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**COUNSEL FOR THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

**Northwest Senior Housing Corporation, *et*
*al.*¹**

Debtors.

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Chapter 11

Case No. 22-30659 (MVL)

Jointly Administered

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
TO INTERCITY INVESTMENT PROPERTIES, INC.'S MOTION TO DISMISS
CHAPTER 11 CASES UNDER 11 U.S.C. § 1112(b)**

[Relates to Docket No. 541]

The Official Committee of Unsecured Creditors (the “**Committee**”) of the above-captioned debtors and debtors in possession (the “**Debtor**”), hereby files this objection (the “**Objection**”) to *Intercity Investment Properties, Inc.’s Motion to Dismiss Chapter 11 Cases Under 11 U.S.C. §*

¹ The Debtors in these chapter 11 cases (the “**Chapter 11 Cases**”), along with the last four digits of each Debtor’s federal tax identification number, are Northwest Senior Housing Corporation (1278) and Senior Quality Lifestyles Corporation (2669). The Debtors’ mailing address is 8523 Thackery Street, Dallas, Texas 75225.



1112(b) [Docket No. 541] (the “**Motion to Dismiss**”).² In support of the Objection, the Committee respectfully represents as follows:

I. **BACKGROUND**

A. The Bankruptcy Filing

1. On April 14, 2022 (the “**Petition Date**”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made.

2. On April 28, 2022, the United States Trustee for the Northern District of Texas appointed the Committee in these Chapter 11 Cases, as amended on April 29, 2022 and May 2, 2022.

B. The Plan and Disclosure Statement

3. On August 3, 2022, the Debtors filed their *Plan of Reorganization* [Docket No. 508] and the *Disclosure Statement* in support thereof [Docket No. 509]. The Disclosure Statement was initially set for hearing on September 29, 2022 but has since been continued indefinitely.³

4. On August 11, 2022, the Debtors filed their *Motion of Debtors for Entry of an Order Extending the Exclusivity Period for the Filing of a Chapter 11 Plan* [Docket No. 534] (the “**Exclusivity Motion**”) seeking an extension of “180 days of the Debtors’ exclusive period for obtaining acceptances of and confirming the Debtors’ Plan.”⁴ The Exclusivity Motion further states that “The Debtors believe the Adversary Proceeding can and should be decided before the

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion to Dismiss.

³ See Docket No. 625.

⁴ See Exclusivity Motion at 2, ¶ 3.

Debtors proceed to confirmation on the Plan,” acknowledging that, while the Plan has been filed, confirmation cannot occur until after the litigation with the Landlord has been concluded.

C. The Motion to Dismiss

5. On August 12, 2022, the Landlord, Intercity Investment Properties, Inc., filed the Motion to Dismiss seeking dismissal of the Chapter 11 Cases and describing the Debtors as “engag[ing] in a campaign of deception before this Court and the Edgemere’s residents by obscuring the facts and creating unrealistic expectations for both.” At the heart of the Motion to Dismiss is the Landlord’s belief that these Chapter 11 Cases constitute a “charade” wherein the “Debtors continue spending inordinate amounts of time, money, and judicial resources prosecuting frivolous litigation claims against the Landlord... .”⁵

6. On August 23, 2022, the Debtors filed their *Preliminary Objection to Motion to Dismiss Chapter 11 Cases Under 11 U.S.C. § 1112(b)* [Docket No. 564] (the “**Preliminary Response**”). The Preliminary Response addresses many of the arguments raised in the Motion to Dismiss, including that the absolutely priority rule does not apply in these Chapter 11 Cases, and argues that the Motion to Dismiss is a “premature, disguised objection to either approval of the Disclosure Statement or the confirmation of the Plan” and “fails to appropriately assert a legitimate basis to dismiss these Chapter 11 Cases at this early stage.”⁶

7. On September 13, 2022, UMB Bank, N.A. filed its *Objection to Intercity Investment Properties, Inc.’s Motion to Dismiss Chapter 11 Cases Under 11 U.S.C. § 1112(b)* [Docket No. 622] (“**Trustee’s Objection**”) arguing, primarily, that the drastic relief of dismissal

⁵ See Motion to Dismiss at 3, ¶ 5.

⁶ Preliminary Response at 2.

is not in the best interest of creditors.⁷ The Trustee’s Objection also notes that the primary non-Landlord constituents to these Chapter 11 Cases are united in their opposition to dismissal.⁸

8. Also on September 13, 2022, the Debtors filed their *Objection to Motion to Dismiss Chapter 11 Cases Under 11 U.S.C. § 1112(b)* [Docket No. 624] (the “**Debtors’ Objection**”). The Debtors’ Objection repeats many of the themes from the Preliminary Response while taking specific aim at the Landlord’s contentions regarding a “Successful Outcome,” concluding that the Landlord has not met its burden to demonstrate “cause” to dismiss these Chapter 11 Cases, and, at this “embryonic” stage, dismissal would benefit only one creditor—the Landlord. The Committee agrees.

II. **ARGUMENT**

9. The Motion to Dismiss seeks to dismiss the Chapter 11 Cases for “cause” pursuant to § 1112(b)(1) of the Bankruptcy Code. The purported “cause” is threefold: 1) the Debtors’ Plan is unconfirmable, making rehabilitation impossible; 2) the Debtors’ estates are suffering “substantial, continuing losses” through the accrual of administrative expenses, including professional fees—essentially, the estates are administratively insolvent; and 3) dismissal is a better outcome than other alternatives, namely conversion and liquidation.

10. The Landlord cannot establish “cause” at this point in these Chapter 11 Cases for dismissal. First, in characterizing the current Plan as “unconfirmable”⁹ with terms that are “illegal”¹⁰ the Motion to Dismiss essentially mirrors pleadings filed, and arguments made, in the

⁷ Trustee’s Objection at 2; 3, ¶¶ 1-2; 4, ¶ 4.

⁸ *Id.* at 5, ¶ 5.

⁹ Motion to Dismiss at ¶¶ 1, 13, 33.

¹⁰ *Id.* at 27.

litigation between the Debtors and the Landlord. Notably, since the Motion to Dismiss was filed, the Court issued its *Order Granting in Part and Denying in Part the Defendants' Motion to Dismiss the Complaint for Failure to State a Claim*¹¹ that rejected many of those same arguments, mainly that the relief the Debtors seek through the litigation (and upon which the Plan is based) is impossible and/or illegal, and they cannot attain that which they seek. There, the Court ruled that the litigation should continue, as the Debtors have stated plausible claims for relief.¹² For the time being, these Chapter 11 Cases should continue, as well, to allow the Debtors to pursue those claims.

11. Second, even accepting as true the Landlord's contentions regarding the *current* Plan, the Motion to Dismiss fails to recognize the possibility of a *different* Plan that may be proposed somewhere down the line that could successfully reorganize the Debtors. The Committee is actively engaged with stakeholders in contingency planning for potential alternate restructuring scenarios that may only be possible in bankruptcy, and the bankruptcy process is designed to allow such contingencies to be formulated and pursued. The Landlord's "one strike and you're out" premise is nonsensical.

12. Third, while the Committee is concerned about the accrual and payment of administrative expenses in these Chapter 11 Cases, the accrual of unpaid administrative expenses, by itself, is not equivalent to the requisite "negative cash flow or declining asset values" nor does it constitute cause to dismiss otherwise viable bankruptcy cases. None of the cases cited by the Landlord support this proposition. Moreover, § 1112(b)(4)(A), which contains the "substantial or continuing loss" prong, requires both the aforementioned loss *and* "the absence of a reasonable

¹¹ Docket No. 99 in Adversary No. 22-3040 (MVL), entered August 24, 2022.

¹² *See id.* at 5-22 (finding that the Debtors pleaded plausible factual allegations supporting counts for breach of the NDA, promissory fraud, civil conspiracy, equitable subordination, and reformation of the ground lease and denying Landlord's motion to dismiss as to those counts).

likelihood of reorganization.”¹³ Even if the Landlord could demonstrate the former, it cannot do so with respect to the latter as discussed above.

13. Finally, the Landlord cannot demonstrate that dismissal—and a return to the prepetition status quo as between the Debtors and the Landlord—is in the best interests of the estate. As the Court and the parties are well aware, the Debtors operate a continuing-care retirement community home to more than 350 current residents, and their safety and continued care should be the highest priority of every party involved in these Chapter 11 Cases. Dismissing these Chapter 11 Cases does nothing to assist the Debtors in reorganizing and remaining viable for the benefit of those residents and their community they call home and is not in the best interests of the Debtors or their estates. It does, however, make a “Successful Outcome” less likely, which is why the Motion to Dismiss was really filed in the first place.

WHEREFORE, the Committee respectfully requests that the Court deny the Motion to Dismiss and grant any further relief that the Court seems just and appropriate.

[Signature page to follow]

¹³ See *In re TMT Procurement Corp.*, 534 B.R. 912, 918 (Bankr. S.D. Tex. 2015) (“In order to demonstrate cause pursuant to § 1112(b)(4)(A), the moving party must demonstrate that there is both (1) a substantial or continuing loss to or diminution of the estate and (2) the absence of a reasonable likelihood of rehabilitation.”). The Landlord cited this case in the Motion to Dismiss.

Dated: September 14, 2022

Respectfully submitted,

FOLEY & LARDNER LLP

/s/ Stephen A. McCartin

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served electronically by the Court's PACER system on September 14, 2022.

/s/ Stephen A. McCartin

Stephen A. McCartin