UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Return Date: September 20, 2007
10:00 a.m.

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In re

Chapter 11

KOLLEL MATEH EFRAIM, LLC, a/k/a MATEH EPHRAIM LLC, a/k/a KOLEL MATEH EFRAIM

Case No. 04-16410 (SMB)

Debtor.

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MEMORANDUM OF LAW IN SUPPORT OF HELEN MAY HOLDINGS, LLC'S MOTION FOR SANCTIONS AGAINST THE DEBTOR, JACK LEFKOWITZ AND BACKENROTH FRANKEL & KRINSKY, LLP, PURSUANT TO F.R.B.P. 9011, AND 28 U.S.C. § 1927

Creditor Helen-May Holdings, LLC ("Helen-May") makes this motion for sanctions against Debtor Kollel Mateh Efraim, LLC a/k/a Mateh Ephraim LLC a/k/a Kolel Mateh Efraim (the "Debtor"), the Debtor's managing member, Jack Lefkowitz ("Lefkowitz") and the Debtor's counsel, Backenroth Frankel & Krinsky, LLP ("BFK") (collectively, the "Culpable Parties") pursuant to F.R.B.P. 9011 ("Rule 9011") and 28 U.S.C. § 1927 ("Section 1927") for an order; (1) pursuant to Rule 9011 sanctioning the Culpable Parties to be jointly and severally liable to Helen-May in the amount of all damages incurred by Helen-May as a result of the filing of the Petitions in this bankruptcy proceeding, including damages for the misapplication of the automatic stay, costs, expenses and attorney's fees; (2) pursuant to 28 U.S.C. § 1927 sanctioning BFK in the amount of Helen-May's excessive costs, expenses and attorneys' fees because of their conduct; and (3) for any other further relief that the court deems just, proper and equitable.

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PRELIMINARY STATEMENT

1. The Debtor filed its initial Chapter 11 Petition herein on October 4, 2004 (the "Initial Petition"). The Debtor did so after the failure to close on a series of agreements relating to the sale of property in upstate New York owned by Helen-May, the seller. The Debtor filed a second Chapter 11 Petition on November 24, 2004 (the "Second Petition") after Helen-May challenged the legitimacy of the Initial Petition due to the apparent non-existence of the Debtor and the Debtor's failure to include an Employer Identification Number ("EIN"). This motion seeks sanctions against the Culpable Parties relating to the Initial Petition and Second Petition (the "Petitions") based on two reasons. First, the numerous false representations made by the Culpable Parties in the Petitions. Second, the admittedly frivolous filings of the Petitions.

2. Regarding the false representations, as will be more fully set forth below, the Culpable Parties have repeatedly supplied the court with misinformation from the very beginning of this proceeding. Specifically, the Culpable Parties misrepresented the identity of the entity which was assigned the rights to buy the upstate property, leading to an improper application of the Bankruptcy Code's automatic stay. This false representation severely damaged Helen-May.

3. As to the admittedly frivolous conduct, as will also be more fully set forth below, the Debtor did not file the Petitions for a legitimate bankruptcy purpose. Rather, the Debtor filed the Petitions as a means of frustrating Helen-May in relation to the aforementioned series of agreements. Indeed, the Debtor's Chapter 11 filings herein have allowed for the rent free occupancy of the property for nearly four years.

4. After nearly four years of litigation, on the eve of defeat, the Culpable Parties have finally conceded that the Petitions were filed in bad faith with no legitimate bankruptcy purpose. The Culpable Parties have done so through their recently filed Motion to Dismiss the instant Chapter 11 Case (the "Motion to Dismiss"), dated August 6, 2007, which adopts all of Helen-May's prior pleadings regarding the indicia of Culpable Parties' bad faith and actually uses those concessions as a basis for the motion. Thus, little doubt is left as to the Culpable Parties' culpability under the applicable statutes.

5. Finally, Helen-May respectfully submits that this case warrants sanctioning the Culpable Parties by having them reimburse Helen-May for all its expenses, damages and attorney's fees related to and resulting from the filing of the Petitions and the improper application of the automatic stay. Helen-May believes the Court should impose such extreme sanctions due to the Culpable Parties' blatant bad faith in filing the Petitions containing false representations, filing the Petitions for an improper purpose and its audacity in conceding, only after nearly four years of litigation, that it is indeed so. Notably, over the last several years, the Culpable Parties have denied and vehemently fought Helen-May's repeated assertions that the Culpable Parties initiated this proceeding in bad faith with no legitimate bankruptcy purpose or basis. Now, on the eve of their defeat, the Culpable Parties, having successfully forced Helen-May, its Managing Member Irene Griffin and her husband Paul Griffin to endure years of litigation while watching their property being occupied rent free, actually flaunt their "gotcha" strategy, as evidenced by their Motion to Dismiss which concedes that the Petitions were indeed filed with no legitimate bankruptcy purpose. The Culpable Parties' conduct is not only bereft of any basic human decency, but is also an affront to this Court, as they have manipulated and abused its jurisdiction to cause pain and suffering to

innocent people. Helen-May submits that such extreme sanctions are necessary in order to effectively deter such conduct in the future by the Culpable Parties or those deep pocket litigants similarly situated as the Culpable Parties.

STATEMENT OF FACTS

Background Facts Leading to the Filing of the Petitions

The Contract of Sale and Assignment

6. On or about April 29, 2004, Helen-May entered into a contract of sale (the "Contract") with an individual known as Aron Fixler for the sale of the property known as the Meadows Resort located 1141 County Road 114, Fosterdale, New York (the "Property"). Contract, Exhibit A[1].

7. Thereafter, by assignment dated, May 18, 2004, (the "Assignment") Aron Fixler assigned the Contract to the entity Kolel Mateh Efraim. Abraham Steinwurtzel, a trustee of Kolel Mateh Efraim, executed the Assignment on Kolel Mateh Efraim's behalf. Exhibit B.

The Subsequent Occupancy Agreement and the Conditional Extension Agreement

8. Subsequent to the Contract, Kolel Mateh Efraim and Helen-May executed a letter-agreement dated June 3, 2004 (the "Occupancy Agreement") which essentially allowed Kolel Mateh

[1]The Exhibits referred to herein are the Exhibits attached to the Declaration of David Carlebach submitted herewith.

Efraim to occupy the Property during the period between Contract and Closing and called for Kolel Mateh Efraim to be responsible for all operating expenses of the Property as well as to make certain other payments to Helen-May and/or its principals. Exhibit C. The Occupancy Agreement was executed by Jack Lefkowitz, as President of Kolel Mateh Efraim. Id.

9. Thereafter, Helen-May and Kolel Mateh Efraim executed another letter agreement, dated September 22, 2004, (the "Conditional Extension Agreement") containing the following provision:

> The date for the closing is now November 29, 2004, and remains time is of the essence as to Purchaser only.

Exhibit D.

10. The Conditional Extension Agreement also contained the following provision:

> The Purchaser will pay the additional sum of $20,250.00 upon return of this letter and $20,250.00 on or before October 27, time being of the essence.

Id.

The Conditional Extension Agreement was executed by Jack Lefkowitz, as President of Kolel Mateh Efraim, as well. Id.

11. Kolel Mateh Efraim failed to make the payments under the Conditional Extension Agreement, thus being in default and being subject to eviction.

The Filing of the Petitions

Lefkowitz's Plan

12. After Lefkowitz's entity, Kolel Mateh Efraim, defaulted under the Occupancy Agreement and the Conditional Extension Agreement (collectively, the "Agreements"), it lost all

its purchase and occupancy rights to the Property. Rather than vacate the Property or attempt an amicable resolution, Lefkowitz decided to embark on a destructive path of baseless litigation using a forum he was familiar with: the Bankruptcy Court[2]. Armed with a nearly limitless source of funding from the various entities and business ventures in his control, Lefkowitz was bent on fighting Helen-May, its managing member Irene Griffin and husband Paul Griffin (the "Griffins") tooth and nail until the Griffins would have no choice but to give up and settle on his terms.

The Initial Petition

13. Lefkowitz's first move was to file the Initial Petition on October 4, 2004. Exhibit E. By doing so, Lefkowitz invoked the Bankruptcy Code's automatic stay, with the apparent intention of continuing to occupy the Property rent free throughout the pendency of the Chapter 11 case. Notably, the debtor listed on the Initial Petition is "Kollel Mateh Efraim, LLC" and no EIN was supplied. Exhibit E. The reason for this was the second part of Lefkowitz's plan; namely, to continue occupying the Property while concealing the assets of Kolel Mateh Efraim, a Religious Corporation and the assignee and signatory to the Agreements, from the Bankruptcy Court. Thus, Lefkowitz could reap the benefits of the automatic stay without putting the Religious Corporation's significant and sizeable assets at risk. However, the only way to do so was to commit bankruptcy fraud.

[2]Lefkowitz's familiarity with the bankruptcy court is evidenced by his filing of In re Nassau Equities, Case, No. 99-43087, listed as a related pending bankruptcy proceeding in the Initial Petition. See, Exhibit E.

14. To further illustrate the fraud, Lefkowitz states, in the Local Rule 1007 Affidavit, that the Debtor filed the Initial Petition to preserve its claims arising from the Contract and the Property. See, October 4, 2004 Local Rule 1007 Affidavit, Exhibit F.

15. Specifically, the Local Rule 1007 Affidavit goes on to describe the Debtor's purported purpose for invoking the jurisdiction of the Bankruptcy Court:

> **1. I am the managing member of Kollel Mateh 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]

Exhibit F.

16. Lefkowitz arrogantly sets forth the above various misrepresentations failing to make even an effort at a semblance of legitimacy. Firstly, the Agreements were signed by Lefkowitz as "President" of Kolel Mateh Efraim. Now, he represents that the Debtor has executed the Agreements even though an LLC does not have a "President." Indeed, Lefkowitz states that he is the "Managing Member" of the Debtor, which is an LLC[3].

17. With a little due diligence, Helen-May discovered that the Debtor listed on the Initial Petition was an entity that did not exist. In that regard, Helen-May challenged the Initial Petition and the automatic stay as follows:

[3] Regarding the substantive contract allegations, the purported reason given for the filing and the complete failure to perform under the Contract is totally false and a complete sham. All extraneous representations regarding the acreage, and indeed, any claim Debtor thinks it may have regarding the Property's condition are barred as a matter of law due to various "as is" and merger provisions in the Contract. These issues are already pending before the Court in Defendants' Summary Judgment Motion in the related adversary proceeding, case no 04-04545. However, as noted later herein (¶ 20, *Supra*) the Court has indicated that these allegations are meritless.

> 2. Kollel Mateh 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.

See, Helen-May's Motion to Lift Stay, Item #8 on the Docket, Part 2 paragraphs 2-3. Thus, Helen-May dealt its first blow to Lefkowitz's master plan.

18. Notably, 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]. Now the Debtor concedes this point, by citing to this non-existence argument in its Motion to Dismiss, as a fact which warrants dismissal. See, Exhibit T, page 2, ¶4.

The 2004 Adversary Proceeding

19. Meanwhile, Lefkowitz wasted no time on his full court press strategy. On November 15, 2004, attempting to smother the Griffins right out of the gate, the Debtor filed an adversary proceeding styled Kollel Mateh Efraim, LLC a/k/a Mateh Ephraim, LLC v. Helen-May Holdings, LLC and Irene Griffin, bearing the Adversary Proceeding Number 04-04545 (the "2004 Adversary Proceeding"). The 2004 Adversary Proceeding set forth no less than twelve causes of action arising from the Contract. Lefkowitz commenced the frivolous action even though there was never any privity between the Debtor and Helen-May, as explained above.

20. Significantly, while not the subject of the instant motion, the 2004 Adversary Proceeding did crystalize the Debtor's exact theory of Helen-May's alleged liability sounding in fraud. In that regard, this Court had already indicated at a July 20, 2005 Hearing, that the contentions regarding fraud in the Complaint in the 2004 Adversary Proceeding (which are essentially the same allegations of fraud contained in the Petitions) are meritless. The Court stated that an assignee of a contract does not have standing to assert the tort claims of the original contract vendee unless specifically provided for in the assignment. Transcript of July 20, 2005 Hearing, Exhibit G, at 63, ln.12-17. The Bankruptcy Court further stated that the "tax map designation" issue, the gravamen of Debtor's contention in support of its fraud claim, was "equally questionable". Id, at 63, ln.20-23.

21. Thus, this Court has already examined the substantive contract claims of the Petitions and found them to be meritless.

The Second Petition

22. Lefkowitz, upon being challenged on the legitimacy of the Initial Petition and the apparent violation of Rule 1005 of the Federal Rules of Bankruptcy Procedure (which provides that the title of the case shall include, *inter alia*, the employer identification number) filing the Second Petition on November 24, 2004. Exhibit H. This Petition listed the Debtor as "Mateh Ephraim LLC d/b/a Kollel Mateh Efraim, LLC" and also listed the EIN 11-2831693. Besides the foregoing, the Petitions were identical in every other regard. Id.

23. As for the Local Rule 1007 Affidavit accompanying the Second Petition, Jack Lefkowitz, swore as follows:

> 1. I am the managing member of Mateh 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 Mateh Efraim, L.L.C. A petition was previously filed herein under the name Kollel Mateh 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 Mateh 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.

Exhibit I.

Thus, Lefkowitz swore once again that the LLC Debtor was the assignee of the Contract. Therefore, each and every document signed by Lefkowitz in the Second Petition was rank perjury because he clearly knew that this entity was not the assignee.

Lefkowitz Violates Judge Blakshear's Initial Adequate Protection Order

24. Initially, Judge Blackshear, by oral order, ordered the Debtor to pay $5,000.00 a month as adequate protection. As evidenced at the June 28, 2005 Hearing, the Debtor did not make all the monthly payments pursuant to the order. See, June 28, 2005 Hearing Transcript, Exhibit J, p.22 [10-15]. Furthermore, the Debtor has used this violation of the order as one of the bases for its pending Motion to Dismiss this bankruptcy proceeding. See, Motion to Dismiss, Exhibit T, p. 8, ¶ 26.

The Proposed "Reorganization Plan"

25. On or around June 24, 2005, the Debtor submitted to the Court a proposed plan for reorganization along with a joint disclosure statement. Exhibits K and L, repectively. This proposed plan revealed that the commencement of the bankruptcy proceeding was nothing more than a tactic to paralyze Helen-May while occupying the Property.

26. To illustrate, the proposed plan took care of all the creditors except for Helen-May. The proposed plan called for the repayment to all other creditors in full plus interest with the exception of Lefkowitz controlled Maskil-El Dal, who, *not surprisingly*, agreed to waive its $1,200.000.00 claim. Exhibit K, Article 2. Furthermore, Lefkowitz controlled Maskil-El Dal would

provide the funds to the Debtor for paying off the creditors and financing the closing on the Property. Id, ¶ 5.1; Exhibit L, at Exhibit B thereto.

27. As for Helen-May, the Debtor proposed to put the $1,260,000.00 claim amount in escrow. Thus, the Culpable Parties could continue the two party dispute.

28. Apparently, since things were progressing exactly according to plan, the Culpable Parties had no qualms about proposing a plan which displayed the true purpose of the bankruptcy filings; *solely* to frustrate Helen-May.

The Culpable Parties Amend the Caption to Include "Kolel Mateh Efraim" as one of the Debtor's a/k/a's

29. Thereafter, for reasons only known to the Culpable Parties at the time, the Debtor applied to the Court for an order, *inter alia*, to amend the caption in this proceeding to list the Debtor as "Kollel Mateh Efraim, LLC, a/k/a Mateh Ephraim, LLC a/k/a Kolel Mateh Efraim." The Court granted the application by order dated November 27, 2006. Exhibit M .

30. At the time, this seemed like a benign maneuver just to ensure that the Debtor was properly listed in the Petition. Indeed, the new "a/k/a" appeared to be proper since that was the signatory to the Assignment and the Agreements.

Lefkowitz Ignores and Violates the Court's March 15, 2007 Plan Order

31. On March 15, 2007, this Court ordered the Debtor to file its reorganization plan by May 15, 2007. This was done after collateral litigation involving a purported settlement on the record by Helen-May's former counsel ended. Thus, the bankruptcy proceeding was in full swing.

32. The Debtor chose to ignore this order, thus evidencing its lack of intent to use the bankruptcy proceeding to reorganize.

Lefkowitz Violates the Court's April 24, 2007 Adequate Protection Order

33. By Order dated April 25, 2007 (the "April 25, 2007 Order"), this Court ordered the Debtor to make monthly adequate protection payments of $13,335.00 to Helen-May. The Court also ordered that the Debtor make a payment of $210,120.00 to Helen-May for "Net Arrears" of adequate protection dating back to July 1, 2005. Exhibit N .

34. Still determined to starve the Griffins into submission, Lefkowitz completely defied the April 25, 2007 Order. The Debtor made one lone adequate protection payment when it was necessary to obtain an extension of time to submit reply papers to the pending summary judgment motion in the 2004 Adversary Proceeding. The Court conditioned such extension on the payment and the Debtor had no choice but to make the payments lest it inconvenience the Debtor's Counsel's summer schedule.

Lefkowitz Discloses the Ace Up His Sleeve While Exposing His Bankruptcy Fraud

35. Refusing to give in to Lefkowitz's strong-arm strategy, Helen-May moved to hold the Debtor in contempt for willful violation of the April 25, 2007 Order and for the Court to lift the automatic stay. In response to the contempt/lift stay motion, the Debtor presented an affidavit from Abraham Steinwurzel (the "First Steinwurzel Affidavit"), the signatory on the Assignment. Exhibit O. He represented that the he was the Debtor's "Rabbi" and pled poverty as a defense to contempt. Exhibit O, ¶¶ 3-4. This assertion further demonstrates that the Debtor's entire strategy is to make a farce out of the bankruptcy court, since the Lefkowitz controlled entity Maskil El-Dal was

previously willing to give the Debtor millions of dollars to pay creditors and finance the closing of the Property as part of the "Reorganization Plan." Exhibit K, ¶ 5.1 Exhibit L, at Exhibit B thereto.

36. As a result, by Order dated June 5, 2007, the Court lifted the automatic stay.

37. Lefkowitz, however, could not escape the entry of a judgment in the amount of the Net Arrears and the missed adequate protection payments from May 1, 2007.

38. After the Court instructed the parties to settle the Judgment, Helen-May filed its first proposed judgment on June 1, 2007. The Griffins had finally obtained some measure of relief from the Court, or so they thought.

39. The Debtor objected to Helen-May's proposed order. As its basis, the Debtor argued for the first time that there exists a separate entity, Kolel Mateh Efraim, a religious corporation, purportedly separate from the Debtor, and a judgment bearing the amended caption would subject it to the judgment. Exhibit P (The Debtor's Objection without exhibits). Furthermore, the Debtor argued, by separate applications: (1) that the Petition should be amended to reflect the Debtor's EIN as 75-3244717, not 11-2831693 since the EIN 11-2831693 is actually the religious corporation's EIN (Docket No. 145); and (2) that the Court should amend the caption to delete the "Kolel Mateh Efraim" a/k/a. (Docket No. 156).

40. Thus, the Debtor admitted that the tax identification information contained in the Second Petition was patently false. The motion to amend was denied by the Bankruptcy Court and, to date, no amendment of that petition has been made.

41. To support its contentions, the Debtor submitted a second affidavit from Steinwurzel dated June 8, 2007 (the "Second Steinwurzel Affidavit"). Exhibit Q. Therein, Steinwurzel states

that the Debtor and Kolel Mateh Efraim, are two separate entities. He stated that the Debtor is an LLC and Kolel Mateh Efraim is a religious corporation and that the two entities are separate and distinct entities. Exhibit Q, ¶ 3.

42. Thus, after failing to force the Griffins into submission, the Culpable Parties had no choice but to expose their fraud lest the religious corporation's assets be put at risk by the approximately quarter million dollar judgment. One thing that the Culpable Parties did not explain, and indeed, could not explain, is how the Debtor had any interest in the property in the first place since the "Rabbi" of the Debtor, who also happens to be a Trustee of the Religious Corporation, signed the Assignment for the entity "Kolel Mateh Efraim." Nor can Lefkowitz explain how the Debtor has any interest or privity regarding the Agreements when it was signed by him, as "President" of Kolel Mateh Efraim. Where does the Debtor, the LLC, fit into the Agreements? The simple answer is that it does not, and Lefkowitz's sworn testimony in the Petitions are bald faced lies.

Helen-May Takes the First Steps to Evict the Debtor

43. The stay having been lifted, Helen-May served the Debtor with a "Ten Day Notice to Quit and Vacate" dated June 15, 2007. Exhibit R. Being that the Debtor did not oppose the lifting of the stay, Helen-May did not anticipate a problem in regaining possession of the property.

Lefkowitz's State Court Collateral Attack

44. Facing eviction, the Culpable Parties got desperate and sought a stay of the eviction in State Court. At the same time, however, they wished to take a crack at their contract claims in State Court, where they were not assured of failure. This strategy spawned the case styled Aron Fixler; Mateh Ephraim, LLC d/b/a Kolel Mateh Efraim, LLC v. Helen-May Holdings, LLC and Irene Griffin, Supreme Court, Sullivan County, Index No. 1952/07 (the "Removed Action"). Much to Lefkowitz's chagrin, Judge Meddaugh denied the application for an ex-parte TRO to stay the eviction. Exhibit S (Order to Show Cause in Removed Action and Summons and Complaint without exhibits).

45. Logically, Helen-May removed the case to this court, since all the issues raised in the new Complaint are already before the court in the 2004 Adversary Proceeding. Currently, a motion to remand, fully briefed and argued is pending before the Court.

46. In retrospect, the Culpable Parties were apparently just playing possum in allowing the stay to be lifted. They used the imminent eviction as a convenient excuse to seek an ex-parte stay in the unfamiliar state forum and one again raise their frivolous contract claims. It was also a way to further burden Helen-May with collateral litigation in having to remove the action and oppose the remand motion.

Lefkowitz, the Debtor and BFK Finally Concede that the Bankruptcy Filing was Frivolous with no Intention of Reorganization or for a Legitimate Bankruptcy Purpose

47. Having successfully tortured the Griffins and manipulated the Bankruptcy Court for as long as possible without bearing any consequences, the Culpable Parties finally want out of this

proceeding. They have voiced this intention in their latest pleading; the Motion to Dismiss (the "Motion to Dismiss"). Exhibit T (Motion to Dismiss without Exhibits).

48. Therein, the Culpable Parties shamelessly list all the violations of court orders, their failure to propose a plan pursuant to the latest order in that regard and even matter of factly mention that their destructive course has led to the foreclosure of the Property.

49. Specifically, they do not deny that they did not timely file, nor do they deny that they will never file, a Plan and Disclosure Statement. Exhibit T, p.7, ¶ 25. They do not even attempt to proffer the faintest justification for their failure to file, thus evidencing their lack of any intention to make the slightest legitimate effort to reorganize under Chapter 11.

50. Furthermore, the Culpable Parties offer no justification for their allowing the administrative debt to reach its astronomical level. Id. Indeed, they concede that the administrative debt has reached a level which makes rehabilitation impossible, and, amazingly, now assert that this is cause for dismissal as well.

51. In addition, the Culpable Parties submit that another reason to dismiss the case is the Debtor's violation of no less than three court orders meant to afford Helen-May some protection in connection with the occupancy of the Property during this proceeding. Id., p. 8, ¶ 26. The Culpable Parties' commencing this proceeding for no legitimate bankruptcy purpose is evidenced by their lack of justification for not paying administrative expenses, violating court orders, ignoring the damage such violations have caused Helen-May and the Griffins, and, moreover, using these circumstances as reasons to dismiss the case. The Culpable Parties conduct reveals that they filed the Petitions *solely* to frustrate Helen-May's contract and property rights. Indeed, one can now see that the only thing the Culpable Parties were concerned with was occupying the Property for as long as possible

without paying rent. Now that their charmed life is coming to an end, they have no use for this proceeding anymore and would like for nothing more than to escape this court's jurisdiction solely yo escape the consequences of their reprehensible actions.

52. In the Motion to Dismiss, the litany of misconduct concludes, not, as one might expect with an excuse, but with an actual request to dismiss this case based on the misconduct. Not being able to invent another alternate reality or delay matters with hyper-technical procedural maneuvering, the Culpable Parties finally cynically adopt Helen-May's prior pleadings. One can only imagine that the Culpable Parties have done so to get out of their sinking bankruptcy ship to do battle anew in a forum without a record of the above misconduct. They do so in the hope that their contract claims would fare better with an unfamiliar state court judge. Furthermore, as evidenced by the Order to Show Cause in the Removed Action, they are hoping to obtain an injunction to further occupy the Property while dragging things out in Sullivan County.

53. In summary, it is clear that the entity that took the Assignment was the Religious Corporation, Kolel Mateh Efraim, signed by Rabbi Abraham Steinwurzel on May 18, 2004 and that the religious corporation executed the Agreements. It is further clear from the Petitions that the filings were intended to protect this Assignment and the occupancy of the Property. 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.

54. The Culpable Parties, wishing to have their cake and eat it too, attempted to protect the Assignment and the occupancy of the property, while at the same time shielding the assets of the

religious corporation from this Court's jurisdiction. The only way to do so was to commit bankruptcy fraud, swearing that the Debtor was the assignee.

55. Furthermore, this proceeding was commenced with one purpose in mind: to frustrate Helen-May. The Culpable Parties never had a legitimate bankruptcy purpose when filing the Petitions.

56. The shenanigans and subterfuge engaged in by the Culpable Parties to fool the Court and creditors into thinking that the Debtor was the assignee and the automatic stay should apply to the Property, coupled with the Culpable Parties' blatant abuse of the Bankruptcy Court, bespeaks a level of indifference to honesty and decency which warrant extreme sanctions in order to deter future conduct by the Culpable Parties and those similarly situated.

ARGUMENT

I

THE COURT SHOULD SANCTION THE CULPABLE PARTIES PURSUANT TO RULE 9011 SINCE THE CULPABLE PARTIES KNOWINGLY FILED PETITIONS CONTAINING FALSE REPRESENTATIONS

57. Rule 9011 provides, in pertinent part[4]:

> (b) *Representations to the Court*. By presenting the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, –
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;

Thus, the Culpable Parties are clearly in violation of Rule 9011 since they never had a basis to claim that the Debtor was the assignee of the Contract or that it had standing to enforce any rights under the Contract and the Agreements since the Debtor lacked privity with Helen-May.

58. The fact that the Religious Corporation and not the Debtor was the Assignee could not be clearer than as set forth by the Culpable Parties in the June 8, 2007 Steinwurzel Affidavit, "Kollel Mateh Efraim is a separate and distinct religious corporation from the Debtor which is a

[4]The "safe harbor" provision in Rule 9011(c)(1)(A) does not apply to motions for sanctions relating to the filing of a petition. Thus, Helen-May was not required to serve the motion on the Culpable Parties 21 days before filing. Fed. R. Bank. Pro. 9001(c)(1)(A); In re Intercorp. International, LTD., 309 B.R. 686, 694 fn. 10 (Bkrtcy. S.D.N.Y. 2004)

limited liability company." Exhibit Q, ¶ 3. This admission comes from Abraham Steinwurzel, a Trustee of the Religious Corporation and Rabbi to the Debtor with personal knowledge. Id., ¶¶ 1-2.

59. The above demonstrates, beyond cavil, that the allegations pertaining to the Debtor being the Assignee and, thus, filing for Chapter 11 to protects its rights as such are factual allegations that have no evidentiary support, and are indeed false. Thus, the Petitions, which do contain these allegations, violate Rule 9011. These allegations were set forth by the Debtor, Lefkowitz, who signed off on the perjurious affidavits and Petitions and BFK, who filed and signed the Petitions.

60. Furthermore, regarding BFK's culpability, a reasonable inquiry by the attorneys would have disclosed that the Agreements were signed by the religious corporation, not the LLC Debtor due to the simple fact that the Assignment and Agreements do not bear "LLC" after the entity name. In addition, and perhaps more telling, is the fact that the Agreements were signed by the "President" of Kolel Mateh Efraim. The seasoned counsel at BFK, named partner Mark Frankel, Esq. who signed the Petitions, in particular, would have realized that a corporation, not an LLC signed the Agreements at a mere glance at the documents. In re Martin, 350 B.R. 812, 817 (Bkrtcy. N.D. Ind. 2006) ("Rule 9011 imposes an affirmative obligation upon counsel to conduct a reasonable inquiry into both the law and the facts before advancing a particular position to the court.")

61. Further lending to BFK's culpability is its improperly filing the Initial Petition missing an EIN, and then filing the Second Petition containing a false EIN. See, Exhibit E, and ¶¶ 39-40, *Supra*. The seasoned bankruptcy counsel at BFK have utterly failed to discharge their duty to be candid with the Court about the identity of the Debtor. Nor is the issue of the Debtor's identity a mere hypertechnical omission or inconsequential misstatement, but is the very artifice of the fraud

perpetrated on the Court and Helen-May by the Culpable Parties. The fraud was the very tool which the Culpable Parties hoped to use to emerge scott-free from bankruptcy after having starved Helen-May into submission while simultaneously allowing the estate's liability to reach astronomical levels of no return.

62. Accordingly, the Court should impose sanctions under Rule 9011 against the Culpable Parties.

II

THE COURT SHOULD SANCTION THE CULPABLE PARTIES PURSUANT TO RULE 9011 SINCE THE PETITIONS WERE FILED IN BAD FAITH

A. The Standard for the Court to Impose Sanctions for a Bad Faith Filing

63. The Court may determine that the Culpable Parties' filing of the Petitions is frivolous, and thus, impose sanctions, if it was clear, from the date of the filings, that there was no reasonable likelihood that the Debtor intended to reorganize and no reasonable probability that it would eventually emerge from bankruptcy proceedings. In re Intercorp. International, LTD., 309 B.R. 686, 694 (Bkrtcy. S.D.N.Y. 2004). The Court may determine the Debtor's intent to reorganize if, upon considering the totality of the circumstances, there is substantial evidence to indicate that the Debtor made a bad faith filing. Id. Helen-May must establish that the petition was filed for an improper purpose by clear evidence. Id.

64. The totality of the circumstances show that the filing of the Petitions were the linchpin of a plan orchestrated by the Culpable Parties with one purpose: to frustrate Helen-May's

rights as Seller under the Contract and owner of the property. Indeed, Helen-May and the Griffins had to stand by helplessly since October of 2004 while their property was occupied rent free, receiving one lone payment from the Debtor in order to avoid inconveniencing BFK's summer plans.

65. This improper purpose, coupled with the numerous deliberate material misrepresentations relating to the identity of the Assignee and the party to the Agreements, warrant clearly shows the Culpable Parties' bad faith, thus warranting 9011 sanctions.

66. The Culpable Parties' bad faith is further set forth in the admissions contained in their Motion to Dismiss. Therein, The Culpable Parties do not deny that they did not timely file, nor deny that they would never file, a Plan and Disclosure Statement. Exhibit T, p.7, ¶ 25. They do not even attempt to proffer the faintest justification for their failure to file, thus evidencing their lack of any intention to make the slightest legitimate effort to reorganize under Chapter 11.

67. Furthermore, the Culpable Parties offer no justification for their allowing the administrative debt to reach its astronomical level. Id. Indeed, they concede that the administrative debt has reached a level which makes rehabilitation impossible, and, amazingly, now assert that this is cause for dismissal as well. In addition, the Culpable Parties submit that another reason to dismiss the case is the Debtor's violation of no less than three court orders meant to afford Helen-May some protection in connection with the occupancy of the Property during this proceeding. Id., p. 8, ¶ 26. The Culpable Parties lack of justification for paying administrative expenses, violating court orders and ignoring the damage such violations have caused Helen-May and the Griffins, and, moreover, using these circumstances as reasons to dismiss the case, further evidence that Culpable Parties filed the Petitions with no legitimate bankruptcy purpose. It reveals that the Culpable Parties filed the

Petitions to *solely* frustrate Helen-May's contract and property rights. Indeed, one can now see that the only thing the Culpable Parties were concerned with was occupying the Property for as long as possible without paying rent. Now that their charmed life is coming to an end, they have no use for this proceeding anymore and would like for nothing more than to escape this court's jurisdiction before it imposes the very sanctions now being sought.

68. The above demonstrates, beyond cavil, that the Culpable Parties filed the Petitions without a legitimate bankruptcy purpose and *solely* to frustrate Helen-May's contract and property rights. Accordingly, the Court should impose Rule 9011 sanctions on the Culpable Parties.

B. The Debtor Does not Deny that the Case Should be Dismissed Pursuant to 28 U.S.C. § 1112(b), which Suggests the Factors to Consider in Determining a Bad Faith Filing

69. Besides the totality of the circumstances showing the bad faith filings, the Debtor, in its Motion to Dismiss, tacitly admits that the case should be dismissed because of bad faith.

70. To illustrate, the Debtor states that dismissal is warranted under 11 U.S.C. § 1112(b). Exhibit T, p. 7, ¶ 23. Section 1112(b) contains a non-exhaustive list of the factors a court may consider in determining whether a petition was filed in bad faith. In re C-TC 9TH Avenue Partnership, 113 F.3d 1304, 1310 (2nd Cir. 1997).

71. The Debtor specifically sets forth the following factors warranting dismissal under the statute: (A) substantial or continuing loss to or dimunition of the estate and the absence of a reasonable likelihood of rehabilitation; (C) failure to maintain appropriate insurance that poses a risk to the estate or to the public; (E) failure to comply with an order of the court; and (J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of

the court. Id., p. 7, ¶ 24. The Debtor goes on to explain that both Helen-May and the Mortgagee have asserted these factors warranting dismissal and fails to deny that these factors exist. Id., pp. 7-8, ¶¶ 25-26. Thus, the Debtor has adopted the factors expounded by Helen-May and the Mortgagee which warrant a finding of bad faith.

72. Accordingly, due to the very factors set forth by the Debtor in support of its Motion to Dismiss, the Petitions were filed in bad faith and warrant Rule 9011 sanctions.

C. The Court Should Impose Sanction Just as it did in the Similar Case *In re Intercorp International, Ltd.*

73. The Culpable Parties' conduct in this case is similar to the Debtor's conduct in In re Intercorp International, Ltd., *Supra*. In that case, this Court imposed sanctions based on a bad faith bankruptcy filing. In In re Intercorp, the Debtor filed a Chapter 11 Petition in order to avoid foreclosure and eviction from the Debtor's property pursuant to a California judgment. The Court found that the Debtor did not file for bankruptcy for a legitimate bankruptcy purpose, but did so *solely* to frustrate the creditor Chase's legitimate right to foreclose. Id., at 694. In making its decision, this Court noted that: 1- the timing of the bankruptcy filing indicates it was for the purpose of staving off creditor Chase's foreclosure. (Id., at 695); 2- the Debtor needed the automatic stay to stay the foreclosure (Id.); and 3- the Debtor's proposed Chapter 11 plan called for satisfaction of all creditor's besides creditor Chase.

74. The essential facts in this case parallel those in In re Intercorp. Lefkowitz's entity faced imminent eviction, having defaulted under the Agreements. The Initial Petition was filed just after such default. When the Debtor did propose a plan, it proposed a plan where all other creditors

would be satisfied or forgive the debt, leaving only Helen-May's claim unsatisfied and still in dispute.

75. Furthermore, the Culpable Parties' conduct in this case is even more egregious due to the fact that it committed bankruptcy fraud to boot.

76. Accordingly, the Court should impose sanction on Culpable Parties for their bad faith filings.

III

BFK SHOULD BE LIABLE FOR HELEN-MAY'S EXCESSIVE COSTS, EXPENSES AND ATTORNEYS' FEES BECAUSE OF THEIR CONDUCT PURSUANT TO 28 U.S.C. § 1927

77. In addition to being liable for sanctions under Rule 9011, BFK is also liable for Helen-May's excessive costs, expenses and attorney's fees pursuant to Section 1927 as well.

78. Section §1927 gives the Court inherent power to sanction an attorney for improperly multiplying the proceedings in a case as follows:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

28 U.S.C. § 1927.

79. Such sanctions may be imposed when there is conduct constituting or akin to bad faith. In re 60 East 80th Street Equities, Inc., 218 F. 3d 109, 115 (2nd Cir. 2000). The Second Circuit

has held that an award under Section 1927 is proper when the attorney's actions are so completely without merit that they must have been undertaken for some improper purpose such as delay. Id.

80. The Court should impose Section1927 sanctions against BFK for the same reasons meriting 9011 sanctions against the Culpable Parties and BFK. Namely, as set forth above extensively, the misrepresenting of the identity of the party who had an interest in the contract rights and occupancy to the Property. As set forth above, such misrepresentation led to an improper application of the automatic stay, barring Helen-May and the Griffins from their property for several years. A simple glance at the relevant agreements shows that a corporation and not an LLC were the party to the agreements. Thus, BFK's bad faith in filing the Petitions is apparent. The fact that BFK has gone along with the Debtor's and Lefkowitz delay tactics for the sole purpose to frustrate Helen-May, while advancing arguments based on misrepresentations further warrant Section 1927 sanctions.

81. Furthermore, all arguments set forth above in support of 9011 sanctions pursuant to bad faith are incorporated herein by reference and should equally be the basis for Section 1927 sanctions against BFK.

82. Accordingly, BFK should be liable for the excessive costs, expenses an attorney's fees incurred by Helen-May because of BFK's conduct.

IV

THIS CASE WARRANTS EXTREME SANCTIONS IN THE AMOUNT OF HELEN-MAY'S DAMAGES, COSTS,

EXPENSES AND ATTORNEY'S FEES SINCE THE FILING OF THE INITIAL PETITION TO DETER THE CULPABLE PARTIES OR THOSE SIMILARLY SITUTATED TO CULPABLE PARTIES IN THE FUTURE

83. A sanction imposed by Rule 9011 should be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. 11 U.S.C. § 9011(c)(2).

84. When determining the amount of monetary sanctions to impose under Rule 9011, some courts consider: (1) the reasonableness of the opposing party's attorney's fees; (2) the minimum to deter; (3) the ability to pay; and (4) factors related to the severity of the Rule 11 violation. In re Kunstler, 914 F.2d 505, 522 (4th Cir.1990); In re Glasco, 321 B.R. 695, 701 (W.D.N.C., 2005).

85. Regarding the first factor, the Court will see, should it order a hearing based on this motion, that Helen-May incurred hundreds of thousands of dollars in attorney's fees merely to pare every one of the Culpable Parties' frivolous attacks.

86. Regarding the second factor, in order to the deter the Culpable Parties from continuing to manipulate the Bankruptcy Code and the Bankruptcy Court for improper purposes when faced with a similar situation, the Court should sanction the Culpable Parties for no less than all the damages incurred by Helen-May as a result of the filing of the Petitions. This would include all of Helen-May's attorney's fees, costs and expenses in litigating in the Bankruptcy Court and State Court. The reason for these extreme sanctions is that any less would be viewed by Lefkowitz as merely a cost of business for being an unethical, unscrupulous businessman. Should Lefkowitz be liable for all the damage his hard-handed tactics caused Helen-May, he would think twice before once again filing another perjurous petition in the Bankruptcy Court.

87. Furthermore, such extreme sanctions would be a message to all deep pocket litigants wishing to use the Bankruptcy Court as an improper means to bring others with less resources and assets to its knees. Seeing that such harassment and unethical litigating does not go unpunished will deter those big corporations or deep pocket businessmen from attempting to get what they want from less moneyed parties through fraud, deceit and bad faith. 11 U.S.C. § 9011(c)(2).

88. As for the third factor, Lefkowitz has demonstrated that, should the need arise, he is able to produce millions of dollars, as evidenced by Lefkowitz controlled Maskil El-Dal's readiness to give the Debtor millions of dollars to finance the "Reorganization Plan" while being unwilling to give that money to comply with adequate protection orders.

89. Regarding the fourth factor, such extreme sanctions are warranted since, not only has the Culpable Parties improperly used this bankruptcy proceeding, but it committed bankruptcy fraud in doing so. The Culpable Parties' shameless flaunting of such abuse and fraud now that they want out of the proceeding further exacerbates the egregiousness of their conduct.

CONCLUSION

90. For the reasons set forth above, the Court should issue an order; (1) pursuant to Rule 9011 sanctioning the Culpable Parties to be jointly and severally liable to Helen-May in the amount

of all damages incurred by Helen-May as a result of the filing of the Petitions in this bankruptcy proceeding, including damages for the misapplication of the automatic stay, costs, expenses and attorney's fees; (2) pursuant to 28 U.S.C. § 1927 sanctioning BFK in the amount of Helen-May's excessive costs, expenses and attorneys' fees because of their conduct; and (3) for any other further relief that the court deems just, proper and equitable.

Dated: New York, New York
September 10, 2007

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