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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
SAMARITAN BREAST CENTER LTD.,
Debtor.

Case No. 590-03290-MM
Chapter 11
**MOTION FOR PARTIAL
ADJUDICATION**

INTRODUCTION

Before the Court are the Motion for Declaratory Ruling or Motion for Partial Adjudication filed by Jamal Modir, M.D. ("Dr. Modir") and the Cross-Motion for Partial Adjudication of Issues in Favor of HDI. The issue that arises is whether the Second Amended Joint Plan of Reorganization filed by Health Dimensions, Inc. (the "Second Amended Joint Plan") is confirmable as a matter of law. Specifically, the issue is whether the proposed Second Amended Joint Plan's removal of Northern California Breast Institute as the managing general partner of Samaritan Breast Center precludes confirmation of the Second Amended Joint Plan filed by Health Dimensions, Inc. For the reasons that follow, Dr. Modir's Motion for Partial Adjudication is denied, and the Cross-Motion for Partial Adjudication of Issues in Favor of HDI is granted.

FACTS

Samaritan Breast Center ("SBC"), the debtor, is a California limited partnership that was formed in 1985 pursuant to the Amended and Restated Limited Partnership Agreement (the "SBC Partnership

1 Agreement") to operate a medical clinic specializing in providing diagnostic and therapeutic care to
2 patients with breast cancer and other breast related diseases. The general partners of SBC are Northern
3 California Breast Institute ("NCBI"), also a debtor in these proceedings, and Good Samaritan Hospital
4 ("Good Samaritan"). NCBI is a corporation wholly owned by Dr. Modir, who holds 50% of the stock
5 of NCBI, and H.P. Gulesserian, M.D. ("Dr. Guleserrian"), who holds the balance of the stock. The sole
6 asset of NCBI, which is the managing general partner of SBC, is its general partnership interest in SBC.

7 Section 4.03 of the SBC Partnership Agreement provides in part:

8 The Limited Partners shall have no right to remove a General Partner
9 nor to approve any transaction other than those described
10 hereinabove, notwithstanding any actual or potential conflict of
11 interest of a General Partner or its affiliates in connection with any
12 decisions of the Partnership except as follows: a General Partner may
13 be removed only upon the bankruptcy or dissolution of such General
14 Partner or upon the death or incompetency (as determined by a court
15 of competent jurisdiction) of each of the shareholders of such General
16 Partner and upon the written consent of Limited Partners owning
17 more than 50% of the voting limited partner Units.

18 Good Samaritan and NCBI entered into a Memorandum of Agreement in 1985 providing for
19 NCBI's management of SBC and for Good Samaritan's ongoing support services to and long-term
20 financial backing of SBC. Health Dimensions, Inc. ("HDI") is the parent company of Good Samaritan.
21 HDI posted the collateral for a loan to SBC from Bank of America.

22 These bankruptcy proceedings were precipitated by the claims of HDI against the debtors. HDI's
23 claims against SBC arose upon SBC's default on the loan from Bank of America and are based on HDI's
24 subrogation to the rights of Bank of America upon foreclosure on HDI's collateral. SBC has also
25 asserted substantial claims against Good Samaritan for its failure to honor its commitments to SBC,
26 arguing that it is entitled to a right of offset against HDI's right of reimbursement and that HDI is the alter
27 ego of Good Samaritan. These claims were pending in state court at the time the petitions were filed.
28 They have since been liquidated by a judgment in favor of HDI, which the debtors have appealed. During
the pendency of these cases, HDI and Good Samaritan have statutorily merged.

HDI has proposed the Second Amended Joint Plan of Reorganization, which removes NCBI as
the managing general partner of SBC and substitutes HDI as the managing general partner. Dr.
Gulesserian has joined in support of HDI's Second Amended Joint Plan. Dr. Modir has proposed a

1 competing Second Amended Plan of Reorganization.

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3 **DISCUSSION**

4 **A. HDI's Second Amended Joint Plan Complies with the**
5 **Provisions of the SBC Partnership Agreement**

6 First, HDI's Second Amended Joint Plan does not contravene the terms of the SBC Partnership
7 Agreement. The clear language of Section 4.03 of the SBC Partnership Agreement supports HDI's
8 argument that the Second Amended Joint Plan complies with the conditions for removing NCBI as a
9 general partner. Section 4.03 of the Second Amended Joint Plan provides that the limited partners may
10 remove the general partner of SBC only upon the occurrence of two events: 1) the bankruptcy or
11 dissolution of the general partner, or the death or incompetency of each of the shareholders of the general
12 partner; and 2) the written consent of limited partners owning more than 50% of the voting limited
13 partnership units. The Court finds that this language is unambiguous.

14 The term "bankruptcy" in this context shall be given its plain meaning in common usage, which
15 includes both a chapter 7 liquidation and a chapter 11 reorganization. Viewed in this manner, it thus
16 appears that NCBI's filing of a voluntary chapter 11 petition is sufficient to meet the first prong of the
17 test for the removal of a general partner of SBC.

18 The second prong of the test for the removal of a general partner of SBC is met if the plan
19 acceptance requirements of section 1126(c) are satisfied. Therefore, the vote of the limited partners of
20 SBC as a class to accept the Second Amended Joint Plan would satisfy the consent requirement of
21 Section 4.03 of the SBC Partnership Agreement. Accordingly, all of the conditions for removal of a
22 general partner may be satisfied under the provisions of HDI's Second Amended Joint Plan.

23 **B. The Bankruptcy Court Has the Authority to Modify**
24 **the SBC Partnership Agreement Under the Second Amended Joint Plan**

25 Secondly, even if the Second Amended Joint Plan fails to satisfy the conditions for the removal
26 of a general partner set forth in the SBC Partnership Agreement, the Bankruptcy Court has the authority
27 to confirm a plan that is fair and equitable. 11 U.S.C. § 1129(b)(1). Modification of a partnership
28 agreement as proposed in a plan of reorganization is not prohibited and does not preclude confirmation.

1 In re Ingleside Associates, 136 Bankr. 955, 962 (Bankr. E.D. Pa. 1992). See also In re Acequia, Inc.,
2 787 F.2d 1352 (9th Cir. 1986)(confirmation of plan which amended corporate debtor's charter to prohibit
3 debtor's shareholders, including an objecting fifty percent shareholder, from participating in election of
4 directors for a period after confirmation to avoid a corporate deadlock due to shareholder acrimony,
5 making reorganization feasible).

6 The Ingleside Associates Court criticized In re Sovereign Group, 1984-21, Ltd., 88 Bankr. 325
7 (Bankr. D. Colo. 1988), a case upon which Dr. Modir relies for his argument that a plan that restructures
8 the management of a partnership in a manner not permissible in the partnership agreement is not
9 confirmable as a matter of law. In its opinion, the Ingleside Associates Court stated:

10 [T]he Sovereign Group passages were at best dictum which no other
11 court has adopted.... Other courts ... have not echoed the language of
12 Sovereign Group regarding the sanctity of partnership agreements and
13 have confirmed plans which did amend partnership agreements
14 (citations omitted).... [W]e can perceive of no basis for the overriding
15 concern for the sanctity of partnership agreements communicated in
16 Sovereign Group.... If a plan is otherwise confirmable, the fact that
17 it alters a contractual partnership agreement, even in ways not
18 permissible under state law, should not, in itself, prevent confirmation
19 of a plan in all cases.

20 Ingleside Associates, 136 Bankr. at 962.

21 The Court in Ingleside Associates confirmed a plan that required partners to contribute to capital
22 calls according to their interests in order to retain their partnership interests and allowed authorized
23 partners to execute documents on behalf of the partnership without the unanimous approval of the
24 partners, contrary to the provisions of the partnership agreement. In so doing, the Court held that the
25 proposed modifications were not so substantial or unfair as to justify denial of confirmation. Id.

26 In this case, the substitution of the managing general partner is not so substantial as to justify an
27 adjudication of nonconfirmability, insofar as the proposed managing general partner is already a general
28 partner of the debtor and is familiar with the debtor's operations, and the shareholders of the existing
managing general partner are hopelessly deadlocked as to how to proceed in this case. In his declaration,
Dr. Gulesserian stated that but for the pending chapter 11 case, he would seek to dissolve and wind up
the affairs of NCBI because of his differences with Dr. Modir. The Court also finds that the Second
Amended Joint Plan may be fair and equitable with regard to NCBI because it will receive the treatment

1 provided to a removed general partner under the SBC Partnership Agreement.

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CONCLUSION

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Accordingly, the Motion for Partial Adjudication filed by Dr. Modir is denied, and the Cross-Motion for Partial Adjudication in Favor of HDI is granted. The Second Amended Joint Plan may be confirmable notwithstanding that it removes NCBI as managing general partner of SBC.

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