

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
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SAINT VINCENTS CATHOLIC MEDICAL	:	Case No. 10-11963 (CGM)
CENTERS OF NEW YORK, <u>et al.</u> ,	:	
	:	
Debtors.	:	Jointly Administered
	:	
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**JOINT PRE-HEARING ORDER BETWEEN SAINT VINCENTS
CATHOLIC MEDICAL CENTERS OF NEW YORK AND DR. JOHN J. KHADEM**

Saint Vincents Catholic Medical Centers of New York (“**SVCMC**”) and certain of its affiliates, as chapter 11 debtors and debtors in possession (the “**Debtors**”), and Dr. John J. Khadem, (the “**Occupant**” or “**Khadem**”) having conferred among themselves now submit this proposed joint pre-hearing order pursuant to Federal Rule of Civil Procedure 16(e) and Federal Rule of Bankruptcy Procedure 7016:

1. Nature of the Case: The principal issue to be adjudicated is whether the Bankruptcy Court should enter an order compelling the Occupant to vacate from the premises located at 20 Seventh Avenue, New York, New York (known as the “**O’Toole Building**”) on August 1, 2011 and for any other appropriate orders in furtherance of such eviction, including but not limited to, issuing a writ of eviction or assistance directing the United States Marshal Service to compel eviction on August 2, 2011.

2. Jurisdiction and Venue: This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(M), (N) and (O) and § 1334(b) and 11 U.S.C. § 363. This proceeding is a core proceeding and venue is proper pursuant to 28 U.S.C. § 1409(a).

3. Objections: An objection was filed by Dr. John J. Khadem on March 29, 2011.

4. Relief Prayed:

- (a) The Debtors seek the entry of an order compelling the Occupant to vacate from the O’Toole Building on August 1, 2011 and for any other appropriate orders in furtherance of such eviction, including but not limited to, issuing a writ of eviction or assistance directing the United States Marshal Service to compel eviction on August 2, 2011.
- (b) Objectant, John J. Khadem, M.D., respectfully requests that the Court deny the branches of the Debtors’ motion (i) seeking approval of the Sale Free and Clear of Khadem’s rights to possession; and (ii) for entry of an order directing that Khadem vacate the property; and such other relief as this Honorable Court may deem just and proper.

5. Statement of Undisputed Facts:

- (a) SVCMC is the owner and landlord of the O'Toole Building.
- (b) Prior to April 14, 2010 (the "**Petition Date**") SVCMC routinely leased space at the O'Toole Building to physicians for the provision of various healthcare services.
- (c) The Occupant leased suites 422, 416, 424 at the O'Toole Building (the "**Premises**") pursuant to a lease dated July 29, 2004 (the "**Lease**"). Pursuant to and during the term of the Lease, the Occupant currently pays, pursuant to the Lease, \$11,417.00 per month in rent and other lease obligations ("**Rent**").
- (d) Occupant has paid use and occupancy charges during his/her holdover occupancy.
- (e) On or about March 10, 2011, the Occupant received notice, by registered mail and hand delivery, that its month-to-month holdover occupancy was terminated effective May 31, 2011 (the "**Notice of Termination**"). As such, the Debtors provided the Occupant with over seventy-five (75) days notice of termination of the holdover occupancy.
- (f) On or about March 10, 2011, the Debtors, by their agents, served the Debtor's Motion for an Order (I) Approving the Entry Into the Amended and Restated Contract of Sale for the Real Estate and Personal Property Comprising the Debtors' Manhattan Campus to RSV, LLC and North Shore-Long Island Jewish Health Care System; (II) Approving Such Sale Free and Clear of Liens, Claims, Encumbrances and Other Interests; (III) Directing Occupants Under Terminated Leases to Vacate the Property; and (IV) Granting Related Relief Pursuant to Sections 105 and 363 of the Bankruptcy Code [Docket No. 1454] ("**Manhattan Campus Sale Motion**") on Occupant by registered mail and hand delivery.
- (g) On April 11, 2011, the Bankruptcy Court entered an order granting the Manhattan Campus Sale Motion (the "**Manhattan Campus Sale Order**"). The Manhattan Campus Sale Order approved the sale of the Premises to a third-party free and clear of interests including all occupancies.
- (h) The Court scheduled a hearing to set a date certain for the Occupant to vacate the Premises on June 30, 2011.
- (i) By letter dated April 19, 2011, the Debtors delivered to Occupant and/or Occupant's Counsel (i) a true copy of the Manhattan Campus Sale Order and (ii) a letter responding to requests to extend the occupancy at the O'Toole Building and proposing an extension of the holdover occupancy until July 31, 2011 conditioned upon entry of a stipulation agreeing to

timely pay use and occupancy charges and to confirm the vacate date of July 31, 2011 (the “**April 19 Letter and Stipulation**”).

- (j) In the Manhattan Campus Sale Order, the Court fixed May 19, 2011 as a status conference regarding the issues of holdover occupancies.
- (k) To date, the Occupant has not entered into a stipulation with the Debtors fixing a date certain by which the Occupant has agreed to vacate.
- (l) A closing of the Sale is not conditioned upon the delivery of the Premises vacant of the Occupant.

6. **Disputed Issues of Fact:**

(a) SVCMC’s Assertions of Fact:

- (i) The Lease has expired.
- (ii) After the Lease expired, Occupant has continued to occupy the Premises on a month-to-month basis as a holdover occupant.
- (iii) The Debtors intend to remove all saleable furniture, fixtures and equipment from the Premises after the Occupant vacates the Premises.
- (iv) The Debtors cannot complete the removal of all saleable furniture, fixtures and equipment until the Occupant vacates the Premises.
- (v) The Debtors expend and/or incur approximately \$300,000 per month on overhead expenses in connection with the O’Toole Building. This amount is in excess (or will be in excess) of the rent the Debtors receive at the O’Toole Building.
- (vi) North Shore-Long Island Jewish Health Care System, which will construct a comprehensive care center at the O’Toole Building, has committed to a schedule that calls for the abatement of hazardous materials and conditions in the O’Toole Building to begin in October 2011 promptly after the closing of the sale.
- (vii) Any delays caused by the Occupant remaining on the Premises hinder the Debtors’ ability to remove saleable equipment prior to the closing and/or the commencement of the abatement planned by NSLIJ and generally delays the schedule to begin the construction.

(b) Occupant’s Assertions of Fact:

- (i) The Debtor’s estate, and therefore its creditors, benefit by the Occupant paying its monthly rent.

7. Issues of Law:

- (a) Whether the Occupant's holdover rights in the O'Toole Building were properly terminated under relevant constitutional, bankruptcy and/or state law.
- (b) Whether in implementing the Manhattan Campus Sale Order approving a free and clear sale of the property, the Bankruptcy Court may and should enter an order directing that the Occupant vacate the O'Toole Building by August 1, 2011.
- (c) Whether an Occupant's failure to comply with a Bankruptcy Court Order directing the Occupant to vacate by August 1, 2011, may form the basis for a finding of contempt of court and would justify the imposition of penalties and damages among other relief.
- (d) Whether in implementing the Manhattan Campus Sale Order approving a free and clear sale of the property, the Bankruptcy Court may enter a writ of assistance directing the U.S. Marshals Service to remove the Occupant from the O'Toole Building on or before August 2, 2011.
- (e) Whether the issue of possession of the Premises is a matter that may only be decided in state court after closing of title.

8. Previous Substantive Motions:

- (a) The Debtors filed the Manhattan Campus Sale Motion which was approved by the Court on April 11, 2011 [Docket No. 1454].

9. Discovery: The parties shall complete discovery by June 28, 2011.

10. Witnesses:

- (a) For the Debtors:
 - (i) James Porter
 - (ii) Patrick Chang
 - (iii) Gerard Connolly
- (b) For the Purchaser:
 - (i) Maurice LaBonne
- (c) For the Occupant:
 - (i) Dr. John J Khadem

11. Experts: None.
12. Exhibits stipulated to be entered into the record without objection:
 - (a) Lease dated July 29, 2004.
 - (b) Lease extension letter dated June 22, 2005.
 - (c) Lease extension letter dated September 15, 2005.
 - (d) Lease dated March 7, 2006.
 - (e) Lease extension letter dated November 30, 2007.
 - (f) Lease modification and extension agreement dated November 4, 2008.
 - (g) Notice of Termination
 - (h) Affidavit of Service for Manhattan Campus Sale Motion and Notice of Termination
 - (i) April 19 Letter and Stipulation
 - (j) Affidavit of Service for Manhattan Campus Sale Order and April 19 Letter and Stipulation
13. Exhibits to be introduced at trial that have not been stipulated to:

None identified at this time.
14. Requested Evidentiary Rulings: The Debtors request that the Court take judicial notice of the following:
 - (a) The Writ of Assistance Enforcing the Sale Order in connection with the Debtors sale of the property known as the Staff House [Docket No. 644]
15. Counsel:

For the Debtors:

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Adam C. Rogoff
P. Bradley O'Neill
Gregory G. Plotko
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(212) 715-9100

-and-

Belkin Burden Wenig & Goldman LLP
Joseph Burden
270 Madison Avenue
New York, New York 10016
(212) 867-4466

For the Occupant:

Jeffrey W. Toback, P.C.
314 Virginia Avenue
Oceanside, NY 11572
516-644-1558

16. Estimate of Proceeding Time:

- (a) The Debtors believe that it will take one hour to present their case.
- (b) The Occupant believes that it will take one hour to present his case.

17. Final Hearing Date: June 30, 2011 at 11:00 a.m.

18. Briefing Schedule:

- (a) The Debtors request permission to submit a pre-hearing brief two (2) days before the June 30, 2011 eviction hearing.
- (b) The Occupant requests permission to submit a pre-hearing brief two (2) days before the June 30, 2011 eviction hearing.

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19. Modification of Order: To prevent manifest injustice or for good cause shown, at the final hearing or prior thereto upon application of counsel for either party, made in good faith, or upon motion of the Court, the Court may modify this Pre-Hearing Order.

Dated: New York, New York
June 29, 2011

/s/ Cecelia G. Morris
THE HONORABLE CECELIA G. MORRIS
UNITED STATES BANKRUPTCY JUDGE

AGREED TO BY:

**SAINT VINCENTS CATHOLIC
MEDICAL CENTERS OF NEW YORK**

DR. JOHN J. KHADEM

Kramer Levin Naftalis & Frankel, LLP

Jeffrey W. Toback, P.C.

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Counsel for Dr. John J. Khadem