

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re: : Chapter 11
: :
Philadelphia Newspapers, LLC *et al.*,¹ : Case No. 09-11204 (SR)
: :
Debtors. : Jointly Administered
: :
: :

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO DEBTORS' MOTION FOR RECONSIDERATION OF OCTOBER 8,
2009 ORDER DENYING REIMBURSEMENT OF OUT OF POCKET EXPENSES**

The Official Committee of Unsecured Creditors (the "Committee"), appointed in the chapter 11 cases of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), hereby objects (the "Objection") to the Debtors' motion for reconsideration (the "Motion"), made pursuant to Rule 59 of the Federal Rules of Civil Procedure, of this Court's October 8, 2009 Order (the "Bid Procedures Order") denying the reimbursement to the Stalking Horse Bidder of its out-of-pocket expenses [Docket No. 1233 and 1234]. In support of this Objection, the Committee respectfully states as follows:

ARGUMENT

1. In their Motion, the Debtors ask this Court to revisit the Bid Procedures Order in which this Court denied the Debtors' request to reimburse the Stalking Horse Bidder its out-of-pocket expenses. The Debtors claim that reconsideration of the Court's decision is "necessary to prevent manifest injustice" because the Debtors agreed, in their business judgment, to reimburse the Stalking Horse its out of pocket expenses as an "inducement for the Stalking Horse making

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Philadelphia Newspapers, LLC (3870), PMH Acquisition, LLC (1299), Broad Street Video, LLC (4665), Philadelphia Direct, LLC (4439), Philly Online, LLC (5185), PMH Holdings, LLC (1768), Broad Street Publishing, LLC (4574), Philadelphia Media, LLC (0657) and Philadelphia Media Holdings, LLC.

an initial offer to acquire the Debtors' assets." Motion at ¶¶ 11-12.

2. This Motion is inappropriate for at least four reasons.

3. First, the Debtors have appealed the Court's decision which they now ask the Court to reconsider. It is a basic principle of jurisprudence that given the fact that the Debtors appealed this ruling, the Court has no jurisdiction to reconsider it. *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) ("a notice of appeal is an event of jurisdictional significance - it confers jurisdiction on the [higher court] and divests the [lower court] of its control over those aspects of the case involved in the appeal"); *Venen v. Sweet*, 758 F.2d 117, 120 (3d Cir. 1985) (same); *Brenner v. CFTC*, 338 F.3d 713, 722 (7th Cir. 2003) ("the filing of a notice of appeal divests the lower court of jurisdiction and shifts control over the issues on appeal to the appellate court"); *In re Butcher Boy Meat Market, Inc.*, 10 B.R. 258, 259 (Bankr. E.D. Pa. 1981) ("once a notice of appeal has been filed, the lower court loses jurisdiction over the subject matter of the appeal"). Given this basic fact, it is unfathomable why the Debtors filed this Motion.

4. Second, even if this Court had jurisdiction, it is improper for the Debtors to seek reconsideration of the Court's Bid Procedures Order. As the Third Circuit has held, a motion for reconsideration should be granted only in "exceptional circumstances." *Lony v. E.I. DuPont deNemours & Co.*, 935 F.2d 604, 608 (3d Cir. 1991); *see, also*, 11 Wright, Miler & Kane, *Federal Practice and Procedure* § 2810.1, 124-130 (1995) ("reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly). A motion for reconsideration may be granted only to correct manifest errors of fact or law or to present newly discovered evidence. *Harsco Corp. v. Slotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). A motion for reconsideration may not be used to present a new legal theory or to adduce evidence that could

(and should) have been raised in connection with the original motion. *In re Sisson*, 668 F. Supp. 1196, 1197 (N.D. Ill. 1983); *In re Armstrong Store Fixtures Corp.*, 139 B.R. 347, 349 (Bankr. W.D. Pa. 1992). Nor may a motion for reconsideration be used to rehash arguments presented in the original motion or to express the view that the court's prior decision was wrong. *MGLC Indemnity Corp. v. Weisman*, 803 F.2d 500, 505 (9th Cir. 1986); *In re Armstrong Store Fixtures Corp.*, 139 B.R. at 349. These proscriptions on motions for reconsideration are designed to preclude repetitive arguments and to bring an end to disputes before the trial court. *Park South Tenants Corp. v. 200 Central Park South Associates*, 754 F. Supp. 352, 354 (S.D.N.Y. 1991); *In re Armstrong Store Fixtures Corp.*, 139 B.R. at 349. The Debtors do not even pretend that any facts have changed or new facts have come to light since the Court entered the Bid Procedures Order.

5. Third, on the merits, the Motion clearly fails the test set by the Third Circuit in *Calpine Corp. v. O'Brien Env'tl. Energy, Inc. (In re O'Brien)*, 181 F.3d 527 (3d Cir. 1999). The Committee briefed and argued this matter in connection with the Debtors' initial efforts to enrich the Stalking Horse by \$1.5 million. The Committee sees no reason to repeat those arguments here but incorporates by reference (i) the briefs previously filed in opposition to the Debtors' prior motion, including the Committee's objection [Docket No. 1007], and (ii) the record, including the factual record, adduced at the October 1, 2009 hearing. The Court's Bid Procedures Order is well considered and consistent with Third Circuit law.

6. Fourth, instead of persisting in attempting to divert estate resources to the insiders that comprise the Stalking Horse Bidder, if the Debtors truly functioned as estate fiduciaries, they should be seeking reimbursement from the Stalking Horse Bidder for the benefits that the Debtors have conferred on this insider for free. As this Court has observed, any fair reading of

the advertisements that the Debtors have run every day since August 20, 2009 and the balance of the massive “Keep it Local” campaign is that the Debtors advocate a sale to the Stalking Horse Bidder over any other bid. The Debtors have done their utmost to dissuade any other bidders, particularly the Senior Lenders. This campaign has been designed to benefit the Stalking Horse and, as a result, at the hearing on September 9, 2009, the Court indicated that the Stalking Horse Bidder should pay for it. The Debtors have generally argued that the costs to the estates of providing these benefits have been minor. For example, they contend that pages in the newspaper where they run these ads would otherwise have been blank. That argument does not wash factually. But even if it were correct factually, it is not the law. The law provides that the Debtors’ estates can recover from the Stalking Horse Bidder the value of the benefits conferred (e.g., the market value of: the advertisements run daily, the letters sent to each of the Debtors’ advertisers, operating and maintaining a web site touting a sale to the Stalking Horse and linking that web site to philly.com, enlisting the Debtors’ work force (often against their will) to assist in this campaign, etc.) that the Stalking Horse has so far received for free.

7. While the Debtors have maintained that the marginal out-of-pocket costs to the Debtors of this campaign are minimal, this argument ignores the fact that the most valuable services the Debtors provided to the Stalking Horse included access to a distribution network that reaches about 2 million people daily, which the Debtors (and their predecessors) have built over a century and which the Debtors would normally guard jealously since it is the life blood of their business.

8. Moreover, when other estate fiduciaries have argued that their personal use of assets is of no great consequence since the estate had little use for them, such arguments have consistently been met with scorn by courts. *See, e.g., Lopez-Stubb v. Rodriguez-Estrada (In re*

San Juan Hotel Corp.), 847 F.2d 931 (9th Cir. 1988) (affirming an award of damages equal to full normal rate for hotel services as opposed to the cost of providing such services); *In re Tigue*, 82 B.R. 724, 731-36 (Bankr. E.D. Pa. 1988) (awarding damages in the amount of the financial benefit personally gained from an attorney's purchase of estate property and later sale of that property at a profit); *In re New York City Shoes, Inc.*, 89 B.R. 479, 484 (Bankr. E.D. Pa. 1988) (awarding damages in the amount equal to the difference between the amount paid by the debtor's CFO for 30,000 pairs of "warehouse" shoes at a private sale and the amount that could have been obtained in an open and disclosed auction); *In re Cavaliere*, 142 B.R. 710 (Bankr. E.D. Pa. 1992) (ordering transferee in violation of 363(b) to pay the difference between amount paid and estimated fair market value minus improvements paid for by transferee). The temptation of an insider to use estate resources for free and to claim that the estate did not suffer, for the estate supposedly would not have used the assets anyway, has lead to the removal of such cavalier fiduciaries. It should not be tolerated here.

CONCLUSION

9. For the foregoing reasons, the Motion should be denied.

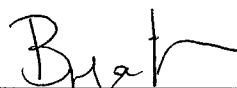
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WHEREFORE, for the reasons stated above, the Committee respectfully requests that the Court deny the relief sought in the Motion, and grant such other and further relief as the Court deems just and proper.

Dated: November 16, 2009
Philadelphia, Pennsylvania

Respectfully Submitted,

ECKERT SEAMANS CHERIN & MELLOTT, LLC



Gary Schildhorn (Pa ID #25770)
Ronald S. Gellert (Pa ID #80783)
Brya Keilson (Pa ID #94565)
Two Liberty Place
50 South 16th Street, 22nd Floor
Philadelphia, PA 19102
Telephone: (215) 851-8400
Facsimile: (215) 851-8383

and

Ben H. Logan
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, CA 90071
Telephone: (213) 430-6000
Facsimile: (213) 430-6407

Gerald C. Bender
O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, NY 10036
Telephone: (212) 326-2000
Facsimile: (212) 326-5151

*Counsel for the Official Committee of
Unsecured Creditors of Philadelphia
Newspapers, LLC, et al.*

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTORS' MOTION FOR RECONSIDERATION OF OCTOBER 8, 2009 ORDER DENYING REIMBURSEMENT OF OUT OF POCKET EXPENSES was served this 16th day of November, 2009 on the parties listed below by electronic mail and by the Court's CM/ECF transmission:

Mark K. Thomas
Proskauer Rose LLP
Three First National Plaza
70 W. Madison, Suite 3800
Chicago, IL 60602
Via Electronic Mail

Lawrence G. McMichael
Dilworth Paxson LLP
1500 Market Street
Suite 3500E
Philadelphia, PA 19102
Via Electronic Mail

George M. Conway
Office of the United States Trustee
833 Chestnut Street, Suite 500
Philadelphia, PA 19107
Via Electronic Mail

Andrew J. Flame
Drinker Biddle & Reath LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103-6996
Via Electronic Mail

/s/ Brya M. Keilson
Brya M. Keilson