UNITED STATES BANKRUPTCY APPELLATE PANEL

FOR THE FIRST CIRCUIT

BAP No. MW 97-049

IN RE: SUMMERFIELD PINE MANOR

SISTERS OF PROVIDENCE HEALTH SYSTEM, INC.,
Appellant,

v.

SUMMERFIELD ELM MANOR,
SUMMERFIELD PINE MANOR,
SUMMERFIELD OAK MANOR, INC. and
H-C HEALTH SERVICES, INC. d/b/a MEADOWOOD,
Appellees.

Appeal from the United States Bankruptcy Court
for the District of Massachusetts
(Hon. Henry J. Boroff, U.S. Bankruptcy Judge)

Before
Goodman, Haines and Carlo, U.S. Bankruptcy Judges

Maurice M. Cahillane and Egan, Flanagan and Cohen, P.C. for the appellant.

George W. Tetler, III, Mark W. Powers and Bowditch & Dewey, LLP for the appellees.

April 16, 1998

Per Curiam

This is an appeal from an order of the United States Bankruptcy Court for the District of Massachusetts dated June 18, 1997 denying the motion of appellant, Sisters of Providence Health Systems, Inc. ("SPHS" or "Appellant") for mandatory abstention pursuant to 28 U.S.C.

§1334(c)(2) ("Abstention Motion"), denying relief from the automatic stay pursuant to 11 U.S.C. §362, and allowing debtors' sale of assets pursuant to 11 U.S.C. §363. The Bankruptcy Appellate Panel of the First Circuit has jurisdiction to hear this appeal pursuant to 28 U.S.C. §158(b). For the reasons discussed below, the Bankruptcy Court's order is affirmed.

BACKGROUND

The debtors are organized as four separate, non-profit nursing homes where each debtor owns and operates one nursing home. The corporate structure of ownership is as follows: Valley Health System, Inc. ("Valley") is the parent corporation of Summerfield, Inc. ("Summerfield") which is the parent corporation of all four debtor non-profit entities, Summerfield Elms Manor, Inc., Summerfield Pine Manor, Inc., Summerfield Oak Manor, Inc., and Health Services d/b/a Meadowood (collectively referred to as "Debtors"). Neither Valley, the Debtors' upstream affiliate, nor Summerfield, the Debtors' parent, is a debtor before this Court.

SPHS, appellant herein, operates nursing homes and other health care services, unaffiliated with Debtors, in Western Massachusetts and in February of 1994 entered into an agreement that would have resulted in SPHS becoming the sole corporate member of the Debtors with control of the assets. In June of 1995 Valley attempted to terminate the merger agreement and in July 1995 SPHS commenced an action in the Hampden Superior Court ("State Proceeding") against Valley for breach of contract, breach of covenant of good faith and fair dealing and for violation of Massachusetts General Laws Annotated Chapter 93A. SPHS sought specific performance and damages. The State Proceeding remains pending in state court. None of the Debtors before this Court is named as a party defendant in the State Proceeding nor is a party to the merger agreement between Valley and SPHS.

In 1996, according to the appellant's brief, Valley announced that it had agreed to sell all of the assets held by the subsidiaries, now Debtors in this case, to OHI Corporation d/b/a/ Oasis

Healthcare.[1] In response, SPHS sought and obtained from the Hampden Superior Court a preliminary injunction prohibiting the sale. Again, none of the Debtors is a party to the litigation seeking injunction relief.

Debtors began to experience severe financial problems and on April 8, 1997 each filed a separate Chapter 11 petition. SPHS does not dispute that all four Debtors are properly before the Bankruptcy Court.[2] As part of their reorganization effort, the Debtors sought an early sale of their nursing homes by filing with the Bankruptcy Court a Motion For An Order Approving Bidding Procedures and Break Up Fee With Respect To The Sale Of Nursing Homes Pursuant to 11 U.S.C. §363(f) ("Bidding Procedures Motion") together with a Motion for Sale Free and Clear of Liens and Encumbrances under 11 U.S.C. §363(f) ("Sale Motion"). Two days prior to the hearing on the Bidding Procedures Motion, SPHS filed its opposition to them requesting that the Bankruptcy Court abstain from hearing the Bidding Procedures Motion and the Sale Motion pursuant to 28 U.S.C. §1334(c)(2).[3]

The Bankruptcy Court approved the Bidding Procedures Motion. Thereafter, SPHS filed a Motion for Mandatory Abstention and Relief from Stay which was heard on June 18, 1997 together with the Sale Motion. At the hearing, the Bankruptcy Court denied Appellant's Abstention Motion, denied the Appellant's motion for relief from stay and allowed Debtors'

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[1] There is no dispute that each Debtor is a separate corporation than that of either the parent or the upstream affiliate. No explanation has been proffered on how the parent structured the sale of the assets of its subsidiaries.

[2] At the Bankruptcy Appellate Panel hearing on this matter, Appellant's counsel conceded that the state court injunction could not have intended that Debtors be prohibited from seeking relief in the Bankruptcy Court.

[3] The statute provides:

> Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

28 U.S.C. §1334(c)(2).

application to sell assets free and clear of liens.

DISCUSSION

The Bankruptcy Court granted the motion to establish bidding procedures, denied the motion for relief from stay, and granted the Debtors' motion to sell assets free and clear of liens. All three of these judicial determinations were core proceedings[4] within the original and exclusive jurisdiction of the district court.[5]

Clearly, the Bankruptcy Court, exercising the original and exclusive jurisdiction of the district court under 28 U.S.C. §1334, cannot abstain from the administration of the bankruptcy case, leaving a state court to determine core matters. They are matters that arise exclusively under the Bankruptcy Code and related jurisdictional statutes establish jurisdiction in the district court and in the Bankruptcy Court, its delegatee. The provision for mandatory abstention under 28 U.S.C. §1334(c)(2) clearly does not apply to core matters. See, e.g., In re Robb, 139 B.R. 791, 796 (Bankr. S.D.N.Y. 1992) (finding that mandatory abstention is inapplicable to core proceedings); In re Texaco, Inc., 109 B.R. 609, 612-13 (S.D.N.Y. 1990) (proffering as a conclusion of law that "mandatory abstention is inappropriate in a core proceeding"); In re Ionosphere Clubs, Inc., 108 B.R. 951, 954 (Bankr. S.D.N.Y. 1989) (explaining that "mandatory abstention under 28 U.S.C. §1334(c)(2) only applies to non-core proceedings").[6]

It is disingenuous to argue that creditors of these Debtors must submit their fortunes to a state court proceeding to which these Debtors are not even parties. That, in essence, would be

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[4] 28 U.S.C. §§157(b)(2)(G) and 157(b)(2)(N).

[5] As delegated to the Bankruptcy Court pursuant to 28 U.S.C. §157(a).

[6] In addition, since none of the Debtors are named as a party to the state court litigation the appellant cannot pass the threshold test of 1334(c)(2) that "the district court shall abstain from hearing such proceedings if an action is commenced." because no action has yet been commenced against these Debtors. The reference in the statute to "is commenced" means before the Debtors have filed for relief in the Bankruptcy Court. See In re Robb, 139 B.R. 791, 796 (Bankr. S.D.N.Y. 1992).

the result if the bankruptcy court had abstained from hearing the core matters it decided. Appellant, who suggests in this appeal that a state court can better treat the rights of these Debtors' creditors than the Bankruptcy Court, is misinformed.

Accordingly, the Bankruptcy Court's decision is AFFIRMED.