2:19-cv-10352-DSF

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al*., Debtors and Debtors In Possession.	On Appeal from the United States Bankruptcy Court for the Central District of California Bankruptcy Court Lead Case Number: 2:18−bk−20151−ER
STRATEGIC GLOBAL MANAGEMENT, INC. APPELLANT(S) v. STATE OF CALIFORNIA, VERITY HEALTH SYSTEM OF CALIFORNIA, INC., OFFICIAL COMMITTEE OF UNSECURED CREDITORS, *et al.* APPELLEE(S).	Date: [TBD] Time: [TBD] Courtroom: 7D Location: 350 W. First Street Los Angeles, CA 90012

OFFICIAL COMMITTEE OF UNSECURED CREDITORS' REPLY TO STRATEGIC GLOBAL MANAGEMENT, INC.'S OPPOSITION TO "DEBTORS' EMERGENCY MOTION TO DISMISS APPEAL"

The Official Committee of Unsecured Creditors of Verity Health System of California, Inc., *et al*. (the "Committee") appointed in the chapter 11 cases (the "Chapter 11 Cases") of the above-captioned debtors and debtors-in-possession (the "Debtors"), hereby files this reply (the "Committee Reply") to Strategic Global Management, Inc.'s Opposition To "Debtors' Emergency Motion To Dismiss

Appeal" (the "SGM Opposition")[1] [District Court Docket No. 10), and in support thereof represents as follows:

REPLY

1. Having been afforded all the relief to which it was entitled under the APA, or, more precisely, not having been deprived of any rights it was granted under Section 8.6 of the APA, SGM has no standing to prosecute the Appeal, and its sole available option is to either close the Sale on the terms contemplated by the APA or face the consequence of breaching the APA if elects not to do so. In keeping with the foregoing conclusion, the Committee files this Reply for the limited purpose of taking issue with SGM's extravagant account of the rights it was allegedly granted under Section 8.6 of the APA and thereafter allegedly denied in the Enforcement Order. [Debtor App. Tab 4; Tab 7.][2] SGM makes a number of other arguments about other orders, hearings, appeals, and alleged procedural irregularities, but its core complaint—and the only matter actually before the Court with respect to this Appeal and the Dismissal Motion—is SGM's assertion that "SGM did not get what it was entitled to under Section 8.6" in the Enforcement Order.[3] (SGM Opp. at 19.) In

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[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Dismissal Motion or the Committee Joinder.

[2] "Debtor Appendix" or "Debtor App." refers to the Appendix in Support of the Debtors' Emergency Motion to Dismiss Appeal [District Court Docket No. 3], which was filed by the Debtors contemporaneously with the Dismissal Motion.

[3] This is so, SGM argues more specifically, because (i) "[a] bare-bones 'motion is granted' and the transfer is 'free and clear,' in the unusual and novel context of a sale free and clear of regulatory conditions" was insufficient; and (ii) a matter of this significance "deserve[d] more

fact, as set forth below, (i) SGM was deprived of none of the rights to which it was "entitled" under Section 8.6 in the Enforcement Order; (ii) SGM is not a "person aggrieved" under controlling Ninth Circuit precedent as a result; and (iii) the Appeal must consequently be dismissed as requested in the Dismissal Motion.

2. SGM proffers a detailed account of its Section 8.6 rights on the apparent assumption that, if the Appeal is not dismissed at this time and SGM prevails upon its ultimate disposition, all of the rights as to the Enforcement Order to which SGM now lays claim will be restored to it, along with the right not to close the Sale until SGM "get[s] what it was entitled to under Section 8.6." (SGM Opp. at 19.) Nothing could be further from the truth because this Appeal cannot restore to SGM rights with respect to the substance, form, and language of the Enforcement Order to which, as is set forth below, SGM never had any entitlement.

3. **No Right to Entry of Enforcement Order.** As a threshold matter, SGM never had any right or entitlement to the actual entry of the Enforcement Order itself. SGM suggests otherwise, presumptively laying claim to such protection on a mandatory basis, but, as SGM elsewhere acknowledges, the right to seek entry of the Enforcement Order was solely held by the Debtors. (*Compare* SGM Opp. at 6 ("During this process, the AG took a 'take it or leave it' position in

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than three (3) words regarding Section 363(f) of the Bankruptcy Code." (SGM Opp. at 19.) "This is especially true," according to SGM, "given the importance of Section 8.6, the magnitude of the transaction, the removal of the Bankruptcy Court's Memorandum of Decision, and the ambiguity of the AG Settlement and Compromise." (*Id.*)

the negotiations, although the form of order was unacceptable to SGM," implying the Debtors had obligation to pursue an Enforcement Order "acceptable" to SGM) *with* APA § 8.6 ("Sellers shall have the opportunity [*i.e*, but not the obligation] to file [the Enforcement Motion]"). Since Additional Conditions were, in fact, imposed on the Sale by the Attorney General, in the absence of such an Order, SGM could simply have walked away. (APA § 8.6 ("If [the Attorney General imposes Additional Conditions and] Sellers determine not to seek such Supplemental Sale Order . . . Purchaser shall be entitled to terminate this Agreement and receive the return of its Good Faith Deposit.") However, whether to seek entry of the Enforcement Order and thereby advance the closing of the Sale was left to the Debtors' discretion. *Id.* (affording Debtors "opportunity" to file Enforcement Motion). Nowhere in Section 8.6 was SGM granted the right to compel the Debtors to file the Enforcement Motion. To the extent that the Debtors declined to act, SGM was at the time, and remains, without a remedy other than refusal to close the Sale.

4. **No Right to Dictate Scope of Relief**. Nor, if the Debtors elected to seek entry of the Enforcement Order, did SGM have any right to dictate the scope of the relief sought in Enforcement Order. To the contrary, by the express terms of Section 8.6, the Enforcement Order was required to address only two matters and obtain only two related findings: (i) that "the Additional Conditions [were] an 'interest in property' for purposes of 11 U.S.C. § 363(f);" and (ii) that "the Assets

[could] be sold free and clear of the Additional Conditions without the imposition of any other conditions, which would adversely affect the Purchaser." (APA § 8.6.)

5. No other form of relief was mandated by the language of the APA, and to the extent SGM now argues for restoration of "the powerful protection it was entitled to under the APA," along with broader relief that would not leave it "vulnerable" to future litigation, SGM's arguments are undermined by the plain meaning of Section 8.6, which confers no such protection.[4] (SGM Opp. at 19); *see Waller v. Truck Ins. Exchange, Inc*., 11 Cal. 4th 1, 18-19, 900 P.2d 619, 627, 44 Cal. Rptr.2d 370, 378 (1995) ("It is fundamental that the interpretation of the contract 'give effect to the 'mutual intention' of the parties.'"); *Perez-Encinas v. AmerUs Life Ins. Co.*, 468 F. Supp.2d 1127, 1133 (N.D. Cal. 2006) ("In searching for a plain meaning, a court is to interpret the language of an agreement in its "ordinary and popular sense, unless used by the parties in a technical sense."); *In re Bird*, 565 B.R. 382, 396 (Bankr. S.D. Tex. 2017) ("In California, the first step of contract interpretation is to look to the 'plain meaning or the meaning a layperson would ordinarily attach' to the contract.").

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[4] Under Section 8.6's plain meaning, moreover, the worst-case-scenario formulation of the relief granted by the Enforcement Order that SGM proffers in its Opposition could never come to pass. (SGM Opp. at 12 (postulating as acceptable under current version of Enforcement Order "public health and safety" exception permitting future imposition of Additional Conditions). Any future imposition of Additional Conditions would plainly run afoul of Section 8.6's prohibition on the "imposition of any other conditions, which would adversely affect the Purchaser" and would, thus, violate the Enforcement Order. (APA § 8.6.)

6. **No Right to Control Form and Language.** Section 8.6 also did not afford SGM any rights as to the overall form or precise language of the Enforcement Order. The Debtors were obligated, as set forth above, to obtain entry of an Order that provided, in sum or substance, that any "Additional Conditions [were] an 'interest in property' for purposes of 11 U.S.C. § 363(f)"; and (ii) that the Debtors' "Assets [could] be sold free and clear of the Additional Conditions without the imposition of any other conditions, which would adversely affect the Purchaser." (APA § 8.6.) No other language was required, and no consent right as to the precise form of the language adopted was granted to SGM.

7. Under this construct, SGM simply has no entitlement to "more than three words regarding Section 363(f)," even "in the unusual and novel context of a sale free and clear of regulatory conditions." (SGM Opp. at 19.) If SGM truly believed that this context "deserve[d] more than three (3) words," it could have bargained for such specificity in Section 8.6. (*Id.*) SGM did not do so, and it cannot manufacture for purposes of this Appeal Enforcement Order rights it does not have under the APA.

8. **No Prohibition on Inclusion of Other Matters.** Nor was there any prohibition in the APA on the Enforcement Order addressing matters beyond the scope of Section 8.6. Section 8.6 prescribes only what must be "included" in the

Enforcement Order; it does not speak at all to matters that must be "excluded" from the Order.

9. Thus, for example, there was no bar on the Enforcement Order providing for the *vacatur* of the Memorandum of Decision. SGM complains loudly about the decision to "[r]eplac[e] the twenty-four (24) page Memorandum of Decision with two sentences stating that the motion is granted, and the assets are transferred free and clear of the Additional Conditions" as "leav[ing] SGM without the powerful protection it was entitled to under the APA." (SGM Opp. at 19.) However, as SGM itself elsewhere acknowledges, "at the time the parties entered into the APA, no one knew whether the Bankruptcy Court would enter [the Enforcement Order] or what it would say," so Section 8.6 promised to SGM a supplemental sale order of no specific length or level of detail. (SGM Opp. at 4.)

10. The 24-page Memorandum of Decision that the Bankruptcy Court diligently produced comprehensively resolved all of the issues presented by the Enforcement Motion, but its "replacement" was in no way inconsistent with Section 8.6. (*Id*.) The *vacatur* of the Memorandum of Decision, in other words, stripped SGM of no right ever granted to it under the APA.

11. **No Deprivation of Section 8.6 Rights.** In the final analysis, SGM greatly overstates its rights under Section 8.6 with respect to the Enforcement Order, which are, in fact and as set forth above, very limited. The Debtors obtained a

form of Enforcement Order that was, in form and substance, consistent with Section 8.6. In the intervening weeks, the Debtors have "checked all the boxes" by confirming that all other Conditions Precedent have been satisfied and obtaining the Bankruptcy Court's confirmation that the Enforcement Order complies with the requirements of Section 8.6, including, without limitation, by finding that the Enforcement Order is now a final, non-appealable order because there is no party in interest remaining with standing to pursue an appeal. As a result, as Section 8.6 itself recites, SGM has no choice but to close. (APA § 8.6 ("If the [Enforcement] Order becomes a final, non-appealable order prior to the expiration of the Evaluation Period or, if applicable, the Extended Evaluation Periods, Purchaser shall consummate the Sale provided that all other conditions to closing have been satisfied."))

12. Thus, for all the foregoing reasons, there is no relief that SGM could obtain as a result of the Appeal that could (i) change its rights, as outlined above, under Section 8.6 of the APA; or (ii) provide it with the additional comfort that it contends it requires to close the Sale. SGM is—for this, as well as all the other reasons set forth in the Dismissal Motion, the Committee Joinder, and the Debtors' reply—not a "person aggrieved" under the controlling Ninth Circuit standard. *See Duckor Spradling & Metzger v. Baum Tr. (In re P.R.T.C., Inc.)*, 177 F.3d 774, 777 (9th Cir. 1999) (under prudential standing doctrine, a "person aggrieved" is a party who is "directly and adversely affected pecuniarily" by relevant order); *Fondiller v.*

Robertson (In re Fondiller), 707 F.2d 441, 442-43 (9th Cir. 1983) (noting, by way of example, that "hopelessly insolvent debtor does not have standing to appeal orders affecting the size of the estate" because "such an order would not diminish the debtor's property, increase his burdens, or detrimentally affect his rights"). The Enforcement Order could not have the requisite "detrimental" impact on any rights ever granted to SGM under the APA, so SGM is without standing to seek restoration of such rights on appeal. The Dismissal Motion must be granted.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court (i) grant the Dismissal Motion in its entirety; and (ii) grant such other and further relief as may be just and proper.

DATED: December 19, 2019

MILBANK LLP

/s/ Mark Shinderman
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