IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

In re:

Laser Spine Institute, LLC	
CLM Aviation, LLC	Case No. 2019-CA-2762
LSI HoldCo, LLC	Case No. 2019-CA-2764
LSI Management Company, LLC	Case No. 2019-CA-2765
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2768
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2769
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2772
Medical Care Management Services, LLC	Case No. 2019-CA-2773
Spine DME Solutions, LLC	Case No. 2019-CA-2774
Total Spine Care, LLC	Case No. 2019-CA-2775
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2776
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2777
	Case No. 2019-CA-2780
Assignors,	
To:	Division L
Soneet Kapila,	
Assignee,	

SHIRLEY AND JOHN LANGSTON'S OBJECTION AND OPPOSITION TO ASSIGNEE'S NOTICE OF AND MOTION TO ABANDON CERTAIN ASSETS TO TEXAS CAPITAL BANK, AS ADMINISTRATIVE AGENT

Shirley and John Langston, by and through undersigned counsel, now oppose Assignee's Notice Of and Motion to Abandon Certain Assets to Texas Capital Bank, as Administrative Agent, ("Motion") and state:

Summary

The Assignee, Sonett Kapila, seeks approval of a document signed by both Assignee and Texas Capital Bank, contingent upon approval of this Court, titled “Surrender

of Collateral and Consent to Strict Foreclosure Agreement," ("Surrender Agreement") that goes beyond the surrender of collateral. The Surrender Agreement refers to "Collateral" as all accounts, instruments, collateral notes, retail installment credit contracts and financial arrangements and proceeds thereof, appears to acknowledge a minimum debt of $154,000,000.00, appears to stipulate to a valid security interest, and stipulates that the value of the collateral is $10,000,000.00. However, the Surrender Agreement does contain both latent and patent ambiguities as to its meaning and effect. For example, in Paragraphs 1.01 and 1.02, the Assignee acknowledges a default and Texas Capital's right to exercise rights and remedies in accordance with Loan Documents, but includes the sentence, "[t]he Assignee reserves all rights with respect to the amount of the Indebtedness." However, paragraph 1.03 then provides that the Assignee acknowledges a valid security interest. Minimally, the Surrender Agreement stipulates to a valid debt of an unknown amount and a valid security agreement and also appears to stipulate to an allowed deficiency claim of at least $144,000,000.00. This is beyond the purview of abandonment unless and until the Assignee shows an evidentiary basis for all of the relief sought by this Motion and Agreement. If the collateral is worth at least $10,000,000.00, the Assignee cannot abandon that collateral unless and until it establishes to the satisfaction of the Court (1) the actual value of the collateral (2) an uncontested and valid debt in excess of the amount of the collateral and (3) valid, enforceable, and uncontestable liens on said collateral. None of that is accomplished by this motion or the facts set forth in support of the motion, so the motion must be denied.

Background

1. Pursuant to § 727.102, this Court has jurisdiction over all matters arising under Chapter 727 Assignments.

2. Shirley and John Langston ("the Langstons") are Plaintiffs in a medical

malpractice case pending in the Circuit Court of Hillsborough County, Florida, against Laser Spine Institute, LLC ("LSI") and one of the former physician employees of LSI, Dr. Thomas Francavilla, titled, Shirley and John Langston v. Laser Spine Institute, LLC, and Dr. Thomas Francavilla, Case No. 17-CA-10423, Circuit Court of Hillsborough County, Florida (the "Langston Malpractice Case.

3. Beginning March 1, 2019, culminating on March 14, 2019, LSI along with a series of what the Assignee describes as "15 affiliates," ceased operations and filed these state court proceedings under Chapter 727 of the Florida Code as assignments for the benefit of creditors.

4. LSI is a common Florida LLC, not a professional association, which employed physician employees and in the case of the Langstons, rendered medical care through its physician employees. LSI entered contracts to provide medical services to the Langstons, paid the physician employees, hired and paid other health care workers, and engaged in a nationally advertised business of providing "laser" spine surgery. LSI apparently contracted with one of its "affiliates," which held a Florida ambulatory surgical center license, but the physician employees were only employees of the unlicensed common LLC, LSI. The Langstons allege that LSI and its physician employee were negligent in the treatment and care of Shirley Langston, causing damage.

5. July 12, 2019, is the current proof of claim deadline for all unsecured claims.

6. The Assignee has also filed a separate cash collateral motion that seeks to grant Texas Capital Bank a priority lien over all assets not covered by the security agreements. The Langstons have filed an opposition to that motion also.

Analysis

7. Pursuant to § 727.101:

> The intent of this chapter is to provide a uniform procedure for the administration of insolvent estates, and **to ensure full reporting to creditors and equal distribution of assets according to priorities** as established under this chapter. (emphasis added).

Also see *Pro Finish, Inc. v. Estate of Estate of All Am. Trailer* Mfrs., 204 So. 3d 505, 507 (Fla. 4th DCA 2016) ("The intent of chapter 727 is to provide a uniform procedure, ensure full reporting to creditors, and ensure equal distribution per priority.") § 727.108 describes the "duties of assignee," which includes the following subsections:

a. In subsection, 1, prosecuting, or selling and assigning the right to prosecute, tort claims and causes of action, and remedies are not limited by a claim that the assignor acquiesced or participated in the wrongful act;

b. In subsection 2, examining the assignor under oath, which the Assignee noticed for April 16, 2019;

c. Subsection 3 requires notice to all creditors of matters concerning the administration of the estate;

d. Subsection 9 requires an "interim report of receipts and disbursements within 6 months after the filing date," with certain exceptions;

e. Subsection 10 requires the Assignee to "[e]xamine the validity and priority of all claims against the estate,"; and

f. Subsection 11 provides for the abandonment of assets to perfected lien creditors where Assignor determines that there is no equity or the assets are burdensome. § 727.109, in subsection 8, grants this Court the power to determine the validity, priority, and extent of liens, and subsection 15 grants a general power to exercise any other powers necessary to enforce or carry out the provisions of Chapter 727.

9. There has been no reporting by the Assignee of the following facts and circumstances, as it relates to this Motion:

a. How the assets being abandoned have been valued;

b. What amount is owed by which entities;

c. Whether there are any defenses to the enforcement of the debt;

d. Whether there are any defenses to the enforcement of the liens; and

e. Whether there are any equitable doctrines, including equitable subordination, that can be applied to allow unsecured creditors to participate in the distribution of the assets. Florida recognizes the doctrine of equitable subordination of liens, *Carlton Fields, P.A. v. LoCascio*, 59 So. 3d 246 (Fla. 3d DCA 2011), which allows Courts to subordinate liens to claims of junior creditors for a lender's misconduct, *Pepper v. Litton*, 308 U.S. 295, 304, 84 L. Ed. 281, 60 S. Ct. 238 (1939).

10. These cases have not been substantively consolidated so that assets of one entity are marshalled to pay debts of other entities. The Langstons have claims only against LSI, other than possible fraudulent transfer claims that are now the property of the Assignee under applicable Florida law. At some point, the Assignee has to make the analysis of how the assets and debts of the different assigned entities are going to be administered and present that to the Court for approval. As of now, it appears that all of the entities are effectively being administered as a combined single entity. One basis for equitable subordination to subordinate the debt of Texas Capital Bank is to determine whether Texas Capital Bank used assets of one entity not liable for a debt to pay the debts of another, and the Assignee must make that analysis and report the conclusions.

11. There has also been no disclosure to the Court as to whether the owners of the Assignors contend that any of the Lenders participated in conduct that breached loan agreements. The Assignee should minimally disclose whether the Assignors, their managers and controlling persons, claim that the secured lenders breached any loan agreements.

12. Unless and until the Assignee fully investigates and reports on the methodology to determine the value of the collateral and defenses to both the validity of liens

and the uncontestable amounts of secured claims, it is premature to abandon these assets under the terms of the Surrender Agreement.

13. To be clear, abandonment of these assets may be in the interest of the assigned estates, but the Assignee has failed to present a sufficient factual basis for the Court and the unsecured creditors to evaluate whether or not the assets should be abandoned.

14. If the Surrender Agreement was modified to provide clearly that the proceeds of liquidation will be the set-off to amount of the secured debt, as ultimately determined by this Court, instead of an agreed $10,000,000.00 value (unless the Court is satisfied that there is a reasonable evidentiary basis to assess that value), that the Surrender Agreement does not waive defenses to either the amount of the claim or the validity of liens, that the Surrender Agreement does not waive any claims of equitable subordination, that the Surrender Agreement does not stipulate that any amount is due or that a default occurred, there may be circumstances under which the Court is sufficiently advised of the applicable facts to allow Texas Capital Bank to efficiently liquidate the alleged collateral. It is recognized that the type of collateral being referred to, such as accounts receivable, should be collected in an expedited fashion and the passage of time may devalue these assets. However, the Assignee has not provided the unsecured creditors and the Court with the required information to, "ensure full reporting to creditors, and ensure equal distribution per priority," *Pro Finish, Inc. v. Estate of Estate of All Am. Trailer Mfrs*., 204 So. 3d at 507, to grant the motion at this time.

Conclusion

The Assignee has not provided the Court with a sufficient factual basis to approve the Surrender Agreement. Before abandoning the assets for an agreed $10,000,000.00 set -off, the Assignee must show the evidentiary basis to value the collateral, the amount of the uncontested debt, the lack of defenses to the lien, and the lack of any equitable claims or set-offs to the secured claims. This has not yet occurred, so the motion must be denied.

Wherefore; the Langstons oppose and object to the Motion and request that the same be denied or held in abeyance, and request the Court to order the Assignee to fully report on the status of the estate as above stated, and such other relief as the Court deems appropriate

Certificate of Service: I hereby certify that a copy of the foregoing has been filed and service will be made through the Court's efiling service this 4th day of June, 2019.

/s/Donald J. Schutz
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