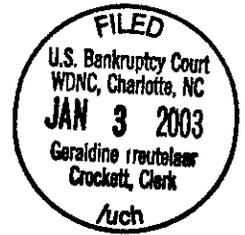


UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
WILKESBORO DIVISION



IN RE:) Case No. 00-51128
) Chapter 11
BLOUNTSTOWN HEALTH INVESTORS,)
LC, d/b/a BLOUNTSTOWN HEALTH)
& REHAB CENTER)
)
)
Debtor.)
)
_____)

JUDGMENT ENTERED ON JAN 03 2003

ORDER

This matter was before this Court on January 2, 2003, upon the (1) Motion of Debtor for Determination of Application of Automatic Stay and for Permanent Injunction (the "Motion") and (2) Notice of Special Appearance by Counsel Representing the Florida Agency for Health Care Administration ("AHCA") filed in response thereto.

The Chapter 11 debtor operates a nursing home in Florida pursuant to a state license issued by AHCA. That license is renewed annually, and heretofore renewal has not been a problem. However, under a recently enacted Florida statute, § 400.141(20), Fla. Stat. (2002), all nursing home operators are now required to maintain liability insurance coverage as a precondition to renewal of their licenses.

The Debtor has been unable to secure, or perhaps afford, liability insurance. Due to this lack of insurance, AHCA has declined to renew the Debtor's license. Obviously, without the license the Debtor can not operate its business. The Debtor has contested AHCA's decision not to renew its license through an

administrative appeal proceeding established under Florida law, which appeal has stayed termination of the Debtor's license.

A hearing is scheduled on January 6, 2003, before a state administrative law judge for the purpose of making findings of fact regarding the license renewal. That impending hearing prompted the Debtor's Motion. In its Motion, the Debtor asks this Court to declare that AHCA's refusal to renew the Debtor's nursing home license constitutes a violation of the automatic stay. Alternatively, the Debtor seeks to enjoin the pending administrative proceedings.

Having heard the matter, the undersigned believes that the Debtor's Motion should be DENIED for several reasons.

First, contrary to the Debtor's suggestion, it does not appear that the impending administrative proceedings are stayed under 11 U.S.C. § 362(a). The Debtor is correct in asserting that both the nursing home and the license are estate property under 11 U.S.C. § 541 and that bankruptcy courts have exclusive jurisdiction over a debtor's property. See 28 U.S.C. § 1334(d). Moreover, it is generally true that actions to exercise control over estate property are stayed by a bankruptcy filing. See 11 U.S.C. § 362(a). However, Chapter 11 debtors do not operate independently of the laws that govern other corporate entities, and unless these laws are preempted by federal bankruptcy law, a Chapter 11 debtor must comply with applicable nonbankruptcy law. In recognition of

this fact, Congress chose to exclude from the automatic stay acts of a governmental unit to enforce its police and regulatory powers. See 11 U.S.C. § 362(b)(4).

The current dispute clearly falls within the police or regulatory powers exception to the automatic stay. The regulation of health care facilities, such as nursing homes, is an area traditionally regulated by states and is a proper subject for the exercise of state regulatory power. In addition, requiring liability insurance as a condition of operating a nursing home undoubtedly protects the public.¹

Florida now requires all nursing homes to maintain liability insurance as a condition of license renewal. Although an asset of the bankruptcy estate, the nursing home license is a creature of state law and is limited thereby. By its terms, the license must be renewed annually and in accordance with the laws and procedures enacted by the state of Florida.

Nothing in this record suggests that Florida is abusing its regulatory power by enforcing the license renewal statute. AHCA is not unfairly discriminating against this debtor due to its

¹ The Debtor suggests that the recently enacted Florida statute does not protect the public because it does not require a minimum dollar amount of insurance. This Court disagrees. The clear purpose of the statute is to insure that nursing home operators can compensate those who may be injured at their facility. In that regard, the statute specifically provides that in lieu of liability coverage, a nursing home can demonstrate proof of financial responsibility.

bankruptcy filing. Nor is this a disguised attempt to collect a prepetition debt. Rather, the licensing procedures in question apply to all Florida nursing homes. The Debtor concedes this fact.

The Debtor's Motion must also be denied due to failure of process and failure of service of process. In the absence of a stay pursuant to 11 U.S.C. § 362(a), if the licensing proceedings are to be enjoined, the injunction must necessarily issue pursuant to 11 U.S.C. § 105. Section 105 provides, in part, that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." See 11 U.S.C. § 105(a). However, a proceeding to obtain an injunction is an adversary proceeding and must be initiated by the filing of a proper complaint. See Fed. R. Bankr. P. 7001(7), 7003. Here, the Debtor has proceeded by motion, and, as such, the relief it requests is beyond what can be afforded under this procedural vehicle.

Moreover, the Debtor's Motion must be denied because AHCA was not properly served and *in personam* jurisdiction does not lie. Fed. R. Bankr. P. 7004(b)(6) requires that service may be made upon a state agency by mailing a copy of the summons and complaint:

to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.

The applicable Florida statute, in turn, requires service upon the Secretary of AHCA. See § 48.111(2), Fla. Stat. (2002). The Debtor, however, served only the attorneys for AHCA with whom it had been dealing, and did so by telefacsimile transmission, not by first class mail. Therefore, service was improper.

The Court recognizes that the aforementioned procedural deficiencies could be easily corrected. However, one other factor supports denial of the Debtor' Motion. At least at this juncture, it appears that this is a proceeding in which discretionary abstention is appropriate under 28 U.S.C. § 1334(c)(1) which permits a bankruptcy court to abstain from hearing a proceeding "in the interest of justice, or in the interest of comity with State courts or respect for State law."

The question of whether the Debtor should have to obtain insurance in order to renew its nursing home license is an issue properly determined in the state administrative process. The subject matter is a license issued by the state of Florida; nursing homes are regulated by a state agency; and appropriate appeal procedures exist under Florida state law. Both comity and state interests weigh in favor of deferring to this state procedure, particularly since there appear to be no federal interests impugned by doing so.

Having decided this matter on other grounds, the Court does not reach AHCA's sovereign immunity argument.

It is therefore **ORDERED** that the Motion of Debtor for Determination of Application of Automatic Stay and for Permanent Injunction is denied.

This the ____ day of January, 2003.



~~Dated as of date entered~~
U.S. Bankruptcy Court