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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE:

ESJ TOWERS, INC.
Debtor

ESJ TOWERS, INC
Plaintiff

vs.

LUIS DANIEL MUÑIZ, and DE
ANGEL & COMPAÑÍA CPA, LLC
Defendants

CASE NO. 22-01676 (ESL)
CHAPTER 11

ADV. PROC. 25-00036

FILED AND ENTERED 5/28/2026

OPINION AND ORDER

This adversary proceeding is before the court upon the *Motion to Dismiss the Amended Complaint at Dkt. No. [31] Pursuant to Fed. R. Civ. P. 12(b)(6) & for Term of Twenty (20) Days to File Final Application for Compensation nunc pro tunc* filed by codefendant Luis Daniel Muñiz (“Muñiz”) on January 21, 2026 (the “*Motion to Dismiss*”, dkt. #76) and the *Response* filed by the Official Committee of Unsecured Creditors (the “UCC” or the “Committee”) of ESJ Towers, Inc. (the “Debtor”), on January 24, 2026 (the “*Response*”, dkt. #82), as supplemented by the *Motion to Schedule Remote Case Management Conference* filed on May 3, 2026 (dkt. #135).

For the reasons stated herein, the *Motion to Dismiss* is hereby DENIED.

PROCEDURAL BACKGROUND

1. The Committee filed the instant adversary proceeding *Complaint* against Muñiz and De Angel & Compañía CPA, LLC (“DAC”) on July 20, 2025 (dkt. #1). An *Amended Complaint* was subsequently filed on October 30, 2025 (dkt. #31).

2. The *Amended Complaint* includes two (2) counts related to Muñiz. In Count I, the Committee alleges that Muñiz was not allowed fees on a final basis and, thus, requests the court to enter an order requiring Muñiz to disgorge the full amount that he was paid by the Debtor (\$73,500.00). See, dkt. #1, ¶¶49-51. Meanwhile, in Count II the Committee seeks to avoid the

1 \$52,500.00 of allegedly unauthorized payments made to Muñiz by the Debtor between April 2023
2 and May 2024. See, dkt. #1, ¶¶52-54.

3 3. The key allegations in the *Amended Complaint* related to Muñiz are the following:

4 20. On July 14, 2022, roughly a month after the Petition Date, the
5 Debtor filed an application to employ [Muñiz] as special counsel for
6 a wide variety of matters (the “Original Muñiz Application”).

7 21. The Original Muñiz Application proposed to pay [Muñiz] a
8 “retainer” of \$3,500 per month for up to 30 hours of work, and
9 \$150.00 per hour for any work in excess of the 30 hours.

10 22. The United States Trustee as well as the HOA initially objected
11 to the Muñiz Application on the grounds that [Muñiz]’s pre-petition
12 work had included representing entities that were adverse to the
13 Debtor on matters for which the Muñiz Application sought to
14 employ him.

15 23. On January 27, 2023, after the Court had approved, but then
16 vacated, [Muñiz]’s engagement, the Debtor filed a new motion to
17 retain [Muñiz] as special counsel (the “Second Muñiz
18 Application”), but with [Muñiz]’s proposed engagement now
19 limited to “horizontal property and timeshare law[] matters.”

20 24. Despite his substantially more limited role, the Second Muñiz
21 Application proposed to pay [Muñiz] the same “retainer” as the
22 original application.

23 25. After the HOA (but not the UST) renewed its objection to the
24 renewed Muñiz Application, the Court granted it — on February 9,
25 2023 (the “Muñiz Order”).

26 26. On March 3, 2023, less than a month after the Muñiz Order,
27 [Muñiz] filed an interim fee application pursuant to section 331 of
the Bankruptcy Code (the “Interim Muñiz Fee Application”).

28 27. The Interim Muñiz Fee Application requested \$21,000 — that
is, \$3,500 for six months of work from July 2022 through February
2023, but excluding December 2022 and January 2023.

29 28. The interim application misstated that [Muñiz] had filed his
amended employment application in late August, not late January
2022.

1 29. [Muñiz] had billed a total of 78.75 hours during the six months
2 for which he was requesting \$21,000 (at \$3,500 per month): July
3 (16.25); August (16.5); September (19.5); October (8.5); November
4 (8.5); and February (9.5).

5 30. Of the 78.75 hours for which [Muñiz] sought compensation,
6 nearly 70 were worked during the period for which his services were
7 not approved.

8 31. On April 3, 2023, when no one had objected to the Interim
9 Muñiz Application, the Court entered an Order granting it (the
10 “Interim Muñiz Fee Award”).

11 32. On March 28, 2023, shortly after the Court entered the Interim
12 Muñiz Award, the Debtor paid [Muñiz] \$21,000 (the “Interim
13 Muñiz Payment”).

14 33. During the ensuing 14 months, through May 24, 2024, the
15 Debtor paid [Muñiz] another \$52,500, all without court approval
16 (the “Unauthorized Muñiz Payments,” and collectively with the
17 “Interim Muñiz Payment,” the “Total Muñiz Payments”).

18 34. The dates and amounts of the Muñiz Payments are set forth in
19 Exhibit A hereto, which is incorporated herein and made a part of
20 this Amended Complaint for all purposes.

21 35. [Muñiz] did not file a final fee application before (or after) the
22 Administrative Expense Claim Bar Date.

23 Dkt. #31, ¶¶20-35.

24 4. After requesting multiple extensions of time to file a responsive pleading (dkt. #47,
25 57, 66), which were granted by the court (dkt. #48, 58, 67), on January 21, 2026, Muñiz filed the
26 *Motion to Dismiss* (dkt. #76). The Committee filed the *Response* on January 24, 2026 (dkt. #82).
27 Muñiz sought leave to file a reply to the *Response* (dkt. #94), which was granted by the court (dkt.
#95). However, Muñiz did not file a reply.

5. On May 26, 2026, the court entered a *Partial Judgment of Dismissal with Prejudice*
as to Defendant [DAC] (dkt. #145) after DAC and the Committee entered into a *Settlement*
Agreement and Mutual Release as to the Committee’s claims against DAC. The Committee’s
claims against Muñiz remain pending.

1 POSITION OF THE PARTIES

2 1. *Muñiz’ Position in the Motion to Dismiss*

3 Muñiz argues in the *Motion to Dismiss* “that the issues raised by the UCC in relation to
4 the compensation received by the Defendant can be entertained with a final application for
5 compensation Nunc Pro Tunc, that will be submitted for the consideration of the Court in the
6 following 20 days. All parties in interest will have the opportunity to review said final Application
7 for Compensation and file any objections if they understand it necessary.” Dkt. #76, ¶3. Further,
8 Muñiz posits that the Committee “failed to assert an actionable claim for relief” against him,
9 “even when the non-conclusory allegations in the Amended Complain are assumed to be true”.
10 Dkt. #76, ¶18. Lastly, Muñiz argues that the filing of an adversary proceeding, “instead of filing
11 an objection to the Final Fee Application for Compensation is the incorrect mechanism to
12 entertain the matter before the [c]ourt”. Dkt. #76, ¶21.

13 2. *The Committee’s Position in the Response*

14 In the *Response*, the Committee states that “the motion nowhere argues that the Amended
15 Complaint’s allegations fail to provide [Muñiz] with notice of a substantively plausible claim.
16 Nor does the motion attempt to explain why — even if the Bankruptcy Code or the Confirmed
17 Plan would allow the Court to enter a *nunc pro tunc* fee award — [Muñiz] would qualify for such
18 extraordinary relief here.” Dkt. #82, p. 4.

19 In addition, in its *Motion to Schedule Remote Case Management Conference* (dkt. #135),
20 the Committee states that as “it pertains to [Muñiz], the proceeding seeks the avoidance, recovery
21 and disgorgement of a total of \$73,500 that the Debtor paid [Muñiz] as the Debtor’s court-
22 approved special counsel, with [Muñiz] having received \$52,500 of that amount without any court
23 approval, and the other \$21,000 through an interim, but not a final, fee award.” Dkt. #135, ¶3.
24 Therefore, the Committee alleges and concludes that, “in view of [Muñiz]’s (a) failure to file a
25 fee application, (b) refusal to engage in meaningful settlement negotiations, (c) rejection of the
26 Committee’s request for his time records for the period for which he received \$52,500, and (d)
27 position that he will provide the Committee with none of the Debtor’s records or of [Muñiz]’s

1 work product as the Debtor’s counsel — rescheduling of the settlement conference, or the
2 scheduling of any other hearings involving [Muñiz], would not be productive until the Court has
3 had time to rule on the [Motion to Dismiss].” Dkt. #135, ¶14.

4 LEGAL STANDARD AND DISCUSSION

5 *i. Motions to Dismiss under Fed. R. Civ. P. 12(b)(6)*

6 “The purpose of a motion to dismiss under Fed. R. Civ. P. 12(b)(6) is to assess the legal
7 feasibility of a complaint, not to weigh the evidence which the plaintiff offers or intends to offer.”
8 Velez-Arcay v. Banco Santander de P.R. (In re Velez-Arcay), 499 B.R. 225, 230 (Bankr. D.P.R.
9 2013), citing Ryder Energy Distribution Corp. v. Merrill Lynch Commodities, Inc., 748 F.2d 774,
10 779 (2nd Cir. 1984); Citibank, N.A. v. K-H Corp., 745 F. Supp. 899, 902 (S.D.N.Y. 1990).

11 Fed. R. Civ. P. 8(a)(2), applicable to adversary proceedings through Fed. R. Bankr. P.
12 7008, mandates that complaints contain a “short and plain statement of the claim showing that
13 the pleader is entitled to relief.” “Although detailed factual allegations are not required, the Rule
14 does call for sufficient factual matter”. Surita-Acosta v. Reparto Saman Inc. (In re Surita-Acosta),
15 464 B.R. 86, 90 (Bankr. D.P.R. 2012). Therefore, to survive a Fed. R. Civ. P. 12(b)(6) motion to
16 dismiss, a complaint must contain sufficient factual matter that, accepted as true, “state[s] a claim
17 to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).
18 A claim has facial plausibility when the pleaded factual content allows the court to draw the
19 reasonable inference that the defendant is liable for the misconduct alleged. *Id.* at 556, 127 S.Ct.
20 1955. The Twombly standard was further developed in Ashcroft v. Iqbal, 556 U.S. 622 (2009),
21 advising lower courts that “determining whether a complaint states a plausible claim for relief
22 will ... be a context-specific task that requires the reviewing court to draw on its judicial
23 experience and common sense.” Ashcroft v. Iqbal, 556 U.S. at 679. “In keeping with these
24 principles, a court considering a motion to dismiss can choose to begin by identifying pleadings
25 that, because they are no more than conclusions, are not entitled to the assumption of truth. While
26 legal conclusions can provide the framework of a complaint, they must be supported by factual
27 allegations. When there are well-pleaded factual allegations, a court should assume their veracity

1 and then determine whether they plausibly give rise to an entitlement to relief.” *Id.* In sum,
2 allegations in a complaint cannot be speculative and must cross “the line between the conclusory
3 and the factual”. *Peñalbert-Rosa v. Fortuño-Burset*, 631 F.3d 592, 595 (1st Cir. 2011). “[A]n
4 adequate complaint must provide fair notice to the defendants and state a facially plausible legal
5 claim.” *Ocasio-Hernandez v. Fortuño-Burset*, 640 F.3d 1, 11 (1st Cir. 2011).

6 In *Schatz v. Republican State Leadership Committee*, 669 F.3d 50, 55 (1st Cir. 2012), the
7 U.S. Court of Appeals for the First Circuit established a two-step standard for motions to dismiss
8 under Fed. R. Civ. P. 12(b)(6). Step one: isolate legal conclusions. Step two: take the complaint's
9 well-pleaded (non-conclusory) allegations as true, drawing all reasonable inferences in favor of
10 the plaintiff and determine if they plausibly narrate a claim for relief. Also see *Pérez v. Rivera (In*
11 *re Pérez)*, 2013 WL 1405747 at *3, 2013 Bankr. LEXIS 1561 (Bankr. D.P.R. 2013); *Zavatsky v.*
12 *O'Brien*, 902 F. Supp. 2d 135, 140 (D. Mass. 2012); *Guadalupe-Báez v. Pesquera*, 819 F.3d 509,
13 (1st Cir. 2016).

14 This court in *Hotel Airport, Inc. v. Best W. Int'l Inc. (In re Hotel Airport, Inc.)*, 2014 WL
15 4661943 (Bankr. D.P.R. 2014) held that the court would not dismiss an adversary proceeding
16 based solely on procedural grounds alone because that would elevate form over substance and
17 increase the cost of litigation without benefitting either party.

18 ii. *Discussion*

19 The court agrees with the Committee’s position in the *Response*. The conclusory and
20 unsupported allegations in the *Motion to Dismiss* do not adequately contest the well-plead
21 allegations in the *Amended Complaint* as to the Committee’s claims against Muñiz. In addition,
22 as of this date and over four (4) months after the filing of the *Motion to Dismiss*, no final
23 application for compensation has been filed by Muñiz. Moreover, contrary to Muñiz’ assertion,
24 an adversary proceeding, such as the instant case, is the proper method to recover the money
25 allegedly paid improperly to Muñiz by the Debtor. See, Fed. R. Bankr. P. 7001(a).

26 CONCLUSION

27 In view of the foregoing, the *Motion to Dismiss* filed by Muñiz is hereby DENIED.

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Consequently, a Pretrial Conference will be scheduled in a separate order.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 28th day of May 2026.


Enrique S. Lamotte
United States Bankruptcy Judge