

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF TENNESSEE

IN RE:)
)
NASHVILLE SENIOR CARE, LLC, et al.,) Case No. 3:23-bk-02924
) (Jointly Administered Chapter 11)
Debtors-in-Possession.) Judge Charles M. Walker
)
)
)
MARISA SPEARS, EXECUTRIX,)
)
Movant,)
)
v.) Contested Matter
)
NASHVILLE SENIOR CARE, LLC, et al.,)
)
Respondents.)

**MOTION FOR TEMPORARY ALLOWANCE OF CLAIM OF
MARISA SPEARS PURSUANT TO
RULE 3018(A) OF THE FEDERAL RULES OF BANKRUPTCY
PROCEDURE FOR PURPOSES OF ACCEPTING OR REJECTING
THE DEBTORS' PLAN OF LIQUIDATION**

The movant, Marisa Spears, as the Executrix and personal representative of the Estate of Registine Spears (hereinafter "Ms. Spears"), by and through its undersigned counsel, and hereby respectfully moves the Court (the "Motion") for entry of an order pursuant to Bankruptcy Rule 3018(a) temporarily allowing Ms. Spears' claim in the full amount of \$500,000.00 for the sole and limited purpose of voting on the proposed "Combined Disclosure Statement and Plan of Reorganization" (the "Plan") of Nashville Senior Care, LLC and its affiliated debtors and debtors-in-possession (each a "Debtor" and

collectively, the “Debtors”). In support of this Motion, Ms. Spears respectfully states as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b).
2. Venue lies properly in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The legal basis for the relief sought herein is Bankruptcy Code sections 105(a) and 502(c) and Bankruptcy Rule 3018.

Relief Requested

4. Ms. Spears requests entry of an order temporarily allowing her claim in full at face value for plan voting purposes only.

Background

A. Procedural History

5. On August 14, 2023 (the “Petition Date”), each of the Debtors filed with the Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have remained in possession of their assets and have continued to operate and manage their businesses as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

6. On August 31, 2023, the Office of the United States Trustee for the Middle District of Tennessee appointed the Official Committee of Unsecured Creditors (the "Committee"). Document No. 123.

7. By an order entered October 19, 2023, the Court set December 22, 2023 as the bar date for filing proofs of claim against the Debtors. Document No. 302.

8. On May 1, 2024, the Court entered the "Order (A) Granting Approval for Debtors to File a Combined Disclosure Statement and a Plan, (B) Granting Approval of Procedures for Solicitation and Tabulation of Votes to Accept or Reject Combined Disclosure Statement and Plan, (C) Scheduling Combined Hearing on Final Approval of Adequacy of Disclosure Statement and Confirmation of Plan, (D) Approving Form of Ballot and Solicitation Package, (E) Approving Notice Provisions, and (F) Granting Related Relief" at Document No. 751 (the "Interim Approval and Procedures Order"), which authorized, among other things, the solicitation of the Combined Disclosure Statement and Chapter 11 Plan of Liquidation Proposed by the Debtors (the "Combined Disclosure Statement and Plan"). Document No. 749.

9. A hearing to consider the adequacy and confirmation of the Combined Disclosure Statement and Plan is currently set for June 5, 2024 at 10:00 a.m. (the "Combined Hearing").

10. The Debtors are authorized to continue to operate their businesses as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

B. Ms. Spears' Proof of Claim

11. Prior to the Petition Date, Registine Spears was admitted as a resident and patient at a healthcare facility operated by Cincinnati Senior Care, LLC (the "Debtor"). At the time of her admission to the facility, Registine Spears was 77 years of age, of sound-mind, diagnosed with End Stage Renal Disease, Type 2 Diabetes which required dialysis three times a week, and was at high risk for limb loss, among other chronic conditions. Complaint at ¶¶ 16-18 (a copy of the Complaint is attached to Ms. Spears' proof of claim in this case).

12. While a resident at the facility, Ms. Spears was deprived of necessary medical care and treatment, including the receipt of required medications and dialysis. As a result of the Debtor's failure to provide necessary and adequate medical care, including dialysis treatments, Ms. Spears' condition deteriorated to the point where her toe had to be amputated.

13. On or about September 21, 2022, while under the care and supervision of the Debtor, Registine Spears was sexually assaulted by an employee working at the facility after he drugged her by "shoving a handful of pills in her mouth" and forcibly raping her while she was tied down. Complaint at ¶¶ 26, 32. The Cincinnati, Ohio Police Department subsequently conducted a criminal investigation of the assault and rape. Complaint at ¶¶ 32-34.

14. Registine Spears died on July 11, 2023 as a direct and proximate result of the injuries that she suffered at the facility. Complaint at ¶ 106. The care and treatment which the Debtor provided to Registine Spears fell below acceptable standards of medical care and treatment, nursing care and treatment, and nursing home care and treatment by,

among other things, failing to provide a safe living environment, failing to provide necessary medical care and treatment, failing to assess her physical condition, and failing to assure her safety. Complaint at ¶ 108.

15. Ms. Spears possesses unliquidated claims, including survivorship and wrongful death claims, against the Debtor. As evidenced by her timely proof of claim filed November 29, 2023, she has estimated her unliquidated claim at \$500,000.00. Claim No. 152. A valuation of \$500,000.00 is reasonable for Ms. Spears' claims for survivorship damages, which includes the pain and suffering she endured while a resident at the facility, as well as for her wrongful death. See Affidavit of Robert J. Thumann, Esq. attached hereto as Exhibit A.

Argument

Temporary Allowance of Ms. Spears' Wrongful Death Claim in Full is Warranted

16. Pursuant to Bankruptcy Rule 3018(a), “[n]otwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.” Fed. R. Bankr. P. 3018(a). A bankruptcy court is permitted to make a “speedy and rough estimation of claims for purposes of determining [the claimants’] voice in the Chapter 11 proceedings.” In re Chateaugay Corp., 944 F.2d 997, 1006 (2d Cir. 1991).

17. The policy behind temporarily allowing claims is “to prevent possible abuse by plan proponents” who attempt to ensure acceptance of a plan by gaming the system through objections to the claims of dissenting creditors. In re Armstrong, 292 B.R. 678, 686 (B.A.P. 10th Cir. 2003); see also In re Harmony Holdings, LLC, 395 B.R. 350, 353-54

(Bankr. D. S.C. 2008) (“[O]ne can easily visualize a situation where it would be grossly unfair and unjust to disenfranchise any claim or interest just because a debtor interposed an objection to the allowance of the claim or interest. . . . To achieve justice, some discretion must be left to the court to deal with the problem just described.”) (internal quotation marks and citation omitted). In short, Bankruptcy Rule 3018(a) “was designed to give all creditors, even those holding disputed claims, the opportunity to vote.” In re Century Glove, Inc., 88 B.R. 45, 46 (Bankr. D. Del. 1988).

18. The decision to grant temporary allowance of a claim for voting purposes under Bankruptcy Rule 3018 is at the reasonable discretion of the bankruptcy court. See Pension Ben. Guar. Corp. v. Enron Corp., 2004 WL 2434928, at *5 (S.D.N.Y. Nov. 1, 2004). There is, however, a presumption in favor of temporarily allowing a disputed claim for purposes of voting. See In re Amarex Inc., 61 B.R. 301, 303 (Bankr. W.D. Okla. 1985) (“[T]o allow [the disputed claims] to vote on the plans, even though some may be eventually disallowed for purposes of distribution, is more in keeping with the spirit of chapter 11 which encourages creditor vote and participation in the reorganization process.”).

19. Ms. Spears submits that the Bankruptcy Court should temporarily allow her claim for voting purposes only and that such relief is both fair and equitable to all parties involved and will not prejudice the Debtors.

20. The Bankruptcy Code and the Bankruptcy Rules provide little guidance as to how a bankruptcy court should calculate a claim temporarily allowed for voting purposes. In re Quigley Co., 346 B.R. 647, 653 (Bankr. S.D.N.Y. 2006). Although courts may “employ whatever method is best suited to the circumstances of the case,” In re Ralph

Lauren Womenswear, Inc., 197 B.R. 771, 774 (Bankr. S.D.N.Y. 1996), any calculation “should ensure that the voting power is commensurate with the creditor’s economic interests in the case.” In re Quigley Co., 346 B.R. at 654. A bankruptcy court “must decide the Rule 3018(a) motion on its merits and not consider what impact, regardless of what that impact would be, the decision will have on the plan confirmation process.” See In re First RepublicBank Corp., 1990 Bankr. LEXIS 2840, *6 (Bankr. N.D. Tex. June 19, 1990). Estimation of a claim under Bankruptcy Rule 3018(a), however, is not determinative of or preclusive upon the ultimate validity or amount of the claim or any causes of action before a non-bankruptcy court. See Quigley, 346 B.R. at 654.

21. To calculate the amount of a claim to be temporarily allowed, courts have considered: (i) the debtor’s scheduling of the claim, (ii) the proof of claim filed, and (iii) the debtor’s objection. In re Stone Hedge Properties, 191 B.R. 59, 65 (Bankr. M.D. Pa. 1995). Calculation of a claim under Bankruptcy Rule 3018(a), however, is not binding on (i) the ultimate validity or amount of the claim or (ii) any causes of action before a non-bankruptcy court. In re Quigley Co., 346 B.R. at 654.

22. Here, the appropriate amount for temporary allowance is the full amount of the claim filed against the Debtors: \$500,000.00. Such is the case because:

- (i) Ms. Spears properly executed and filed her proof of claim, which is prima facie evidence of the validity and amount of her claim. See Fed. R. Bankr. P. 3001(f) (“A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.”);

- (ii) The Debtor has failed to offer any evidence whatsoever in support of its recently filed claim objection and has failed to refute any element of the claim asserted on behalf of Ms. Spears. Instead, the Debtor alleges, without any affidavit or declaration, that “after a review of their books and records” the claim is somehow “overstated” and “inappropriately inflated” and then inexplicably concludes that the claim “should be set at the amount of \$1.00 solely for purposes of voting;” and
- (iii) Valuing Ms. Spears’ claim at \$1.00 for the purposes of plan confirmation would effectively disenfranchise her and provide competing creditors with greater influence over the plan confirmation process than permitted under Bankruptcy Code section 1126.

23. In conclusion, Ms. Spears respectfully requests that the Court temporarily allow her claim in the amount of \$500,000.00 for voting purposes only.

Reservation of Rights

Ms. Spears reserves the right to amend, modify, or supplement this Motion. Ms. Spears further reserves the right to reply to any objections to this Motion and to make other arguments in connection with any adjudication of or related to her claim.

WHEREFORE, Ms. Spears respectfully requests that the Court enter an order temporarily allowing her claim in full at face value solely for purposes of accepting or rejecting the Plan, and granting such other and further relief as is necessary, equitable and just.

Dated: May 17, 2024.

/s/ Joseph P. Rusnak

Joseph P. Rusnak

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Attorneys for Marisa Spears, Executrix

Certificate of Service

I hereby certify that on May 17, 2024 a true and correct copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

Dated: May 17, 2024.

/s/ Joseph P. Rusnak

Joseph P. Rusnak

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF TENNESSEE

IN RE:)
NASHVILLE SENIOR CARE, LLC, et al.,) Case No. 3:23-bk-02924
Debtors-in-Possession.) (Jointly Administered Chapter 11)
) Judge Charles M. Waker
NASHVILLE SENIOR CARE, LLC, et al.,)
Movant,)
v.) Contested Matter
MARISA SPEARS, EXECUTRIX,)
Respondent.)

AFFIDAVIT OF ROBERT J. THUMANN, ESQ.

State of OHIO)
) SS.
County of HAMILTON)

I, ROBERT J. THUMANN, after being duly cautioned and sworn, hereby state that the following is true and accurate to the best of my personal knowledge and belief:

1. I am an attorney licensed to practice law in Ohio, Kentucky, and multiple Federal Courts.
2. I was first admitted to practice law in Ohio in November of 2002.
3. Throughout my career, I have represented thousands of clients in personal injury/wrongful death matters representing both plaintiffs and defendants.

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4. I am counsel for Marisa Spears, as the Executrix of the Estate of Registine Spears, in claims against Debtor, Cincinnati Senior Care, LLC, ("Debtor") as more particularly described in the Complaint attached to the Proof of Claim filed by Ms. Spears in this matter ("Claims").

5. Based on my education, training, and experience, I have evaluated the Claims against Debtor to be valued at \$500,000.

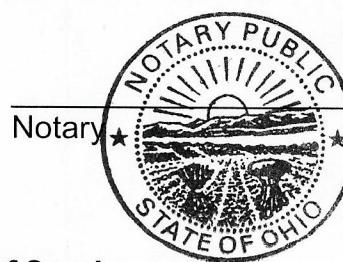
6. This valuation is based on the medical expenses, pain and suffering, and wrongful death incurred by Registine Spears.



Robert J. Thumann

NOTARY

I hereby certify that Robert J. Thumann, after being duly cautioned and sworn, did sign his name above in my presence this 15 day of May 2024.



KENNETH J. CREHAN
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Date, Section 147.03 O.R.C.

Certificate of Service

I hereby certify that on May 17, 2024 a true and correct copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

Dated: May 17, 2024.

/s/ Joseph P. Rusnak
Joseph P. Rusnak

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