IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

IN RE:	)	
	)	
RETIREMENT GROUP, L.L.C.	)	Nos. 00-1038
	)	00-1039
Debtor.	)	00-1040

SUN HEALTHCARE GROUP, INC. and	)	
WEST TENNESSEE, INC.,	)	Bankr. No. 99-11347-GHB
	)	
Appellants,	)	
	)	
VS.	)	
	)	
RETIREMENT GROUP, L.L.C. and	)	
LTC PROPERTIES, INC.,	)	
	)	
Appellees.	)	

ORDER AFFIRMING DECISIONS OF THE BANKRUPTCY COURT

Sun Healthcare Group, Inc. (Sun), and West Tennessee, Inc. (West), have filed joint notices of appeal from three separate orders entered by the United States Bankruptcy Court for the Western District of Tennessee, in the Chapter 11 bankruptcy proceeding In re Retirement Group, L.L.C., Bankr. No. 99-11347-GHB. The three appeals were docketed separately in this Court, but were consolidated on unopposed motion of the Appellants.

The primary assets of the Debtor, Retirement Group, L.L.C., consist of six

retirement/nursing homes, three located in Tennessee, two in Georgia, and one in Florida. First-priority mortgages on five of those properties are held by LTC Properties, Inc., or by an entity on whose behalf LTC is authorized to act. All six of the properties were, at some point, leased by the Debtor either to West or to Bibb Health & Rehabilitation, Inc. (Bibb). Both West and Bibb are indirect subsidiaries of Sun. In early 1999, West and Bibb stopped paying rent to the Debtor under their respective leases. The Debtor then defaulted under its mortgages with LTC, and filed a petition under Chapter 11 of the United States Bankruptcy Code on April 30, 1999. On October 14, 1999, Sun, West and Bibb filed Chapter 11 petitions in the United States Bankruptcy Court for the District of Delaware.[1]

In appeal #00-1040, Appellants argue that the Bankruptcy Court erroneously found that they failed to establish an administrative claim against the Debtor. In #00-1039, Appellants contend that the Bankruptcy Court erroneously confirmed the debtor's Amended Plan of Reorganization after finding that the Debtor had satisfied all the elements for confirmation, despite the Appellants' objection that the plan was not feasible. Docket #00-1038 concerns the Bankruptcy Court's entry, in conjunction with the confirmation of the plan, of a "Supplemental Agreed Order on LTC's Motion for Relief From Automatic Stay, Etc."

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[1] At the outset, the Court notes that the appellants have set forth in their consolidated brief extensive "background" to these appeals. However, a great deal of this information does not appear anywhere in the record in these cases, and constitutes only the appellants' "good faith view" of the facts. As the appellants have also asserted that these matters are "not integral for deciding the matters on appeal," the Court questions why it was even included. Although the Court declined, in a previous order, to formally strike the unsupported factual assertions, in deciding the appeal the Court has relied only upon those factual assertions that are supported by the evidence and the record, or which are clearly undisputed by the parties.

A district court reviews the factual findings of a bankruptcy court for clear error, and the conclusions of law *de novo*. Bankr. Rule 8013; Keeney v. Smith (*In re* Keeney), 227 F.3d 679, 683 (6th Cir. 2000); Wesbanco Bank Barnesville v. Rafoth (*In re* Baker & Getty Fin. Serv., Inc.), 106 F.3d 1255, 1259 (6th Cir. 1997). The bankruptcy court's factual findings should not be disturbed "unless there is the most cogent evidence of mistake of justice." *In re* Baker & Getty, 106 F.3d at 1259 (citations and internal quotations omitted). In addition, the Bankruptcy Court's denial of a claim for administrative expense is reviewed for an abuse of discretion. The Beneke Co. v. Economy Lodging Sys., Inc. (*In re* Economy Lodging Sys., Inc.), 234 B.R. 691, 693 (B.A.P. 6th Cir. 1999). An abuse of discretion occurs when the Bankruptcy Court "relies upon clearly erroneous findings of fact or when it improperly applies the law or uses an erroneous legal standard." Mapother & Mapother, P.S.C. v. Cooper (*In re* Downs), 103 F.3d 472, 480-481 (6th Cir. 1996) (citations omitted).

Appeal #00-1040

In its Chapter 11 petition, the Debtor listed Sun as the holder of unsecured nonpriority claims that were contingent, unliquidated and disputed. The Bankruptcy Court fixed September 7, 1999, as the deadline for filing a proof of claim for non-governmental creditors. Subsequently, the Bankruptcy Court set a deadline of November 23, 1999, for filing motions or requests for administrative claims. The Appellants did not file a proof of claim, but instead filed a joint motion for allowance of a priority administrative claim pursuant to 11

U.S.C. § 503 on the last day, November 23, 1999. The Debtor filed an objection to that motion.

Attached as an exhibit to the Appellants' motion for allowance of administrative claims was a copy of a complaint that had been filed as an adversary proceeding in the Appellants' Delaware bankruptcy case the day before, November 22, 1999. The motion asserted that the Appellants had commenced the adversary proceeding against the Debtor, Retirement Group, alleging claims of preferential transfer and fraudulent conveyance in regard to Appellants' own bankruptcy filing, pursuant to 11 U.S.C. § 547 and § 548, and for wrongful execution and conversion under Tennessee law. These claims arose out of: (1) Sun's payment of $282,727.17 in rent to the Debtor in compliance with an order of the Tennessee Bankruptcy Court, and (2) the alleged conversion by the Debtor of $283,066.16 in Medicaid payments from the State of Tennessee.

It is undisputed in this case that in January or February, 1999, the Appellants stopped paying rent on the nursing home facilities that were leased from the Debtor, but continued to occupy and operate those facilities. The Bankruptcy Court ordered the Appellants, on July 30, 1999, to sequester funds for five of the Debtor's facilities pending further orders — the funds were to be held separate from and not commingled with other funds. Subsequently, on September 1, 1999, the Bankruptcy Court apparently ordered the Appellants to jointly pay to the Debtor the August rent for those five facilities and the September rent for three of those facilities. That order is not included in the record on appeal.

The evidence shows that on September 8, 1999, the Debtor received two checks from the Tennessee Medicaid Program. One check was made payable to Laurelwood Health Clinic in the amount of $78,363.23, and the other was made payable to Maplewood Healthcare Center in the amount of $204,702.93. The funds represented payment by Medicaid for services provided at the nursing facilities, and were used by the Debtor to meet various obligations.

On November 30, 1999, the Tennessee Bankruptcy Court conducted a hearing, designated as a pretrial conference on plan confirmation and objections thereto, and on various other motions and objections. At the conclusion of that hearing, the Bankruptcy Court scheduled another hearing for December 14, 1999. The primary purpose of the December hearing was to determine whether the Debtor's plan of reorganization should be confirmed. Therefore, the Bankruptcy Court indicated that it would, at that time, first have to determine whether Appellants' request for an administrative claim would be allowed. If the claim were allowed, it would be estimated. (Tr. 11/30/99 Hr'g, at 26-27, 32-33.) The Bankruptcy Court also allowed for expedited discovery on those issues. Id. at 28-32. Appellants did not object to the ruling on expedited discovery, or to the Bankruptcy Court's stated intention to estimate the administrative claim if it were allowed, and did not express any confusion about that intent at the time.

At the outset in the December 14 hearing, the Appellants argued that they were unaware that the Bankruptcy Court was prepared to estimate the claim during the hearing,

if it were allowed, and were unprepared to go forward on that issue. However, as the Bankruptcy Court clearly had ruled from the bench on November 30 that such an estimation could occur, this argument was, and is, meritless.[2] Following the testimony of two witnesses called by the Appellants, the Bankruptcy Court ruled orally upon a motion by the Debtor for, essentially, judgment as a matter of law:

> All right. This is a very interesting question that is before the court. As the court has said previously, what the court has been looking for here is how Sun Healthcare and West Tennessee, Inc. are entitled at this stage to the allowance of an administrative claim under section 503. Section 503(b) provides that, after notice and a hearing, there shall be allowed administrative expenses . . . including . . . the actual and necessary costs and expenses of preserving the estate, including wages, salaries or commissions for services rendered after the commencement of the case.
>
> Mr. Meyers has cited to this court the case of *Reading Company vs. Brown* for the proposition that a post-petition tort action is entitled to an administrative expense priority and, after reading that case, I am not so sure that that is what the Supreme Court said. Actually I think what they said is if you are a receiver who is appointed in an old Chapter 11 case, that you better not be negligent or you will have to pay.
>
> It occurs to me that the first thing there needs to be, before section 503(b) comes into play, is there needs to be a claim. An administrative expense claim is a claim and there is a pending adversary proceeding in the bankruptcy court in Delaware which makes certain allegations on behalf of Sun Healthcare against the debtor in this case. And among those it alleges preferential transfers, fraudulent transfers, post-petition tort actions.
>
> As of December 14, 1999, those are allegations. There has been no claim. There has been no adjudication. Sun Healthcare and its subsidiaries chose to go to Delaware to file that action, to attempt to obtain a judgment which says there has been a preferential transfer and/or fraudulent conveyance and/or post-petition tort. That was their choosing.

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[2] Some of the confusion perhaps stems from the fact that, generally, some evidence as to the underlying merits of a claim is necessary only to estimate the amount of the claim, pursuant to § 502(c). However, in this case, it was necessary to consider the merits of Appellants' allegations in order to determine the primary issue of whether the claim should even be allowed administrative priority. As the Bankruptcy Court denied the claim, the amount did not need to be estimated.

> What this court has to do is it has to deal with what is before it. As of today, Sun Healthcare has no claim in this court. There has not been a claim. There has not been proof that there is a claim. There has been proof that there are allegations out there in an action that is pending in a court in Delaware and basically all I have heard today from both sides is argument about defenses or about allegations that have been made in that adversary proceeding. Now, why Sun chose to go there to litigate that, I don't know, but I can tell you, Mr. Shelton, I am going to grant your motion, I am going to overrule the motion for an administrative claim on behalf of Sun Healthcare and West Tennessee because there is no administrative expense claim at this time before this court on behalf of either one of those entities.
>
> What I am being asked to do here today basically is to render a declaratory judgment or an advisory opinion on behalf of Sun and West Tennessee that says you are entitled to a claim. And this court is not convinced that Sun is entitled to administrative priority, period, but I am certainly not convinced at this point in time that Sun even has a claim.
>
> And so, therefore, I am going to overrule your motion. . . .

(Tr. 12/14/99 Hr'g, at 132-134.)

In support of its position that the administrative claim was properly denied, the Debtor first relies on the fact that the Appellants did not file a formal proof of claim under Fed. R. Bankr. P. 3001. Appellants counter that the Bankruptcy Code does not require the filing of a standard proof of claim for administrative expenses. Appellants are correct that § 503(a) requires only a "request for payment" of an administrative expense.[3] However, unlike a formal proof of claim, see Fed. R. Bankr. P. 3001(f), a request or motion under § 503(a) does not constitute *prima facie* evidence of the validity or amount of an administrative claim, and does not shift the burden to the opposing party to produce evidence to overcome that

[3] The legislative history of § 503 indicates that the Bankruptcy Rules "will specify the time, the form, and the method of such a filing." See § 503 (Historical and Statutory Notes). However, the Editors' Comment to Fed. R. Bankr. P. 2016 notes that the 1991 amendments to the Bankruptcy Code contained a proposal that would have amended that Rule to provide a procedure for requesting administrative expenses without filing a formal motion as required by § 503(a). The proposal was rejected by the Advisory Committee on Bankruptcy Rules.

presumption. See *In re* Cardinal Indus., Inc., 151 B.R. 833, 836 (Bankr. S.D. Ohio 1992). Therefore, the Appellants have the burden of showing that they are entitled to administrative priority status by a preponderance of the evidence. Id.

Appellants argue that the Bankruptcy Court effectively ruled that they had forfeited any administrative claim by filing the adversary proceeding in Delaware rather than in Tennessee. However, this Court does not interpret the Bankruptcy Court's ruling so radically. The Bankruptcy Court clearly was concerned because the underlying claim was still pending in another court. However, the primary focus of that concern appears to have been the lack of a actual judgment in the Delaware case, coupled with the Appellants' failure to present evidence in this case sufficient to substantiate their administrative claim.

Pursuant to § 503(b)(1)(A), administrative expenses are allowed and given priority if they constitute "the actual, necessary costs and expenses of preserving the estate . . . ." It has been recognized that the purpose of this section "is to encourage third parties to provide the debtor in possession with goods and services essential to rehabilitation of the business." *In re* Economy Lodging Sys., Inc., 234 B.R. at 697. As the Court in Economy Lodging explained,

> The Sixth Circuit normally utilizes what has become known as the "benefit to the estate test" in order to determine what qualifies as an "actual, necessary" administrative expense. Under this test, a claimant must prove that the debt "(1) arose from a transaction with the bankruptcy estate and (2) directly and substantially benefitted the estate." Pension Benefit Guaranty Corp. v. Sunarhauserman, Inc. (*In re* Sunarhauserman, Inc.), 126 F.3d 811, 816 (6th Cir.1997). See also United States v. Schottenstein, Zox & Dunn (*In re* Unitcast, Inc.), 219 B.R. 741, 746 (B.A.P. 6th Cir. 1998).

234 B.R. at 697. "The requirement that the benefit be 'direct and substantial' reflects the statutory intent that only those expenses which 'preserve' the estate be allowed as administrative expenses." *In re* Cardinal Indus., Inc., 151 B.R. at 837.

In this case, the Debtor does not dispute that the funds from both the rent payments and the Medicaid payments were used to meet its various obligations. Nevertheless, as stated, it is also undisputed that the Appellants continued to occupy and operate the facilities while withholding rent for several months. Thus, the Court concludes that the partial rent payments turned over in compliance with the Bankruptcy Court's order, and the Medicaid payments received by the Debtor from the State of Tennessee were not direct and substantial benefits that "preserved" the bankruptcy estate. However, the Appellants' primary argument is that their administrative claim falls within recognized exceptions to the strict "benefit to the estate" test.

The Sixth Circuit has created an "unjust enrichment" exception to this test, for those expenses that "reflect actual value conferred on the bankrupt estate by reason of wrongful acts or breach of agreement." United Trucking Serv., Inc. v. Trailer Rental Co. (*In re* United Trucking Serv., Inc.), 851 F.2d 159, 162 (6th Cir. 1988). See also *In re* Economy Lodging Sys., 234 B.R. at 697. In addition, some courts interpret the Supreme Court's decision in Reading Co. v. Brown, 391 U.S. 471 (1968), as having created a separate, but similar exception to the general rule.

In Reading, which arose under the old Bankruptcy Act, a receiver had been appointed

for the debtor, and due to the receiver's post-petition negligence, a fire destroyed the debtor's building and damaged adjoining businesses. Id. at 473. The Court held that the post-petition tort claims of the third parties were entitled to administrative priority, noting that the fire claimants, unlike other creditors, "did not merely suffer injury at the hands of an insolvent business: [they] had an insolvent business thrust upon [them] by operation of law." Id. at 478. The Court stated that it would "be inconsistent . . . with the rule of fairness in bankruptcy to . . . totally subordinat[e] the claims of those on whom the arrangement is imposed to the claims of those for whose benefit it is instituted." Id. at 479.

The Supreme Court further reasoned that "actual and necessary costs" of preserving the estate should include "costs ordinarily incident to operation of a business," even though they are not "costs without which rehabilitation would be impossible." Id. at 483. Even though a tort claim itself does not benefit the estate, continued operation of the business is essential to reorganization. Thus, such claims incurred during post-petition operation of the business by the trustee or the debtor-in-possession may be viewed as a cost of engaging in conduct that could benefit the estate. See *In re* B. Cohen and Sons Caterers, Inc., 143 B.R. 27 (E.D. Pa. 1992) (administrative priority given to tort claim of person who slipped and fell at the debtor's catering establishment during a function for client who was paying for the debtor's catering services).

The Court finds that the circumstances of this case do not fall within the limited Reading exception. The Appellants simply cannot be compared to innocent third-party

victims who have had an insolvent business "thrust upon them by operation of law." To the contrary, Appellants were involved in these bankruptcy proceedings from the outset, and their own actions may have contributed to the bankruptcy filing. Therefore, in order to establish that the claim should be allowed administrative priority, the Appellants must show that the Debtor's conduct in connection with both the rent payments and the Medicaid payments was somehow wrongful and that the Debtor was unjustly enriched, in accordance with the exception recognized in *In re* United Trucking Serv., Inc., *supra*.

In United Trucking, the parties had entered into a pre-petition lease under which the debtor leased semi-trailers from the creditor. The lease required the debtor to maintain the trailers. After the filing of the bankruptcy petition, the creditor sought administrative priority for post-petition losses it incurred as a result of the debtor's misuse of the trailers and failure to comply with its maintenance obligations. 851 F.2d at 160-61. The Sixth Circuit held:

> In light of the Act's purpose of enabling the continued operation of insolvent businesses, we conclude that the bankruptcy court was correct in treating TRC's post-petition damages claim as an administrative expense under § 503. United's asserted failure to maintain and repair the trailers in accord with the lease obligation allowed United, the debtor, to use the money saved and not paid for TRC's benefit as contemplated under the lease, to continue its operations. This breach and misuse of TRC's trailers did benefit the bankrupt estate. Accordingly, the damages under the breached lease covenant, to the extent that they occurred post-petition, provided benefits to the bankrupt estate and were properly accorded priority under § 503 to TRC.

Id. at 162.

In this case, Appellants failed to introduce sufficient evidence to establish that the Debtor was unjustly enriched by either the rent payments and/or the Medicaid payments. The

Appellants had withheld rent for at least six months, while continuing to occupy and operate the facilities. Thus, the receipt of a partial rent payment, and the retention of the Medicaid payments, even if somehow wrongful, did not enable the Debtor to save and use in the operation of the business money that was owed to the Appellants. Appellants' claim, therefore, does not fall within the United Trucking exception for that reason alone. Nevertheless, the Court also will address the issue of whether the Debtor's conduct was wrongful.

With regard to the allegation of wrongful execution of the Medicaid payments, the Appellants simply have no claim. The complaint filed in Delaware alleges only that the Debtor failed to comply with Tenn. Code Ann. § 26-1-101 *et seq.*, relating to the issuance and return of executions in general; Tenn. Code Ann. § 26-3-101 *et seq.*, relating to levy of execution; and Tenn. Code Ann. § 26-5-101 *et seq.*, relating to sale on execution. The simple reason why the Debtor did not comply with these statutes is that there was no such execution issued, wrongful or otherwise. The specific statutes under which this claim is brought apply only when there has been a judgment by a court, upon which the court has issued a formal execution. There is no evidence that an execution was issued in this case.

In tort actions, the term "wrongful execution" can encompass the tort of conversion, see Sanders v. Sanders, No. 01A-01-9601-CV-00006, 1996 WL 426770, *1 (Tenn. Ct. App. July 31, 1996), which the Appellants also have alleged with regard to the Medicaid payments. Under Tennessee law, a finding of wrongful intent is not generally necessary to establish

conversion. Mammoth Cave Prod. Credit Ass'n v. Oldham, 569 S.W.2d 833, 836 (Tenn. Ct. App. 1977). A conversion is:

> "the appropriation of the thing to the party's own use and benefit, by the exercise of dominion over it, in defiance of plaintiff's right. To be liable, the defendant need only have an intent to exercise dominion and control over the property that is in fact inconsistent with the plaintiff's rights, and do so; good faith is generally immaterial.

Id., (citations omitted). In addition, "it seems true ordinarily that conversion can be maintained only if the plaintiff can show possession or a right to immediate possession of the item converted at the time of the alleged conversion." Id. at 836-37.

In this case, James J. Andrews, the managing member of the Debtor, testified that the Medicaid checks were received by the Debtor, made payable directly to the individual facilities, Laurelwood Health Clinic and Maplewood Healthcare Center, not to either of the Appellants. He also testified that the checks probably were for services provided during the time that those facilities were operated by the Appellants. There was also testimony, both from Andrews and by deposition from Billy Huffines, the Director of Long Term Care for the State of Tennessee, raising the possibility that the Debtor may be liable for Medicaid overpayments resulting from the Appellants' failure to pay the rent, giving the Debtor the right to recoup those overpayments from the Appellants. However, neither Andrews nor Huffines could say exactly how the Medicaid recoupment procedure worked.

Given the intricacies of the Medicaid Program, and the fact that the checks in question were made payable directly to the nursing facilities, there is insufficient evidence to establish

that the Appellants had an immediate right to possession of those funds at the time of the alleged conversion. Thus, the Appellants failed to show that the Debtor converted the funds in question.

Appellants also allege that the rent payments were fraudulent transfers under § 548(a)(1)(B) with regard to their own bankruptcy proceedings.[4] That section provides, in relevant part:

> (a)(1) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily —
> . . . .
> (B) (i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and
> (ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;
> . . . .

The evidence presented at the December 14 was to the effect that the Appellants were insolvent at the time the rent payments were made to the Debtor in this case. However, there was no evidence suggesting that the Appellants received less than reasonably equivalent value in exchange for the transfer. As the Court has stated, the Appellants continued to occupy the Debtor's facilities, but had withheld rent for several months. Under those circumstances, there was no fraudulent transfer under § 548(a)(1)(B).

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[4] The Appellants obviously do not allege under § 548(a)(1)(A) that they made the rent payments with the actual intent to hinder creditors in their own bankruptcy proceeding. In addition, although the Debtor's brief also addresses the issue of whether the Medicaid payments were a fraudulent transfer, the Appellants' complaint does not contain allegations of fraudulent transfer in connection with the Medicaid payments. Therefore, the Court need not address that issue.

The Appellants' primary argument is that the rent payments and the Medicaid payments constituted preferential transfers with regard to their Delaware bankruptcy proceedings, under § 547(b). Appellants spend a great deal of time explaining why that is so, and the Debtor has responded in opposition. However, the Court must not lose sight of the issue — which is whether Appellants' claim is entitled to priority administrative status. Even if the payments in question are preferences, Appellants have cited to only one case, contained in a footnote in their opening brief, for the proposition that a claim of preferential transfer by one who is in bankruptcy is always entitled to administrative priority in the separate bankruptcy of the debtor to whom the transfer was made. That case, Wallach v. Frink Am., Inc. (*In re* Nutall Equip. Co.), 188 B.R. 732 (Bankr. W.D.N.Y. 1995), has not been cited for that proposition in a reported decision, and this Court does not find it persuasive here.

Thus, regardless of whether the transfers constitute preferences under § 547(b), the pertinent inquiry remains whether, under the United Trucking exception, the Appellants have shown that the Debtor's conduct in seeking or accepting the rent payments, or in retaining the Medicaid payments, was wrongful. The answer to that question clearly is "no." The Tennessee Bankruptcy Court itself ordered the rent payments to be made, and there is simply no evidence in the record suggesting that the Debtor wrongfully induced the Bankruptcy Court to enter that order. In addition, the Court has determined that the Debtor did not convert the Medicaid payments, and the Appellants have offered no evidence that the

retention of those checks was otherwise wrongful.

For the foregoing reasons, the Court concludes that the Bankruptcy Court did not abuse its discretion in denying Appellants' request for administrative priority, as the Bankruptcy Court did not rely upon factual findings that were clearly erroneous, or improperly apply the law. Therefore, the Bankruptcy Court's decision in #00-1040 is hereby AFFIRMED.

Appeal #00-1039

In appeal #00-1039, Appellants contend that the Bankruptcy Court erroneously confirmed the Debtor's Amended Plan of Reorganization after finding that the Debtor had satisfied all the elements for confirmation, despite the Appellants' objection that the plan was not feasible.

At the hearing conducted on December 14, 1999, after ruling on the Appellant's request for administrative priority, the Bankruptcy Court recessed for an hour in order to give the interested parties the opportunity to negotiate the final details of the proposed Plan of Reorganization. The hearing was then reconvened in order to determine whether the Plan should be confirmed.

Objections to the Plan were pending on behalf of the Appellants and LTC Properties, Inc., the Debtor's primary secured creditor. Through negotiation during the recess, LTC and the Debtor agreed to certain changes in the plan with the result that LTC agreed to withdraw

its objection and vote for the Plan as modified.[5] After briefly addressing some matters brought up by the United States Trustee, the Bankruptcy Court granted the Debtor's motion for confirmation under Fed. R. Bankr. P. 3020(b)(2).[6] Although counsel for the Appellants were present during the entire confirmation portion of the hearing, they did not present any further evidence against confirmation, or make any objections, either substantive or procedural. (Tr. 12/14/99 Hr'g, at 135-142.)

Appellants now contend that the Bankruptcy Court erred in ignoring their objection and confirming the Plan even though it was not feasible. The Appellants argue that the Bankruptcy Court failed to require evidence as to the confirmation criteria of § 1129(a), even though their objection was pending.

In their written objection to the Plan, the Appellants simply restated their claim for a priority administrative expense, asserting that if the administrative claim were allowed, the Plan would not be feasible because it did not provide for payment of that claim.[7] Thus, the Bankruptcy Court's denial of the request for administrative expense effectively denied the Appellants' objection to the Plan as well. Appellants raised no other issues or objections regarding the feasibility of the Plan or any other criteria under § 1129(a), either in the

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[5] At that point, LTC apparently was the only impaired class entitled to vote on Plan confirmation. Debtor's counsel stated during the hearing that a prior objection by another secured creditor was withdrawn after certain changes to the original Plan were made. (Tr. 12/14/99 Hr'g, at 135-36.)

[6] Rule 3020(b)(2) requires a confirmation hearing, but provides that if no objections are filed, "the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues."

[7] An additional issue was raised in the Appellants' objection, regarding Appellant West's lease of the "Trenton Nursing Home." However, Appellants have not raised that issue in this appeal.

Bankruptcy Court or in this appeal.

As Appellants' objection had just been resolved, it was not necessary for the Bankruptcy Court to conduct a second hearing on the very same claim, even though it was restated as an objection to feasibility. While the Bankruptcy Court must, of course, be satisfied that all of the criteria in § 1129(a) are met, it clearly was so satisfied in this case, having just conducted a hearing on the only remaining objection. There is nothing in either § 1129(a) or Rule 3020(b)(2) requiring the Bankruptcy Court to state affirmatively and expressly on the record that it finds all of the relevant criteria have been met.

As the Appellants have raised no issues in this Court regarding the feasibility of the Plan except for the failure to provide for payment of their claimed administrative expense, the Bankruptcy Court's order confirming the Plan was not based on factual findings that were clearly erroneous and was not contrary to law. Therefore, the Bankruptcy Court's order confirming the Debtor's Amended Plan of Reorganization is hereby AFFIRMED.

Appeal #00-1038

The issue in #00-1038 is whether the Bankruptcy Court erred when, in conjunction with confirmation of the Plan, it entered a Supplemental Agreed Order on LTC's Motion for Relief from Automatic Stay, Etc" (the "LTC Order") on December 15, 1999. Like #00-1039, this appeal is also dependent upon the outcome of #00-1040, and the Appellants do not address this appeal as a separate issue in their briefs.

The LTC Order incorporates by reference two prior orders: (1) the "Agreed Order on LTC's Motion for Relief from Automatic Stay or, in the Alternative, for Adequate Protection Combined With Notice of Entry Thereof," entered August 3, 1999; and (2) the "Order Amending Agreed Order on LTC's Motion for Relief from Automatic Stay, Etc.," entered on August 25, 1999. The August 3rd Agreed Order recites certain background information regarding the history of the business relationships between LTC, the Debtor, the Appellants and Bibb. The Agreed Order also provides for interim payments to LTC, specifies how LTC will be treated in the Plan, sets a deadline for the Debtor to have a confirmed Plan, and provides for relief from the automatic stay in the event of Debtor's default or failure to confirm a Plan.

Following the entry of the Agreed Order, the Appellants filed an objection, setting forth four minor concerns that did not seriously affect the substantive provisions. A hearing on those objections was conducted on August 11, 1999, after which the August 25 order was entered. That order amended the Agreed Order to address all but one of the Appellants' objections.[8] The order provided that, as modified, all provisions of the Agreed Order remained in full force and effect. No additional objections to the August 25 order were filed by the Appellants.

At the December 14, 1999, confirmation hearing, counsel for the Debtor and LTC advised the Bankruptcy Court that certain additional changes to the Agreed Order had been

[8] The August 25 order, in effect, granted two of the Appellants' objections, denied one, and did not specifically address the fourth.

negotiated, and announced those modifications on the record. The modifications were then set forth in the LTC Order entered the next day. Counsel for Appellants did not object to the substance of the proposed modifications when they were announced at the hearing, and do not do so in this Court.

Generally, absent a showing of exceptional circumstances, a reviewing court will not consider issues raised for the first time on appeal. See, e.g., Stevenson v. J.C. Bradford & Co. (*In re* Cannon), 277 F.3d 838, 848 (6th Cir. 2000). As Appellants did not object to the entry of the LTC Order in the Bankruptcy Court, and have shown no exceptional circumstances in this case, it has waived any issues related to its specific provisions.

Apparently, the Appellants appealed the entry of the LTC Order only because it is "integrally related" to the Order of Confirmation. Thus, if the Order of Confirmation is vacated, Appellants contend that the LTC Order should be vacated as well. However, as the Court has determined in connection with #00-1039 that the Order of Confirmation should be affirmed, there is likewise no basis for setting aside the LTC Order. Accordingly, the Court concludes that the Bankruptcy Court's entry of the LTC Order is not clearly erroneous or contrary to law, and is hereby AFFIRMED.

Conclusion

For all of the foregoing reasons, the challenged rulings of the Bankruptcy Court in each of these three consolidated appeals is AFFIRMED. The Clerk of Court is directed to

prepare a judgment accordingly.

IT IS SO ORDERED.

_____
JAMES D. TODD
UNITED STATES DISTRICT JUDGE

_____
DATE