

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing Date
June 21, 2007, 10:00 a.m.

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In re

Chapter 11

Kollel Match Efraim, LLC

Case No. **04-16410-cb**

Debtor.

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**SUPPLEMENTAL REPLY OF HELEN-MAY HOLDINGS TO THE DEBTOR'S
OBJECTION TO HELEN-MAY HOLDING'S NOTICE OF PRESENTMENT OF
PROPOSED ORDER**

**TO THE HONORABLE STUART M. BERNSTEIN
CHIEF UNITED STATES BANKRUPTCY JUDGE:**

Helen-May Holdings, LLC, the fee owner and licensor herein (hereinafter referred to as "Helen-May") as and for its supplemental reply in further opposition to the Objection of the Debtor to Helen-May's Notice of Presentment of Proposed Order, (the "Objection") respectfully represents as follows:

THE DEBTOR'S PROCEDURALLY IMPROPER SUR-REPLY

1. The Debtor has now filed an additional pleading on June 11, 2007, entitled Response by Debtor to HMH's Reply in Further Support of Notice of Settlement of Proposed Judgment and Order. This type of pleading is commonly known as a sur-reply (the "Sur-reply"). In truth there is no presumed right of sur-reply in this or any other Federal or State Court, unless new issues were raised on reply and, even then, usually only with the permission of the Court. In order to justify its inappropriately interposed pleading, the Debtor makes the absurd procedural argument that Helen-May had no right to reply to its objection. Local rule 9074-1 (c)(3) sets forth that where an

Objection is interposed to a Notice of Presentment the Court may set it down for a hearing. Thus, it is no different than any other motion where there is typically a right of reply to a response.

2. It appears that the reason why the Debtor interposed the Sur-reply, which really adds very little and merely restates the same points made in its Objection, was primarily to respond to the issue raised with respect to its disingenuous changing of the caption of its pleading in its Objection. This issue was apparently very troublesome for the Debtor because it totally undermines the integrity of the Debtor's entire submission. Additionally, it constitutes a tacit admission by the Debtor that the appropriate Court Ordered caption, in and of itself, proves the Debtor's arguments in its pleading to be wrong since Kolliel Match Efraim is clearly part of the Debtor.

3. Furthermore, the lame explanation offered by the Debtor in the Sur-reply for its changing of the caption, that it was only copying Helen-May, rings completely hollow since this was the very first time that the Debtor used that caption. As previously stated, **in each and every pleading prior thereto**, subsequent to this Court's November 27, 2006, Order amending the caption, the Debtor utilized the appropriate Court ordered caption. Indeed, as recent as June 4, 2007, when filing an objection and certificate of service to a prior proposed order of Helen-May (Items # 135 and 136 on the docket respectively), the Debtor utilized the Court Ordered caption. Now, a mere four days later on June 8, 2007, when interposing a pleading arguing that Kolliel Match Efraim is not the Debtor, the Debtor has the temerity to tell this Court that it decided, for the first time in seven months, to copy Helen-May's style and use an abbreviated caption – which leaves out Kolliel

Match Efraim. Nothing further need be said on that point as the Debtor's conduct speaks very loudly for itself.

THE DEBTOR HAS BEEN PROMULGATING MISINFORMATION FROM THE OUTSET OF THIS CASE AND HELEN-MAY HAS MERELY RELIED IN GOOD FAITH ON THE DEBTOR'S REPRESENTATIONS REGARDING ITS CORPORATE STRUCTURE

4. A similarly absurd argument is interposed in the Debtor's papers when it argues that Helen-May's characterization of the Debtor as "not a religious corporation" proves that the religious corporation, Kolliel Match Efraim, is not the Debtor. Once again, Helen-May was merely relying on information promulgated by the Debtor in its filings with the Court that the Debtor is a for-profit LLC. Helen-May certainly had the right to assume, in the first instance, that the information promulgated by the Debtor with respect to its own corporate structure was correct.. The Debtor, after more than three and one-half (3½) years in this Court, has only now, for the first time, in its Objection dated June 8, 2007, disclosed that it is not a for-profit LLC, but rather, a religious corporation. That's why Helen-May didn't know about it. Thus, Helen-May's statements or characterizations don't "prove" anything other than its reliance on the mis-information provided by the Debtor.

THE REAL STORY WITH THIS DEBTOR AND ITS VARIOUS PERMUTATIONS AND CAPTION CHANGES

5. What is the real story with this Debtor and its various permutations and caption changes? In order to fully understand this it is necessary to go back to the genesis of this case.

JACK LEFKOWITZ SWEARS THREE TIMES ON OCTOBER 4, 2004, THAT; A) THE DEBTOR WAS AN LLC BY THE NAME OF KOLLEL MATEHEFRAIMLLC; B) HE WAS THE MANAGING MEMBER OF THAT LLC; AND C) THAT ENTITY HAD ENTERED INTO A CONTRACT OF SALE WITH HELEN MAY WITH RESPECT TO THE PROPERTY.

6. The Debtor filed its petition on October 4, 2004. (Item # 1 on the Docket). The name utilized in the petition was **KOLLEL MATEHEFRAIM, LLC**, the address listed therein was, **751 Second Ave, 1st Floor New York, NY 10017**. The petition was signed by **Jack Lefkowitz, Managing Member**.

7. In the Corporate Resolution (Attachment 2 to Docket # 1) it further states as follows:

I, Jack Lefkowitz, declare under penalty of perjury that I am the Managing Member of Kollel Match Efraim, LLC,... [emphasis added]

8. Thereafter in the Local Rule 1007-2 Affidavit the Debtor states as follows:

Jack Lefkowitz, being duly affirmed, deposes and says:

1. I am the managing member of Kollel Match Efraim, L.L.C., a New York limited liability company ("Debtor").

2. No committee of creditors was previously appointed hereto.

3. There is no prior pending bankruptcy case.

4. The Debtor maintains its place of business at 751 Second Avenue, New York, New York.

5. The schedule of twenty (20) largest creditors excluding insiders is annexed to the petition. The Debtor has less than twenty creditors.

6. No property of the Debtor is in possession or custody of any public officer,

receiver, trustee, assignee for the benefit of creditors, mortgagee, pledgee or assignee of rents.

7. No shares of stock, debentures or other securities of the Debtor or any subsidiary of the Debtor are publicly held.

8. The Debtor is a corporation that was assigned a contract (“Contract”) to purchase the real property known as the Meadows Resort Hotel, in Fosterdale, New York (the “Property”) from Helen-May Holdings, LLC (“Seller”) for \$1.4 million. The Debtor paid a \$140,000 deposit.

9. Thereafter, upon the agreement of the Debtor and the Seller, the Debtor took occupancy of the Property and invested at least \$600,000 in improvements. In addition, the Debtor purchased two adjacent properties for the purpose of developing the Property.

10. A number of vendors and investors have claims against the Debtor arising from the Debtor’s investment in the Property. Those claims exceed \$1.5 million, as set forth in the Debtor’s petition.

11. The closing was scheduled for September 27, 2004, with an agreement to extend based upon the payment of fee to the Seller.

12. On September 27, 2004, however, the survey of the property that the Debtor had ordered months before arrived. That survey showed that the Property consisted of 60 acres of land. Up until that moment, based upon the Seller’s representations, the marketing materials for the Property, and the tax map for the Property, the Debtor believed that the Property consisted of 77 acres.

13. Given the substantial reduction in acreage, the sale contract is no longer viable.

[emphasis added]

9. Thus, Mr. Lefkowitz swore at least three times on October 4, 2004, that; a) the Debtor was an LLC by the name of Kollel Match Efraim LLC; b) he was the Managing Member of that LLC; and c) that that entity had entered into a contract of sale with Helen May with respect to the Property.

10. The first crack in this story was raised by Helen May in its initial Motion to Lift the Stay dated November 7, 2004, (Item #8 on the Docket, Part 2 paragraphs 2-3), as follows:

2. Kollel Match Efraim, LLC, the debtor and debtor-in-possession herein (the “Debtor”) filed its voluntary bankruptcy petition with this Court for relief under Chapter 11 of the Bankruptcy Code on October 5, 2004 (the “Petition Date”).

3. Movant is uncertain whether the Debtor is a real entity. The Debtor does not list a tax identification number in the Petition where required, presumably because none exists. Moreover, all payments made by the Debtor, both on the deposit on the contract, and on the occupancy payments discussed below, were not through its own name but either through attorney escrow checks and primarily through a third party corporation known as Maskil El Dal. Inc. Movant has made diligent effort through various database searches to determine the existence and corporate status of the Debtor but has been unable to locate such an LLC or Corporation. If indeed no such Corporation or LLC exists then the sworn representations in its Rule 1007 affidavit that the Debtor is a “limited liability company” and thereafter also as a “corporation” would be inaccurate, (either way, at least, one of the statements is inaccurate.) The Chapter 11 filing would be a complete nullity since no such Debtor actually existed at the time of the filing. This Court would be required to, *sua sponte*, immediately dismiss the case on jurisdictional grounds. Thus, as a threshold matter the Debtor should be required to demonstrate that it was indeed a validly formed entity at the time of the filing of the petition.

11. Essentially, Helen-May had searched the New York Department of State website and had not come across such an entity and thus questioned the validity of the entire filing.

12. In its response to Helen-May’s initial lift stay motion, the Debtor addressed virtually every other point raised by Helen-May, but completely failed to address the issue of its lack of existence and its erroneous petition documents. (See Debtor’s Objection to Motion to Lift Stay dated November 15, 2004, [Item # 11 on the Docket] and Helen May’s Response dated November 16, 2004 [Item # 12 on the Docket at para.2 thereof] filing.

JACK LEFKOWITZ SWEARS THREE TIMES ON NOVEMBER 24, 2004, THAT; A) THE DEBTOR WAS AN LLC BY THE NAME OF MATEH EFRAIM LLC, D/B/A KOLLEL MATEH EFRAIM LLC; B) HE WAS THE MANAGING MEMBER OF THAT LLC; AND C) THAT ENTITY HAD ENTERED INTO A CONTRACT OF SALE WITH HELEN MAY WITH RESPECT TO THE PROPERTY.

13. Thereafter, and admittedly in order to address the issue raised by Helen-May with respect to its existence, the Debtor filed its second petition Chapter 11 Case No. 04-17525. The name of the Debtor in this second petition was (Item # 1 on the Docket of Case No. 04-17525) listed as **Match Ephraim LLC d/b/a Kollel Match Efraim, LLC**. In the first petition the Debtor listed for the first time a tax ID Number **11-2831693**. Otherwise the petition was identical to the first one.

14. The Corporate Resolution of that second petition (Item # 1 on the Docket Attachment 1; Case No. 04-17525) stated as follows

I, Jack Lefkowitz, declare under penalty of perjury that I am the Managing Member of Match Ephraim LLC d/b/a Kollel Match Efraim, LLC...

15. The Local Rule 1007-2 Affidavit (Item # 1 on the Docket Attachment 2; Case No. 04-17525) states in pertinent part as follows:

Jack Lefkowitz, being duly affirmed, deposes and says:

1. I am the managing member of Match Ephraim LLC, a New York limited liability company ("Debtor").....
4. The Debtor maintains its place of business at 751 Second Avenue, New York, New York.
8. The Debtor is a limited liability company doing business under the name Kollel Match Efraim, L.L.C. A petition was previously filed herein under the name Kollel Match Efraim, L.L.C., case no. 04-16410. An objection has been made in that case by a creditor seeking to dismiss that case on the basis that Kollel Match Efraim, L.L.C. does not formally exist as entity registered with the New York Secretary of State. The Debtor is filing this case as a protective measure so that in the event that the Court might determine that

Kollel Mateh Efraim, L.L.C. could not be a debtor herein, the Debtor will have still filed this case to protect its interests. In that regard, the Debtor was assigned a contract (“Contract”) to purchase the real property known as the Meadows Resort Hotel, in Fosterdale, New York (the “Property”) from Helen-May Holdings, LLC (“Seller”) for \$1.4 million. The Debtor paid a \$140,000 deposit.

16. Thus, the Debtor, admitted in its second filing , as it had to, that the first entity that it filed for did not exist. Indeed, by contrasting the two petitions, it is crystal clear that the Debtor knew from the outset that the first entity did not exist. This is by the simple fact that it did not list a tax identification number in the first petition.

17. In the first instance, each and every document signed by Mr. Lefkowitz in the first petition was rank perjury because he clearly knew that this entity did not exist and yet purported to sign documents on its behalf.

THE DEBTOR KNOWINGLY FILED TWO FALSE PETITIONS TO PROTECT THE ENTITY THAT REALLY SIGNED THE ASSIGNMENT, THE RELIGIOUS CORPORATION KOLLEL MATEH EFRAIM

18. This raises a question as to what was the Debtor’s game here? Why would it knowingly file a petition for an entity that does not exist?

19. The answer lies in the original assignment of the contract for the Property. As set forth above at paragraphs 8 and 15, the protection of this assignment and the Property was the stated and admitted purpose for the filing of both petitions. This assignment is already on file with the Court as Exhibit A to Helen-May’s initial Motion to Lift the Stay dated November 7, 2004, (Item

#8 on the Docket, Exhibit A thereto(Part 3) at page 26 thereof). The assignment, appearing at the back of the contract states simply as follows:

The obligations of the aforesaid contract are hereby assumed:

[signature] Abraham C. Steinwurzel
KOLLEL MATEH EFRAIM- ASSIGNEE

Dated: May 18, 2004

Thus, the assignment was; a) not in the name of an LLC of any kind and; b) was not signed for by Jack Lefkowitz. Indeed, this entity is none other than the Religious Corporation known as Kollel Mateh Efraim, formed in July of 1986, of which Abraham Steinwurzel was and is Trustee. All of this is set forth in Exhibit A to the Debtor's June 8, 2007, Objection (Item 139 on the Docket part 2 thereof).

20. Thus, it is now clear, that, each and every document signed by Mr. Lefkowitz in both petitions was rank perjury, because he clearly knew that the entity that signed the assignment and had an interest in the property was not an LLC at all, that his LLC had no relationship whatsoever to the assignment or the Property, and that he, Jack Lefkowitz, was neither an officer or legal representative of the true entity that held the assignment to the contract.

21. The reason for this subterfuge has only now become apparent as Helen-May was poised to get as judgement against Kollel Mateh Efraim. Now for the first time the Debtor has disclosed the existence of this entity – while bitterly protesting that this entity is not the Debtor.

Its quite obvious that this entity, so plainly the real Debtor herein, has assets and operations and a judgement against it would be devastating.

22. This Debtor has filed operating reports throughout this case that showed only the expenditures of U.S. Trustee Fees and adequate protection payments. In response to Helen-May's recent contempt motion, the Debtor has also put in an affidavit stating that it has no money and is destitute and, therefore, cannot pay Court ordered adequate protection payments. Meantime the Debtor has been operating the property, paying salaries of the caretaker, making unauthorized alterations and paying contractors.

23. In point of fact, Kollel Match Efraim is a viable educational institution in the heart of the Borough Park section of Brooklyn that, in addition to its aforementioned activities at the Property, has extensive operations and assets independent of the Property.

24. Thus, it was to protect the assets and operations of this solvent entity and keep them out of the reach of the Bankruptcy Court that the Debtor engaged in this massive fraud on this Court, filing two blatantly phony, false and perjurious, petitions, and all the while pretending as if those nonexistent or shell entities, with names similar to the assignee, were the entities that signed the assignment, when they clearly were not.

25. The Debtor was clearly aware of this when on November 27, 2006, it submitted an order for signature to the Court amending the caption with the additional third entity, Kollel Match

Efraim, as an entity to be covered under the protection of the Bankruptcy Court. By contrast, Helen-May had no idea that a third entity, Kollel Mateh Efraim existed but just assumed it was a another rendering of the LLC. The reason why this entity did not show up in Helen-May's due diligence is because it is a Religious Corporation. Such entity's are not listed on the New York Department of State website. Rather they are physically filed with the County Clerk in the county where they are registered.

THE REAL DEBTOR IN THIS CASE HAS ALWAYS BEEN, AND CONTINUES TO BE, THE RELIGIOUS CORPORATION, KOLLEL MATEH EFRAIM, THE ENTITY WHICH TOOK THE ASSIGNMENT AND THE ENTITY FOR WHOM THE COURT HAS EXERCISED THE PROTECTIVE PROVISIONS OF CHAPTER 11 SINCE THE OUTSET TO OF THIS CASE

26. In summary, it is clear that the entity that took the assignment was the Religious Corporation, Kollel Mateh Efraim, signed by Rabbi Abraham Steinwurzlel on May 18, 2004. It is further clear from the Debtor's petitions that the filings were intended to protect this assignment. Indeed, the Debtor has invoked the jurisdiction of this Court throughout these proceedings solely to protect the assignment. The Court's jurisdiction was further invoked with respect to this entity when the Court signed an order on November 27, 2006, at the Debtor's behest, amending the caption, to include Kollel Mateh Efraim as part of the bankruptcy case.

27. Thus, it is beyond cavil, that the only real debtor in this case is the entity Kollel Mateh Efraim. This entity, who took the assignment, has always admittedly been the Debtor based on, *inter alia*, the Debtor's own Local Rule Affidavits. Thus this Court has jurisdiction over this entity and may now enter judgement against it.

28. The shenanigans and subterfuge engaged in by the Debtor to fool the Court and creditors into thinking that some other entity is really the Debtor are ultimately irrelevant with respect to this analysis. This is not intended to minimize, however, the rank bankruptcy fraud and perjury engaged in by this Debtor to conceal its assets to the great detriment of its creditors.

WHEREFORE, Helen-May respectfully requests that the Court sign the proposed Order and Judgement grant such other further and different relief as may be just and proper.

Dated: New York, New York
June 19, 2007

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