

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MAINE

IN RE: PEGASUS SATELLITE) Case No. 04-20878
TELEVISION, INC.,) Chapter 11
ET AL.,) November 17, 2004
Debtor.) Portland, Maine

TRANSCRIPT OF TELEPHONIC HEARING

ON MOTION FOR EMERGENCY HEARING REGARDING

MOTION TO RECONSIDER FILED BY FELTON STREET ASSOCIATES

BEFORE

THE HONORABLE JAMES B. HAINES, JR.

APPEARANCES:

For the Debtors : Robert Keach, Esq.
Paul Caruso, Esq.

For Felton Street Associates : Kenneth Aaron, Esq.
Bruce Hochman, Esq.

For Great American Group : Mark Naughton, Esq.

For Unsecured Creditors : Paul Dublin, Esq.
Committee

Recording Equipment Monitor : Julie Winberg

INDEX OF WITNESSES

WITNESS: DIRECT CROSS REDIRECT RECROSS

No witnesses were presented on the record.

INDEX OF EXHIBITS

EXHIBIT: MARKED ADMITTED

No exhibits were presented on the record.

HEARING COMMENCED (NOVEMBER 17, 2004, 3:59 P.M.)

THE COURT: I'll just ask you each to identify yourselves as you speak, and we're gonna hold just a minute until counsel for Felton Street gets on.

(PAUSE)

ROBERT KEACH, ESQ.: Hello.

THE COURT: Hi, Mr. Aaron?

MR. KEACH: No, this is Mr. Keach.

THE COURT: Okay. All right. This is Judge Haines. Mr. Caruso's on for the debtor. I'll have other people identify themselves for you. We're waiting for Mr. Aaron from Felton Street.

MR. KEACH: All right. Thank you.

(PAUSE)

KENNETH AARON, ESQ.: Hello, this is Ken Aaron.

THE COURT: Oh, good. Mr. Aaron, this is Judge Haines.

MR. AARON: Oh, hello, Judge, I'm sorry to disturb you.

THE COURT: That's all right. I think we got everybody else on the line, and let's just go through one more time so that you know who all is on and the Court Reporter can confirm it.

BRUCE HOCHMAN, ESQ.: Bruce Hochman, local

counsel for Felton Street, Judge.

MR. AARON: Ken Aaron, Counsel for Felton Street.

PAUL CARUSO, ESQ.: Paul Caruso, Sidley, Austin, Brown and Wood, for the debtor.

MR. KEACH: Bob Keach, Bernstein-Shur, for the debtors.

PHILIP DUBLIN, ESQ.: Phil Dublin, Akin-Gump, for the committee.

MARK NAUGHTON, ESQ.: Mark Naughton, N-A-U-G-H-T-O-N, for Great American Group.

THE COURT: Okay. Real good. This is Judge Haines, and again, I'll ask you each to identify yourselves each time you speak so that we can keep an accurate record. We're here on a motion for expedited or emergency hearing and for reconsideration of some of the terms of the order authorizing the debtors to employ Great American and sell assets outside the ordinary course. Let's--let me start by understanding, first of all, is there anyone who objects to us taking this on an expedited basis? And if there is, then we're gonna--we'll deal with that first.

MR. CARUSO: Not from the debtors, your Honor.

THE COURT: Okay.

MR. DUBLIN: The committee has no objection, your Honor.

THE COURT: All right. And hearing no objection registered, we'll go ahead and proceed to the merits of the motion. And I understand from--Mr. Hochman indicated before everyone was on the line only that Mr. Aaron and Mr. Caruso had been in conference. So let me start by asking Mr. Aaron what the status of the matter is and what, if any, issues remain to be considered.

MR. AARON: Well, we--we did engage in, I guess, substantial conferencing this morning. I've been on the phone pretty much regularly this afternoon with Mr. Caruso. Unfortunately, I think that some of the over--the number of overtures that we've made have not really developed a resolution at least that--that makes this call not necessitated. There--we have recently had another conversation about some issues having to do with the auction itself, which maybe we can discuss if your Honor wants to.

THE COURT: Oh, I'm here to discuss whatever you folks haven't ironed out, so--

MR. AARON: Yes. I think the--the only thing that most--we have actually come to an agreement on is that the millwork on the property is not being sold and that the reception desk on the property is not being sold.

THE COURT: Okay.

MR. AARON: There was a list--and also I guess the other issue was, your Honor, in my Exhibit A there was a--something indicating that there was a, potentially a dense filing system on the property, and it appears that there is not one, so that has been stricken from Exhibit A.

THE COURT: Okay.

MR. AARON: So unfortunately that leaves us with a large variety of--of items that we have a dispute over, whether they are fixtures that need to be retained on the premises or--and are subject to, at least under our reading of the lease, versus whether they are subject to being sold free and clear of our interest as the--as the landlord. And the other issue was we have had some discussion about trying to understand the bidding procedures. As a--a discussion that we've had over how we go about protecting our interests in this whole process 'cause it didn't appear that there were any specific bidding procedures approved and--and it's a little bit difficult for me to navigate my way through Great American's site to see if there is such a thing other than that there--it looks like there's maybe a hun--maybe a thousand lots.

THE COURT: Okay. Well, if every time we had a sale of FF&E we had, you know, complicated bidding procedures, we'd never get anything sold.

MR. AARON: Well, I guess--

THE COURT: And Great American's been retained for the purpose of doing the sale in accordance with reasonable business terms. If your concern is that you're able to credit bid for some of the fixtures against a claim that you might have, that's another question, because it would depend whether it's administrative or projection damages or pre-petition status. So I guess--

MR. AARON: Well, let--

THE COURT: Yeah, go ahead.

MR. AARON: The--the two issues--I mean, there's distinctly--also obviously there's an issue of if it's mine, if it's something that we have an ownership interest or rights in, it might be different than just being a secured party. And--and obviously to the extent your Honor's order allows, it's unclear even in the order, whether it extinguished interests, I don't remember seeing the word, "interest" ever used there, it only talks about liens. And the other issue was whether there is going to be an opportunity to bulk bid. In other words, there's thousands of different lots.

THE COURT: Right.

MR. AARON: My client may be willing to participate and try to--and deal with the--what our rights

are subsequently if there is a clear understanding that we have a right to come in and make a bid for all things on the premises, a bulk bid.

THE COURT: Okay.

MR. AARON: And that doesn't--it's hard to determine whether that is within this auction.

THE COURT: All right. Well, let's find out from--well, let me ask you, what clause is it in the lease that you're relying on to consider that you have the ability to assert a present proprietary interest in anything that's up to be sold, and--and then we'll get the debtor's reaction to that and try to go forward from there. I've got to tell you folks that I'm operating at a disadvantage, maybe more than the usual disadvantage because I'm in a hotel room in Atlanta. I don't have access to the docket or the full--the full pleadings. I have what's been faxed to me. If I had--if my computer were in operating order, I would have it here and be able to look at things more comprehensively than I'm gonna be able today. I've offered to be available Friday to deal with this, but for some reason that's not soon enough for everybody. But I'm at--

MR. AARON: Emphatically for us if there's no auction.

THE COURT: Well, that's--that's, you know--

MR. CARUSO: Your Honor, it's Paul Caruso from Sidley-Austin. If I may interject?

THE COURT: Yeah.

MR. CARUSO: The reason that we--we saw this was noticed for Friday, and I informed Mr. Aaron that that probably wouldn't do for his client because the auction at the Marlborough facility is scheduled for tomorrow and wanted to make him aware of that as opposed to going into court before you Friday with, in effect, his motion being moot.

THE COURT: Right. Well, that's--I mean, that's gonna be your choice, because if you insist on having it tomorrow, and I'm not in a position to rule, you may not have an auction at all, okay? So--or else you're gonna have to go find another Judge, and my understanding is there's not one available. So, frankly, that's the position you've put yourself in by not having come to an agreement with Felton Street, and that Felton Street has put himself in by not having yet come to an agreement with you. But that's fine. That doesn't mean that I have to rule off the seat of my pants without the information to make an intelligent, informed and legally-correct ruling. But that's the position you folks have put each other in by

not coming to an agreement. I understand there are circumstances when you can't come to an agreement. That's what the Court is for. But this Court has been making hearings available to this debtor and a variety of other parties in interest in this case without reservation at your discretion, at your will. This is one time when I do not have the full record in front of me and I am not going to rule off the seat of my pants. So unless you folks can narrow the issues to something that I can intelligently deal with from here today, then I'm going to set this over for Friday and I'm not gonna tell you you can't have an auction tomorrow. So that's where we are, and I think it's only fair to tell you folks I can be available until six o'clock tonight to help you deal with this, but I'm not gonna do it blind, and if you've put yourself in an alley where you're asking me to do it blind, it ain't going to happen. So I want to be very clear on that with all of you. So where do we go from here? Mr. Caruso?

MR. KEACH: Your Honor, Bob Keach for the debtors. Let me just get to a point that I thought was opened up by Felton Street, and that is this issue about their ability to make a bulk bid. That, from our standpoint, is a question for Great American, of course, but what I thought I'd heard was if they had the ability to

make a bid for everything subject to whatever--their interest attaching to whatever would result from that, that that might be a way to get past tomorrow and still have a sale, if I'm not mistaken.

THE COURT: Okay. Well, we need to know if there's something that has a resolution so with that--

MR. CARUSO: Your Honor, Paul Caruso of Sidley-Austin again. That was the issue that Mr. Aaron and I were discussing immediately prior to the--to the hearing, and after that I was delayed because I was speaking with Mr. Naughton at Great American about that. And I believe he indicated to me that that is something that Great American could work through with Felton Street Partners to allow them to make a bulk bid.

THE COURT: Okay. Well, let me--let's find out if that would make all or part of today's concerns go away if you can work that out, because I'd be happy to give you some more time to do that, and I don't mean to be knee-jerk on this, but I'm at way more of a disadvantage than you, yet the ball ultimately, if you can't work something out, is in my re--my court to make a decision. And if I'm not comfortable making a decision, I'm gonna have to ask you to hold up until I can do so comfortably, which will be Friday morning. So--but let's--let's ask, first of all,

Mr. Naughton from Great American, whether that can be worked out and, second, whether that would abate the concerns with regard to tomorrow's auction, and if so, whether you need more time to talk to talk to one another.

MR. NAUGHTON: Your Honor, this is Mark Naughton. I would have to talk to the auctioneer. I did put--place a call on the other line to him to make sure, but my--my informed speculation is that we would entertain, and this isn't gonna be a unique situation, but we would entertain a bulk bid and then would probably go through after entertaining bulk bids individual lots being sold and seeing for purposes, you know, of which was the higher recovery--

MR. AARON: Well, your Honor, that's not how we would proceed--I'm sorry, I didn't mean to interrupt.

THE COURT: Excuse me. I--if people are gonna start interrupting--

MR. AARON: I apologize.

THE COURT: --and not identifying themselves, I'm gonna hang up right now and I'm gonna tell you see me on Friday. So--and I'm also disappointed to hear that people have people yet to talk to before they can come to make authorized representations about what they are or are not willing to do, because--

MR. AARON: The only reason I--

THE COURT: --I asked my Clerk to tell you folks if--excuse me. You are not to interrupt or this hearing will end. All right? I'm--I'm not crabby about this, but you folks have put yourself in a difficult position, you've put me in a more difficult position. You can either work things out or not, and if you're not going to, I have to have an informed basis on which to rule because I don't do things just based on how I feel at any given moment. So the question is do you folks need more time to talk to each other about this bulk bid mechanism? If you are able to come to some resolution about it, would it abate tomorrow's concerns. And, if not, are we capable of presenting enough of a record based on agreed representations so that I can give you a ruling? Those are my questions. I'll entertain an identified response from anybody here who wishes to respond.

MR. CARUSO: Your Honor, it's Paul Caruso of Sidley-Austin. I believe that, uhm, it would be in Mr. Aaron's, his client's issue to determine whether that is something that would be, uh, worthwhile to pursue further, because the debtor certainly would.

THE COURT: All right. Mr. Aaron?

MR. AARON: Your Honor, I--I think that there's

value in having the discussion over this. We've spent a good deal of time on discussion. I think that--that it at least would allow us to preserve our rights and at the same time not necessarily cause the disruption of not having an auction. But, uhm, while I was concerned about it, we don't see a bulk bid being--that we'd bulk bid first and then go through--through lots. We see--do the lots, that sets the price on it, and if we are willing to pay essentially \$5 more than what all those lots are--

THE COURT: Right.

MR. AARON: --that would be how we--that way they cannot--the estate can't possibly be harmed by that. And at the same time, we have preserved our rights and have retained the integrity of our site.

THE COURT: Yeah. Well, that sounds like it's just a question of the ordering of the two processes, the bulk bid versus the lots. And let me ask for Great American, Mr. Naughton, whether or not that's something that--that you folks think there's something constructive to be spoken about.

MR. NAUGHTON: Your Honor, this is Mark Naughton on behalf of Great American. We would certainly entertain allowing both bids. The concern we would have about both bids occurring at the end of the sale is that that, in our

experience, will depress the likeliness of--likelihood of anyone individually bidding on the lot. I mean, that's at least the experience that we've had.

THE COURT: Sure. And, of course, you've got to think about what's gonna happen if you don't have a sale at all tomorrow as advertised.

MR. NAUGHTON: I--I understand that.

THE COURT: So, what I'd be happy to do is to stand by and, since you're all on the phone right now, to--if you could signal the operator to call me back if you've made any progress on this. I've, like I said, I can be available right up through six o'clock tonight to--to work through this with you. In the meantime, I'll be talking to staff back at the courthouse to see if there's anything more or less I should have in order to assist you further. But if there's something you can talk about that'll get you through tomorrow, that would be great. And if there's not, then we'll just do what we can do today. Will you be able to ask the operator to ring me back in?

MR. HOCHMAN: It's Bruce Hochman. I believe I can, your Honor.

THE COURT: Okay. Well, what I'm gonna do, then, is I'm going to--you can call me back at, you know, at

least 15 minutes from now. In the interim I'm gonna talk to staff down at the courthouse and see what we can do. But if you can come to some kind of resolution, that's certainly the better. And it's not my style to tell folks that you have to resolve it on your own and I'm not gonna do anything, but in this particular instance, I'm happy to do as much as I'm capable of doing lawfully and in an informed manner, but I'm not happy doing any more than that. So at a certain point, you folks have to roll your sleeves back up again and see how much you can get done on your own or else resolve to wait until Friday with or without something happening tomorrow, with or without an ability to protect your interest in the value of the assets between now and then. So I will sign off as will chambers. And then I'll ask when you're ready 15 minutes or more from now if you'll have the operator ring me and chambers back in, then we will--we'll be happy to do what we can for you.

MR. CARUSO: Thank you, Judge.

THE COURT: All right. Thank you.

MR. HOCHMAN: Thank you, your Honor.

HEARING RECESSED (4:17 P.M.)

HEARING RESUMED (5:21 P.M.)

THE COURT: All right. This is Judge Haines.

We've reconvened in the Pegasus matter on the Felton Street Partnership's motion. Let's start by getting appearances from everybody who's on the phone.

MR. HOCHMAN: Bruce Hochman for Felton Street, your Honor.

MR. AARON: Kenneth Aaron for Felton Street, your Honor.

MR. CARUSO: Paul Caruso from Sidley, Austin, Brown and Wood for the debtors, your Honor.

MR. KEACH: Bob Keach from Bernstein-Shur for the debtors, your Honor.

MR. DUBLIN: Phil Dublin, Akin-Gump, for the committee.

MR. NAUGHTON: Mark Naughton on behalf of Great American Group.

THE COURT: Okay. Thank you all. Let me--I imagine there's probably somebody who can report, and I'll ask them to do so. Please identify yourselves as you speak.

MR. CARUSO: Your Honor, this is Paul Caruso of Sidley-Austin for the debtors. Since the last time we spoke I think we've had some very constructive dialogue among the parties to resolve the motion of Felton Street, and I think the way we resolved that is to modify or at

least some to some agreed-upon bidding procedures for the auction tomorrow at the Marlborough facility which will take place as follows: Great Am--Felton Street will determine whether it intends to make an initial opening blind bid for the bulk of the assets at that location based upon numbers provided to it by Great American. After that initial bid is announced, it'll also be announced that Felton has the right at the conclusion of all the auctions of the various lots to make a topping bid. Then the bid--the bidding will--an auction will proceed on all the different lots, at which time, depending on the aggregate net proceeds for the various lots, again, Felton Street will have the opportunity to purchase all of those assets in bulk for an incremental price above the individual aggregate prices. The way--the initial--the initial guaranteed amount or initial bid will, in effect, be a guaranteed amount by the Felton Street to the extent they elect to proceed that way. So, for example, your Honor, if Felton Street's bid \$50,000 for the bulk of the assets, through the course of the auction the sale proceeds are \$40,000, then Felton Street will have purchased the bulk of the assets for \$50,000, but they will retain their right to claim that certain assets which they in effect purchased were theirs, and their interest will attach to those

proceeds.

THE COURT: Understood.

MR. CARUSO: To the extent that the auction prices are greater than their initial bid and they overbid, they will again purchase all of the assets and again have the right to come before the Court and adjudicate their right, have their rights adjudicated in the proceeds, and they also have the opportunity to decline to overbid, in which case the assets will be sold to whatever purchasers there will be free and clear of any interest of Felton Street, but any interest Felton Street has in those assets will attach to the proceeds.

THE COURT: Understood.

MR. CARUSO: I hope I correctly summarized the agreement among the parties, and I'm sure if I haven't, others will correct me.

THE COURT: Let me check with Mr. Aaron first, please.

MR. AARON: Your Honor, let me say this. We've worked very hard to try to deal with this issue. I--I had a conversation with my client following this discussion, or I went out--reached out and got my client to join our phone call. The one issue that he raised was--and this is, I honestly have to say, news to the others because we -- in

the interim I had that call with him -- was they're willing to go along with that process with one caveat, and that has to do with my client doesn't really have an interest in the--in the network assets, the assets that were used to operate the network. And to the extent that, you know, there's some valuation that was attributed to that by Great American, we would seek to have that--our initial blind bid reduced by that and they can sell that off in whatever way they choose, you know, under the auction. It would not be subject to our bulk bid, and the same when we overbid, if we determine to do that at the end, we would not include the network assets. They're--

THE COURT: But you're--what you're telling me is that you would agree to the arrangements that Mr. Caruso outlined--

MR. AARON: All--

THE COURT: --with the--with the exception that the network assets would be, I take it, in one lot that would proceed independently of that process?

MR. AARON: It may be a group of lots, but, yes--

THE COURT: Right.

MR. AARON: --it'll be independent of that, and what they get from it--they get on it, which is--and we don't particularly claim any interest in them, and at the

same time, they're not the issues of--that we have a, you know, a concern with as far as our integrity of our--of our site. And with that caveat, I think we can--I don't think that's necessarily a complex thing and--to do, and we are prepared to proceed on that basis and--and reserve all of our rights for yet another day, and by then we also will have the benefit of having valuations that your Honor can--we all can pretty much rely upon as to what individuals thought the lots were worth.

THE COURT: All right. Thank you. Mr. Caruso?

MR. CARUSO: Uh, your Honor, uhm, I think that would be amenable to the debtors. I--again, this is new, so I think the--just the practical concern is being able to discuss with Great American a way to, you know, put a value on--on those assets.

THE COURT: All right. Mr. Naughton?

MR. NAUGHTON: Yes, sir?

THE COURT: Do you think you can work with the parties to go through with that arrangement as modified?

MR. NAUGHTON: Yes, your Honor. Obviously we have to define what those assets are and then we'll have to figure out what the valuation for them--

THE COURT: Sure.

MR. NAUGHTON: --for them is.

THE COURT: Sure. Does anybody else wish to comment?

MR. AARON: We appreciate your Honor indulging Felton Street, and--and we do also appreciate Mr. Caruso avoiding us coming before your Honor on something that would be moot or after the fact, and we appreciate everybody's efforts to try to do something that is extraordinarily out of the ordinary, but it's been helpful.

THE COURT: I appreciate it--I appreciate all of your work, and I apologize if I was snappish at the outset of the hearing because I take my job seriously and I really felt unequipped to do it for you, and happily, though, the result of my inability to do it for you resulted in the parties getting some good hard work amongst themselves done that has resulted in a resolution, and I sincerely appreciate that, and will be ready to help you out another day in a--a better way if necessary. So Mr. Caruso, do you, Great American and Felton Street and the committee wish to submit anything by way of an order, or will a letter agreement among you do? I don't see where this really has to do with the bidding procedures and terms that Great American would have been responsible for pursuant to the order, but let me leave it with you as to whether you wish to memorialize it and have anything in the

Court record beyond what's been outlined in the course of this hearing.

MR. CARUSO: Thank you, your Honor. I guess the only thing I'd just like to make clear on the record is the fact that the auction is going to proceed tomorrow.

THE COURT: Mmhmm.

MR. CARUSO: And any assets sold to any parties other than Felton will, of course, be sold free and clear of any interest in those assets other than proceeds to those purchasers.

THE COURT: Right. And it's understood that Felton reserves its rights to its claims of interest which would transfer to the proceeds.

MR. CARUSO: Correct, your Honor.

THE COURT: Very good.

MR. AARON: And if we can--I think it would be helpful if we can--once your Honor--once we are excused, your Honor, we could maybe at least talk about logistics and get--

THE COURT: Sure.

MR. AARON: --the process. Because I think we're talking about an 11 o'clock a.m. auction, is that correct?

MR. DUBLIN: Your Honor--

THE COURT: Yes, go ahead.

MR. DUBLIN: --I'm sorry, Phil Dublin from Akin-Gump from the committee. I think we don't--I don't think we need to document this, but if you could so order it in the record, I think that would be sufficient for the parties.

THE COURT: I will--I do hereby order that it proceed along the arrangement outlined by Mr. Caruso as modified and--by Felton Street through Mr. Aaron and subsequently agreed to with that modification. And again, I will--I will depart the line so that you all can continue the good work that you've done this afternoon, and I sincerely appreciate you devoting the energy to--to resolve it.

ALL COUNSEL IN UNISON: Thank you, your Honor.

HEARING CONCLUDED (NOVEMBER 17, 2004, 5:30 P.M.)

STATE OF MAINE)
) ss.
CUMBERLAND)

I, Patricia A. Burrows, transcriber, do certify that the foregoing is a correct transcript from the electronic sound recording of the telephonic proceedings on Motion for Emergency Hearing regarding Motion to Reconsider filed by Felton Street Associates, in In Re: Pegasus Satellite Television, Inc., Case Number 04-20878, held on November 17, 2004, at Portland, Maine.

_____ Date: March 29, 2005
Patricia A. Burrows, Transcriber