

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

IN RE:	)	Chapter 11
	)	
SINDESMOS HELLINIKES-KINOTITOS OF	)	Case No. 15 B 22446
CHICAGO a/k/a HOLY TRINITY HELLENIC	)	
ORTHODOX CHURCH a/k/a HOLY TRINITY	)	Hon. Timothy A. Barnes
ORTHODOX CHURCH OF CHICAGO, an	)	
Illinois religious corporation	)	
	)	
Debtor.	)	
_____	)	
	)	
HELLENIC-AMERICAN ACADEMY	)	
FOUNDATION, NFP,	)	
	)	
Plaintiff,	)	Adversary No. 16 A _____
v.	)	
	)	
SINDESMOS HELLINIKES-KINOTITOS OF	)	
CHICAGO a/k/a HOLY TRINITY HELLENIC	)	
ORTHODOX CHURCH a/k/a HOLY TRINITY	)	
ORTHODOX CHURCH OF CHICAGO and	)	
MB FINANCIAL BANK, N.A.,	)	
	)	
Defendants.	)	
_____	)	

**COMPLAINT TO DETERMINE VALIDITY, PRIORITY AND  
EXTENT OF INTERESTS IN DEERFIELD PROPERTY**

The Hellenic-American Academy Foundation, NFP (the "Academy"), through its undersigned counsel, pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure, brings this Adversary Complaint against Defendants Sindesmos Hellinikes-Kinotitos of Chicago a/k/a Holy Trinity Hellenic Orthodox Church a/k/a Holy Trinity Orthodox Church of Chicago (the "Debtor") and MB Financial Bank, N.A. (the "Bank"), stating as follows:

### **The Parties**

1. The Academy is an Illinois not-for-profit corporation having its principal offices in Cook County, Illinois.

2. The Debtor is an Illinois religious corporation having its principal offices in Cook County, Illinois and is the debtor in the bankruptcy case (the "Case") within which this adversary proceeding is commenced.

3. The Bank is a national banking association having its principal offices in Cook County, Illinois.

### **Jurisdiction and Venue**

4. This Court has personal jurisdiction over the Defendants because each of them resides or conducts its principal activities in this judicial district and the transactions at issue arose in this judicial district.

5. This Court has subject matter jurisdiction in this proceeding pursuant to 28 U.S.C. §1334 because this proceeding arises under, or arises in, or is related to the Case, which is a case under Title 11 of the United States Code (the "Bankruptcy Code").

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §1409(a) because the Case is pending in this district.

7. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (K), (M) and (O).

### **Background**

#### **The Case**

8. On or about June 29, 2015, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code and commenced the Case.

9. The Debtor is operating as a debtor in possession pursuant to section 1107 and 1108 of the Bankruptcy Code.

The Academy and Its Relationship with the Debtor and the Deerfield Property

10. For more than 100 years, the Debtor has operated a Greek Orthodox Church located at 6041 W. Diversey Avenue in Chicago, Illinois (the "Chicago Property"). In addition to conducting religious services and parish activities at the Chicago Property, the Debtor also historically operated a school, known as the Socrates Greek-American Elementary School (the "Socrates School"), since at least in 1907 or 1908.

11. In 2004, the Debtor purchased the real estate commonly known as 1085 North Lake Cook Road, Deerfield, Illinois (the "Deerfield Property") as part of a broader plan that began with relocating the Socrates School to the Deerfield Property. This broader plan also contemplated relocating the Debtor's church and religious services to the Deerfield Property in the future.

12. In or about 2004 or 2005, the Academy was formed by various members of the Debtor's parish and the broader community that the Debtor serves in order to take over the operation of the Socrates School.

13. On or about June 15, 2006, the General Assembly of the Debtor and the Board of Trustees of the Academy adopted a certain joint resolution (the "Joint Resolution"), pursuant to which the Debtor transferred ownership and control of the Socrates School to the Academy, beginning with the 2006-2007 academic year. A copy of the Joint Resolution is attached hereto as Exhibit A.

14. In order to allow the Academy an opportunity to establish itself at the new location and to maintain operations in the future, the Joint Resolution provides the Academy

with the right to lease the Deerfield Property rent free for a period of ten years (the "Initial Term") with the right to extend the lease of the Deerfield Property after the Initial Term for fair market rent (the "Lease Extension"). Additionally, the Joint Resolution provided the Academy with a right of first refusal to purchase the Deerfield Property (the "Right of First Refusal" and, collectively with the Lease Extension and other rights under the Joint Resolution, the "Deerfield Property Rights").

15. Specifically, the Joint Resolution provides, among other things, that:

- (a) The Debtor shall allow the Academy exclusive use of the Deerfield Property;
- (b) The Debtor "shall not seek from the Academy nor shall it accept any monetary remuneration for a period of 10 years....";
- (c) After such 10 year period, the Debtor and the Academy "shall enter into a good faith, arms-length, fair market space-sharing agreement.";
- (d) The Debtor "shall not lease to a third party, or otherwise deprive the Academy of the [Deerfield Property] without the Academy's prior written consent."; and
- (e) In the event the Debtor wishes to sell all or any portion of the Deerfield Property, the Academy "shall have a Right of First Refusal to purchase the Subject Property for a price equal to the Original Purchase Price[\$4,500,000] plus 'Yearly Inflation'".

16. In 2006, pursuant to and in reliance on the Joint Resolution, the Academy assumed ownership and control of the Socrates School and, in connection therewith, exclusive use of the Deerfield Property. Since then, it has continuously operated the Socrates School and related activities at the Deerfield Property. Today, the Academy serves approximately four hundred children and employs many people at the Deerfield Property

through its full-time day school program for children pre-kindergarten through eighth grade and its Greek language programs as well as providing cultural programs for children and adults.

#### The Bank Loan and Mortgages

17. On or about June 1, 2007, in order to pay for the costs of renovating the Deerfield Property, the Debtor obtained a loan (the "Loan") in the original principal amount of about \$12.191 million. The Loan was evidenced by a certain Bond and Loan Agreement dated June 1, 2007 (the "BLA") issued by the Illinois Finance Authority (the "IFA") and purchased by the Bank. The Loan was secured by, among other things, mortgages and assignments of rents on both the Chicago Property and the Deerfield Property and was guaranteed by the Academy.

18. On or about February 25, 2010, the IFA, the Debtor, the Academy and the Bank entered into a First Amendment to the Bond and Loan Agreement (the "BLA Amendment"). Pursuant to the BLA Amendment, the original principal amount of the Loan was reduced to \$6.910 million, the Academy became the obligor on the Loan and the Debtor became the guarantor thereof. To secure its guaranty, the Debtor granted the Bank, among other things, mortgages and assignments of rents on both the Chicago Property and the Deerfield Property.

#### Debtor and the Bank Refuse to Recognize Academy's Deerfield Property Rights

19. The Initial Term of the Academy's lease of the Deerfield Property expires prior to the start of the 2016-2017 academic year.

20. In December 2015, the Academy requested that the Debtor enter into good faith negotiations regarding a lease and made informal proposals. However, these

negotiations never materialized and the Debtor abruptly terminated any discussions in late December 2015.

21. On information and belief, the Bank disputes the Academy's right to continue to lease the Deerfield Property and desires that the Debtor market the Deerfield Property for sale free and clear of the Academy's Deerfield Property Rights.

22. On or about December 11, 2015, the Debtor filed a motion [Docket No. 50 in the Case] requesting authority to retain a real estate broker (the "Retention Motion") for the purpose of marketing and obtaining offers to purchase the Deerfield Property.

23. On or about January 25, 2016, the Court entered an order [Docket No. 64 in the Case] granting the Debtor authority to retain such a broker.

24. In connection with the Retention Motion, the Academy specifically asserted its rights to continue to lease the Deerfield Property and reserved all of the Academy's Deerfield Property Rights [Docket Nos. 61 and 62 in the Case].

25. On or about February 1, 2016, the Academy, through its counsel, sent a letter (the "Demand Letter") to the Debtor's counsel demanding that the Debtor enter negotiations with the Academy related to the Lease Extension pursuant to the Deerfield Property Rights granted in the Joint Resolution. Attached hereto as Exhibit B is a true and correct copy of the Demand Letter.

26. On or about March 4, 2016, the Academy was informed that members of the Debtor's Parish Counsel, a decision making body, would meet on or about March 9, 2016, to consider the Academy's demand in the Demand Letter.

27. On or about March 16, 2016, counsel for the Debtor informed the Academy's counsel that the Debtor would not lease the Deerfield Property to the Academy and desired to sell the Deerfield Property unencumbered by a lease to the Academy.

28. On March 29, 2016, the Debtor filed a Motion to Approve Rejection of Executory Leasehold Interests and Right of First Refusal to Purchase Deerfield Property with Hellenic American Academy Foundation, NFP [Docket 71 in the Case] (the "Rejection Motion").

29. The Rejection Motion seeks to reject the Academy's Deerfield Property Rights granted by the Joint Resolution, for the stated purpose of allowing the Debtor to sell the property to a third party free and clear of the Academy's Deerfield Property Rights.<sup>1</sup>

30. Consistent with the Rejection Motion's purported intent and despite the Academy's repeated demands and assertions of its Deerfield Property Rights, the Debtor has refused to negotiate the terms of a "good faith, arms-length, fair market space-sharing agreement" regarding the Academy's continued use of the Deerfield Property, as required by the Joint Resolution.

31. There is an actual controversy regarding the Academy's Deerfield Property Rights.

#### Relief Requested

32. Section 363(e) of the Bankruptcy Code provides that "at any time, on request of an entity that has an interest in property . . . proposed to be used, sold, or leased, by the

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<sup>1</sup> In a situation where, as here, the Debtor is the lessor under a lease, the rejection of a lease does not extinguish the lessee's rights thereunder. Instead, the lessee is entitled to retain its rights under the rejected lease, including the right of possession, and offset against future rent the value of any damage caused by the lessor's future nonperformance. Sec. 11 U.S.C. 365(h)(1). Accordingly, even if the Motion were granted, the Academy would retain its rights under the Joint Resolution, including the right of possession, and any purchaser of the Deerfield Property could only take subject to same.

trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.”

33. Seeking such a determination of the validity, priority, or extent of an interest in property must be sought through the commencement of an adversary proceeding under Federal Rule of Bankruptcy Procedure 7001(2) and 7001(9).

34. Three parties, the Debtor, the Bank and the Academy, each claim an interest in the Deerfield Property: the Debtor as owner, the Bank as mortgagee and the Academy through its Deerfield Property Rights.

35. The Academy claims that its Deerfield Property Rights include, without limitation, the right, granted by the Joint Resolution, to: (a) a long term lease commencing in June 2016 and, until then, continued possession without payment of remuneration; and (b) a right of first refusal.

36. The Academy further claims and seeks a declaration that, whether the Rejection Motion is granted or not, the interests of the Debtor and the Bank, as well as those of any future purchaser or encumbrancer of the Deerfield Property, are subject to the Academy’s Deerfield Property Rights.

37. Determination of the validity, extent and priority of the respective interests of the Debtor, the Bank and the Academy in the Deerfield Property is necessary to determine the value of such property to the Debtor and the Bank, as well as to determine the future of the Academy and the hundreds of families and people that it serves.

WHEREFORE, the Academy respectfully requests that the Court enter judgment:

A. Determining that interests in the Deerfield Property, including the Deerfield Property Rights, granted to the Academy by the Joint Resolution are valid and



enforceable, including, without limitation, the Lease Extension and the Right of First Refusal;

B. Determining that the rights of the Debtor, the Bank and their respective successors and assigns in the Deerfield Property are subject to the Academy's Deerfield Property Rights, including, without limitation, the Academy's Lease Extension and Right of First Refusal;

C. Granting the Academy its costs herein; and

D. Granting such other and further relief as the Court deems just.

Respectfully submitted,

Date: April 4, 2016

/s/ Michael M. Schmahl

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