



Portfolio Media, Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

\$10M Suit Against Johnson DeLuca Over Hospital Ch. 11 Pared

By Jeremy Heallen

Law360, Houston (September 19, 2014, 7:37 PM ET) -- A Texas bankruptcy judge on Thursday cut claims from a \$10 million malpractice suit that alleges Johnson DeLuca Kennedy & Kurisky PC should not have advised a former hospital owner to file for Chapter 11, but he stopped short of dismissing the case.

U.S. Bankruptcy Judge Jeff Bohm ruled that while Marty McVey and his investment company cannot pursue claims that he lost millions when a deal to sell the defunct Spring Branch Medical Center fell through as a result of the bankruptcy, he can sue Johnson DeLuca for allegedly allowing creditors to go after him for \$2.6 million of the hospital's debt.

But Judge Bohm added that McVey's "personal" claims against the firm have to be heard in state court because they are not legally related to the hospital's Chapter 11 case.

"Thus the court will remand the adversary proceeding to state court," Judge Bohm said in a 34-page ruling. "Further, even if the court were to consider the adversary proceeding 'related to' [the bankruptcy], remand would nevertheless be appropriate because Texas state courts have jurisdiction over plaintiffs' causes of action given that they are based entirely on state law."

Attorneys for the parties did not immediately respond to a request for comment Friday.

Judge Bohm said McVey's complaint about the impact of the failed deal and the hospital's resulting loss in value are "derivative" claims that belong to the bankruptcy estate and that he lacks legal standing to pursue.

And those claims had to be dismissed because the liquidating trust for the hospital filed a "woefully inadequate" motion to intervene in an effort to join McVey's malpractice lawsuit, Judge Bohm said.

"The trust rests its entire argument for why intervention is appropriate on two sentences[,]" the ruling said. "Given the lack of substance in the motion to intervene, the court will deny the motion for failure to plead a cause of action in compliance with [Federal Rule of Civil Procedure] 24(c)."

However, the bankruptcy estate does not own McVey's claims that the firm abandoned him when it was appointed special counsel in the hospital's bankruptcy and exposed him to personal liability for \$1.4 million the hospital owed the Internal Revenue Service and another \$1.2 million claimed by other creditors, Judge Bohm ruled.

Judge Bohm also granted a request by McVey to remand his case to state court, saying that even if the bankruptcy court theoretically has jurisdiction to decide the dispute, it has little reason to hear cases that do not bear on the underlying Chapter 11 proceeding.

"In sum, this court concludes that abstention is appropriate and that the plaintiffs' direct causes of action should be remanded to the Harris County District Court," Judge Bohm said.

McVey filed the suit against Johnson DeLuca in state court last March, alleging that he hired the firm to help him stave off the troubled hospital's creditors long enough to close a deal to sell the facility, but was hung out to dry when the Chapter 11 case was filed.

Prior to the bankruptcy, Harborcove Financial LLC had filed a foreclosure suit against McVey and the hospital for about \$2 million in unpaid loans, according to court records.

Harborcove allegedly agreed to abate its lawsuit to allow McVey time to sell off the hospital, but Johnson DeLuca warned McVey that the creditor could sell its notes to a third party, possibly initiating another foreclosure action, the suit says.

McVey says that Johnson DeLuca told him initiating a Chapter 11 case was the only way to buy time to effectuate a sale but that in reality, the firm could have stopped Harborcove from selling its notes to another party without a bankruptcy.

When the firm successfully pitched the idea that it should be appointed special counsel to the bankruptcy estate, it failed to mention that it would not be looking out for McVey's interests going forward, the suit says.

What Johnson DeLuca really wanted was to collect its unpaid fees from the Chapter 11 estate and to build its reputation as a bankruptcy firm at the expense of McVey, according to the suit.

McVey was ultimately unable to arrange for a \$15 million sale of the hospital, which he seems to blame on the bankruptcy. The hospital was eventually liquidated for "pennies on the dollar," causing a substantial loss to McVey as the institution's major investor, according to the suit.

And as a result, McVey says he is personally stuck with \$2.6 million of the hospital's debts.

McVey is represented by David Eric Kassab and Lance Christopher Kassab of The Kassab Law Firm.

Johnson DeLuca is represented by Thomas M. Fulkerson, Wesley G. Lotz and Ethan G. Gibson of Fulkerson Lotz LLP.

The adversary case is *McVey et al. v. Johnson et al.*, case number 4:14-ap-3126, in the U.S. Bankruptcy Court for the Southern District of Texas.

The state court litigation is *McVey et al. v. Johnson et al.*, case number 2014-12680, in the 270th Judicial District Court of Harris County, Texas.

--Editing by Patricia K. Cole.

All Content © 2003-2015, Portfolio Media, Inc.