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March 18, 2009

VIA EMAIL: Bernstein.chambers@nysb.uscourts.gov

The Honorable Stuart M. Bernstein
Chief Bankruptcy Judge
United States Bankruptcy Court
Southern District of New York
1 Bowling Green
New York, New York 10004

**Re: *Geltzer v. Lefkowitz and Steinwurz*
*Adv. Proceeding No. 08-01265***

Dear Judge Bernstein:

We represent the defendants in the above referenced Adversary Proceeding. The purpose of this Letter is to respond briefly to the March 17, 2009 letter from the Trustee's attorney, Robert A. Wolf, Esq., with respect to our proposed Motion for Summary Judgment. A pre-motion conference has been scheduled for Thursday, March 19, 2009, before Your Honor.

As an initial matter, Mr. Wolf tells this Court that our proposed Motion for Summary Judgment is "a purely dilatory tactic" and an attempt to "rehash" arguments previously rejected on our Motion to Dismiss the Complaint. Not so, and I am frankly offended by the notion that I would make a motion to this Court which is not well grounded in law and fact. Indeed, as Your Honor specifically noted during the oral argument of the Motion to Dismiss, the denial of that Motion was premised upon the *facial sufficiency* of the Adversary Complaint, and was accordingly without prejudice to a motion for summary judgment premised on the *factual insufficiency* of the claims at the close of discovery.

Moreover, rather than demonstrate a "patent lack of merit" to our proposed Summary Judgment Motion, Mr. Wolf's responsive letter implicitly concedes that he has "no answer" to a

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number of our legal arguments. In order to assist the Court at tomorrow's conference, we note the following:

1. Authority of Rabbi Steinwurzel. Mr. Wolf strings together a number of statements made by Rabbi Steinwurzel to the effect that he was a "manager" of the Debtor. But while Rabbi Steinwurzel may have assigned himself the *title* of "manager", the deposition testimony establishes that his *actual duties* were limited to the performance of clerical and ministerial matters; and that he had no management or supervisory responsibility over the Debtor with respect to the "business decisions" at issue in this case. Under these circumstances, we do not believe that the Trustee has any *evidence* to show that Rabbi Steinwurzel was a "manager" as that term is used in the Limited Liability Company Act, or may be held liable for a breach of fiduciary duty involving the failure to rent the Meadows Property to a third party.¹
2. The Ability to Lease the Meadows Property on a "For Profit" Basis. Mr. Wolf provides no indication that he has any evidence showing that the Meadows Property, had it not been utilized by the Summer Camp, could have been leased or rented to a third party on a "for profit" basis. Instead, he simply repeats the allegations of his Adversary Complaint and notes that the continued occupancy of the Meadows Property caused the Debtor to incur charges to Helen May.
3. The Business Judgment Rule. Once again, Mr. Wolf simply repeats the allegations of his Adversary Complaint, but fails to come forward (as he must on a motion for summary judgment) with any facts showing why the decisions of the defendants are not protected by the Business Judgment Rule. The closest he comes is to point to the fact that one of Mr. Lefkowitz's sons spent a summer at the Camp (for which he presumably paid a fee) and that Rabbi Steinwurzel, as the director of the Camp, lived at the Meadows Property during the summer, together with his family. With all due respect, we do not believe that this constitutes "self dealing" sufficient to negate the Business Judgment Rule.
4. Lack of Damage to the Debtor. Mr. Wolf finds "incorrect" and "troubling" our argument that even though the Debtor may have incurred liability arising from its continued occupancy of the Meadows Property, it suffered no cognizable damage since it never had the funds available to pay any of this

¹ Mr. Wolf's suggestion that we have "explicitly conceded that Steinwurzel was a Manager of the Debtor" on the prior Motion to Dismiss is, with respect, silly. The Motion to Dismiss, of necessity, *assumed* the truth of the allegations in the Complaint, including the allegation that Rabbi Steinwurzel was a "manager."

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liability. But once again, Mr. Wolf does not explain *why* the theory is wrong, but just repeats the allegations of his Adversary Complaint.

5. Limitations in the Occupancy Agreement. Mr. Wolf appears to concede that the Occupancy Agreement would not permit the Debtor to operate a summer camp at the Meadows Property. He also appears to concede that he will not be able to come forward with evidence showing that the Meadows Property could have been profitably operated as a resort. Under these circumstances, it would seem that his entire theory of this adversary proceeding – that the defendants wrongfully failed to generate revenue from the Debtor’s occupancy of the Property – must fail. Once again, it is no answer to say that the defendants could have “stopped the bleeding” by surrendering possession; the issue is whether (i) the Debtor’s assets were in any respect “wasted” by virtue of this “bleeding”; and (ii) under the Occupancy Agreement and given the realities of the marketplace, there were “revenue generating” alternatives to the use of the Meadows Property by the Summer Camp.

Respectfully submitted,

/s/

Stuart A. Blander

SAB:cfid

cc: Robert A. Wolf, Esq. (via email: rwolf@ssd.com)