

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 08-12229(MFW)
. .
. .
WASHINGTON MUTUAL, INC., .
et al., . 824 North Market Street
. Wilmington, DE 19801
. .
Debtors. . February 27, 2009
. 10:31 a.m.

TRANSCRIPT OF OMNIBUS HEARING
BEFORE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Weil, Gotshal & Manges, LLP
By: TAL SAPEIKA, ESQ.
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Richards, Layton & Finger, P.A.
By: CHUN I. YANG, ESQ.
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Wilmington, DE 19801

For the Creditors Pepper Hamilton, LLP
Committee: By: DAVID M. FOURNIER, ESQ.
1313 Market Street
Wilmington, DE 19899

For Nadia Youkelsone: Pro se

Audio Operator: Jennifer Pasierb

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1 THE COURT: Good morning.

2 MS. SAPEIKA: Good morning, Your Honor, Tal Sapeika,
3 Weil, Gotshal & Manges for the debtors. Of the items on the
4 agenda, Your Honor, I believe that there are only two
5 outstanding at this point because Your Honor entered orders on
6 CNOs for the other items.

7 THE COURT: Yes.

8 MS. SAPEIKA: If Your Honor is amenable I could begin
9 with the debtors' motion to assume and assign two real property
10 leases to JP Morgan. And then the other item on the agenda is
11 the status conference with respect to the adversary proceeding.

12 THE COURT: You may.

13 MS. SAPEIKA: The motion seeks to assume and assign
14 two real property leases to JP Morgan. One lease relates to a
15 parking lot that's adjacent to a bank branch, and the other is
16 a space currently being used as a bank branch. Both leases are
17 in the name of Washington Mutual and JP Morgan -- Washington
18 Mutual. And JP Morgan has requested that the debtors assume
19 and assign the leases over to JP Morgan. And pursuant to the
20 agreements between the debtors, JP Morgan and the landlords if
21 that was authorized by the Court the debtors would have no
22 ongoing obligations with respect to those leases. And to date
23 that motion has been uncontested.

24 THE COURT: Well, let me ask you a question.

25 MS. SAPEIKA: Sure.

1 THE COURT: Do the leases have any value?

2 MS. SAPEIKA: Not to WMI's knowledge. No.

3 THE COURT: Have they done any research on this or
4 analysis of the leases?

5 MS. SAPEIKA: I believe that they would have
6 considered that and determined that they had no use for them,
7 that they didn't have any value. And had they not determined
8 to assume and assign them to JP Morgan they would have rejected
9 them.

10 THE COURT: All right. Does anybody else wish to be
11 heard on that?

12 MR. FOURNIER: Dave Fournier for the creditors'
13 committee. The creditors' committee likewise has reviewed this
14 motion and we have no objection.

15 THE COURT: All right. Then I will grant the motion.

16 MS. SAPEIKA: Thank you. Thank you, Your Honor.
17 With your permission I have a proposed order for your review.

18 THE COURT: Is it any different from what was
19 submitted earlier?

20 MS. SAPEIKA: No, it has not changed.

21 THE COURT: All right. I'll enter the one in the
22 binder then.

23 MS. SAPEIKA: Okay. Thank you very much.

24 THE COURT: Thank you.

25 MS. SAPEIKA: The other item is the status conference

1 with respect to the adversary proceeding. I'm not sure if Ms.
2 Youkelsone -- Ms. Youkelsone is here today. It's my
3 understanding, Your Honor, that Ms. Youkelsone filed a
4 complaint against Washington Mutual, Inc. on January 21st, and
5 the debtors filed a motion to dismiss the complaint on February
6 20th which has been served on Ms. Youkelsone. One of my
7 colleagues, I believe, spoke with Ms. Youkelsone yesterday to
8 discuss, you know, the status of the adversary proceeding and
9 suggested that perhaps it would be best to actually adjourn the
10 status conference until the motion to dismiss had been briefed.
11 I think -- I believe it was Ms. Youkelsone's preference to
12 address all of those issues before the Court today and proceed.
13 However, it is the debtor's preference that a status conference
14 be adjourned until such time as a motion has been dismissed --
15 a motion to dismiss has been briefed. The response -- Ms.
16 Youkelsone's response to the motion to dismiss will be due next
17 Friday, and then the debtors would have an opportunity to reply
18 after that.

19 THE COURT: All right. Plaintiff wishes to be heard?

20 MS. YOUKELSONE: Yes, Your Honor, thank you. Yes,
21 indeed I did receive motion to dismiss on January 24th alleging
22 several statements based on the debtors' seeking to dismiss.
23 And mostly the statements, I mean, allegations listed this way.
24 It's more like affirmative defense than subject to be a
25 dismissal for the dismissal motion. And it wasn't my

1 preference to adjourn motion, I mean, today's conference for in
2 order to -- debtor to entertain. So a motion to dismiss rather
3 than. I did have the conversation with the debtor yesterday
4 where debtor had advised me that they were looking for to
5 dismiss my complaint. And I said just like I've just stated a
6 motion shouldn't be entertained on the basis that it's more
7 like affirmative defense than to be -- is to be subject to
8 answer rather than motion to dismiss.

9 Nevertheless, I ask this Court about two weeks of
10 time to reply to the motion to dismiss if debtor is still --
11 was still moved with the motion. And I was about to ask this
12 Court whether we can have the debtor to file an answer before a
13 motion to dismiss can be entertained.

14 THE COURT: Well, procedurally what I usually do at
15 the status conference that is scheduled in a case is determine
16 whether motions to dismiss or answers will be filed. The
17 debtor has the choice to do one or the other, not both. If an
18 answer is filed I'll schedule discovery and trial. But it
19 looks like they filed a motion to dismiss which is their right.
20 I can't order them to file an answer. So I think I will go
21 ahead and order them to -- or direct you to file your answer by
22 next Friday. Typically I will not have any argument on it.
23 I'll look at the pleadings and decide the motion and then we'll
24 proceed from there.

25 MS. YOUKELSONE: If I may, Your Honor, to ask about

1 two weeks time to reply. Is it a possibility?

2 THE COURT: Any objection to an additional week?

3 MS. SAPEIKA: No. An extension of time would be fine
4 with the debtors, Your Honor.

5 THE COURT: All right. Then let me get that date
6 there. You can file it by March 13th, is that enough time?

7 MS. YOUKELSONE: Yes, Your Honor. Yes.

8 THE COURT: All right. Then I'll look for that. And
9 the debtor will have until the 20th to reply?

10 MS. SAPEIKA: That should be fine, Your Honor.

11 THE COURT: Is that sufficient? Okay.

12 MS. YOUKELSONE: Thank you, Your Honor.

13 THE COURT: Then I'll look for the pleadings to come
14 in by binder after the 20th.

15 MS. YOUKELSONE: Thank you.

16 THE COURT: All right. Thank you.

17 MS. YOUKELSONE: Your Honor, before I leave, on the
18 20th should I be here for the motion hearing or I would be
19 informed?

20 THE COURT: No, there will be no motion -- there will
21 be no hearing on the motion. I'll ask you once they file their
22 reply to get me a binder with all of the pleadings. And once
23 that comes to me then I'll decide the motion based on the
24 pleadings.

25 MS. YOUKELSONE: Thank you.

1 THE COURT: Thank you.

2 MS. SAPEIKA: Thank you, Your Honor. Your Honor,
3 that's all we have today unless Your Honor has any other
4 questions.

5 THE COURT: I have no more.

6 MS. SAPEIKA: Thank you. Thank you very much.

7 THE COURT: We stand adjourned.

8 * * * * *

9 C E R T I F I C A T I O N

10 I, KIMBERLY UPSHUR, court approved transcriber,
11 certify that the foregoing is a correct transcript from the
12 official electronic sound recording of the proceedings in the
13 above-entitled matter, and to the best of my ability.

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15 /s/ Kimberly Upshur DATE: March 19, 2009

16 KIMBERLY UPSHUR

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UNITED STATES BANKRUPTCY COURT
District of Delaware

In Re:

Washington Mutual, Inc.
1301 Second Avenue
Seattle, WA 98101
EIN: 91-1653725

Chapter: 11

Case No.: 08-12229-MFW

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