

**UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

**HYPERION FOUNDATION, INC.,
D/B/A OXFORD HEALTH &
REHABILITATION CENTER,**

CASE NO. 08-51288-NPO

DEBTOR.

CHAPTER 11

**MEMORANDUM OPINION AND
ORDER DENYING MOTION TO COMPEL ARBITRATION**

On March 16, 2009, there came on for hearing (the “Hearing”) the Motion to Compel Arbitration (the “Arbitration Motion”) (Dkt. #81) filed by Hyperion Foundation, Inc., d/b/a Oxford Health & Rehabilitation Center (the “Debtor”), and the Response to Motion to Compel Arbitration (the “Response”) (Dkt. #90) filed by Academy Healthcare Center, Inc., f/k/a Adventist Health Center, Inc. (“AHC”), in the above-styled case. At the Hearing, Craig M. Geno appeared on behalf of the Debtor, and Derek A. Henderson appeared on behalf of AHC. The Court, having considered the pleadings, arguments of counsel, and relevant legal authorities, concludes for the reasons discussed below that the Arbitration Motion is not well taken and should be denied.¹

Jurisdiction

This Court has jurisdiction of the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. The matter is a core proceeding pursuant to 28 U.S.C. § 157. Notice of the Motion was proper under the circumstances.

¹ The following constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rules of Bankruptcy Procedure 7052 and 9014.

Facts

1. On August 5, 2008, the Debtor filed a voluntary petition for relief (the “Petition”) pursuant to chapter 11 of the Bankruptcy Code (Dkt. #1).

2. On August 29, 2008, AHC filed its Motion to Terminate Automatic Stay and Motion to Assume or Reject Unexpired Lease (the “Stay & Lease Motion”) (Dkt. #43).

3. On September 24, 2008, the Debtor filed its Arbitration Motion.² Paragraph 9 of the Motion urges that:

[T]he threshold issue in connection with the Lift Stay Motion ... is to determine whether or not the Landlord breached the Lease Agreement by failing to arbitrate the alleged defaults and disputes that have allegedly occurred in connection with operation under the Lease Agreement, so that the attempted termination was invalid...

[E]ven in litigation involving the assumption of the unexpired lease in this case, the arbitration provisions of the Lease Agreement control as to decisions regarding whether defaults exist...

(Arbitration Motion ¶ 9).

4. AHC filed its Response to Motion to Compel Arbitration (the “Response to Arbitration Motion”) (Dkt. #90) on October 2, 2008. In the Response to Arbitration Motion, AHC claims that,

All matters between the Debtor and AHC are core proceedings. The Debtor voluntarily submitted to the jurisdiction of the Bankruptcy Court, invoking the

² At the Hearing, the Court asked Counsel for the Debtor why the Debtor preferred arbitration over adjudication by a bankruptcy court. The main reason cited was that the arbitration award could not be vacated if the arbitrator “had manifestly disregarded the law.” *See Citigroup Global Markets v. Debra M. Bacon*, 2009 WL 542780 (C.A.5 (Tex))(5th Cir. 2009). In essence, unlike this Court, the arbitrator could disregard the Lease Agreement and the relevant law without having the decision vacated. Presumably, the Debtor wants the option to seek a decision from the arbitrator on grounds not justified by the law. While this Court appreciates the candor of Counsel for the Debtor, such a basis for preferring arbitration hardly seems compelling.

Bankruptcy Code and other related rules and regulations including, but not limited to § 362 and § 365.³

(Resp. to Arbitration Motion ¶26).

5. The Arbitration Motion and the Stay & Lease Motion were both set for the Hearing.

Discussion

The Court of Appeals for the Fifth Circuit recently has stated:

A two-step analysis is applied to determine whether a party may be compelled to arbitrate. . . . First, we must ask if the party has agreed to arbitrate the dispute. . . . If so, we then ask if “any federal statute or policy renders the claims non-arbitrable.”

Sherer v. Green Tree Serv. LLC, 548 F.3d 379, 381 (5th Cir. 2008) (citations omitted). In the case at bar, AHC concedes that it executed the Lease with the arbitration provision,⁴ but argues, essentially, that the Bankruptcy Code and Rules render the Stay & Lease Motion non-arbitrable.

1. Is the Stay & Lease Motion a Core Proceeding?

In order to determine whether the Bankruptcy Code and Rules render AHC’s Stay & Lease Motion action non-arbitrable, this Court must first determine whether the matter constitutes a core or a non-core proceeding. A core proceeding is one that “arises under” or “arises in” a case under title 11. 28 U.S.C. § 1334(b). Matters “arising under” title 11 are those based on a right “created or determined by a statutory provision of the Bankruptcy Code.” Buckingham v. Baptist Memorial Hospital-Golden Triangle, Inc., 283 B.R. 691, 693 (N.D. Miss. 2002). Proceedings “arising in” a title 11 case “are those that are not based on any right expressly created by title 11, but nevertheless, would have no existence outside of the bankruptcy.” Id. (citations omitted). In a core proceeding,

³ Hereinafter, all code sections refer to the United States Bankruptcy Code, located at Title 11 of the United States Code, unless otherwise noted.

⁴ Lease Agreement ¶ 39.

a bankruptcy court may refuse to enforce an otherwise applicable arbitration agreement only if enforcement of the agreement would conflict with the purpose or provisions of the Bankruptcy Code. Insurance Co. of North America v. NCG Settlement Trust & Asbestos Claims Mgmt. Corp. (In re National Gypsum Co.), 118 F.3d 1056, 1069-70 (5th Cir. 1997). That is, a bankruptcy court has discretion to override an arbitration agreement only if “it finds that the proceedings are based on provisions of the Bankruptcy Code that ‘inherently conflict’ with the [Federal] Arbitration Act or that arbitration of the claim would ‘necessarily jeopardize’ the objectives of the Bankruptcy Code.” MBNA America Bank, N.A. v. Hill, 436 F.3d 104, 107 (2d Cir. 2006) (quoting U.S. Lines, Inc. v. Am. S.S. Owners Mut. Prot. & Indem. Ass’n, Inc. (In re U.S. Lines, Inc.), 197 F.3d 631, 640 (2d Cir. 1999)); In re Mirant Corp., 316 B.R. 234 (Bankr. N.D. Tex. 2004).

A non-core proceeding is a matter that would exist outside of the bankruptcy, but is “related to” a bankruptcy case. 28 U.S.C. § 1334(b). “An action is related to bankruptcy if the outcome could alter the debtor’s rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.” Buckingham, 283 B.R. at 693 (quoting In re Goldstein, 201 B.R. 1, 4-5 (Bankr. D. Me. 1996)). “It is generally accepted that a bankruptcy court has no discretion to refuse to compel the arbitration of matters not involving ‘core’ bankruptcy proceedings under 28 U.S.C. § 157(b)” In re Gandy, 299 F.3d 489, 495 (5th Cir. 2002); *see also* In re Shores of Panama, Inc., 387 B.R. 864, 865 (Bankr. N.D. Fla. 2008) (“If the proceeding is non-core, the bankruptcy court has no discretion and must compel arbitration.”).

AHC’s requests for relief under Sections 362 and 365 contained in the Stay & Lease Motion are ones which arise only in the context of a bankruptcy proceeding. In the Stay & Lease Motion,

AHC maintains that the Lease terminated prior to the Petition and the Debtor should be compelled to reject the Lease under Section 365. As a result, AHC contends that it should be granted relief from the stay under Section 362 in order to continue with the eviction proceeding filed in state court. Given that AHC seeks relief pursuant to Sections 362 and 365, the Court concludes that the Stay & Lease Motion is one which arises only in the context of a bankruptcy proceeding.

The Court further determines that the two forms of relief requested by AHC are ones which predominately arise under or in a bankruptcy case. Although not every issue raised by AHC and the Debtor arise directly from the Bankruptcy Code or Rules, the thrust of the Stay & Lease Motion is relief provided by the Bankruptcy Code. Thus, as the Fifth Circuit reasoned in In re Gandy, “[w]hile some of the Debtor’s remaining claims do involve her pre-petition legal or equitable rights, the bankruptcy causes of action predominate.” In re Gandy, 299 F.3d at 497.

2. Would Arbitration Conflict with the Purposes of the Bankruptcy Code?

In In re Gandy, the Fifth Circuit stated, “That Debtor’s bankruptcy causes of action predominate does not, however, end the analysis.” In re Gandy, 299 F.3d at 498. That is, “Even when the cause of action is derived entirely from the federal rights conferred by the Bankruptcy Code, the bankruptcy court has discretion to deny enforcement of the arbitration clause only when enforcement would conflict with the purpose or provisions of the Code.” Id. at 498.

Purposes of the Bankruptcy Code include “the goal of centralized resolution of purely bankruptcy issues, the need to protect creditors and reorganizing debtors from piecemeal litigation, and the undisputed power of a bankruptcy court to enforce its own orders.” In re National Gypsum, 118 F.3d at 1069. As noted, the Stay & Lease Motion in the case at bar primarily seeks remedies which arise only in the context of a bankruptcy proceeding. Centralized resolution of these

bankruptcy issues and the Court's power to ensure obedience to its own orders weigh in favor of denying enforcement of the Arbitration Provision. In the Court's opinion, enforcement of the Arbitration Provision would inherently conflict with the underlying purposes of the Bankruptcy Code. The Court, therefore, will exercise its "significant discretion" to deny the Debtor's Arbitration Motion. See In re Gandy, 299 F.3d at 495.

Conclusion

Based on the foregoing, the Court concludes that the Stay & Lease Motion is a core proceeding. Consequently, the Court has discretion to refuse to compel arbitration. The Court finds that it should exercise its discretion and deny the Arbitration Motion.

IT IS, THEREFORE, ORDERED that the Arbitration Motion is denied.

SO ORDERED.



Neil P. Olack
United States Bankruptcy Judge

Dated: March 27, 2009