

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.)	
)	

**OBJECTION OF THE HELLENIC-AMERICAN ACADEMY FOUNDATION,
NFP TO DEBTOR’S MOTION TO APPROVE SALE OF THE
DEERFIELD PROPERTY FREE AND CLEAR OF
LIENS, CLAIMS, LIABILITIES, AND ENCUMBRANCES**

The Hellenic-American Academy Foundation, NFP (the “Academy”), through its undersigned counsel, files this Objection (the “Objection”) to the Debtor’s Motion to Approve Sale of the Deerfield Property Free and Clear of Liens, Claims, Liabilities, and Encumbrances (the “Motion”) [Docket No. 84], pursuant to which the Debtor seeks the entry of an order that, among other things: (i) authorizes the Debtor to accept a potential offer from Gilbane Development Company or its assignee (“Gilbane” or the “Potential Buyer”) to purchase the real property commonly known as 1085 Lake Cook Road in Deerfield, Illinois (the “Deerfield Property”); (ii) authorizes the Debtor to enter into an agreement with the Potential Buyer in the form of the draft attached to the Motion as Exhibit A (the “Draft Agreement”); (iii) authorizes the sale of the Deerfield Property free, and clear of all liens, claims, and encumbrances, including the Academy’s interests in the Deerfield Property; and (iv) provides additional relief “barring and enjoining any parties holding or asserting any such liens, claims, liabilities, encumbrances, and interests . . .

from asserting against Gilbane, without limitation, any defaults, breaches, claims . . . arising from the rejection or termination of any lease or executory contract of the Debtor or any rights to possession of all or any part of the Deerfield Property (the “Requested Injunctive Relief”). In support of this Objection, the Academy respectfully states as follows:

Introduction

1. Historically, the Academy and the Debtor have enjoyed a close affiliation and a shared history. As described below, the Academy was founded in order to further the Debtor’s Plan (as defined below) to relocate a school (the “School” or the “Socrates School”) that was founded by the Debtor over 100 years ago, to the Deerfield Property with the intent to ultimately relocate the Debtor’s church there as well.

2. Tracing its roots back to 1907-1908 as one of the first Greek schools in the United States, and likely one of the oldest continuously operating Greek schools outside of Greece in the world, the School is now owned and operated by the Academy and consists of a full time day school educating children from pre-kindergarten through the eighth grade in a full range of subjects including Greek and Serbian language instruction. In addition to the day school, the Academy serves the Chicagoland community by maintaining a language program teaching Greek to children and adults as well as a rich cultural program dedicated to Greek music, drama and other arts and customs.

3. Today, the Academy serves approximately 400 children and adults through its day school and various language and cultural programs.

4. The next academic year is scheduled to start within approximately three weeks from the filing of this Objection.

5. Over the last several years, the Academy's relationship with the Debtor has been strained as the Debtor unilaterally pulled back and then stopped financial support of the Academy through debt service payments and threats to sell the Deerfield Property in breach of the parties' agreement.

6. The Academy previously initiated an adversary proceeding captioned *Hellenic-American Academy Foundation, NFP v. Sindesmos Hellinikes-Kinotitos of Chicago, et al.* (Adv. No. 16 A 229) (the "Adversary Proceeding") in which it principally seeks, among other things, a declaratory judgment that the Academy has various rights in the Deerfield Property, including, without limitation, a lease for the Deerfield Property and the right to extend that lease into the future, that the Academy has the right to retain possession in spite of any rejection of the Academy's lease pursuant to 11 U.S.C. § 365(h), and that any sale of the Deerfield Property must be subject to the Academy's rights in that property.¹

7. The Adversary Proceeding is currently pending before the Court with all parties having filed cross-motions for summary judgment that are fully briefed.

¹ The summary description of the Adversary Proceeding and the relief the Academy is seeking therein contained above and elsewhere in this Objection are solely intended as a brief description of that action and the complaint filed by the Academy. Nothing in this summary is intended to limit or modify the allegations, issues, or relief requested by the Academy in the Adversary Proceeding, and any inaccuracies in the summary descriptions of the Adversary Proceeding or the Academy's rights related to the Deerfield Property and any inconsistencies with the allegations and positions taken in the Adversary Proceeding are entirely unintended. The Academy looks to its complaint and the other pleadings filed in the Adversary Proceeding for a complete description of the allegations, issues, and relief requested in the Adversary Proceeding. As such, the Academy reserves all, and does not waive or modify any, of its rights, claims, and defenses, related to the Deerfield Property and the Adversary Proceeding and nothing herein should be construed as a waiver or modification of the allegations, issues, or positions asserted in the Adversary Proceeding.

8. The Debtor's Motion is the culmination of the Debtor's efforts to deprive the Academy of its rights related to the Deerfield Property and to circumvent the Adversary Proceeding. For the reasons stated below, the Court should deny the Motion.

Jurisdiction

9. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

10. On or about June 29, 2015, the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and commenced this bankruptcy case.

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

12. The Academy is a creditor and party in interest in this bankruptcy case.

Debtor and the Acquisition of the Deerfield Property

13. The Debtor is an Illinois religious corporation and maintains a Greek Orthodox Church located at 6041 W. Diversey Avenue in Chicago, Illinois (the "Chicago Property").

14. Historically the Debtor served a vibrant Greek-American community on the west side of Chicago surrounding the Chicago Property. In addition to religious services, the Debtor historically operated the Socrates School, founded by the Debtor in or about 1908, through which the Debtor provided an exceptionally balanced bi-lingual

educational program (in Greek and English) to the Greek-American community in the area.

15. In recent decades, the Greek-American population on the west side of Chicago has dwindled as many dispersed to other areas in and around Chicago. Recognizing this reality, beginning in or about 2002 or 2003, the Debtor began planning to relocate first the School and then its church closer to the Greek-American population centers in the area and focused on the city's North Shore suburbs for the benefit of and to preserve the Debtor's community in the future (the "Plan").

16. Acting on this Plan, in or about August 2004, the Debtor purchased the Deerfield Property in August of 2004 for approximately \$3.1 million after viewing several other properties with various other religious leaders and representatives of the Greek Orthodox Metropolis. In large part, the Deerfield Property was selected, because it was believed to be a suitable location with sufficient space to house both the Debtor's church and School.

17. The Debtor financed this purchase through a \$3.1 million loan from North Community Bank and subsequently accepted additional financing to begin renovating the Deerfield Property and construction necessary to operate the School.

Formation of the Academy and Debtor's Agreement with Academy

18. In order to accommodate the cost of further renovating the Deerfield Property to make it suitable for the School, the Plan was modified to include the creation of an operational entity, which would take over the School, that was intended to qualify for tax free status under Section 501(c)(3) of the Internal Revenue Code in order to pursue special debt financing opportunities as well as private donations.

19. Several months following the Debtor's purchase of the Deerfield Property, the Academy was formed as this operational entity by various members of the Debtor's parish, many of whom directly participated in the numerous discussions related to the Plan and were otherwise directly involved in the Plan.

20. Enrollment at the School, which had already temporarily relocated to a Serbian Orthodox Church to allow the Debtor to lease the Chicago Property to the Chicago Public Schools, had already declined from historic levels and was expected to be further reduced due to the planned second move to the Deerfield Property in the North Shore.

Debtor's Agreement With The Academy and The Joint Resolution

21. After months of discussion, and in reliance on the Plan, the Academy and the Debtor agreed that the Academy would take over the School starting with the 2006-2007 academic year and operate it at the Deerfield Property while the Debtor continued to lease out the Chicago Property to support the financing needed to carry out the Plan, including the renovation of the Deerfield Property.

22. Given the Academy's anticipated start-up operating losses and need to grow and become established in Deerfield, the agreement required the Debtor to support the Academy for a start-up period of ten years by assisting in financing the real estate expenses related to the Deerfield Property through the rent proceeds from the lease of the Chicago Property, while also ensuring both that the Academy had sufficient rights to

remain on the Deerfield Property in perpetuity and that the Debtor would be able to relocate its church on the property in the future.²

23. Though various terms of this agreement were not written by the Debtor and the Academy, several of them were memorialized in a joint resolution of the governing bodies of the Debtor and the Academy dated June 15, 2006 (the "Joint Resolution"), which also constitutes a lease of the Deerfield Property (the lease along with the other rights under the Joint Resolution, the "Deerfield Property Rights").

24. The Joint Resolution provides for several terms of the parties' agreement in addition to the Deerfield Property Right, including, without limitation, that: (i) ownership of the School was transferred to the Academy starting with the 2006-2007 academic year; (ii) the Academy would lease the Deerfield Property rent free (and that the Debtor would not accept monetary remuneration) for a period of ten years; (iii) after the initial ten-year term, the Academy and the Debtor would enter into a market rate lease for the Deerfield Property into the future; (iv) the Debtor would not deprive the Academy of use of the Deerfield Property without the Academy's consent; (v) the Academy would seek to obtain and maintain status under Section 501(c)(3) of the Internal Revenue Code; and (vi) the Academy would continue to operate the School on the Deerfield Property continuously in perpetuity. A copy of the Joint Resolution is attached hereto as Exhibit A.

25. Among other things, the Joint Resolution specifically provides that:

² In the Motion, the Debtor states that this Bankruptcy Case was commenced in order to protect the Chicago Property from a foreclosure action initiated by MB due to the Academy's failure to make loan payments to MB. See Motion at ¶ 10. The Debtor's statement is disingenuous, because the Debtor was obligated to make these payments from the Chicago Property rent proceeds under its agreement with the Academy. The Academy submits that the Debtor unilaterally shifted this burden onto the Academy in breach of the parties' agreement.

- 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 use 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 [Deerfield Property] for a price equal to the Original Purchase Price plus ‘Yearly Inflation’.”

The MB Debt

26. On or about June 1, 2007, in order to finance the additional costs of renovating the Deerfield Property pursuant to the Plan, the Debtor obtained a loan in the original principal amount of about \$12.191 million, pursuant to a certain Bond and Loan Agreement dated June 1, 2007 (the “BLA”) issued by the Illinois Finance Authority (the “IFA”) and purchased by MB Financial Bank, N.A. (“MB”). The Loan was expected to be sufficient to pay for both the costs to complete development of the School’s facilities and the expected, though not obligated, relocation of the Debtor’s church to the Deerfield Property. The Loan was secured by, among other things, mortgages and assignments of

rents on both the Chicago Property and the Deerfield Property and guaranteed by the Academy.

27. On or about February 25, 2010, the IFA, the Debtor, the Academy and MB entered into a First Amendment to the Bond and Loan Agreement (the “BLA Amendment”) pursuant to which the Academy became the obligor under the amended loan and the Debtor became the guarantor of the amended loan pursuant to a guaranty that is secured by, among other things, mortgages and assignments of rents on both the Chicago Property and the Deerfield Property. Due to the fact that the Debtor did not then have concrete plans to relocate the church, the unused loan proceeds, which would otherwise accrue interest, were also repaid to the lender so that the balance was reduced to \$6.91 million as part of the amendment. Pursuant to the BLA Amendment, the IFA issued new bonds for the then outstanding principal balance of about \$6.910 million (the “Amended Bond”), which was purchased solely by MB.

28. Within approximately six years following the relocation of the School to the Deerfield Property, the Academy had substantially grown enrollment and was able to finance its operating expenses. At that time, the Academy anticipated continued growth in the coming years and to be in a position to fully fund a market lease of the Deerfield Property from the Debtor by its tenth year of operation of the School.

29. The Debtor, however, unilaterally began incrementally reducing and, by 2013, ceasing payments to service the debt under the Amended Bond. In light of these and other actions, the Debtor created significant fear among the Academy’s teachers and families that the Academy would be forced off of the Deerfield Property, resulting in material attrition that threatens the Academy’s operations.

30. As described in the Academy's complaint in the Adversary Proceeding and otherwise, the Academy has consistently asserted its Deerfield Property Rights, including, among other things, by demanding that the Debtor enter into a lease extension for the Deerfield Property with the Academy.

31. The Debtor has consistently refused to acknowledge or honor the Academy's Deerfield Property Rights.

Objection To The Motion

32. Through the Motion the Debtor attempts to improperly set aside the Academy's Deerfield Property Rights and perform an end run around the Adversary Proceeding and the Academy's rights under Section 365(h) of the Bankruptcy Code. For the reasons stated below, the Court should deny the Motion.

The Academy's Section 365(h) Rights Cannot Be Set Aside Through the Motion

33. For the reasons stated in the Academy's Motion for Summary Judgment and related briefs (including the Academy's Responses to the Debtor's and MB's respective Motions for Summary Judgment) in the Adversary Proceedings, all of which are expressly incorporated herein, the Joint Resolution is an enforceable lease that provides the Academy with the right to extend its leasehold interest in the Deerfield Property and maintain its right of first refusal. *See Schumacher v. Fatten*, 18 Ill. App. 2d 387 (2nd Dist. 1958) (holding that an option to renew a leasehold interest was enforceable in spite of the fact that the option was silent as to its duration); *Kaybill Corp. v. Cherne*, 24 Ill. App. 3d 309, 318-320 (1st Dist. 1974) (enforcing a lease extension option that did not provide a specific dollar value for rental rates).

34. Section 365(h) of the Bankruptcy Code specifically provides the Academy the right to retain its Deerfield Property Rights under the Joint Resolution in the face of a rejection of this lease by the Debtor, including, without limitation, the rights to continue to use, possess, and to retain quiet enjoyment of the Deerfield Property, for the balance of the term of the Deerfield Property Rights “and for any renewal or extension of such rights” as well as the right to offset any damages incurred by the Academy against future rent. *See* 11 U.S.C. §§ 365(h)(1)(A)(ii) and (h)(i)(B). The Academy has asserted its rights under Section 365(h) and that election and the Debtor’s pending motion to reject the Academy’s Deerfield Property Rights are being addressed in connection with the Adversary Proceeding.

35. Numerous courts have held that a debtor cannot use Section 363(f) to avoid a non-debtor lessee’s rights under Section 365(h). *See In re Churchill Properties III, L.P.*, 197 B.R. 283,286-288 (Bankr. N.D. Ill. 1996) (holding that Section 363(f) does not trump Section 365(h) rights); *see also In re Zota Petroleums, LLC*, 482 B.R. 154, 160-161 (Bankr. E.D. Va. 2012); *In re Haskell, L.P.*, 321 B.R. 1, 9 (Bankr. D. Mass. 2005); *LHD Realty Corp. v. Metro. Life Ins. Co. (In re LHD Realty Corp.)*, 20 B.R. 717 (Bankr. S. D. Ind. 1982); *but see Precision Indus. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, (7th Cir. 2003) (holding that sale pursuant to Section 363(f) could be free and clear of a non-debtor lessee’s possessory interest in property where the non-debtor lessee failed to object to the sale or timely appeal the sale order).

36. *Qualitech* does not control and is distinguishable from the case at bar, because the Academy has long asserted its Deerfield Property Rights, commenced the Adversary Proceeding, and is hereby objecting the Debtor’s proposed sale. Furthermore,

the Debtor is seeking to reject the Academy's Deerfield Property Rights and the Academy has asserted its rights under Section 365(h). As such, the Court should not permit the Debtor to indirectly avoid those rights through the Motion.

Debtor Has Failed to Show Section 363(f) Applies To the Deerfield Property Rights or To Provide Adequate Protection

37. Section 363(f) has limited application and only permits sales free and clear of third party interests in limited circumstances. *See* 11 U.S.C. § 363(f); *see also Precision Indus. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, 544-545 (7th Cir. 2003) (noting the limited circumstances in which Section 363(f) applies in a case in which a non-debtor tenant failed to object to the sale free and clear of its leasehold interest until after the sale).

38. Though the Debtor is clearly attempting to sell the Deerfield Property free and clear of the Academy's Deerfield Property Rights³, the Debtor utterly fails to identify any basis upon which Section 363(f) applies to the Academy's Deerfield Property Rights. Rather, the Debtor's discussion is solely limited to MB's consent to the sale. *See* Motion at ¶ 17.

39. Moreover, even if Section 363(f) were to apply, the Court "shall prohibit or condition such . . . sale . . . as is necessary to provide adequate protection" of the Academy's Deerfield Property Rights under Section 363(e). *See* 11 U.S.C. § 363(e); *see also Precision Indus. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, (7th Cir. 2003) (holding

³ For example Paragraph 15 of the Motion requests that the proposed sale be free and clear of "the Leases & Real Estate Rights" defined in the Draft Agreement to include the Academy's Deerfield Property Rights.

that a lessee of property being sold pursuant to Section 363(f) “would have the right to insist that its interest be protected.”).

40. The Debtor has not offered to provide any adequate protection to the Academy. Rather it proposes only to provide adequate protection to MB.

41. The Deerfield Property Rights, including, without limitation, the rights to perpetually lease the Deerfield Property on terms that include a right of first refusal are specific and unique to that property. The Academy has expended significant effort and resources to develop the School on the Deerfield Property and to establish its presence in the North Shore. The academic year starts in less than a month and the School cannot be relocated in just a few weeks. As such, the value of the Deerfield Property Rights are uniquely tied to the Deerfield Property itself.

42. In the event that the Deerfield Property were to be sold free and clear of the Academy’s interests, at a minimum, it would likely materially injure the Academy and its operations by creating fear and uncertainty on the eve of the start of the new academic year which would almost certainly result in significant attrition among the School’s teachers, students and families irrespective.

43. Adequate protection most frequently takes the form of a share of the sale proceeds. However, the *Qualitech* court implied that protection of the non-debtor lessee’s Section 365(h) rights may also be appropriate. *See Qualitech*, 327 F.3d at 548 (“‘Adequate protection’ does not necessarily guarantee a lessee’s continued possession of the property . . .”).

44. Under the circumstances, the Academy asserts that it is both entitled to adequate protection of its Deerfield Property Rights in any sale of the Deerfield Property

and that conditioning any such sale on the purchaser honoring the Academy's Deerfield Property Rights is the appropriate form of adequate protection.

45. To the extent that the Academy is obligated to first demand adequate protection under Section 363(e), the Academy has made such a demand in the Adversary Proceeding and, through this objection, again hereby demands adequate protection to protect its Deerfield Property Rights.

The Requested Injunctive Relief Should Be Denied.

46. In addition to seeking a sale free and clear of third party interests, the Debtor goes a step further and requests that the Court approve the Requested Injunctive Relief to bar and enjoin the Academy from asserting the Academy's Deerfield Property Rights and the Academy's rights under Section 365(h) (presumably including, without limitation, the Academy's offset right under Section 365(h)(1)(B)) against Gilbane in the future. *See* Motion at ¶ 15(d).

47. The Debtor cites no authority for its Requested Injunctive Relief. However, any such relief, if it is available at all, may only be pursued through either an adversary proceeding or a confirmed chapter 11 plan. *See* Federal Rule of Bankruptcy Procedure 7001(7).

48. As such, the Debtor's request for such relief should be denied.

The Motion Is Premature

49. The Debtor readily acknowledges that it has not yet accepted Gilbane's offer and that the Draft Agreement has not been executed (even conditionally subject to the Court's approval).

50. Thus, Gilbane is not bound by the Draft Agreement and Gilbane is free to back out of the proposed transaction or to modify its purported offer.

51. Moreover, the Deerfield Property and the Chicago Property are the two most significant assets of the Debtor's bankruptcy estate. The Debtor has not begun discussions related to, much less filed, a proposed Chapter 11 plan.

52. Many courts have expressed, at a minimum, concern regarding sales of significant assets outside of the context of a chapter 11 plan and the protections provided through the plan confirmation process. *See e.g. In re Lionel Corp.*, 722 F.2d 1063, 1069-1070 (2nd Cir. 1983); *Pension Benefit Guaranty Corp. v. Braniff Airways, Inc. (In re Braniff Airways, Inc.)*, 700 F.2d 935 (5th Cir. 1983).

53. Presumably in an effort to forestall this issue, the Debtor acknowledges that it must demonstrate a "sound business justification" for the Motion and asserts that the proposed sale is necessary in order to maximize value for the estate and minimize interest expenses on the MB debt. *See* Motion at ¶¶ 20-21.

54. While the Debtor states that it received numerous offers to purchase the Deerfield Property, it fails to describe any of those competing offers or explain why the proposed Gilbane offer would "maximize value for the estate." Particularly in light of the fact that the proposed sale is not subject to higher or better offers, such a showing should be required. The Academy reserves all of its rights to test any such evidence through cross examination or as may otherwise be appropriate.

55. Furthermore, the Debtor's asserted justification fails to take into account that the purported offer as contained in the Draft Agreement:

- a. has not been signed and does not bind Gilbane;

- b. provides an extended schedule allowing extensive time for Gilbane to conduct due diligence (Section 3(a) of the Draft Agreement), and obtain zoning and other approvals (Section 3(b) of the Draft Agreement), that do not begin (assuming the Draft Agreement is signed) until after a sale order has become final and no longer subject to appeal or review (based on the definition of “Court Approved Effective Date” in Section 3(b) of the Draft Agreement) and which, at a minimum (assuming Gilbane does not exercise any of multiple extensions), are expected to last for up to 210 days, with Gilbane having the right to further extend this process by another up to at least another 90 days;
- c. further provides that the due diligence and approval schedule may be delayed by up to 180 additional days to allow up to 90 days (from the date of any execution) to obtain a final and non-appealable sale order (Section 3(d)(i)) and then up to another 90 days for a definitive resolution of the Academy’s Deerfield Property Rights either through agreement or a final court order (Section 3(d)(ii)); and
- d. provides Gilbane with multiple opportunities to terminate the Draft Agreement throughout this extended schedule.

56. The Debtor has not alleged that MB has agreed to waive any interest or other charges prior to any closing of the proposed sale. Given that the proposed sale could take up to 480 days to close from the execution of the Draft Agreement, it is difficult to understand how this will minimize the accrual of any interest on the MB debt

or how the Debtor could not preserve Gilbane's offer and pursue it in the context of confirming a plan.

57. Therefore, while the Academy acknowledges that asset sales are sometimes permitted outside of the context of a confirmed plan, the Debtor has failed to allege any compelling business justification sufficient to meet this standard.

58. Given the complete lack of urgency in the Draft Agreement, the threshold issues raised in the Adversary Proceeding regarding the Academy's interests in the Deerfield Property, and the potential for significant harm to the Academy, the proposed sale should not be considered outside of a confirmed chapter 11 plan, or, at a minimum, not until there has been a final resolution of Academy's rights related to the Deerfield Property (either through agreement or litigation).

59. Alternatively, in the event that the Court is inclined to consider the proposed sale pursuant to the Motion, the Motion should be continued until after a resolution of the Adversary Proceeding.⁴

Debtor Fails to Establish A Basis for Section 363(m) Finding

60. Section 363(m) is intended to protect the interest of good-faith purchasers notwithstanding that a sale may later be reversed or modified. *See* 11 U.S.C. § 363(m) (reversal or modification on appeal of an authorization under [Section 363(b)] . . . does not affect the validity of a sale . . . to the entity that purchased . . . such property in good faith . . .").

⁴ Any order approving the proposed sale should also be conditioned on and made subject to any eventual resolution of the issues related to the Academy's Deerfield Property Rights in the Adversary Proceeding.

61. Although “good faith” is not defined in the Bankruptcy Code, courts generally consider whether a purchaser has fraudulently or collusively entered into a sale agreement and look to the purchaser’s conduct during the course of the sale. *See Hoese v. Vetter Corp. (In re Vetter Corp.)*, 724 F.2d 52, 56 (7th Cir. 1983).

62. The Debtor has not alleged any basis to support a such a finding other than to allege that it conferred with MB regarding choosing Gilbane’s offer. Furthermore, in light of the fact that the Draft Agreement has not been executed, the sale process is not complete. As such, the Debtor should be required to put forth evidence from which the Court may determine if a Section 363(m) is appropriate.

Rule 6004 Stay Should Not Be Waived

63. Federal Rule of Bankruptcy Procedure 6004(h) provides that all orders approving sales of assets are stayed for 14 days unless the Court orders otherwise.

64. In light of the fact that the Debtor appears to be attempting to foreclose the Academy’s Deerfield Property Right through the proposed sale and the fact that any sale pursuant to the Draft Agreement is not contemplated for many months (if not over a year), the Rule 6004(h) stay should not be waived by the Court.

65. Simply stated, there is no urgency in the proposed sale and the Debtor has not set forth any basis for the requested waiver.

66. In the event that the Court determines that the Motion should be granted, the Academy should be afforded the protection provided in Rule 6004(h) and, if appropriate, the opportunity to seek any review that the Academy may be entitled to.

WHEREFORE, the Academy respectfully requests that the Court enter an order denying the Motion, or alternatively making any proposed sale subject to the Academy's Deerfield Property Rights, and granting such other or further relief as the Court determines is just or appropriate.

Date: August 4, 2016

Respectfully submitted,

/s/ Michael M. Schmahl

Michael M. Schmahl
Pollick & Schmahl, LLC
1319 N. Wood St.
Suite 3B
Chicago, IL 60622
(312) 498-1477
mschmahl@pollickschmahl.com
ARDC #6275860
*Counsel for Hellenic-American Academy
Foundation, NFP*

EXCERPT OF MINUTES OF A JOINT MEETING OF THE GENERAL ASSEMBLY OF SINDESMOS HELLENIKES-KINOTETOS OF CHICAGO ("HOLY TRINITY PARISH"), AND THE BOARD OF TRUSTEES OF THE NEWLY FORMED HELLENIC-AMERICAN ACADEMY FOUNDATION, NFP, COUNTY OF COOK, STATE OF ILLINOIS, HELD ON THE 15TH OF JUNE 2006

A joint meeting of the General Assembly (the "Assembly") of the Sindesmos Hellenikes-Kinotetos of Chicago ("Holy Trinity" or "Parish") an Illinois Religious Corporation, and the Hellenic-American Academy Foundation, NFP, ("Academy") an Illinois Not-For-Profit Corporation was held in the Gymnasium, second floor of the Parish, 6041 W. Diversey, Chicago, Illinois, on June 15, 2006, commencing at 1:00 p.m. Written notices of the meeting including the date, hour, place and agenda for the meeting, was posted in the Parish Bulletin, and sent via U.S. Mail to all Parish members and Members of the Academy.

The meeting was called to order at approximately 1:45 p.m. A quorum was established by the Secretary of each body. Mr. Demetrios Logothetis was nominated and accepted the position of the Chairman of the joint meeting.

(Other Proceedings)

Thereupon, there was presented a Joint Resolution entitled:

A JOINT RESOLUTION BY SINDESMOS HELLENIKES-KINOTETOS OF CHICAGO, AND THE HELLENIC-AMERICAN ACADEMY FOUNDATION, NFP; AUTHORIZING THE TRANSFER OF OWNERSHIP AND CONTROL OF SOCRATES-GREEK AMERICAN ELEMENTARY SCHOOL FROM HOLY TRINITY TO THE ACADEMY AND ALLOWING THE ACADEMY RENT-FREE USE OF THE PARISH PROPERTY LOCATED IN DEERFIELD ILLINOIS.

Recitals:

- A. In 1897 Sindesmos Hellenikes-Kinotetos of Chicago was incorporated as an Illinois Religious Corporation making it the first Greek Orthodox Parish in the Midwest and the Second Greek Orthodox Parish in the United States of America.
- B. In furtherance of its educational purposes, the Parish established a Greek language elementary school named "SOCRATES SCHOOL" in 1908. In 1917 the Parish

added an English curriculum to the School making it the first bi-lingual elementary Greek-American School in the United States of America.

- C. From the School's inception until the present the Parish has dutifully and continuously provided its community an exceptionally balanced bi-language educational program.
- D. In adherence to a commitment of advancing its educational purpose, The Parish, in 2004, purchased property at 1085 North Lake Cook Road Deerfield, Illinois ("Subject Property") for the purpose of relocating the school; thereby making it more accessible to a larger student base. Moreover, in an effort to fully effectuate the School's relocation, the Parish has taken upon itself the great financial burden of re-zoning, remodeling and constructing on the Subject Property.
- E. The acquisition, renovation, re-zoning and construction of the Subject Property has thus far cost the Parish approximately \$4,500,000 (Four Million Five Hundred Thousand Dollars). This \$4,500,000 (Four Million Five Hundred Thousand Dollars) is considered the Subject Property's Original Purchase Price.
- F. In 2004, various members of the community formed the Hellenic-American Academy Foundation, NFP. The Academy was formed with the purpose of preserving and promoting the Hellenic and Hellenic-American Heritage to all people through means of education.
- G. The Academy proposes to accomplish its goals by instituting a diverse group of educational programs, including, full-time and part-time elementary school, a high school, dance and theater groups and an assortment of lecture series.
- H. In furtherance of both bodies' educational dedication the Parish and Academy seek to carry forward the School's longstanding tradition by broadening its scope, and fostering its future growth.
- I. The Parish does not wish to profit in any way from transferring ownership of the School to the Academy, nor does it wish to profit from allowing the Academy use of the subject property.

NOW THEREFORE, BE IT RESOLVED by the Parish's General Assembly and the Academy's Board of Trustees, as the governing authorities of each respective body that:

Section 1. The Parish's General Assembly, authorizes the Parish Council to transfer complete ownership and control of Socrates Greek-American Elementary School, along with all the School's auxiliary programs, beginning in the 2006-2007 school year, to the Hellenic-American Academy Foundation, NFP.

Section 2. The Parish pledges to the Academy that:

- The Parish shall allow the Academy exclusive use of its newly acquired and constructed property located at 1085 North Lake Cook Road for the furtherance of the Academy's purpose;
- In allowing the Academy use of the Subject Property, the Parish shall not seek from the Academy nor shall it accept any monetary remuneration for a period of 10 years. Thereafter, the Parish and the Academy shall enter into a good-faith, arms-length, fair market space-sharing agreement.
- The Parish shall not lease to a third party, or otherwise deprive the Academy use of the Subject Property without the Academy's prior written consent.
- In the event that the Parish wishes to sell the Subject Property or any portion thereof, the Academy shall have a Right of First Refusal to purchase the Subject Property for a price equal to the Original Purchase Price plus "Yearly Inflation". "Yearly Inflation" shall be equal to the Consumer Price Index as periodically reported by the United States Government.

Section 3. The Academy acting through its Board of Trustees accepts complete transfer, ownership and control of Socrates Greek-American Elementary School and the use of the Subject Property.

Section 4. In appreciation of the Parish's exceptional generosity the Academy pledges to the Parish that:

- It shall take all reasonable steps to seek and maintain section 501(c)(3) standing from the United States Internal Revenue Service;
- It shall continuously operate Socrates Greek-American Elementary School on the Subject Property as a full time Elementary School.

This Resolution having been submitted to a vote of both bodies:

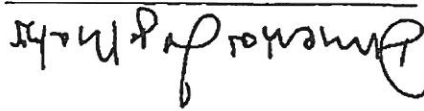
PARISH: ALL MEMBERS OF THE GENERAL ASSEMBLY APPROVED THE RESOLUTION.

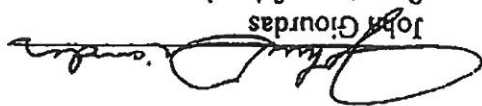
ACADEMY: ALL MEMBERS OF THE ACADEMY'S BOARD OF TRUSTEES APPROVED THE RESOLUTION.

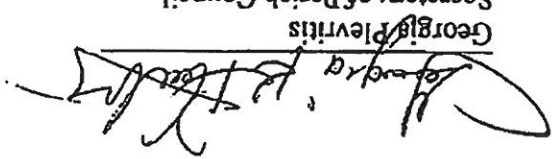
THE RESOLUTION WAS DECLARED ADOPTED BY BOTH BODIES ON THIS, THE 15TH DAY OF JUNE 2006.

(PLEASE TURN TO THE NEXT PAGE FOR ATTESTATION OF THIS RESOLUTION)

Approved by Parish President:
and Academy Chairman


Demetrios Logothetis


John Giourdas
Secretary of Academy


Georgia Plevritis
Secretary of Parish Council

Attest: