United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, June 10, 2020 **Hearing Room 1568**

10:00 AM
2:18-20151 Verity Health System of California, Inc. **Chapter 11**

#6.00 Hearing
RE: [4741] Motion to Reject Lease or Executory Contract /Debtors' Motion Under § 1113 of the Bankruptcy Code to Reject Collective Bargaining Agreement with SEIU; Declarations Of Richard G. Adcock and Steven Sharrer in Support Thereof

FR. 6-3-20

Docket 4741

Matter Notes:

6/10/2020

The tentative ruling will be the order.
Party to lodge order: As set forth in the Tentative Ruling

POST PDF OF TENTATIVE OR AMENDED TENTATIVE RULING TO CIAO

Tentative Ruling:

6/9/2020

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing. The cost for persons representing themselves has been waived.

Having reviewed the Motion and the papers filed in connection therewith, the Court believes that consensual resolution of the § 1113 issues remains possible. To that end, the Court declines to issue a final ruling on the Motion at this initial hearing. Instead, this tentative ruling provides guidance intended to facilitate and channel further negotiations.

The final hearing on the Motion shall take place on **July 8, 2020, at 10:00 a.m.**, unless the Debtors and SEIU agree to a further extension of time to facilitate

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negotiations. *See* § 1113(d)(2) (requiring the Court to rule upon an application for modification or rejection of a collective bargaining agreement within thirty days of the initial hearing, unless the parties agree otherwise). By no later than **July 1, 2020, at 5:00 p.m.**, the Debtors and SEIU shall submit final briefs accompanied by appropriate evidence setting forth their positions on those issues that remain in dispute.

Pleadings Filed and Reviewed:

1) Debtors' Motion Under § 1113 of the Bankruptcy Code to Reject Collective Bargaining Agreement with SEIU [Doc. No. 4741] (the "Motion")
   a) Certificate of Service [Doc. No. 4803]
2) Order Setting Briefing Schedule on Section 1113 Motions [Doc. No. 4753]
   a) Stipulation Continuing Hearing and Deadlines Regarding Debtors' Motions Under Section 1113 of the Bankruptcy Code [Doc. No. 4815]
   b) Order Granting Stipulation Continuing Hearing and Deadlines Regarding Debtors' Motions Under Section 1113 of the Bankruptcy Code [Doc. No. 4819]
3) SEIU-UHW's Opposition to Debtors' Motion to Reject Collective Bargaining Agreement [Doc. No. 4806]
   a) Declaration of Caitlin E. Gray in Opposition to Debtors' Motion to Reject Collective Bargaining Agreement [Doc. No. 4807]
   b) Stipulation Extending Deadline for SEIU-UHW Re Debtors' Motion to Reject Collective Bargaining Agreement [Doc. No. 4797]
   c) Order Approving Stipulation Extending Deadline for SEIU-UHW Re Debtors' Motion to Reject Collective Bargaining Agreement [Doc. No. 4816]
4) Notice of Filing of Declarations Pursuant to Court's Scheduling Order in Connection with Debtors Motion to Reject Collective Bargaining Agreement with UNAC Under § 1113 of the Bankruptcy Code [Doc. No. 4844]

I. Facts and Summary of Pleadings

Debtors move for entry of an order authorizing them to reject a collective bargaining agreement (the "CBA") between St. Francis Medical Center ("St. Francis") and Service Employees International Union–United Healthcare Workers West ("SEIU"). SEIU opposes the Motion.

A. Background

On August 31, 2018 (the "Petition Date"), Verity Health System of California

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("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors' cases are being jointly administered.

On February 26, 2020, the Court entered an *Order (1) Approving Auction Sale Format and Bidding Procedures; (2) Approving Process for Discretionary Selection of Stalking Horse Bidder and Bid Protections; (3) Approving Form of Notice to be Provided to Interested Parties; (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest and Best Bidder; and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases* [Doc. No. 4165] (the "Bidding Procedures Order"). The Bidding Procedures Order established procedures governing the auction (the "Auction") of St. Francis.

The Bidding Procedures Order authorized the Debtors to designate a Stalking Horse Bidder without further order of the Court. The Debtors designated Prime as the Stalking Horse Bidder. The Debtors received bids from potential purchasers, but after consulting with their advisors and the Consultation Parties (as defined in the Bidding Procedures Order), determined that such bids did not constitute Qualified Bids. The Debtors selected Prime as the Winning Bidder and did not conduct the Auction.

On April 9, 2020, the Court entered an order authorizing the Debtors to sell St. Francis to Prime. *See* Doc. No. 4511 (the "Sale Order"). Material terms of the Asset Purchase Agreement (the "APA") as they pertain to the CBA are as follows:

> 4.9. Contract With Unions. (a) … The applicable Sellers and Purchaser shall each participate in all negotiations related to the potential modification and assignment of specific Seller's collective bargaining agreements to Purchaser. The applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchaser and unions and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. The applicable Sellers will not unreasonably withhold, condition or delay Bankruptcy Court approval of any successfully renegotiated collective bargaining agreement. The Parties recognize that Seller's failure to conclude a successor collective bargaining agreement shall not be a breach of Sellers' obligation under this Agreement or otherwise excuse Purchaser's obligations under this Agreement.
>
> (b) On or before the date that is thirty (30) days after the Sale Order Date, the negotiations pursuant to Section 4.9(a) shall have resulted in each, such labor

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> unions, agreeing to either (i) either modification of the St. Francis related collective bargaining agreements under terms that are to be substantially consistent with the Purchaser's existing and most current collective bargaining agreements with each such respective labor union, and that settle all liabilities under the existing Seller collective bargaining agreements that shall be assigned to Purchaser, provided that there are shall be no cure obligations to the Sellers or (ii) enter into new collective bargaining agreements that are substantially consistent with the Purchaser's existing collective bargaining agreements with each such respective labor union; provided, that if Purchaser and each labor union have not entered into such agreements described in (i) or (ii) above, or have entered into an agreement under (ii), then Sellers shall have the absolute right to file or take any other action to reject and terminate any such collective bargaining agreement and, in such event, the Bankruptcy Court shall have entered an order granting Sellers' requested rejection of such collective bargaining agreement prior to the Closing Date.

APA at § 4.9.

If Prime and SEIU have not consensually entered into a CBA consistent with § 4.9, Prime is not required to close the sale unless the Debtors have obtained an order authorizing rejection of the existing CBA:

> Sellers shall have satisfied, in all material respects, their obligations set forth in Section 4.9(b). For the avoidance of doubt, in the event that Purchaser and each labor union has not entered into an agreement described in Section 4.9(b) (i) or (ii), then material satisfaction of Section 4.9(b) means that Seller has filed or taken action to reject and terminate any such collective bargaining agreement and that the Bankruptcy Court has entered an order granting Seller's requested rejection of such collective bargaining agreement prior to the Closing Date.

APA at § 8.7.

Either the Debtors or Prime may terminate the APA if the sale has not closed on or before September 1, 2020 (the "Termination Date"), except that the Termination Date shall be December 31, 2020 if the only condition to closing that has not been satisfied is the Attorney General's consent to the sale upon conditions consistent with those that the Purchase has agreed to accept. *Id.* at § 9.1(i).

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B. Summary of Papers Filed in Connection with the Motion

Debtors assert that rejection of the CBA is warranted for the following reasons:

1) Thorough marketing of St. Francis produced only the bid from Prime. The Debtors have facilitated negotiations between Prime and SEIU intended to result in the negotiation of a successor CBA between the parties (the "Successor CBA"). The parties did not reach agreement on the terms of a Successor CBA within the 30-day period specified in the APA. Pursuant to the APA, the Debtors now have the absolute right to take action seeking to reject the CBA.
2) On May 13, 2020, the Debtors delivered to SEIU a proposal providing for rejection and termination of the CBA (the "Proposal"). Under the Proposal, if SEIU consents to rejection, SEIU employees who are not offered employment by Prime will receive an allowed claim for severance (the "Severance Benefit"). If SEIU contests rejection, the Debtors will withdraw the Severance Benefit.
3) The marketing process has demonstrated that the CBA is not economically viable and that neither Prime nor any other entity will acquire St. Francis subject to the CBA. Upon the closing of the sale, the Debtors will no longer operate St. Francis and therefore will not need the CBA. Accordingly, rejection of the CBA is necessary to permit the Debtors to confirm a liquidating plan by facilitating the closing of the sale of St. Francis. If the CBA is not rejected prior to the closing of the sale, the Debtors will be exposed to a substantial administrative claim. In authorizing the rejection of collective bargaining agreements in connection with the Santa Clara Sale, the Court found that absent rejection the estate would almost certainly be rendered administratively insolvent.

SEIU opposes the Motion for the following reasons:

1) The Debtors failed to meet with SEIU at reasonable times to confer in good faith as required by § 1113. The Debtors did not respond to SEIU's request to be included in the sale process prior to the negotiation of the APA. SEIU was not provided the opportunity to discuss the treatment of the purchaser's collective bargaining obligations before the APA had been

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finalized and filed with the Court on April 8, 2020. The APA provides that if SEIU does not agree to modify the collective bargaining agreement or enter a new collective bargaining agreement with terms "substantially similar" to Prime's existing agreements within 30 days after entry of the Sale Order, the Debtors will have the right to reject the collective bargaining agreement and will be obligated to obtain rejection prior to the closing of the sale. The Debtors were locked into these terms before they began any discussions with SEIU. In *In re Lady H Coal Co., Inc.*, 193 B.R. 233, 242 (Bankr. S.D.W. Va. 1996), the court rejected the debtor's attempt to reject a CBA where, as here, the Debtors did not seek rejection of the CBA until after they had entered into a sale agreement with a party not willing to assume the CBA. The *Lady H* court explained "that a debtor has a duty under § 1113 to not obligate itself prior to negotiations with its union employees, which would likely preclude reaching a compromise," and held that "the Debtors could not have bargained in good faith as the Debtors were, prior to any negotiations with the union, locked into at an agreement where the purchaser was not assuming the [CBA]." *Lady H*, 193 B.R. at 242.

2) The Debtors' Proposal is not based upon the most complete and reliable information available. To evaluate Prime's proposed Successor CBA, SEIU requested information about the proposed wage scale, the reasoning behind Prime's proposal to create a right to subcontract out work previously performed by SEIU, and how much of the workforce would be retained by Prime. This information has never been provided. The lack of information has made it difficult for SEIU to present a counter-proposal to Prime's proposal and has prevented SEIU from assessing the Debtors' Proposal.
3) The Debtors have failed to demonstrate that the Proposal, which terminates all severance obligations if SEIU contests rejection, is necessary for the Debtors to confirm a liquidating plan. The Debtors have offered to pay severance to workers not rehired by Prime, but only if SEIU does not contest rejection of the CBA. This demonstrates that the Debtors have the ability to comply with the CBA's severance obligations.

C. Discussions Between the Debtors, SEIU, and Prime

Prior to the filing of the Motion, the Debtors, Prime, and SEIU met and engaged in

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bargaining on three occasions—on May 1, 5, and 8. The Debtors filed the Motion on May 19. After the Motion was filed, the Debtors, Prime, and SEIU met and engaged in bargaining on June 4 and June 8. On June 4, SEIU presented a counter-proposal for a Successor CBA with Prime that was based on a redline of Prime's original proposal. Declaration of An N. Ruda [Doc. No. 4844] at ¶ 12. Prime agreed to submit a counterproposal at the June 8 bargaining session. *Id.*

II. Findings and Conclusions

As a preliminary matter, the Court emphasizes that the record is not complete because this is the initial hearing on the Motion, and the Debtors have not yet responded to SEIU's opposition. **[Note 1]** The findings set forth below are subject to adjustment based upon arguments presented at the hearing. The Court further notes that a motion to modify or terminate a CBA is unlike most motions heard by the Court, in that the statute expressly contemplates that the position of the parties may change as a result of negotiation up until the hearing date. *See* § 1113(b) (requiring the Debtors to meet with the union's authorized representative "at reasonable times" during "the period beginning on the date of the making of the proposal … and ending on the date of the hearing ….").

The Court declines to rule upon the Motion at the present time. The findings set forth herein are intended to provide guidance to the parties to facilitate and channel further negotiations. "The language and history of section 1113 make clear that the preferred outcome under section 1113 is a negotiated solution rather than contract rejection." *In re AMR Corp.*, 477 B.R. 384, 393 (Bankr. S.D.N.Y. 2012). In the Court's view, a negotiated resolution remains possible and would inure to the benefit of all stakeholders. The Court notes that prior to the failure of the SGM Sale, the Debtors and SEIU were able to consensually resolve issues pertaining to the CBA. The Court is aware that Prime's proposals regarding a Successor CBA differ in material respects from the terms reached with SGM. Nonetheless, the prior consensual resolution shows that a negotiated solution remains possible.

Section 1113 provides:

> (a) The debtor in possession, or the trustee if one has been appointed under the provisions of this chapter, … may assume or reject a collective bargaining agreement only in accordance with the provisions of this section.
>
> (b)

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(1) Subsequent to filing a petition and prior to filing an application seeking rejection of a collective bargaining agreement, the debtor in possession or trustee (hereinafter in this section "trustee" shall include a debtor in possession), shall—

(A) make a proposal to the authorized representative of the employees covered by such agreement, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the employee benefits and protections that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and

(B) provide, subject to subsection (d)(3), the representative of the employees with such relevant information as is necessary to evaluate the proposal.

(2) During the period beginning on the date of the making of a proposal provided for in paragraph (1) and ending on the date of the hearing provided for in subsection (d)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such agreement.

(c) The court shall approve an application for rejection of a collective bargaining agreement only if the court finds that—

(1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (b)(1);

(2) the authorized representative of the employees has refused to accept such proposal without good cause; and

(3) the balance of the equities clearly favors rejection of such agreement.

"Bankruptcy cases generally approach this complicated statute by breaking the statute into a nine part test" first set forth in *In re Am. Provision Co.*, 44 B.R. 907, 909

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(Bankr. D. Minn. 1984). *See In re Karykeion, Inc.*, 435 B.R. 663, 677 (Bankr. C.D. Cal. 2010); *see also In re Family Snacks, Inc.*, 257 B.R. 884, 892 (B.A.P. 8th Cir. 2001) ("Virtually every court that is faced with the issue of whether a Chapter 11 debtor may reject its collective bargaining agreement utilizes a nine-part test that was first set down by the bankruptcy court in *In re American Provision Co.*"). The *American Provision* factors are as follows:

1) The debtor in possession must make a proposal to the Union to modify the collective bargaining agreement.
2) The proposal must be based on the most complete and reliable information available at the time of the proposal.
3) The proposed modifications must be necessary to permit the reorganization of the debtor.
4) The proposed modifications must assure that all creditors, the debtor and all of the affected parties are treated fairly and equitably.
5) The debtor must provide to the Union such relevant information as is necessary to evaluate the proposal.
6) Between the time of the making of the proposal and the time of the hearing on approval of the rejection of the existing collective bargaining agreement, the debtor must meet at reasonable times with the Union.
7) At the meetings the debtor must confer in good faith in attempting to reach mutually satisfactory modifications of the collective bargaining agreement.
8) The Union must have refused to accept the proposal without good cause.
9) The balance of the equities must clearly favor rejection of the collective bargaining agreement.

American Provision, 44 B.R. at 909.

Courts apply the *American Provision* factors even where a debtor is liquidating its assets and does not intend to continue in business after emerging from bankruptcy. Courts reason that "reorganization," as used in § 1113(b)(1)(A), is "generally understood to include all types of debt adjustment, including a sale of assets, piecemeal or on a going concern basis, under § 363 followed by a plan of reorganization which distributes the proceeds of the sale to creditors in accordance with the Bankruptcy Code's priority scheme." *Family Snacks*, 257 B.R. at 895. Some courts have held that where, as here, the Debtors are liquidating their assets, the phrase "necessary to permit the reorganization of the debtor" means "necessary to

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achieve a sale under § 363 of the Bankruptcy Code." *Alpha Nat. Res., Inc.*, 552 B.R. 314, 333 (Bankr. E.D. Va. 2016); *see also Walter Energy*, 542 B.R. at 890 (requiring that the debtor's proposal "be necessary to permit … those modifications necessary to consummate a going-concern sale"); *In re Karykeion, Inc.*, 435 B.R. 663, 679 (Bankr. C.D. Cal. 2010) (finding that the debtor had proven that rejection was necessary when the closing of a § 363 sale was contingent on rejection of a collective bargaining agreement). Others courts have concluded that in a liquidating case, the phrase "necessary to permit reorganization of the debtor" means "necessary to accommodate confirmation of a Chapter 11 plan." *Family Snacks*, 257 B.R. at 895.

Factor 3—Necessary to Permit the Reorganization of the Debtor

In the context of this case, the term "necessary to permit the reorganization of the debtor" is best interpreted to mean "necessary to permit the Debtors to confirm a liquidating plan." This interpretation aligns most closely with the manner in which the Debtors are prosecuting this case. From the outset, the Debtors have stated their intent to sell their hospitals and use the proceeds from the sales to fund a plan of liquidation. This process is well underway. The sales of O'Connor Hospital, St. Louise Regional Medical Center, and St. Vincent Medical Center have all closed.

The closing of the sale of St. Francis to Prime is essential to the Debtors' ability to confirm a liquidating plan. The failure of the prior sale of St. Francis to Strategic Global Management, Inc. has made confirmation of a liquidating plan more challenging by requiring the Debtors to remain in bankruptcy for far longer than anticipated. To satisfy Factor 3, the Debtors must demonstrate that rejection of the CBA is a prerequisite to the closing of the sale.

The Debtors assert that Factor 3 is satisfied because under the APA, if Prime has not entered into an agreement with SEIU within thirty days after entry of the Sale Order, Prime is not required to close the sale unless the CBA has been rejected. The Debtors maintain that their proposal to SEIU to reject the CBA has been made in good-faith (Factor 7) because Prime's refusal to acquire St. Francis subject to the CBA is beyond the Debtors' control. The Debtors cite *In re Walter Energy, Inc.*, 542 B.R. 859, 885 (Bankr. N.D. Ala. 2015), which held that a debtor's proposal to reject a CBA was in good faith where the only bidder willing to acquire the assets was unwilling to do so unless the CBA was rejected.

If SEIU and Prime can agree upon the terms of Successor CBA, it will not be necessary for the Debtors to obtain an order rejecting the CBA. The fact that SEIU and Prime did not agree upon a Successor CBA within thirty days after entry of the

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Sale Order does not foreclose the possibility of the parties reaching an agreement prior to the closing of the sale. There is still ample time for negotiations to take place. The deadline for the sale to close is September 1, 2020 if the Attorney General consents to the sale upon conditions acceptable to Prime; if the Attorney General does not so consent, the deadline is December 31, 2020. It would be premature for the Court to find that rejection of the CBA is necessary to facilitate the closing of the sale.

In a declaration filed on June 8, 2010, An N. Ruda, the Debtors' Chief Labor Negotiator, testifies that "finality of a rejection of the CBA between SEIU and Debtor SFMC would likely motivate [Prime and SEIU] to bridge their differences and achieve a new CBA prior to Closing." Ruda Decl. [Doc. No. 4845] at ¶ 15. The Court does not agree with Ruda's assessment. In the Court's view, the best means of facilitating a Successor CBA between SEIU and Prime—and therefore eliminating the necessity for the Debtors to obtain an order rejecting the CBA—is to defer ruling on the Motion. Deferral of a ruling provides all parties an incentive to attempt to resolve their differences consensually.

Factors 2 and 5—Complete Information

Factor 2 requires that the Debtors' proposal be based on the most complete and reliable information available at the time the proposal is made. Factor 5 requires that the Debtors provide SEIU with "such relevant information as is necessary to evaluate the proposal." For both factors, a debtor "must gather the 'most complete information at the time and ... base its proposal on the information it considers reliable,' excluding 'hopeful wishes, mere possibilities and speculation.' 'The breadth and depth of the requisite information will vary with the circumstances, including the size and complicacy of the debtor's business and work force; the complexity of the wage and benefit structure under the collective bargaining agreement; and the extent and severity of modifications the debtor is proposing.'" *In re Walter Energy, Inc.*, 542 B.R. 859, 886 (Bankr. N.D. Ala. 2015), *aff'd sub nom. United Mine Workers of Am. 1974 Pension Plan & Tr. v. Walter Energy, Inc.*, 579 B.R. 603 (N.D. Ala. 2016), *aff'd sub nom. In re Walter Energy, Inc.*, 911 F.3d 1121 (11th Cir. 2018) (internal citations omitted).

With respect to Prime's proposed Successor CBA, SEIU has requested information from Prime about the reasoning behind the proposed wage scale, the reasoning for Prime's proposal to create a right to subcontract out work previously performed by SEIU, and how much of the workforce would be retained by Prime.

Under § 1113, the obligation to provide information is directed toward the

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Debtors, not Prime. *See Walter Energy*, 542 B.R. at 896 ("To satisfy the second and fifth procedural requirements, a debtor need only provide that information that is within its power to provide."). Prime's failure to provide the information requested by SEIU cannot prevent the Debtors from satisfying Factors 2 and 5.

That being said, the statute's structure does not mean Prime can refuse to respond to all of SEIU's requests for information. The Debtors have sought rejection of the CBA based upon language in the APA that Prime itself negotiated for. It is necessary for the Debtors to seek rejection only because SEIU and Prime have been unable to agree upon a Successor CBA. Under these circumstances, it is incumbent upon Prime—who benefits from the APA and the Debtors' attempts to reject the CBA—to provide at least some information to SEIU.

As discussed above, a negotiated resolution of the § 1113 issues would inure to the benefit of all parties. The testimony of the Debtors' Chief Labor Negotiator indicates that significant progress occurred at the June 4 and June 8 bargaining sessions. *See* Ruda Decl. at ¶ 12 ("In my observation [the June 4 session] was more productive than previous ones. To begin, SEIU passed a comprehensive proposal for a new CBA redlining off the new CBA originally proposed by Prime …. To its credit, Prime acknowledge the significance of the movement made by SEIU, and committed to submitting its own comprehensive counterproposal at the next meeting."). In the Court's view, a formal response by Prime to SEIU's request for additional information would significantly increase the likelihood of consensual resolution.

Factor 7—Good Faith Negotiations

Factor 7 requires that the Debtors meet and confer with SEIU in good faith. "The good faith requirement under section 1113 has been interpreted to mean that the debtor must make a serious effort to negotiate." *Walter Energy*, 542 B.R. at 894.

According to SEIU, the Debtors cannot establish that they met and conferred in good faith regarding modification of the CBAs. SEIU asserts that by the time the Debtors commenced negotiations, the language in the APA made it foregoing conclusion that Prime would not assume the CBA. SEIU relies upon *In re Lady H Coal Co., Inc.*, 193 B.R. 233, 242 (Bankr. S.D.W. Va. 1996) for the proposition "that a debtor has a duty under § 1113 to not obligate itself prior to negotiations with its union employees, which would likely preclude reaching a compromise." The *Lady H* court held that "the Debtors could not have bargained in good faith as the Debtors were, prior to any negotiations with the union, locked into at an agreement where the purchaser was not assuming the [CBA]." *Id.*

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SEIU's reliance upon *Lady H* is misplaced. In *Lady H*, the debtor's CEO unilaterally obtained a broker to market the assets at issue, in violation of § 327. As a result of this violation, the unions received no notice of the marketing of the assets. *Lady H*, 193 B.R. at 242. The lack of notice deprived the unions of the "opportunity to participate in whatever process a debtor engages in to find a suitable buyer." *Id.* Here, by contrast, the Debtors have stated their intent to sell the St. Francis from the inception of the case. The Debtors fully complied with the requirements of § 327 when retaining Cain to market the St. Francis.

In addition, the debtor in *Lady H* did not pursue a possible sale to another buyer who was willing to assume the union's CBA. *Id.* Instead, the debtor obligated itself to a buyer that wanted to reject the CBA, primarily because that buyer had agreed to employ the debtor's officers at inflated salaries. *Id.* In contrast to the facts of *Lady H*, the record shows that the Debtors executed the APA with Prime to maximize the proceeds available to the estate, not to enrich insiders, and that the Debtors aggressively marketed St. Louise. The entire purpose of the APA with Prime was to produce additional favorable bids, some of which might include assumption of the CBAs. The Debtors were not "locked in" under the APA; the APA was merely the first step in a thorough marketing process. The fact that no other bidders emerged does not indicate that there were problems with the APA; it instead demonstrates that no buyers exist who are willing to acquire St. Louise subject to the CBA.

The only temporal requirement imposed by the statute regarding the Debtors' bargaining obligations is that the bargaining commence prior to the filing of a motion seeking relief under § 1113. § 1113(b)(1)(A). Here, the Debtors fulfilled this requirement by meeting with SEIU three times prior to the filing of the Motion.

The decision in *Local 211 v. Family Snacks, Inc., Official Unsecured Creditors' Comm. (In re Family Snacks, Inc.)*, 257 B.R. 884, 897 (B.A.P. 8th Cir. 2001) shows that the Debtors are not obligated to commence bargaining at the inception of the case. Similar to this case, in *Family Snacks* the debtor commenced negotiations only after it had sold its assets. The *Family Snacks* court held that the debtor's decision to not commence negotiations until after the asset sale did not automatically bar the debtor from obtaining relief under § 1113. *Family Snacks*, 257 B.R. at 895–96.

III. Conclusion

The final hearing on the Motion shall take place on **July 8, 2020, at 10:00 a.m.**, unless the Debtors and SEIU agree to a further extension of time to facilitate negotiations. The Debtors, SEIU, and Prime shall continue to negotiate in good faith

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with the objective of consensually resolving the § 1113 issues. By no later than **July 1, 2020, at 5:00 p.m.**, the Debtors and SEIU shall submit final briefs accompanied by appropriate evidence setting forth their positions on those issues that remain in dispute.

The Court will prepare and enter an order setting the final hearing on the Motion.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The hearing on the Motion was initially set for June 3, 2020, on fourteen days' notice pursuant to § 1113(d)(1). On May 20, 2020, the Court issued an order setting SEIU's deadline to file a written opposition to the Motion and providing that the Debtors' reply to SEIU's opposition could be presented orally at the hearing. *See* Doc. No. 4753. To provide the parties additional time to negotiate, on June 2, 2020 the Court approved a stipulated one-week continuance of the initial hearing on the Motion. *See* Doc. No. 4819. To enable the parties to focus their resources upon negotiation, the Court did not order the Debtors to file a reply to SEIU's opposition.

Party Information

Debtor(s):

Verity Health System of California, Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, June 10, 2020 **Hearing Room 1568**

10:00 AM

CONT... Verity Health System of California, Inc. **Chapter 11**

Nicholas A Koffroth
Kerry L Duffy