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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE:) BK. NO: 19-40426-BTR
)
CFO MANAGEMENT HOLDINGS,))
LLC))
D E B T O R.))

* * * * *

TRANSCRIPT OF PROCEEDINGS

* * * * *

BE IT REMEMBERED, that on the 13th day of August, 2019,
before the HONORABLE BRENDA T. RHOADES, United States
Bankruptcy Judge at Plano, Texas, the above styled and
numbered cause came on for hearing, and the following
constitutes the transcript of such proceedings as hereinafter
set forth:



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P R O C E E D I N G S

COURTROOM DEPUTY: Page 6, number 23, CFO Management Holdings. Case 19-40426. Chapter 11 Trustee's motion for substantive consolidation of debtors' estates.

MS. ROSS: Good morning, Your Honor. Judith Ross on behalf of the Trustee, David Wallace.

MR. LEVICK: Larry Levick on behalf of the Unsecured Creditor's Committee.

THE COURT: Okay.

MS. ROSS: Your Honor, we have a motion that was unopposed. We did receive comments, just so the Court knows, from a couple of the secured lenders and have, as a result by agreement, modified the order a little bit, so we will be submitting a different order, slightly different order than what we had originally agreed to.

THE COURT: Okay.

MS. ROSS: But essentially, Your Honor, this particular motion relates to the request of Mr. Wallace to substantively consolidate.

I have a proffer, if the Court is prepared to hear the proffer.

THE COURT: All right. Any objection to a proffer?

MR. LEVICK: No, Your Honor.

THE COURT: All right. I'll allow you to

1 proffer.

2 MS. ROSS: All right. Mr. Wallace, if he were
3 sworn, this would be his testimony.

4 Mr. Wallace, with assistance of his support staff at
5 Trigild has reviewed available documents and records
6 regarding the debtors' assets, liabilities, contracts,
7 transactions, and other activities. And through this review,
8 he has concluded that the debtors have been operated not as
9 separate and distinct entities, but as part of a bigger real
10 estate development enterprise of Mr. Phillip Carter, who had
11 previously owned, controlled, and managed the debtors and
12 their businesses.

13 After a -- he's completed an extensive review of the
14 financial records. And this includes a review of the
15 documents available on the debtors' server, which was
16 obtained by Mr. Wallace through the IT service provider used
17 by the debtors. Additionally, he's had the opportunity to
18 review all documents and analysis prepared by
19 SierraConstellation, which was the prior CRO. And in this
20 review, Mr. Wallace has not been able to locate any separate
21 financial statements or corporate books for the debtors.
22 They don't appear to exist.

23 Furthermore, the evidence would show that the books and
24 records of the debtors had to be constructed by Sierra as
25 part of taking over management of the debtor in early 2019,

1 which caused -- causes the Trustee, at least, to question
2 whether even they're accurate, whatever has been put
3 together. The small amount that they did pull together.
4 What they did do -- what the prior debtor did was to label in
5 the schedules and investor claims, all claims were listed as
6 contingent, unliquidated, and disputed. At that time the
7 liabilities could not be verified.

8 Mr. Wallace has reviewed documents going back at least
9 five years, as well as information obtained by the Texas
10 State Securities Board. And he's concluded that the
11 corporate formalities were not adhered to in the debtors'
12 financial transactions. Funds were deposited or withdrawn
13 from the accounts without regard to the specific debtor
14 entities that were owed funds. The funds were regularly
15 moved out of general accounts to use for specific projects
16 without corporate formalities and notations to reflect
17 intercompany transfers.

18 Furthermore, Your Honor, an example of how this would
19 typically work would be that an investor might write a check
20 to one debtor, such as North 40 Development, LLC. That the
21 funds would be used in the real estate projects of other
22 debtors, such as the commercial real estate development owned
23 by debtor Frisco Lake Crossing Development Partners.

24 Mr. Wallace's testimony would be that he believes it
25 would require significant estate resources that would

1 ultimate harm the estates to attempt to create separate books
2 and records, because it would take a lot of accounting time
3 and effort. And he's not even confident that if we tried to
4 do so, it could be done. He believes that possibly, even if
5 we tried to do it, it would only result in estimates as
6 specific transaction information is not available for all
7 financial transactions. He also believes that administering
8 claims that are filed against an individual debtor but that
9 are ultimately owed by other debtors as co-obligors would be
10 extremely costly and would derive no or little benefit to
11 creditors to try to figure out.

12 Finally, Your Honor, Mr. Wallace would testify that
13 some of the concerns that would be typical in a substantive
14 consolidation case that's not present -- are not present
15 here. For example, we believe that most of the secured
16 creditors are over secured. There are three over secured
17 creditors. And we do not believe that they will have any
18 deficiency which would in turn swamp the unsecured creditor
19 classes.

20 That is the end of Mr. Wallace's testimony, Your Honor.

21 THE COURT: All right. Mr. Wallace, if you'll
22 step forward and be sworn.

23 (The witness was sworn by the courtroom deputy)

24 THE COURT: All right. Would you state your
25 name for the record, sir?

1 THE WITNESS: David Wallace.

2 THE COURT: And you were in the courtroom and
3 listened to your proffer by counsel?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: Now that you've been sworn, would
6 you adopt that as your sworn testimony?

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: Okay. Does anyone wish to
9 cross-examine the witness?

10 MR. LEVICK: No, Your Honor.

11 THE COURT: All right. Thank you. You may be
12 seated.

13 MS. ROSS: Your Honor, the bottom line on all
14 of this is we believe that the evidence is sufficient -- the
15 5th Circuit has not adopted a particular test. They
16 basically rely on both of the traditional tests. The
17 traditional multi-factor test is one and then there's called
18 a balancing of harm test. And if you look at the multiple
19 factors, it's a very long list that begins with the presence
20 or absence of consolidation, consolidate financial statements
21 that were set forth in our papers. I'm not going to go
22 through all of that, Your Honor.

23 But if you take that particular test, most Courts
24 distill it to two critical factors. Whether the creditors
25 dealt with entities as a single economic unit and did not

1 rely on separate identity, or whether the affairs of the
2 debtors are so entangled that consolidation would benefit all
3 creditors. And we believe that we've proven both of those
4 elements, actually, Your Honor.

5 The harm balancing test, which is also a test that the
6 Courts look to, that particular test says that the proponent
7 must show identity between the entities to be consolidated
8 and then show that consolidation is necessary in order to
9 prevent harm or prejudice. And, Your Honor, we think -- at
10 this point, I think Mr. Wallace believes and Trustee's
11 counsel believe at this point that any attempt to figure out
12 what was sold to whom and who owned what, or who owed what
13 debt is going to cost more than it's worth, in this
14 particular case.

15 That's all, Your Honor. I would ask the Court to enter
16 the order. When the Court is finished asking -- if the Court
17 has any questions, feel free to ask them. When you're done,
18 I'd also like to give the Court an update on where we are in
19 the case.

20 THE COURT: Thank you.

21 Did you wish to be heard?

22 MR. LEVICK: Briefly. The Committee supports
23 the consolidation.

24 THE COURT: Okay. All right. The Court is
25 well aware from the beginning of this case, the debtor

1 represented to the Court that they were unable to untangle
2 the records and that they had to expend considerable
3 resources to even create schedules. And because they were
4 uncertain about the assets and liabilities of each of the
5 entities, they had to schedule them as being disputed claims.
6 So the Court is well aware of the history of the case. And
7 given what the Trustee has found now and has testified to on
8 the record today, the Court finds that whether this Court
9 were to engage in the specific factors test, if you will, or
10 the balancing test, as stated in the papers -- I think back
11 in the day, we used to call it the Augie Restivo test.

12 MS. ROSS: We did.

13 THE COURT: Okay. The Court finds that the
14 evidence supports a substantive consolidation of all of the
15 estates and so the Court will, therefore, grant the motion.

16 You'll submit the order, Ms. Ross.

17 MS. ROSS: We'll submit the order, Your Honor.

18 THE COURT: Thank you.

19 MS. ROSS: Hopefully today.

20 THE COURT: Okay.

21 MS. ROSS: Your Honor, I'd also like to give
22 the Court a very brief overview -- I'm sorry.

23 MR. LEVICK: If she could submit that order by
24 my eyes, as well, because she said she had some revisions to
25 it.

1 THE COURT: Certainly.

2 MS. ROSS: We will always give it to the
3 Committee, as well, yes.

4 MR. LEVICK: Thank you.

5 MS. ROSS: Your Honor, just briefly to give
6 the Court a little bit of an update on where things are.

7 THE COURT: Okay.

8 MS. ROSS: The Court may recall that we have a
9 variety of real estate assets in this case that have varying
10 degrees of problems. And one of the biggest problems is the
11 Crescent Court project, which has not been completed. And so
12 the Trustee is following a two-prong attack on the issue of
13 how to obtain recoveries for creditors in this estate.

14 The Trustee is currently negotiating with a buyer for
15 the Starling property, which was the fancy house that's in
16 Frisco, Texas. The fancy house, that's what it is.

17 THE COURT: It's the multi-million home,
18 right?

19 MS. ROSS: Yes. It's a multi-million home.
20 And, you know, would cost a lot of money to upkeep, in my
21 opinion. So I would, you know -- there's not going to be a
22 lot of buyers that are out there, for that reason. But we
23 have some potential buyers there. And then we are also about
24 to sign a contract with another party to buy the raw land.

25 Now, while those particular transactions, we'll

1 probably file motions to sell once we have the contracts, we
2 are simultaneously, though, moving forward with an effort to
3 obtain post-petition financing from Benchmark. And Benchmark
4 has been negotiating with us towards a -- some kind of a
5 financing, which contemplates that there will be a completion
6 of the turn lane at the Wade Crossing property. Those
7 properties are already completed, but they need a turn lane.
8 And trying to get the cash to do that is -- we -- while we
9 may have it, we're worried that the existing M&M lienholders
10 may be causing troubles in being unwilling to perform some of
11 that work.

12 But with respect to the other property, which is the
13 one that is not completed, the DIP lender and -- I call it a
14 DIP lender. It's technically a post-petition financing
15 lender. The post-petition financing lender, the Trustee,
16 Benchmark Bank, and the first lienholder on those assets have
17 been negotiating with one another. And the one party that we
18 have to have come along for the ride are a lot of the people
19 that did the construction. And so it's taking time to get
20 the negotiation done with them, because they are saying, we
21 want to be paid. Which we can understand. But that's
22 the -- those are the two plans. So we hope that ultimately,
23 with some luck, we'll sell the first two pieces of property
24 and be able to get the post-petition financing in place.

25 But I do want to be clear, Judge, that if either of

1 those two properties don't sell, they will probably be part
2 of the post-petition financing collateral that will be
3 provided to them.

4 THE COURT: You're talking about the Starling
5 house or the raw land?

6 MS. ROSS: Yes. It will just depend on -- we
7 can't -- what we can't do, I don't think, is to stop trying
8 to sell while we're waiting on the post-petition financing.

9 THE COURT: Right.

10 MS. ROSS: I think we have to do both of them
11 together. And that's exactly what the Trustee has been
12 doing.

13 THE COURT: Okay. So we've had some other
14 homes in, I think they were in Frisco --

15 MS. ROSS: Those homes were sold, Your Honor.

16 THE COURT: That's closed, right?

17 MS. ROSS: Yes, Your Honor. This Court
18 approved that and those have closed.

19 THE COURT: The Starling house is not
20 finished; is that right? Or is it just a very expensive --

21 MS. ROSS: I believe there's just a little bit
22 that needs to be done. But -- okay. The Trustee says it's
23 move-in ready and done.

24 THE COURT: Okay. So it's just because it's
25 such an expensive home and takes a while to move, right?

1 You know there's a bunch of Dallas Cowboys out there,
2 you know, some refusing \$30 million contracts. And they're
3 right by the Star.

4 MS. ROSS: Hopefully we'll find one, somebody.
5 But we do have -- we had a buyer that we've been negotiating
6 with.

7 THE COURT: Okay.

8 MS. ROSS: And just so the Court knows, as we
9 did the last time, what we are going to do is to kind of make
10 it an open auction. We'll bring in the contract. If
11 somebody wants to come in and outbid --

12 THE COURT: Uh-huh.

13 MS. ROSS: -- we're making it clear to anybody
14 who bids on this stuff that they could be outbid.

15 THE COURT: Okay. And then raw land, where's
16 the -- what raw land is that?

17 MS. ROSS: The raw land is -- I'm going to
18 have to ask the Trustee.

19 MR. WALLACE: West Main.

20 MS. ROSS: West Main --

21 THE COURT: West Main, okay.

22 MS. ROSS: -- in Frisco?

23 MR. WALLACE: Yes.

24 MS. ROSS: West Main in Frisco.

25 THE COURT: Okay.

1 MS. ROSS: And that one we don't think has any
2 liens on it presently.

3 THE COURT: Okay.

4 MS. ROSS: Except there may be a mowing lien.
5 I don't know if there is such a thing.

6 MR. WALLACE: There is.

7 MS. ROSS: But hopefully there's no mowing
8 liens.

9 THE COURT: All right. Thanks for the update.

10 MS. ROSS: Thank you, Your Honor.

11 MR. LEVICK: Your Honor --

12 THE COURT: Yes, sir.

13 MR. LEVICK: -- I also understand, on this
14 Crescent Park project, that Ms. Ross is trying to solicit
15 financing for -- there are a couple of buyers circling around
16 that might possibly make offers as-is. So if those offers
17 ever come in, then I believe the Trustee will be making some
18 kind of presentation to the Committee and say, here's kind of
19 the as-is scenario versus the financing scenario, so the
20 Committee can reach a decision, you know, after reviewing the
21 pros and the cons to kind of try to decide which way they're
22 thinking. Because there are 270 elderly investors out there.
23 And they may want to take a look at the bird in the hand,
24 just to at least evaluate it. But I don't think they even
25 have any as-is offers, as we speak. Correct?

1 MS. ROSS: We do not at this time have any
2 as-is offers.

3 THE COURT: Yeah. I thought the projects that
4 were incomplete were substantially incomplete.

5 MR. LEVICK: Well, there's one -- the one that
6 is incomplete is substantially incomplete. And what happens,
7 Your Honor, is these tire kickers call me and I send them
8 to -- and they all talk a very good game. And then I send
9 them to Mr. Wallace and Ms. Ross. But to get a real tangible
10 earnest money offer down from them is very difficult.

11 THE COURT: Everybody is looking for a
12 bargain.

13 MS. ROSS: Everybody is looking for a bargain.

14 MR. LEVICK: That is correct.

15 MS. ROSS: That is correct.

16 THE COURT: Okay. All right. Well, I'll see
17 you all next time, I guess. But whatever motions you have,
18 you file and --

19 MS. ROSS: Thank you, Your Honor.

20 THE COURT: Okay. Thank you.

21 MS. ROSS: Appreciate it.

22 THE COURT: Parties are excused.

23 Ms. Ross, at some point in time when you all get some
24 estimates as to potential distributions to the creditors, I'd
25 like to kind of know about that just --

1 MS. ROSS: Yes.

2 MR. LEVICK: And I'd like to just speak for a
3 second about that.

4 The bar date, it's either October 14th or 17th. It's
5 one of those dates. So we kind of have a handle on what the
6 claims are going to be, but we still kind of need to see them
7 before we can get to what the distribution might be.

8 MS. ROSS: Right.

9 THE COURT: Right.

10 MR. LEVICK: So it might -- it probably will
11 take near the year of the end before we might have that kind
12 of number.

13 THE COURT: Okay.

14 MS. ROSS: And, Your Honor, on that topic, one
15 thing I'll mention. What Mr. Levick said was absolutely
16 correct. The Trustee is going to consider any proposal
17 that's made to him. So if somebody wants to make an as-is
18 proposal for buying that project, we're going to consider it.

19 THE COURT: You need to get him a Jerry
20 Maguire t-shirt.

21 MS. ROSS: Pardon me?

22 THE COURT: You need to get him a Jerry
23 Maguire t-shirt, show me the money.

24 MS. ROSS: Show me the money.

25 THE COURT: You betcha.

1 MR. LEVICK: Judge Abramson used to say --

2 THE COURT: Oh, I know.

3 MR. LEVICK: -- that.

4 MS. ROSS: Absent that, absent that, then we
5 think that the best way for creditors, this particular moment
6 is to complete the project, if we can do it cost effectively.
7 So it's going to be a balancing act and we're, of course,
8 keeping the Committee informed.

9 MR. LEVICK: And whereas I have an idea about
10 what an investor should file their claim for, that doesn't
11 mean that there aren't going to be investors that aren't
12 going to file claims for interest and punitive damages and
13 all sorts of claims that we're going to have to wade through
14 to really get the real number, Your Honor.

15 THE COURT: Oh, I expect that it's going to
16 take a minute to go through that, as well.

17 MR. LEVICK: Okay. Thank you, Your Honor.

18 THE COURT: Thank you. Parties are excused.

19 (End of Proceedings.)

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C E R T I F I C A T E

I, CINDY SUMNER, do hereby certify that the foregoing constitutes a full, true, and complete transcription of the proceedings as heretofore set forth in the above-captioned and numbered cause in typewriting before me.

/s/Cindy Sumner

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