UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION – BAY CITY

In re:	)	Case No. 12-20666-dof
	)	
COMMUNITY MEMORIAL HOSPITAL	)	Chapter 11
dba CHEBOYGAN MEMORIAL HOSPITAL,	)	
a Michigan nonprofit corporation,	)	HON. DANIEL S. OPPERMAN
	)	
Debtor.	)	
	)	

NOTICE OF ELECTION BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS NOT TO FILE AN ADVERSARY PROCEEDING PRIOR TO THE HEARING SCHEDULED FOR APRIL 30, 2012, REGARDING DOCKET NO. 151

The Official Committee of Unsecured Creditors ("Creditors Committee") hereby provides notice of its intent not to file an adversary proceeding prior to the hearing scheduled for April 30, 2012, regarding Docket No. 151, and by way of background states:

1. On April 12, 2012, the Creditors Committee filed a motion pursuant to §§105 and 363 of the Bankruptcy Code Seeking (A) Interpretation and Enforcement of the Order Granting Debtor's Emergency Motion Pursuant to Sections 105(A) and 363 of the Bankruptcy Code for an Order Authorizing the Sale of Substantially All of the Debtor's Assets Free and Clear of All Liens, Claims, Encumbrances, Mortgages and Interests and (B) Enforcement and Implementation of the Terms of the APA (the "Motion") [Dkt. No. 151].

2. In the Motion, the Creditors Committee sought the following relief:

   (a) An Order directing McLaren to close the transaction authorized by the Court's earlier Sale Order [Dkt. No. 129]; and

(b) An Order clarifying and determining that the transaction authorized by the Court's Sale Order did not constitute a "change of ownership."

3. At a hearing held on April 13, 2012, and in a subsequent Order, the Court directed the parties to brief only the second issue set forth above, and to appear at a hearing to argue that issue on April 30, 2012.

4. It was suggested at the hearing on April 13, 2012, however, that the relief requested in the Motion, including the relief the Court scheduled for hearing on April 30, constitutes a request for a "declaratory judgment" and thus necessitates an adversary proceeding under Bankruptcy Rule 7001(9).

5. The issue set for hearing on April 30, however, is not a request for a declaratory judgment. Rather, the Creditors Committee sought an order by which the Court finds and determines that the existing Sale Order did not effect a "change in ownership" under the terms of the Sale Order or under controlling law. The relief sought in the Motion is thus in the nature of a request for clarification or enforcement of an existing order, and/or a request for an interpretation of existing law, not a request for a declaratory judgment.

6. Such a request does not require an adversary proceeding. See, *In re The Educ. Res. Inst., Inc.*, 442 B.R. 20 (Bankr. D. Mass. 2010); In re Kalikow, 602 F.3d 82, 93 (2d Cir. 2010) (holding that a motion for the "enforcement of a pre-existing injunction" does not require an adversary proceeding); *In re WorldCorp, Inc.*, 252 B.R. 890, 895 (Bankr. D. Del. 2000) ("[A]n adversary proceeding is not necessary where the relief sought is the enforcement of an order previously obtained"); *In Re Charter Commc'n*, No. 09-11435 JMP, 2010 WL 502764 (Bankr. S.D.N.Y. Feb. 8, 2010) appeal dismissed, No. 10 CV 02929 GBD, 2011 WL 3278624

(S.D.N.Y. July 26, 2011) ("All courts retain the jurisdiction to interpret and enforce their own orders").

7. Even if the Motion constituted a request for declaratory relief, however, that relief does not fall within the scope of Bankruptcy Rule 7001(1) through (8). An adversary proceeding is therefore not necessary. *In re Barner,* 597 F.3d 651, 654 (5th Cir. 2010); *In re Van Ness,* 399 B.R. 900 (Bankr. E.D. Cal. 2009).

8. The Creditors Committee reserves the right to file an adversary proceeding with respect to the first issue raised in paragraph 2 above, if and when it is deemed appropriate or ordered by the Court.

Dated: April 19, 2012

VARNUM LLP
Attorneys for
Official Committee of Unsecured Creditors
/s/ *Michael S. McElwee*
Michael S. McElwee (P36088)
BUSINESS ADDRESS AND TELEPHONE:
P.O. Box 352 / 333 Bridge Street, N.W.
Grand Rapids, MI 49501-0352
(616) 336-6000
E-mail: msmcelwee@varnumlaw.com

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