

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA

Judge Laurel Myerson Isicoff

Chapter 11

IN RE:  
SOUTH BEACH COMMUNITY  
HOSPITAL, LLC,

Debtor.

ALAN L. GOLDBERG,

Plaintiff,

vs.

MOUNT SINAI MEDICAL CENTER OF  
GREATER MIAMI, INC.,

Defendant.

**CERTIFIED  
COPY**

CASE NO: 06-10634  
BKC-LMI

ADV. NO. 07-1210  
BKC-LMI-A

ALL MOTIONS ON CALENDAR

May 7, 2007

The above-entitled cause came on for hearing before the HONORABLE LAUREL MYERSON ISICOFF, one of the judges in the UNITED STATES BANKRUPTCY COURT, in and for the SOUTHERN DISTRICT OF FLORIDA at Large, at 51 SW 1st Avenue, Miami, Dade County, Florida, on May 7, 2007 commencing at or about 3:00 p.m., and the following proceedings were had:

Reported By: Maria Elena Colomer

1 APPEARANCES:

2 MARKOWITZ, DAVIS, RINGEL & TRUSTY,  
3 BY ROSS R. HARTOG, ESQ.,

4 On behalf the Trustee.

5 RICE, PUGATCH, ROBINSON & SCHILLER,  
6 BY ARTHUR HALSEY RICE, ESQ.,

7 On behalf of Regions Bank.

8 STEARNS, WEAVER, MILLER  
9 BY PATRICIA REDMOND, ESQ.,

10 On behalf of South Beach Doctors  
11 Hospital, LLC.

12 McDERMOTT, WILL & EMERY, LLP  
13 BY GARY C. MATZNER, ESQ. and WILLIAM P.  
14 SMITH, ESQ.,

15 On behalf of Mount Sinai Medical Center  
16 of Florida, Inc.

17 MIAMI-DADE COUNTY ATTORNEY'S OFFICE,  
18 BY MINDY THORNTON, Assistant Miami-Dade  
19 County Attorney,  
20 On behalf of Miami-Dade County Tax  
21 Collector.

22 LEWIS FISHMAN, ESQ.,  
23 Special Counsel on behalf of the Trustee.  
24 (via telephone)

25 STUART LAVIN, ESQ.,  
On behalf of Hospital of South Beach,  
LLC.

(via telephone)

GRANT DEARBORN, ESQ. and BREVIN BROWN,  
ESQ.,

On behalf of Agency for Health Care  
Administration.

(via telephone)

ALSO PRESENT: ALAN L. GOLDBERG, TRUSTEE.

1 THE COURT: The Court calls the matter of South  
2 Beach Community Hospital, LLC, 06-10634 and Adversary  
3 Proceeding No. 07-1210. I do have a note that Bill  
4 Schonberg would like to appear by telephone.

5 So before I take appearances, I will get  
6 Mr. Schonberg on the phone.

7 MR. HARTOG: Your Honor, I just want to clarify.  
8 I'm sorry. We had arranged -- we had called about getting  
9 a conference call number. I just want to make sure that's  
10 the number you're calling.

11 THE COURT: I have a 216 number. That's the only  
12 number I have.

13 MR. HARTOG: I actually have multiple folks that  
14 wanted to appear by phone. So we called to see if we  
15 could get a call-in number.

16 THE COURT: I have the corrected number here.  
17 Okay. All right. So I will take the conference number.

18 MR. HARTOG: Thank you. Sorry about that, Your  
19 Honor.

20 THE COURT: Good afternoon. This is Judge  
21 Isicoff. I've just called the matter of South Beach  
22 Community Hospital. I'm going to take appearances now  
23 starting with those persons who are on the phone.

24 Proceed.

25 MR. FISHMAN: Lew Fishman, special counsel for

1 the debtor.

2 MR. LAVIN: Your Honor, Stuart Lavin representing  
3 Hospital of South Beach, LLC, purchaser of the assets.

4 MR. DEARBORN: Grant Dearborn and Brevin Brown on  
5 behalf of the Agency for Health Care Administration.

6 THE COURT: Could you repeat the second name,  
7 please?

8 MR. BROWN: Brevin, B-R-E-V-I-N, Brown, Your  
9 Honor.

10 THE COURT: Okay. Anyone else?

11 Is Mr. Schonberg on the phone?

12 MR. LAVIN: This is Stuart Lavin. I'm filling in  
13 for Mr. Schonberg today.

14 THE COURT: I'll take appearances from the  
15 courtroom now.

16 MR. HARTOG: Good afternoon, Your Honor.  
17 Ross Hartog on a behalf of the trustee, Mr. Goldberg.  
18 Mr. Goldberg is also present here in the courtroom.

19 MR. RICE: Good afternoon, Your Honor,  
20 Arthur Rice, Rice, Pugatch, Robinson & Schiller on  
21 behalf of Regions Bank.

22 MS. REDMOND: Good afternoon, Your Honor.  
23 Patricia Redmond on behalf of South Beach Doctors  
24 Hospital, LLC, the debtor's secured creditor and landlord.

25 MR. MATZNER: Good afternoon, Your Honor,

1 Gary Matzner, McDermott, Will & Emery for Mount Sinai  
2 Medical Center of Florida, Inc.

3 Your Honor, we had filed a motion this morning  
4 with regard to an appearance by Bill Smith to appear.  
5 Steve Siff had elective surgery last week. I don't know  
6 whether you have the motion.

7 THE COURT: I believe I've entered the order  
8 already.

9 MR. MATZNER: Okay, great. If I may, Your Honor,  
10 This is Mr. Smith.

11 MR. SMITH: Your Honor, good afternoon.

12 THE COURT: Good afternoon and welcome.

13 MR. SMITH: Thank you.

14 MS. THORNTON: Good afternoon, Your Honor. Mindy  
15 Thornton from the County Attorney's Office representing  
16 the Miami-Dade County Tax Collector.

17 THE COURT: All right. Let's start with what I  
18 assume are the easier motions or motion. I think I've  
19 already entered an order on an agreed motion to extend the  
20 deadline.

21 Did I do that already, Mr. Hartog?

22 MR. HARTOG: You may have. I just did not see it  
23 come through on CMACF, but that's not to say that it  
24 wasn't entered yet.

25 THE COURT: But that order was uploaded?

1 MR. HARTOG: I believe it was properly uploaded  
2 as part of the motion.

3 THE COURT: Okay, thank you. Well, that's  
4 granted, to the extent I haven't already granted it.

5 MR. HARTOG: Very good, and I'll double check to  
6 make sure that was processed appropriately.

7 THE COURT: Okay. All right.

8 Next we get to the Motion for Authority to Obtain  
9 Credit Under Rule 4001(c).

10 MR. HARTOG: Yes, Your Honor. This is, I guess  
11 you can call it, our third motion. As you know, the  
12 trustee, in an effort to continue the business operations  
13 of the hospital through Chapter 11, has borrowed money  
14 from Ms. Redmond's client.

15 The initial draw, I believe, was 130,000. We  
16 borrowed another 150. My recollection might be slightly  
17 off.

18 We're now seeking an additional \$115,000 pursuant  
19 to the attached budget. That was the reason it came to  
20 that number. Again, not to rehash what's in our motion,  
21 but the reason being is that the closing of the sale of  
22 the assets has not been accomplished yet and, therefore,  
23 we're seeking funding to carry us through what we hope to  
24 be an anticipated closing.

25 We have consulted with Regions Bank to see

1 whether Ms. Redmond's client has authorized and agreed to  
2 provide the additional funding and Ms. Thornton has also  
3 been advised and we're not aware of any objections to the  
4 motion.

5 THE COURT: Is there anybody in the courtroom or  
6 on the telephone that has any objections to the motion,  
7 the 4001c motion?

8 All right. There being no objection, and the  
9 Court having reviewed the motion and finding it well  
10 founded, I'll enter the relief requested.

11 Do you have an order?

12 MR. HARTOG: We don't. We'll upload the order,  
13 Your Honor.

14 THE COURT: Okay.

15 MR. HARTOG: The order is also a stipulation. So  
16 we wanted to make sure it was approved to get the parties'  
17 stipulation and we'll upload the order.

18 THE COURT: All right. The next matters are more  
19 or less together, at least in terms of factual basis, and  
20 I'll ask that the arguments be presented together and  
21 that's the emergency Motion for Order to Show Cause why  
22 Mount Sinai Center of Greater Miami should not be held in  
23 contempt for violation of the automatic stay in Case No.  
24 06-10634, and then the Emergency Motion for Preliminary  
25 Injunction and Temporary Restraining Order filed in

1 Adversary Proceeding No. 07-1210 and the responses  
2 thereto, all of which the Court has reviewed.

3 So proceed, Mr. Hartog.

4 MR. HARTOG: Very well, Your Honor. I believe --  
5 just one administrative matter. It appears that the Mount  
6 Sinai entity that we had directed our motions and our  
7 Complaint to might have been inaccurate based on the  
8 pleadings that Mount Sinai filed.

9 I think they indicated that they may have  
10 identified the wrong party in their pleadings.

11 So I want to make it clear we're proceeding on  
12 that basis and I think that Mount Sinai is here in  
13 whatever capacity is necessary to respond.

14 The main purpose for our motion, and I don't want  
15 to rehash a lot of things that are in the pleading as  
16 well, is that we truly believe that the efforts of Mount  
17 Sinai in this case have been directed to destroy value in  
18 this estate and effectively destroy this estate.

19 The reason that we filed our motions when we did  
20 is that we received copies of two administrative petitions  
21 that were filed by Mount Sinai with the Agency for Health  
22 Care Administration.

23 One of those petitions was directed to the  
24 debtor's hospital license and the other was directed to  
25 the application for change of ownership filed, I guess, in

1 conjunction with the Hospital of South Beach to transfer  
2 the license because, again, Hospital of South Beach is the  
3 buyer of all the debtor's assets.

4 We believe this is a violation of the stay. We  
5 believe that what they're trying to do is to have the  
6 license terminated. They're alleging that the license has  
7 already been terminated and, therefore, they have the  
8 right to do this and it's not an asset of the estate.  
9 It's not something that this Court has any control over,  
10 and it's something they have the right to do on an  
11 administrative basis.

12 But we have a license. The trustee filed a  
13 renewal application to renew the hospital license before  
14 the license expired as required by the statute.

15 AHCA reviewed the application and ultimately  
16 granted the application and we have a license that's been  
17 issued and it's good from March 1, '07 through February  
18 28, 2009.

19 THE COURT: That was the copy that was attached  
20 to the pleadings?

21 MR. HARTOG: It was attached as Exhibit B to all  
22 our pleadings, Your Honor. We believe that the entire  
23 basis of Mount Sinai's argument is contingent upon the  
24 fact that they believe the license is terminated and,  
25 therefore, the process that we're going through here is

1 not a license -- there's no license and there could be no  
2 change of ownership of that license and we also believe  
3 that the renewal -- because the renewal has been granted,  
4 we believe that that administrative preceder of having the  
5 license renewed is over, it's closed, and by them seeking  
6 to file their petition to have that revisited they're  
7 trying to open up something that doesn't need to be  
8 reopened and they have no standing to do so.

9 And it violates the stay, because the license is  
10 the primary asset of this estate. It is the basis of the  
11 sale to the Hospital of South Beach, and we think that  
12 their effort and their petition is an attempt to take  
13 control of that asset and destroy its value.

14 We think it's barred by the statute, by Section  
15 362, by the stay and to the extent that the stay doesn't  
16 apply, we still believe that this Court has authority to  
17 enjoin and prevent Mount Sinai from prosecuting that  
18 petition and from taking any action that might damage that  
19 license, the value of the license or the effectiveness of  
20 the license through this Court's powers under 105(a)  
21 through 362 and 363, because it would certainly affect the  
22 administration of this estate, the ability of the estate  
23 to pay a distribution to creditors and for the estate to  
24 close the sale.

25 We think all of these things, in terms of the

1 equities, fall in favor of the trustee and the estate and  
2 we believe that Mount Sinai's efforts should be stopped.

3 THE COURT: I don't have any questions. Well,  
4 let me just double check to make sure.

5 Okay. Thank you, Mr. Hartog.

6 THE COURT: Mr. Matzner, am I going to hear from  
7 you or Mr. Smith?

8 MR. MATZNER: Mr. Smith.

9 MR. SMITH: With your permission, Your Honor, my  
10 name is Will Smith. You'll be shocked to learn we  
11 disagree with Mr. Hartog's analysis.

12 I think there are a couple of principles that we  
13 collectively should be able to agree upon. One of them is  
14 that there is and has been, for some time, questions  
15 regarding licenses for this particular medical facility.

16 The second is, I believe, under the laws of the  
17 State of Florida, there is, as yet, no final decision as  
18 to whether such a license exists.

19 THE COURT: What would you call the license that  
20 was issued by the State of Florida that extends --

21 MR. SMITH: My understanding, Your Honor -- and I  
22 want to be careful, because I don't have a Florida  
23 license, so I don't want to step beyond where I'm supposed  
24 to be stepping. But my understanding is that the effect  
25 of that document is not a license so long as there's a

