

MOYES SELLERS & HENDRICKS
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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

In re:
LEGACY CARES, INC.,
Debtor.

Chapter 11

Case No. 2:23-bk-02832-DPC

**REPLY IN SUPPORT OF
OBJECTION TO SALE AND RELIEF
SOUGHT IN SALE NOTICE
– AND –
REQUEST FOR ADEQUATE
PROTECTION PURSUANT TO 11
U.S.C. § 363(e)**

DATE: November 21, 2023
TIME: 1:30 p.m.
LOCATION: 230 N. First Ave.
Phoenix, AZ 85003
Courtroom 603

In response (the “Response”) to OVG’s¹ Objection, the Debtor argues that OVG has not carried its burden of proving that OVG has rights in and to the OVG Assets, that the release given to Proposed Buyer is “standard” so the Court should look the other way, and that OVG misunderstands the mechanics of the APA, in that none of Elite Sports’ assets are really being transferred to Proposed Buyer. As set forth in greater detail herein, none of the Debtor’s arguments have merit and the Objection should be sustained.

I. OVG Has Established a Colorable Claim to the OVG Assets and is Entitled to Adequate Protection.

The Debtor continues to myopically focus on language Legacy Sports stipulated to in the State Court Action (the “Stipulation”) to support its claim that Legacy Sports did not

¹ All capitalized terms used herein shall have the same meaning ascribed to them in the Objection to Sale and Relief Sought in Sale Notice and Request for Adequate Protection Pursuant to 11 U.S.C. § 363(e) [DE 589] (the “Objection”) unless otherwise defined herein.

1 acquire any assets with the Investment, but instead used the Investment solely to “defer costs
2 previously expended.” Response at 3:18-24. Not only does the Debtor overstate the thrust of
3 the Stipulation,² but the Debtor completely ignores the other representations Legacy Sports
4 made in the State Court Action regarding ownership of the OVG Assets. Attached as Exhibit
5 5 to the Objection are Legacy Sports’ responses to OVG’s Requests for Production of
6 Documents. There, when asked to “Produce all DOCUMENTS and COMMUNICATIONS
7 Concerning all EXPENDITURES YOU made with the \$3,000,000 investment provided by
8 [OVG] under Section 9.3(a) of the Operating Agreement” (Obj. at Ex. 5, 166:22-24), Legacy
9 Sports avowed in pertinent part “The Investment funds were fungible and used to help defer
10 costs previously incurred by Legacy Cares, Inc. for construction of food and beverage
11 leasehold improvements at the Facility *or to purchase food and beverage equipment* or by
12 Legacy Sports using funds provided by Legacy Cares.” *Id.* at 167:2-6 (emphasis added).
13 Legacy Sports’ acknowledgment that it used at least some portion of the Investment to
14 “purchase food and beverage equipment” dooms the Debtor’s defense that the entirety of the
15 Investment was used to “defer costs.” To the extent OVG’s complaint initiating the Adversary
16 Proceeding is unclear regarding Legacy Sports’ use of the Investment, OVG is entitled to
17 leave to amend. *See* Fed. R. Bankr. P. 7015; Fed. R. Civ. P. 15(a)(2) (“The court should freely
18 give leave when justice so requires.”).

19 The Debtor’s other arguments regarding Legacy Sports’ use of the Investment also fall
20 flat. The Debtor argues that the OVG Assets “were delivered to the Park long before OVG’s
21 Investment in April 2022 (months before the Park opened) and, accordingly, title to the [OVG
22 Assets] had clearly vested in the Debtor.” Response at 4:5-7 (citations omitted). As the Court
23 rightly pointed out at last week’s hearing in the Adversary Proceeding, the operative event is
24 not when the subject assets were delivered, but when they were paid for, which is anything
25 but “clear.” Discovery in the State Court Action has shown, however, that at least some of
26

27 ² As noted in the Objection, the parties have not yet explored Legacy Sports’ definition of “costs
28 previously expended,” but this category appears to encompass assets that were ordered by Legacy
Sports, incurring the cost, and subsequently paid for with the Investment.

1 the Identified Assets were paid for in 2022, well after they were allegedly delivered and the
2 year in which the Investment was made.

3 The Debtor's convoluted argument regarding the limited nature of the authority the
4 Debtor granted to Legacy Sports also misses the mark. The Debtor continues to argue that
5 "Legacy Sports had no authority to sell off Debtor's assets." Response at 4:16-17. While OVG
6 disagrees that "IRS Revenue Procedure Section 2017-13" limits the unequivocal agency the
7 Debtor gave Legacy Sports under the Management Agreement ("In the performance of its
8 duties as Manager of the Project, [Legacy Sports] shall act solely as agent of, and for the
9 account of, [the Debtor]" (Management Agreement, § 5.1)), OVG is not alleging that Legacy
10 Sports "sold" any of the Debtor's assets. Instead, OVG has plainly alleged that Legacy Sports
11 acquired assets with Investment Funds and that those assets (the OVG Assets) belong to OVG.

12 The Debtor's argument that Legacy Sports' stipulation in the State Court Action that
13 it would not sell the OVG Assets is not binding on the Debtor because the Debtor terminated
14 the agency granted to Legacy Sports is also unavailing. The Debtor conveniently ignores the
15 fact that the Debtor is owned and controlled by Randy J. Miller and J. Michael Baggett: the
16 same individuals who own and control Legacy Sports. The Debtor acknowledges – as it must
17 – that the stipulation was entered into *after* the Debtor filed for bankruptcy protection. For
18 Legacy Sports to agree post-petition that it would not sell the OVG Assets is a tacit admission
19 that the OVG Assets – including the Identified Assets – do not belong to the Debtor.

20 At base, there is a bona fide dispute regarding ownership of the OVG Assets and, as
21 such, OVG is entitled to adequate protection under § 363(e). As set forth in the Objection, the
22 Debtor has neither offered, nor can it offer, adequate protection. Absent providing that
23 required adequate protection, the Court "shall prohibit" the sale. 11 U.S.C. § 363(e)

24 II. The APA Improperly Releases Proposed Buyer.

25 The Debtor alleges that the releases being provided to Proposed Buyer are not really
26 releases but are instead "a standard provision in asset purchase agreements clarifying that,
27 based on the contract and the transaction being consummated, the buyer is not to be
28 considered a successor-in-interest or otherwise liable for a seller's debts." Response at 6:7-

1 10. Whether characterized as a “release,” a “limitation of liability,” a “waiver” or some other
2 iteration of the foregoing, Section 2.4 of the APA improperly shields Proposed Buyer from
3 OVG’s claims related to the transfers contemplated therein, including the transfers of OVG’s
4 and Elite Sports’ assets for no consideration. The Debtor’s statement that the objectionable
5 language “is not a release that would be binding on third parties such as OVG or other
6 creditors of an asset seller” is nonsensical and unsurprisingly absent from Section 2.4 of the
7 APA. Section 2.4 impermissibly releases Proposed Buyer from claims and must be stricken.

8 III. The APA Transfers Elite Sports’ Assets to Proposed Buyer for No
9 Consideration.

10 Lastly, the Debtor argues that the APA does not contemplate a fraudulent transfer of
11 Elite Sports’ assets because under the APA, Proposed Buyer “is only receiving those assets
12 that Elite “holds for the benefit of” Debtor.” Response at 7:2-4. Wrong. Section 2.1(p) states
13 that:

14 Notwithstanding the enumeration of Purchased Assets set forth in Section
15 2.1(a) to (o), as to [Elite Sports], the Purchased Assets shall include only those
16 assets that [Elite Sports] holds for the benefit of (or on behalf of) [the Debtor],
17 that are related to [Elite Sports’] duties, obligations, and performance under the
18 QMA, or that are related to the [Debtor], the Park or the business or operations
19 conducted thereon.

20 APA, § 2.1(p).

21 In other words, contrary to the Debtor’s representations, Section 2.1(p) of the APA
22 contemplates the transfer of at least *three* tranches of Elite Sports’ assets: (i) the assets Elite
23 Sports holds for the Debtor’s benefit; (ii) Elite Sports’ assets related to its duties, obligations,
24 and performance under the Management Agreement; and (iii) Elite Sports’ assets related to
25 the Debtor, Legacy Park, or the business or operations conducted at Legacy Park. These are
26 assets plainly exceeding those Elite Sports “holds for the benefit” of the Debtor. Elite Sports
27 is receiving nothing in exchange for the transfer of its assets and because Elite Sports’ only
28 apparent business is “related to the Debtor, Legacy Park, or the business or operations
conducted at Legacy Park,” the transfer likely constitutes substantially all of Elite Sports’

1 assets, thereby rendering Elite Sports insolvent. As a result, the transfer is likely fraudulent
2 as to Elite Sports' creditors, including OVG. For this reason, the sale must also be denied.

3 DATED this 20th day of November, 2023.

4 MOYES SELLERS & HENDRICKS

5 By /s/ Cody J. Jess, #025066

6 Cody J. Jess
7 Natalya Ter-Grigoryan
8 *Attorneys for Creditor OVG Facilities,*
9 *LLC*

10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on November 20, 2023, I electronically transmitted the attached
12 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a
13 Notice of Electronic Filing, receipt of which constitutes service under L.R. Bankr. P. 9076-
14 1(a), to all parties who have appeared in this matter.

15 /s/ Julie Larsen