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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In re:	(Hon. Vincent F. Papalia)
PETERSBURG REGENCY, LLC,	Chapter 11
Debtor.	Case No. 15-17169 (TBA)
	Hearing Date: June 16, 2015 @ 10:00 a.m. **Oral Argument: Requested**

MOTION OF LECLAIRRYAN, A PROFESSIONAL CORPORATION FOR ENTRY OF AN ORDER DISMISSING CASE PURSUANT TO 11 U.S.C. § 1112(b), AND FOR SANCTIONS

TO: HONORABLE VINCENT F. PAPALIA
UNITED STATES BANKRUPTCY JUDGE

LeClairRyan, A Professional Corporation ("**LeClair**"), by and through its undersigned counsel, submits this Motion ("**Motion**") seeking the dismissal with prejudice of the chapter 11 petition filed by Petersburg Regency, LLC ("**Debtor**") on April 20, 2015 and sanctions for its bad faith filing. In support of its Motion, LeClair respectfully states as follows:

PRELIMINARY STATEMENT

The Debtor's hurriedly-filed bankruptcy petition is fraught with bad faith and should be dismissed with prejudice. Among other earmarks of the Debtor's abuse of bankruptcy law are: (1) Debtor's admitted lack of any assets around which to reorganize, as evidenced by its concessions in an involuntary bankruptcy proceeding in Virginia just two months ago that its secured debts

exceed the value of its assets; (2) its counsel's endorsement on an order in Virginia state court last month distributing 100% of its only "asset"[1] to its secured creditors; (3) Debtor's misrepresentation in its application to employ counsel regarding its intention to repair a hotel which it no longer owns, which is scheduled for demolition by the City of Petersburg, Virginia, and which is beyond repair; (4) Debtor's initial defective corporate resolution to support its filing; and (5) Debtor's lack of good standing with the State of New Jersey New Jersey.

For the many reasons contained herein, Debtor's petition does not serve a valid bankruptcy purpose, was improperly filed to obtain a tactical litigation advantage, and should be dismissed. In addition, LeClair should be awarded its fees associated with this Motion as an appropriate sanction for Debtor's bad faith filing.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). The statutory predicate for the relief requested is section 1125 of title 11 of the United States Code (the "**Bankruptcy Code**").

FACTUAL BACKGROUND

Debtor History

2. The Debtor is a defunct New Jersey limited liability company, organized in 1998, which is no longer in good standing. The Debtor previously owned a single asset – the Ramada Plaza Hotel ("**Hotel**") located at 380 East Washington Street, Petersburg, Virginia. Robert T. Harmon ("**Harmon**") is the managing member of the Debtor and Harmon and his wife are the 100% owners of the company. The Harmons, insiders, are listed on the Debtor's Schedule F as

[1] LeClair does not concede Debtor has any assets and reserves all rights on this issue.

the single largest unsecured creditor with a $12,000,000 claim for alleged "loans" to the Debtor.

3. On September 18, 2003, the Hotel suffered significant property damage during Hurricane Isabel ("**Hurricane**"), including massive water intrusion and destruction of the façade on the southeast corner of the building.

4. Beginning in 2002 and continuing until 2011, the Debtor was a party to various contracts with the U.S. Department of Defense ("**DOD**") to provide rooms for U.S. Army personnel assigned to the Fort Lee Military base near Petersburg. The contract with the DOD was the Hotel's sole source of revenue.

5. The Hotel was never adequately repaired but continued to operate until it permanently closed its doors on or about December 15, 2011, following the DOD's termination of its contract with the Debtor. Petersburg Regency has conducted no other business since, except to pursue litigation against its insurer, Selective Way Insurance Company ("**Selective**"), for breach of the insurance policy by failing to cover the damages caused the Hotel by the Hurricane.

6. On January 16, 2014, the State of New Jersey revoked the Debtor's charter for failure to file its annual report for two consecutive years. *See Exhibit A to Certification of Douglas J. McGill submitted herewith ("McGill Cert.").*

7. On or around June 30, 2014, the City of Petersburg, Virginia, ("**City**") foreclosed its tax lien and is the current owner of the Hotel. *See McGill Cert., Ex. B.* Given its significant deterioration, the City intends to demolish the Hotel.

The Arbitration

8. On September 20, 2004, the Debtor filed an action in the Superior Court of New Jersey, Bergen County, [Docket No. L-12179-04] against Selective for property damages and

lost income suffered as a result of the Hurricane ("**New Jersey Action**"). The Debtor was represented in the New Jersey Action by Steve M. Kalebic of the Law Offices of Steve M. Kalebic, P.C. ("**Kalebic"**) located in Hackensack, New Jersey.

9. Subsequently, the Debtor retained Anthony J. Accardi, Esq., ("**Accardi**") of the law firm Accardi & Mirda in East Hanover, New Jersey, to represent the Debtor in connection with the lawsuit against Selective. In 2012, the Debtor also retained LeClairRyan to assist Accardi in the claim against Selective. After years of litigation in both New Jersey and Virginia, the dispute between Petersburg Regency and Selective was finally and successfully resolved through arbitration ("**Arbitration**") before the Honorable Anthony J. Sciuto ("**Arbitrator**").

10. The Arbitration commenced in June 2014, and lasted two weeks. On December 30, 2014, the Arbitrator issued an opinion granting the Debtor an award of $10,225,583.92 ("**Arbitration Award**"). *See McGill Cert., Ex. C.* Under applicable law, LeClairRyan and Accardi have liens on the Arbitration Award for their legal services. Numerous other parties also hold secured interests in the Arbitration Award.

11. During the Arbitration, the Debtor introduced uncontroverted expert opinions that the Hotel had been destroyed as a result of the Hurricane and Selective's refusal to cover the loss. The Arbitrator found that there was "a total destruction to the building" and that the cost to repair the Hotel exceeded $30,000,000. *See id*.

The Interpleader and Involuntary Bankruptcy Proceedings in Virginia

12. On December 30, 2014, Selective filed an interpleader action ("**Interpleader Action**") in the Circuit Court of the City of Petersburg, Virginia (Case No. CL14-848) against the Debtor and several of its secured creditors, including LeClairRyan and Accardi. A copy of the complaint without attachments is attached to the McGill Cert. as Exhibit D. Selective

deposited $10,230,626.64 with Petersburg Clerk of Court, which represented full satisfaction of the Arbitration Award.

13. On January 7, 2015, the Debtor presented an Order to Show Cause with Temporary Restraints Pursuant to R. 4:52 in the New Jersey Action, seeking, among other things, an order temporarily and permanently enjoining Selective from pursuing the Interpleader in Virginia, and enjoining Selective from contacting and communicating with the Debtor's creditors.

14. In a Certification (the **"Harmon Certification**") filed with the Order to Show Cause, Harmon certified:

> The hotel was the only business operated by Regency in the State of Virginia and since the hotel was closed in 2011, Regency has not engaged in any business, whatsoever, within the State. The hotel was foreclosed upon by the City of Petersburg, Virginia, thereby stripping Regency of any ownership interest in the property.

See McGill Cert., Ex. E. The New Jersey Court has never ruled on the Debtor's request.

15. On February 3, 2015, three unsecured creditors of the Debtor filed an Involuntary Chapter 7 Petition against the Debtor in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (Case No. 15-30526) (the "**Involuntary Bankruptcy**"), temporarily staying the Interpleader Action and the New Jersey Action.

16. On February 25, 2015, the Debtor filed its Motion to Dismiss the Involuntary Bankruptcy and Memorandum in Support. *See McGill Certification, Ex. F*. Among the arguments put forth in support of its motion, the Debtor argued:

a. total amounts owed to all secured creditors still exceed the amount of the Arbitration Award (p.13);

b. [t]he pleadings filed in the state courts show that a Chapter 7 proceeding should

be futile, in that the amount of claims asserted by purported secured creditors is in excess of the total amount of assets available for distribution (p.14);

c. there are a myriad of hands held out for a share of an arbitration award that appears too small to satisfy even secured claims (p.15);

d. the bankruptcy process would add no significant value because the state court systems …. are aptly equipped to address the appropriate fate of the Arbitration Award. (p.15);

e. [t]o now ask this Bankruptcy Court to be added to the mix creates no added value to the process and only wastes this Court's valuable time and resources (p.16); and

f. the interests of the purported debtor and its creditors would be served by allowing previously instituted matters to proceed (p.16).

17. By Order dated March 18, 2015, the petitioning creditors withdrew the Involuntary Bankruptcy, thus permitting the Interpleader Action to proceed.

18. On April 1, 2015, Selective filed its Motion for Default Judgment against the Debtor for failing to file responsive pleadings in the Interpleader Action. The Debtor has never appeared in, objected to, or sought to participate in any manner in the Interpleader Action, notwithstanding Debtor's knowledge of the proceedings as evidenced by its attempts to have the New Jersey court enjoin Selective from proceeding with the Interpleader Action.

19. On April 15, 2015, the Circuit Court of the City of Petersburg, Virginia, entered a "Final Order", finding that "the Creditors hold secured or statutory liens to the proceeds of the Arbitration Award and that their claims are valid and will extinguish the full amount of the Arbitration Award proceeds" (the "**Final Order**"). *See McGill Certification, Ex. G.* Accardi, Debtor's counsel in the New Jersey Action and the Arbitration, is among those secured creditors who endorsed the Final Order.

The Chapter 11 Petition

20. On April 20, 2015, the Debtor commenced the instant case by filing a voluntary

petition ("**Petition**") for relief under chapter 11 of the Bankruptcy Code.

21. On April 20, 2015, Debtor's counsel faxed a letter to Judge Pamela S. Baskerville of the Petersburg Circuit Court apparently threatening action for any violation of the automatic stay in connection with the Interpleader Action. *See McGill Certification, Ex. H.* On April 21, 2015, Judge Baskerville vacated the Final Order without explanation. *See McGill Certification, Ex. I.*

22. On April 22, 2015, the Debtor filed its Application for Entry of an Order Pursuant to 11 U.S.C. §§327(a), 328(a) Authorizing Debtor to Retain Nowell Amoroso Klein Bierman, P.A., as Counsel [Docket No. 7] (the **"Retention Application**").

23. In its Application, and despite not owning the Hotel, having argued at the Arbitration that the cost to repair the Hotel exceeded $30,000,000, and having asserted in the Certificate that the City of Petersburg had foreclosed on the Hotel, the Debtor falsely proclaimed that among the reasons for the chapter 11 petition, is to "utilize" the Arbitration Award "to repair the Hotel." *See Retention Application at ¶ 3.*

ARGUMENT

I. The Petition is filed in bad faith and should be dismissed.

24. "Chapter 11 bankruptcy petitions are 'subject to dismissal under 11 U.S.C. § 1112(b) unless filed in good faith and the burden is on the bankruptcy petitioner to establish [good faith].'" *In re 15375 Mem'l Corp. v. Bepco, L.P.*, 589 F.3d 605, 618 (3d Cir. 2009) (quoting *In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 118 (3d Cir. 2004) (citations omitted)); *see also In re Cloudeeva, Inc.*, No. BR 14-24874, 2014 WL 6461514, at *3 (Bankr. D.N.J. Nov. 18, 2014) ("[T]he Third Circuit Court of Appeals has joined the majority of circuits in holding that § 1112 allows a chapter 11 to be dismissed if it was not filed in good faith.").

25. "Whether the good faith requirement has been satisfied is a fact intensive inquiry in which the court must examine the totality of facts and circumstances and determine where a petition falls along the spectrum ranging from the clearly acceptable to the patently abusive." *15375 Mem'l Corp.*, 589 F.3d at 618 (quoting *Integrated Telecom Express, Inc*., 384 F.3d at 118 (internal quotation marks omitted)).

26. The bankruptcy court should "'focus on two inquiries that are particularly relevant to the question of good faith: (1) whether the petition serves a valid bankruptcy purpose' and '(2) whether the petition is filed merely to obtain a tactical litigation advantage.'" *Id*. (quoting *Integrated Telecom Express, Inc*., 384 F.3d at 119-20). The Third Circuit explained:

> Notably, these inquiries are based more on objective analysis of whether the debtor has sought to step outside the "equitable limitations" of Chapter 11 than the subjective intent of the debtor:
>
> > The term "good faith" is somewhat misleading. Though it suggests that the debtor's subjective intent is determinative, this is not the case. Instead, the "good faith" filing requirement encompasses several, distinct equitable limitations that courts have placed on Chapter 11 filings. Courts have implied such limitations to deter filings that seek to achieve objectives outside the legitimate scope of the bankruptcy laws. *In re SGL Carbon Corp.*, [200 F.3d 154, 165 (3d Cir. 1999)] (quoting *In re Marsch*, 36 F.3d at 828).

Id. at 618 n.8.

27. With respect to the first inquiry, "a party filing for Chapter 11 bankruptcy may prove that its petition served a valid bankruptcy purpose by showing that the petition 'preserved a going concern or maximized the value of the debtor's estate.'" *Id*. at 619 (quoting *Integrated Telecom Express, Inc*., 384 F.3d at 120 (internal quotation marks omitted)). "To say that liquidation under Chapter 11 maximizes the value of an entity is to say that there is some value

that otherwise would be lost outside of bankruptcy." *Id*. (quoting *Integrated Telecom Express, Inc*., 384 F.3d at 120 (internal quotation marks omitted)).

28. With respect to the second inquiry:

> "[F]iling a Chapter 11 petition merely to obtain tactical litigation advantages is not within the legitimate scope of the bankruptcy laws[.]" *In re SGL Carbon Corp.*, 200 F.3d at 165 (internal quotation omitted); *accord In re Integrated Telecom Express, Inc.*, 384 F.3d at 120. Where "the timing of the filing of a Chapter 11 petition is such that there can be no doubt that the primary, if not sole, purpose of the filing was a litigation tactic, the petition may be dismissed as not being filed in good faith." *In re SGL Carbon Corp*., 200 F.3d at 165 (quoting *In re HBA East, Inc.*, 87 B.R. at 259-60).

Id. at 625.

29. The Petition fails to satisfy both prongs of the applicable bad faith test and constitutes a patently abusive filing subject to dismissal and sanctions.

A. The Petition does not serve a valid bankruptcy purpose as it neither preserves a going concern nor maximizes the value of the estate.

1. The Debtor is not a going concern and cannot be reorganized.

30. The Debtor, by its own admission, is not a going concern and has no assets to preserve. The Debtor is a defunct limited liability company that has failed to operate for years and whose sole prior asset, the Hotel, is now owned by the City. The Debtor itself confessed to these facts in the Certificate filed in the New Jersey Action, where it conceded it has not engaged in any business since 2011, and no longer has ownership of the Hotel. *See McGill Cert., Ex. E*.

31. Indeed, the State of New Jersey has revoked the Debtor's charter. *See McGill Cert., Ex. A.* The Debtor's only potential "asset" is the Arbitration Award, which is insufficient, by Debtor's own admission, to even satisfy the Debtor's secured creditors. Given that the Debtor is not a going concern and has no assets around which to reorganize, a Chapter 11 liquidation proceeding serves no valid purpose.

2. There is no value to the estate.

32. The absurdity of the Debtor's Petition is no better exemplified than by its misrepresentation in the Application that the alleged purpose of the Chapter 11 is to use the funds from the Arbitration Award to repair the Hotel. Not only has the Debtor represented to other tribunals that the Arbitration Award is exceeded by secured claims, it also acknowledges it no longer owns the Hotel and that the cost to repair the Hotel is three times the Arbitration Award. Quite obviously the Debtor seeks to achieve improper objectives outside the scope of the bankruptcy laws and is attempting to manipulate the Court for that purpose. Debtor's actions should be swiftly rebuked and sanctioned.

33. Similarly, the Petition serves no purpose from a liquidation perspective. A Chapter 11 would not enhance the value of the estate as there are no assets to liquidate for creditors. Again, the Debtor concedes this point. In the Involuntary Bankruptcy in Virginia, the Debtor repeatedly asserted that the total amount owed to secured creditors "exceeds" the Arbitration Award. Indeed, the Debtor proclaimed "the *bankruptcy process* would add no significant value" and would only waste the bankruptcy court's "valuable time and resources." *See McGill Cert., Ex. F at pp. 15, 16*. Further, the Debtor advocated that the pending state court proceeding – not a bankruptcy court – was the proper venue to adjudicate the Arbitration Award.

34. The Debtor's statements in the Involuntary Bankruptcy are damning to its current Petition and constitute prima facie evidence of the bad faith nature of the Petition. A mere two months ago, the Debtor assailed its creditors' attempts to put it into bankruptcy, instead proclaiming that existing state court proceedings were "aptly equipped to address the fate of the Arbitration Award." *See id*. Clearly, the Debtor did everything in its power to avoid a bankruptcy, yet it now comes to this Court seeking the very same treatment it fought so hard to deny.

35. The Debtor has not (and can not) offer any evidence of a change in circumstances that would justify such an abrupt change of position. No value will be lost if the Interpleader Action were to conclude as there is no value beyond the secured creditor claims. Having attacked the Involuntary Bankruptcy, the Debtor is judicially estopped from now seeking bankruptcy protection itself, and this Court should hold the Debtor to its election and permit the state court process to conclude.

3. The Petition was filed solely in a misguided attempt to gain a tactical advantage in litigation.

36. The Debtor also fails the second prong of the bad faith analysis. The timing of the Petition leaves no doubt that the primary purpose of the filing was yet another litigation tactic – one designed to delay the Interpleader Action's disbursement of the Arbitration Award and permit Harmon to dictate how it is divided among the Debtor's creditors – including potentially himself.

37. Harmon previously attempted this same tactic, without success. When Selective deposited the Arbitration Award with the Virginia Court in the Interpleader Action in late December 2014, Harmon immediately filed an Order to Show Cause in the New Jersey Action to gain control over the distribution of the Arbitration Award. The New Jersey Court never ruled on Harmon's request and the Virginia proceedings continued.

38. In the interim, several creditors forced the Debtor into an Involuntary Bankruptcy in Virginia, and Harmon vehemently opposed the action – noting his preference for the state court proceedings.

39. Then, when this excessively long litigation finally came to an end with the entry of the Virginia Court's April 15, 2015 Final Order, Harmon was still unwilling to accept defeat, and immediately filed the Petition on April 20, 2015 - a mere five days following the Final Order in the Interpleader Action – and just 33 days after the insisting on dismissal of the Involuntary

Bankruptcy. The same day the Petition was filed, the Debtor's counsel sent the letter to the Virginia judge, apparently threatening action for any violation of the automatic stay.

40. The unmistakable conclusion is that the Petition was filed as yet another inappropriate litigation tactic and not as an acceptable use of the bankruptcy laws. Having failed in two other forums, Harmon now seeks this Court's assistance in asserting control over the Arbitration Award to dictate its distribution and recover for himself and his wife on their bogus unsecured claim for undocumented "loans" to their company. The Court should not condone the Debtor's improper actions.

B. The Court should enter an appropriate order awarding sanctions against the Debtor and its counsel.

41. The Debtor's actions described herein constitute an egregious abuse of the bankruptcy process and an appropriate sanction should issue. Among the Debtor's secured creditors are: (i) Debtor's own counsel (Accardi and LeClairRyan) who, for years, provided invaluable service to the Debtor in its efforts to successfully obtain the Arbitration Award against Selective, as well as (ii) other creditors to whom Harmon willingly granted security interests in the Arbitration Award. Yet, the Debtor continues to misuse the judicial process to block its creditors' path.

42. Given the gross impropriety of the Debtor's actions, this Court should order the Debtor and its counsel to pay LeClairRyan's legal costs incurred in this Motion and these bankruptcy proceedings.

NO PRIOR REQUEST

43. No previous motion for the relief requested herein has been made to this or any other court.

44. The Debtor respectfully requests that the requirement of submitting a brief in connection with the Motion be relaxed, as the applicable legal authorities are set forth herein.

CONCLUSION

WHEREFORE, LeClairRyan, A Professional Corporation respectfully requests the entry of an order: (i) granting the Motion; (ii) dismissing the Petition with prejudice; and (iii) granting and appropriate award of sanctions and such other and further relief as may be just.

WEBBER MCGILL LLC
Attorneys for LeClair Ryan,
a Professional Corporation

By: */s/ Douglas J. McGill*
Douglas J. McGill

Dated: May 21, 2015
Whippany, New Jersey