ultimately payable by BTB. There is no evidence that any of such fees or expenses were discounted below what is requested here.

CONCLUSION

For the reasons stated above, it is ORDERED AND ADJUDGED as follows:

1. The Motion [ECF No. 332] is GRANTED IN PART to the extent provided herein.
2. Pursuant to 11 U.S.C. § 506(b), as part of its Secured Claim, BTB is allowed a claim in the amount of \$4,620,623.59, representing \$2,365,646.05 in interest and \$2,254,977.54 in connection with costs and expenses reasonably incurred in enforcement of its rights as a secured lender, through the date of the Motion.
3. By separate motion, BTB may request the Court to further increase its secured claim under 11 U.S.C. § 506(b) to reflect continuing accrual of interest and expenditures in prosecution of this case.

###

Copies furnished to:

Charles W. Throckmorton, Esq.

Charles W. Throckmorton, Esq. is directed to serve a conformed copy of this order on all parties in interest and file a certificate of service with the Court.