UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	Case No. 18-29862
WOODLAWN COMMUNITY DEVELOPMENT CORPORATION,	Chapter 11
Debtor.	Hon. Carol A. Doyle

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **April 25, 2019, at 10:30 a.m.** or as soon thereafter as counsel may be heard, we will appear before the Honorable Carol A. Doyle, or any judge sitting in her stead, in Room 742 of the Dirksen Federal Building, 219 South Dirksen, Chicago, Illinois 60604, and present the *Motion for Relief from the Automatic Stay*, a copy of which is attached hereto and herewith served upon you, at which time and place you may appear if you so see fit.

Dated: April 18, 2019

Respectfully submitted,

THE CHICAGO HOUSING AUTHORITY

By: /s/ *Kevin H. Morse*

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CERTIFICATE OF SERVICE

I, Kevin H. Morse, an attorney, certify that I caused a copy of the forgoing *Notice of Motion* and *Motion for Relief from the Automatic Stay* to be served on the parties listed below by overnight delivery or through the Court's ECF system on April 18, 2019.

/s/ Kevin H. Morse

VIA U.S. MAIL

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VIA CM/ECF

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Debtor.	Hon. Carol A. Doyle

MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO TERMINATE CONTRACT

The Chicago Housing Authority ("CHA"), by and through its undersigned counsel, hereby moves this Court, pursuant to 11 U.S.C. § 362(d)(1), for relief from the automatic stay to permit the CHA to terminate the Agreements (as defined below) with Woodlawn Community Development Corporation (the "Debtor"). In support of its Motion, the CHA states as follows:

JURISDICTION

1. The United States Bankruptcy Court for the Northern District of Illinois (the "Court") has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157(b)(1), 157(b)(2)(G), and 1334. This is a core proceeding.

BACKGROUND

2. The CHA oversees public housing within the City of Chicago. Through the provision of public housing apartments and the management of Housing Choice Vouchers, the CHA serves more than 63,000 low-income families and individuals, while supporting healthy communities. Since 1937, the CHA's investment in new housing for seniors, veterans and families has transformed the lives of residents through better housing while helping to build stronger communities.

3. The Debtor is a not-for-profit entity that primarily provided property management services to over 4,300 low-income housing units owned by the CHA (collectively, the "CHA Units").

A. The Private Property Management Agreements

4. On October 5 and November 2, 2015, the CHA and the Debtor entered into a *Private Property Management Agreements* (collectively, the "Agreement") that provided, among other things, for the Debtor to serve as property manager for the Units with the responsibility to manage, rent, lease, and maintain the CHA Units. A copy of the Agreements are attached as **Exhibits A1 and A2**. In exchange for these services, the CHA would pay the Debtor a combined management fee of approximately $170,000 per month (the "Management Fee"). The Management Fee accounts for a vast majority of the Debtor's cash flow. See *Interim Order Authorizing Use of Cash Collateral and Granting Adequate Protection* [Docket No. 143], attached hereto as **Exhibit B**.

5. The Agreements had a term of three years, which concluded on October 5 and November 2, 2018, respectively. Exhibits A1-A2, § 3.1. Pursuant to Section 3.2 of the Agreements, following the conclusion of their term, the Agreements would "automatically continue in accordance with [their] terms on a month to month basis." Exhibits A1-A2, § 3.2. Section 3.2 of the Agreements further provide that the CHA "shall have the right to terminate this Agreement upon thirty (30) days written notice to the Manager." Exhibits A1-A2, § 3.2.

6. The Agreements require that the Debtor "manage the Property in accordance with the highest professional standards for such property." Exhibits A1-A2, § 4.2. Further, the Agreements require the Debtor to report corrupt or unlawful activity to the CHA "without undue delay." Exhibits A1-A2, § 4.17.

7. The CHA is entitled to terminate the Agreements with proper notice to the Debtor upon an event of default. Exhibits A1-A2, § 11.02(A). Under the Agreements, an "event of default" is triggered by, among other things, the following:

a. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Manager to the Owner. Exhibits A1-A2, § 11.1.A.

b. Failure to perform the Services with sufficient personnel or with sufficient resources to ensure the performance of the Services or due to a reason or circumstance with the Manager's control. Exhibits A1-A2, § 11.1.B.1.

c. Failure to meet any performance standards set forth in the Agreement. Exhibits A1-A2, § 11.1.B.2.

d. Failure to perform the Services (as defined in the Agreements) in a manner reasonably satisfactory to the CHA. Exhibits A1-A2, § 11.1.B.3.

e. Failure to promptly re-perform within a reasonable time Services or Deliverables that were rejected as erroneous or unsatisfactory. Exhibits A1-A2, § 11.1.B.4.

f. Failure to comply with a material term of the Agreements, including maintaining adequate insurance. Exhibits A1-A2, § 11.1.B.6.

g. Failure to report fraud or other corrupt activity to the Inspector General. Exhibits A1-A2, § 11.1.B.9.

8. Section 11.4 of the Agreements allows the CHA to terminate the Agreements, "at any time by written notice from [the CHA] to [the Debtor] when the [Agreements] may be deemed to be no longer in the best interest of [the CHA]." Exhibits A1-A2, § 11.4.

B. The Debtor's Bankruptcy Filing and Material Issues

9. On October 24, 2018 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). On October 24, 2018, the Debtor filed its *Declaration of Dr. Leon Finney Jr. in Support of the*

Debtor's Chapter 11 Petition and First Day Motion [Docket No. 5] (the "Finney Declaration"). A copy of the Finney Declaration is attached as **Exhibit C**.

10. In the Finney Declaration, the Debtor indicated that it filed bankruptcy because "[m]anagement was completely surprised" by the filing of a $1.8 million federal tax lien by the Internal Revenue Service (the "IRS"). See Exhibit C, ¶ 4. On November 9, 2018, the IRS filed a proof of claim in the amount of $4,012,128.88, with $1,255,373.52 of the IRS claim secured in all of the Debtor's assets (the "IRS Claim"). A copy of the IRS Claim is attached as **Exhibit D**. In fact, however, the IRS Claim indicates that the federal tax lien was filed on September 26, 2018, nearly a month prior to the Petition Date. See Exhibit D.

11. The veracity of the Finney Declaration and exigent filing is further called into question by the Debtor's own documents. On October 8, 2018, sixteen (16) days prior to the Petition Date, the Debtor entered into an agreement with KMA Bodilly ("KMA"), whereby KMA was asked "to assist [the Debtor] in evaluating whether, the payroll, payroll taxes and related payroll deductions were remitted to the payroll service to be paid to the government." [Docket No. 74] (the "KMA Application"). A copy of relevant portions of the KMA Application is attached as **Exhibit E**.

12. The Debtor is unable to account for $1.2 million that should have been paid to taxing authorities for the payment of employees' payroll taxes. Because the proper taxing authorities were not paid $1.2 million and the Debtor does not have $1.2 million in cash, the logical explanation is that someone associated with the Debtor misappropriated such funds.

13. Given that the CHA is the largest source of income of the Debtor, unquestionably, the CHA provided most of these funds (if not all) to the Debtor. The CHA would deposit payroll into a Debtor payroll account. The payroll funds were specifically earmarked solely for payroll

and employment taxes for those employees working at the CHA Units. Consequently, the CHA has lost all confidence in the Debtor's ability to perform under the Agreements (or otherwise). Despite the requirements to notify the CHA of any material issues, including "fraud or other corrupt activity," the CHA did not learn of the Debtor's payroll tax issues until after the Petition Date.

14. Further, the Debtor is required, at all times, to maintain proper insurance under the Agreements. Exhibits A1-A2, at § 15. By the Debtor's own admission, it failed to make premium payments on its insurance policies prior to the Petition Date, resulting in one of its policies (fire) being cancelled and the other policies in danger of being cancelled for non-payment. See, *Application to Set Emergency Hearing* [Docket No. 53] (the "Insurance Hearing," attached hereto as **Exhibit F**). In connection with Insurance Hearing, the Debtor also sought Court approval to pay over $31,664.00 in prepetition premiums that it failed to previously pay. The CHA was not previously or timely notified of the Debtor's lapse of insurance.

C. Debtor's Post-Petition Gross Mismanagement and Material Damage to Property

15. Starting on January 29, 2019 and continuing through February 1, 2019, the city of Chicago experienced some of the coldest recorded temperatures in its history, a weather phenomenon commonly referred to as the "Polar Vortex." In the days leading up to the Polar Vortex, the CHA required all of its property managers, including the Debtor, to take certain precautions to ensure the welfare and safety of its residents. These precautions included, without limitation, confirming that all CHA Units were maintained at the minimum temperatures outlined in the City of Chicago Building Code and taking required steps to prevent damage to CHA Units, such as ruptured water pipes.

16. On January 30, 2019, the Debtor reported to the CHA that all CHA Units were at a normal, livable temperature. For example, the Debtor reported that vacant unit #303 at Washington Park Homes was 67 degrees, 4516 S. Evans was 68 degrees, and 4634 S. Wabash was 72 degrees. Unfortunately, the Debtor misrepresented the actual temperatures of these CHA Units. On February 1, 2019, the Chief Property Officer for CHA reported that all three of these units, and likely several more, recorded actual temperatures in the 50s, while outside temperatures remained well below zero degrees.

17. Not only did Debtor's misrepresentation create unlivable situations, the freezing temperatures in the respective CHA Units at Washington Park caused several pipes to freeze leading to significant property damage to several CHA Units. On February 15, 2019, the CHA sent Notices of Default to the Debtor with respect to the misrepresentation of temperature. Attached as **Exhibit G** are the Notices of Default for the Washington Park CHA Units. The Washington Park Notices of Default cited Debtor's violation of sections 11.1.A and 11.1.B.4 of the Agreements. Exhibit G. Furthermore, despite it being the Debtor's responsibility, the CHA was required to contract on an emergency basis with a company to repair the substantial damage caused from the Debtor's gross mismanagement. As of March 31, 2019, the CHA had paid more than $116,000 for the repairs at the Washington Park CHA Units. A copy of the initial invoices to repair the damage at Washington Park is attached as **Exhibit H**.

18. The Debtor also failed to timely or properly act with respect to damage at the Lake Parc Place CHA Units. At approximately 2:20 am on Friday, February 1, 2019, a fire sprinkler head ruptured in the foyer at the 3939 S. Lake Park Avenue building of Lake Parc Place. It took approximately an hour for the Debtor's staff to arrive at Lake Parc Place to attempt to repair the issue. The Debtor's staff was unable to find the shutoff valve for the ruptured

sprinkler head, so it turned off the water and opened a two-inch drain valve to drain the system to relieve the pressure. Subsequently, the staff found the appropriate shutoff valve, adjusted it to the off position, turned the water back on to refill the fire sprinkler system, and left the boiler room area.

19. Unfortunately, the Debtor's staff did not close the two-inch drain valve before attempting to refill the fire sprinkler system. As a result, the water began to fill the boiler room. The Debtor did not attempt to turn the water back off and the water level continued to rise, completely filling the boiler room and destroying the boilers, fire pumps, domestic water pumps, and systems that control them. As a result, CHA was forced to relocate the residents of the 140-unit building until Monday, February 4, 2019.

20. Additionally, the Debtor failed to follow specific directions given by the CHA while the building systems were being restored. CHA staff instructed the Debtor's management to have the maintenance staff complete all of the outstanding work orders and thoroughly clean the building before residents returned; neither task was completed. The Debtor was also directed to contact the elevator repair company and schedule them to repair one of the elevators before the residents returned, which was not completed as directed. On February 15, 2019, the CHA sent Notices of Default to the Debtor with respect to the damage at Lake Parc Place and subsequent failure to remedy the damage. Attached as **Exhibit I** are the Notices of Default for the Lake Parc Place CHA Units. The Lake Parc Place Notices of Default cited Debtor's violation of sections 4.1.D and 11.1.B.1 of the Agreements. As of March 31, 2019, the CHA had paid more than $277,000 for the repairs at the Lake Parc CHA Units. A copy of the initial invoice to repair a portion of the damage at Lake Parc Place is attached as **Exhibit J**.

D. Appointment of the Chapter 11 Trustee

21. On February 27, 2019, the Court entered an order granting the Official Committee of Unsecured Creditors' Motion for an Order Appointing a Chapter 11 Trustee [Docket No. 142]. On March 6, 2019, Gina Krol was appointed Chapter 11 Trustee (the "Trustee"). For the avoidance of doubt, none of the actions set forth in Section A-C above were caused by or as a result of the Trustee or her appointment. All actions set forth above occurred prior to the appointment of the Trustee. The Debtor and its estate are responsible for such actions, omissions, and damage to the CHA Units, and responsible for the reimbursement of all out-of-pocket costs to repair such damage. Exhibits A1-A2, § 11.02.C.

RELIEF REQUESTED

22. The CHA requests that the Court grant relief from the automatic stay "for cause" under section 362(d)(1) of the Bankruptcy Code so that it may terminate the Agreements in accordance with their terms.

ARGUMENT

23. The CHA is entitled to immediate relief from the automatic stay "for cause" under section 362(d)(1), due to: (a) the express terms of the Agreements; and (b) the Debtor's gross mismanagement of the CHA Units.

24. A party may seek to terminate a contract in a bankruptcy by seeking relief from the automatic stay. See, e.g., In re Griffin, 313 B.R. 757, 768 (Bankr. N.D. Ill. 2004). Section 362 of the Bankruptcy Code provides that the Court may grant relief from the automatic stay "for cause, including the lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. § 362(d)(1). "Cause to lift the stay exists when the stay harms

the creditor and lifting the stay will not unjustly harm the debtor or other creditors." In re Opelika Mfg. Corp., 66 B.R. 444, 448 (Bankr. N.D. Ill. 1986).

A. The CHA may Terminate the Agreements Pursuant to its Terms

25. The Court should modify the stay "for cause" based on the terms of the Agreements. The filing of a bankruptcy case does not give the debtor "a right to extend a contract beyond its original terms . . . [t]he Bankruptcy Code neither enlarges the rights of a debtor under a contract, nor prevents the termination of a contract by its own terms." In re Unidigital Inc., 2000 WL 33712306, at *2 (Bankr. D. Del. Dec. 8, 2000) (internal citations omitted).

26. "A debtor in bankruptcy has no greater rights or powers under a contract than the debtor would have outside of bankruptcy." Valley Forge Plaza Assocs. v. Schwartz, 114 B.R. 60, 62 (E.D. Pa. 1990). The Debtor cannot use this bankruptcy to enlarge its prepetition rights under the Agreements. Moreover, if the stay prevented the CHA from exercising its contractual rights to terminate the Agreements, the automatic stay would be functioning as a sword, rather than as a shield. In re Mid-City Parking, Inc., 332 B.R. 798, 815 (Bankr. N.D. Ill. 2005) (The automatic stay "is a shield, not a sword"). Thus, cause exists to modify the stay so that the Agreements may be terminated pursuant to sections 3 and 11 of the Agreements.

27. Sections 3.2 and 11.4 of the Agreements expressly grant the CHA the right to terminate the Agreements.[1] Section 3.2 does not add any conditions to the CHA's ability to terminate the Agreements. While Section 11.4 conditions the CHA's ability to terminate on the Agreements "no longer [being] in the best interest of the [CHA]", given the Debtor's

[1] Section 3.2 states: "[t]he [CHA] shall have the right terminate this Agreement upon thirty (30) days written notice to the [Debtor]." Section 11.4 states: "[t]he [CHA] may terminate this Agreement . . . at any time . . . when the Agreement may be deemed to be no longer in the best interest of the [CHA]."

mismanagement, apparent misappropriation of funds provided by the CHA, and the CHA's lack of faith in the Debtor to perform under the Agreements, it is clear that the Agreements are no longer in the best interest of the CHA.

28. Moreover, the CHA has declared a default under the Agreements, based on Debtor's recent violations, and is entitled to terminate the Agreements due to the Debtor's failure to comply with sections 11.1.A (material misrepresentation), 11.1.B.1 (failure to perform the Services with sufficient personnel) and 11.1.B.4 (failure to promptly re-perform within a reasonable time Services that were rejected). Additionally, CHA is also entitled to immediately terminate the Agreements based on Debtor's violation of sections 11.1.B.6 (failure to comply with material terms of the Agreements, including insurance) and/or 11.1.B.9 (fraud and/or corrupt activity with respect to the missing $1.2 million in payroll taxes).

29. The Agreements are currently on a month-to-month basis, and the express terms of the Agreement permit the CHA to terminate the Agreement. The Court should enter an order modifying the automatic stay to permit the CHA to terminate the Agreement in accordance with the express terms of the Agreements. [2]

B. <u>The Stay Should be Modified "For Cause" Based on Debtor's Mismanagement</u>

30. The Court should modify the automatic stay for cause to allow the CHA to terminate the Agreements based on the Debtor's gross mismanagement of the CHA Units. In determining whether to lift the automatic stay courts typically examine the "good or bad faith of the debtor, injury to the debtor and other creditors if the stay is modified, injury to the movant if

[2] The CHA has provided the Trustee with advanced notice of the defaults and the CHA's intent to terminate the Agreement. The CHA and Trustee have agreed to work together to ease the transition of management of the CHA Units.

the stay is not modified, and the proportionality of the harms from modifying or continuing the stay." In re Bovino, 496 B.R. 492, 502 (Bankr. N.D. Ill. 2013).

31. As set forth above, the Debtor's inability (and refusal) to account for approximately $1.2 million in funds earmarked for payment to the IRS alone constitutes cause for relief from the automatic stay. Not only did the Debtor fail to remit the payroll taxes to the IRS, and potentially abscond with such funds, the Debtor failed to comply with the terms of the Agreements and report such activity to the CHA. Certainly, these acts demonstrate the Debtor's mismanagement of the CHA Units.

32. In addition to the Debtor's potential misappropriation of the payroll taxes, the gross mismanagement and misrepresentations of the Debtor prior to and following the Polar Vortex provide more than enough cause to grant relief from the automatic stay. The Debtor will not be unfairly prejudiced in the event the stay is lifted, as it maintains the same rights and obligations it had under the contract as of the Petition Date – no more, no less. In re Tudor Motor Lodge Assocs., 102 B.R. 936 (Bankr. D. N.J. 1989). The Debtor must abide by the terms of the Agreements, including those provisions related to the termination of the Agreements.

33. Moreover, any harm that relief from automatic stay has on the Debtor is dwarfed by the harm that the Debtor has inflicted on the CHA, the CHA Units, itself, and its creditors by failing to properly and honestly act during the Polar Vortex and failing to account for the payroll taxes. The Debtor manages over 4,300 units for the CHA, and the filed claims in this case, as of the date of this Motion, exceed $21,600,000.00. It is highly unlikely that the Debtor is able to formulate a confirmable chapter 11 plan. The CHA and its residents of the 4,800 CHA Units will be severely prejudiced if it is forced to retain the Debtor as property manager. The Court

should grant relief from the automatic stay "for cause" to permit the CHA to terminate the Agreements and protect the CHA Units and residents for any further mismanagement.

34. In addition, lifting the automatic stay would permit the CHA to exercise its existing and bargained-for rights. The CHA is not a prepetition creditor of the Debtor and is not attempting to skip ahead of any other creditor in priority. Moreover, as the claims in the case currently stand, none of the general unsecured creditors are in line to receive a distribution from the Debtor. The Debtor's Chapter 11 plan on file is premised solely on the CHA's continued contractual relationship with the Debtor. Based on the Debtor's gross mismanagement, misrepresentations, and potential financial fraud, the CHA no longer has any intention to continue its contractual relationship with the Debtor. The express terms of the Agreements permit the CHA to terminate the relationship, which the CHA seeks authority to do immediately

35. Given the Debtor's issues (not to mention the CHA's rights under the Agreements), the CHA will be severely prejudiced if it is unable to terminate the Agreements and forced to continue working with a party that it no longer trusts, has lost confidence in, and has demonstrably grossly mismanaged the CHA Units. Therefore, cause exists for the Court to modify the automatic stay to permit the CHA to immediately terminate the Agreements.

WHEREFORE, the CHA respectfully requests that this Court enter an order: (1) lifting the automatic stay to allow the CHA to terminate the Agreements; and (2) granting such further relief as this Court deems appropriate and just under the circumstances.

Dated: April 18, 2019

Respectfully submitted,

THE CHICAGO HOUSING AUTHORITY

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