UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re **CONSOLIDATED HEALTH CARE ASSOCIATES, INC.,** **Debtor**	**Chapter 7** **Case No. 00-11815-RS**
PTS REHAB, INC., **Debtor**	**Chapter 7** **Case No. 00-11816-RS**

MEMORANDUM OF DECISION AND ORDER ON
MOTION OF FRANKLIN OFFICE PARK REALTY CORPORATION
FOR RELIEF FROM THE AUTOMATIC STAY

This matter is before the Court on the motion for relief from the automatic stay of Franklin Office Park Realty Corporation ("Franklin") ("Stay Motion"), seeking to allow Franklin to continue a Massachusetts state court action against Consolidated Health Care Associates, Inc. ("Consolidated") and one of its subsidiaries, PTS Rehab, Inc. ("PTS") ("State Court Action"). Consolidated and PTS are debtors in the above-captioned bankruptcy cases under Chapter 7 of the Bankruptcy Code; and Kathleen Dwyer serves as the Chapter 7 Trustee in both cases. In each case, as the Trustee in that case, Ms. Dwyer has objected to the Stay Motion filed in that case. For the reasons stated below, the Court **denies** the Stay Motions.

Background

PTS is a subsidiary of Consolidated. Franklin has obtained a final judgment in the State Court Action against Consolidated, but not against PTS, for $137,812.50 ("Consolidated Debt"). Franklin now seeks a determination that PTS is liable on the Consolidated Debt upon so-called corporate disregard/veil-piercing/substantive consolidation theories (comparable if not identical

theories whatever the labels) and thence a determination that it has a valid, perfected, and enforceable equitable lien against and on funds generated by the sale of certain assets of PTS presently held in escrow ("Funds").

Earlier in these bankruptcy cases, Franklin moved for relief from the automatic stay to access the Funds. This Court denied relief from stay on the grounds that (a) the Funds were the property of PTS, not of Consolidated, and that (b) Consolidated was not then, and is not now, liable to Franklin.

The Trustee opposes the Stay Motions and has commenced two adversary proceedings in these cases ("Adversary Proceedings"), both seeking essentially the same adjudication: namely, that PTS is not liable to Consolidated, the Funds are PTS's property and not Consolidated's, and Franklin is no more than a general unsecured creditor of Consolidated, with no lien claim against PTS's assets (including the Funds).

Ruling

The issue reduces to this: which forum is more appropriate and suitable for adjudication of these matters: the state court or the bankruptcy court. The parties appear to recognize that the remaining contested matters have both a state law and a bankruptcy law aspect and that the timing of adjudication is not dramatically divergent (although the Trustee cites as precedent the two years or more for Franklin to reach final judgment against Consolidated in the State Court Action). Neither court has yet proceeded beyond the initial pleadings stage in the matter. Said differently, each court is competent to resolve these matters and is as likely to do so within a reasonable time frame, although the cited precedent does suggest a differential favorable to the bankruptcy court forum.

Two considerations tip the balance in favor of bankruptcy court adjudication of the issues: first, while the bankruptcy court typically and regularly adjudicates state law rights, the state court typically and regularly defers to the bankruptcy court where those rights are, as here, implicated in a bankruptcy proceeding and likely to require the specialized expertise of that court[1]; and second, the Trustee is protecting the rights of all creditors while Franklin is enforcing only its rights, a clash of interests intrinsic to the bankruptcy court and its process but less normative in the state court and its process.

Accordingly, the Stay Motion is **denied** and the Adversary Proceeding is now the proper vehicle for resolution of the issue of entitlement to the Funds, PTS's liability to Franklin, and the viability of Franklin's purported lien.

ORDER

For the reasons set forth above, the Motions of Franklin Office Park Realty Corporation in both cases is hereby DENIED. The Court will issue amended pretrial orders in the two adversary proceedings, providing for their consolidation into one adversary proceeding.

Date: June 17, 2005

Robert Somma
United States Bankruptcy Judge

[1] For example, the Trustee invokes the lien avoidance powers unique to bankruptcy law proceedings in her attack on Franklin's so-called equitable lien.