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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re: ST. FRANCIS' HOSPITAL POUGHKEEPSIE, NEW YORK, *et al.*,[1] Debtors.	: : : : : : : :	Chapter 11 Case No.: 13-37725 (CGM) (Jointly Administered) **Hearing Date: Sept. 23, 2014 @ 11:00 a.m.** **Objection Deadline: Sept. 16, 2014**

AMENDED MOTION OF THE JAMES J. MCCANN CHARITABLE TRUST FOR ENTRY OF AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362 OR IN THE ALTERNATIVE FOR RELIEF FROM THE PLAN INJUNCTIONS

The James J. McCann Charitable Trust (the "McCann Trust" or the "Trust"), by and through its counsel, McCarter & English, LLP, hereby moves the Court for an Order Granting Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362 or in the Alternative for Relief from the Plan Injunctions (the "Motion") to allow the McCann Trust to initiate an action against St. Francis' Hospital, Poughkeepsie, New York ("SFH") seeking the return of a donor-restricted

[1]The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number include: St. Francis' Hospital, Poughkeepsie, New York (8503), Saint Francis Home Care Services Corporation (3842), SFH Ventures, Inc. (0024), Saint Francis Health Care Foundation, Inc. (5066), and Saint Francis Hospital Preschool Program (1079).

charitable gift that is currently being held in trust by SFH. In support of the Motion, the McCann Trust respectfully states as follows:

BACKGROUND

1. The Trust is a charitable trust located in Poughkeepsie, New York created under the last will and testament of James J. McCann, deceased.

2. The Trust has deep roots in Dutchess County and has focused its philanthropic activities in that area since its inception in 1969 because James J. McCann was a life-long resident of Poughkeepsie.

3. The Trust's charitable giving also had a Catholic focus, reflecting the devout religious belief of the family, and specifically the individual James J. McCann, who created the Trust under his last will and testament.

4. In addition, the Trust's philanthropic giving often focused on health and medicine.

5. SFH was a hospital serving the health care needs of Dutchess County since its opening in 1914 and was located in Poughkeepsie, New York.

6. As its name implies, SFH was a Catholic-affiliated hospital.

7. Since its inception, the Trust made over $3,000,000 in grants to SFH to support a number of projects. Typically, SFH would use funds from its capital reserves, borrowings and other sources to start and fully complete the projects and use the Trust's grant, which was usually paid out over time, to replenish its reserves or repay borrowings.

8. Between 2008 and 2013, the Trust made several charitable gifts to SFH specifically earmarked for the St. Francis Hospital Patient Care Rooms of the Future Project, a project to build certain rooms at SFH's hospital (the "Project"), totaling Five Hundred Sixty Thousand Dollars ($560,000) (the "McCann Gift").

9. The McCann Gift was a conditional gift, which required SFH to complete the Project.

10. The McCann Gift is a donor-restricted charitable gift.

11. In addition to the McCann Gift being specifically earmarked for the Project, SFH agreed to utilize the McCann Gift specifically and solely for the Project and no other purpose.

12. SFH represented to the Trust that the Project was critically needed to keep SFH's hospital competitive with other medical facilities in the area, specifically Vassar Brothers Hospital.

13. In relying upon these statements, the Trust advanced the monies to SFH, anticipating that they would immediately work on the Project, based on SFH's representations that completion of the Project was vital to SFH maintaining market share vis-à-vis Vassar Brothers Hospital and SFH's history of promptly commencing and completing projects.

14. Although some preliminary work was done, the Project was not pursued in the manner represented by SFH and expected by the Trust.

15. Contrary to the expectations of the Trust and the representations of SFH as to how the money would be used, much of the money given to SFH by the Trust simply languished in a bank account.

16. Had the Trust known that, as it turned out, SFH planned to simply allow the money to sit unused, the Trust would have given the money to other charitable organizations in Dutchess County or at least invested the money for future use in Dutchess County.

17. In 2013, the Trust was informed that the Project was tabled and would not be resumed in the future, at which time the Trust ceased making donations towards the Project.

18. The Trust was never advised by SFH about the apparent abandonment of the Project, but instead was shown one singular, completed room and was led to believe that SFH was working to complete the Project, both through verbal and written statements by SFH.

19. Upon information and belief, the unused portion of the McCann Gift currently totals approximately five hundred thousand dollars ($500,000) ("Unused McCann Gift").

20. On December 17, 2013 SFH and certain of its affiliates (collectively, the "Debtors") filed for relief under Chapter 11 of the Bankruptcy Code.

21. Pursuant to § 541 of the Bankruptcy Code, and the Debtors' own admissions to the Court, the McCann Gift is not property of SFH's bankruptcy estate as it is specifically earmarked for use in connection with the Project.[2]

22. On February 24, 2014 the Court entered an Order approving the sale of the Debtors' assets pursuant to an Asset Purchase Agreement (the "APA") dated February 10, 2014 by and among the Debtors and Westchester County Health Care Corporation (the "Purchaser"). [Docket No. 271-1].

23. Westchester County Health Care Corporation is outside the focus of the Trust's philanthropic giving.

24. First, it is not located in Dutchess County, but rather in Westchester County. This is significant as the median income in Westchester County is significantly higher than in Dutchess County, and the Trust wants its philanthropic monies to go where they are most needed.

[2] In the *Debtors' Motion for Entry of an Order Pursuant to Bankruptcy Code Sections 363, 541, and 105(a), Authorizing Debtors to Pay Prepetition Amounts Associated with Grants and Restricted Funds* [Docket No. 21] the Debtors acknowledge in paragraph 18 that a specific grant is "not property of the estate pursuant to Section 541 of the Bankruptcy Code as they are specifically earmarked for use in connection with a specific project."

25. Second, Westchester County Health Care Corporation is not a Catholic-affiliated institution, and giving to Catholic charities has been a primary focus of the Trust's philanthropic activities.

26. The Administrator of SFH has expressed its intent before the Bankruptcy Court and to the Trust to transfer the Unused McCann Gift to Westchester County Health Care Corporation.

27. Supporting healthcare institutions in Westchester County is outside the focus of the Trust's philanthropic giving.

28. The Trust made the McCann Gift envisioning it as a means to support a Catholic presence in Dutchess County healthcare.

29. SFH represented and promised the Trust that the McCann Gift would be used for the Project.

30. The McCann Gift was a conditional gift, made only because SFH would use the money for the Project.

31. In making the McCann Gift, the Trust relied upon SFH's representations and promises that the McCann Gift would be used for the Project.

32. Had the Trust known that the vast majority of the McCann Gift would not be used for the Project, and would instead, as it has, remain in a bank account while SFH went bankrupt, the Trust would not have made the McCann Gift.

33. Had the Trust known that SFH would cease to have any Catholic affiliations, it would not have made the McCann Gift.

34. The Trust has been damaged by SFH and seeks return of the McCann Gift.

35. Section 2.7 of the APA provides that the Debtors must bring and fully support appropriate Cy Pres proceedings to transfer to the Purchaser the Debtors' donor-restricted assets and further provides that such donor-restricted assets are not transferred to the Purchaser pursuant to the APA.

36. The Debtors have acknowledged that a state court proceeding must be commenced in order to transfer any of the donor-restricted assets to the Purchaser, including but not limited to the McCann Gift.

37. On April 23, 2014 the Debtors filed their *Modified First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the "Plan), which was confirmed by the Court on April 30, 2014.

38. Section 10.6 of the Plan contains an injunction which, among other things, prohibits the commencement of an action with respect to a claim against the Debtors. Equally important, Section 10.12 of the Plan provides that the automatic stay pursuant to Section 362 of the Bankruptcy Code remains in full force and effect until the Reorganized Debtors' Chapter 11 cases are closed. These cases have not been closed.

PREDICATES FOR RELIEF

39. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409. The legal predicate for relief sought herein is 11 U.S.C. § 362(d).

RELIEF REQUESTED

40. The McCann Trust seeks entry of an Order granting the McCann Trust relief from the automatic stay or in the alternative relief from the plan injunctions pursuant to § 362(d) of the Bankruptcy Code to commence a state court proceeding (the "State Court Proceeding") against

the Debtor by filing a complaint, substantially in the form annexed hereto as Exhibit A, seeking the return of the Unused McCann Gift.

LEGAL ARGUMENT

41. The McCann Trust is entitled to relief from the automatic stay under § 362(d)(1) of the Bankruptcy Code. Pursuant to Section 362(d)(1) of the Bankruptcy Code, the Court shall grant relief for "cause." See generally In re 68 West 127 Street, LLC, 285 B.R. 838, 843 (Bankr. S.D.N.Y. 2002) (finding that the Bankruptcy Code does not define 'cause' in this context). As shown below, there is cause to lift the stay in this instance since, among other things, the McCann Gift is not property of the estate or of the reorganized debtor, the Plan Administrator has acknowledged the need to commence proceedings outside the jurisdiction of this Court to attempt to transfer the funds at stake to the purchaser of the Debtor's assets, and the Cy Pres proceedings in state court are the proper forum to decide the present dispute between the Plan Administrator and the McCann Trust.

42. The stay may be lifted at the discretion of the bankruptcy court. In re Sonnax Indus., 907 F.2d 1280, 1286 (2d Cir. 1990) (citing Holtkamp v. Littlefield (In re Holtkamp), 669 F.2d 505, 507 (7th Cir. 1982)). Once the movant makes an initial showing of "cause," the burden shifts to the debtor "for all issues other than the debtor's equity in property." In re Balco Equities Ltd., Inc., 312 B.R. 734, 749 (Bankr. S.D.N.Y. 2004).

43. Courts in this Circuit have weighed certain factors in deciding whether litigation should be permitted to be commenced or continued in another forum such as: (1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for

defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms. See In re Sonnax Indus., 907 F.2d 1280, 1286 (2d Cir. 1990).

44. There are sufficient grounds for granting relief from the stay or the plan injunction to permit the Trust to commence the State Court Proceeding because:

(a) An award of relief from the stay or the plan injunction will not prejudice the Debtors or their opportunity for reorganization as the State Court Proceeding does not involve any assets of the Debtors' bankruptcy estates (as set forth above, the Unused McCann Gift is *not* property of the SFH bankruptcy estate).

(b) The Debtors will not be forced to expend additional resources defending the State Court Action as the Debtors are already obligated, pursuant to the APA, to commence and support state court proceedings in order to transfer the donor-restricted gifts, including but not limited to the McCann Gift, to the Purchaser.

(c) The McCann Trust possesses a considerable likelihood of success against the Debtor in the State Court Proceeding. See generally In re ABC Learning Centres Ltd. n/k/a ZYX Learning Centres Ltd. & A.B.C. USA Holdings Pty Ltd., 445 B.R. 318, 338 (Bankr. D. Del. 2010) ("Even a slight probability of success on the merits maybe sufficient to support lifting an automatic stay in an appropriate case.").

(d) The McCann Trust agrees that as a condition to an award of relief from the stay or the plan injunction that it will limit its recovery to the return of the Unused McCann Gift and any payments to which it might be entitled under the Plan.

(e) The McCann Trust agrees, with respect to any verdict or settlement in the State Court Proceeding that as to any amount in excess of the Unused McCann Gift, the only relief which the McCann Trust may pursue are its rights to payment under the Plan.

(f) The State Court Proceeding does not involve bankruptcy issues and will not affect the progress of the Debtors' reorganization.

45. For the foregoing reasons, the requested relief is appropriate, and the Debtors will not suffer any prejudice as a result thereof.

NOTICE

46. Notice of this Motion has been provided to the notice parties pursuant to the Rules of Court including the Debtors' counsel and the United States Trustee.

WAIVER OF MEMORANDUM OF LAW

Because this Motion presents no novel issues of law and the authorities relied upon by the McCann Trust are set forth herein, the McCann Trust respectfully requests that the Court waive the requirement for the filing of a separate memorandum of law in support of this Motion pursuant to Local Bankruptcy Rule 9013-1(a).

WHEREFORE, the McCann Trust respectfully requests that this Court issue an order granting relief from the automatic stay or in the alternative relief from the plan injunctions so that the McCann Trust may commence the State Court Proceeding against the Debtor seeking return of the Unused McCann Gift.

Dated: August 29, 2014

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