IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	)	Chapter 11
	)	
INTEGRATED HEALTH SERVICES, INC., et al.,	)	Case No. 00-389 (MFW) through 00-825 (MFW)
	)	
Debtors.	)	(Jointly Administered
_____	)	Under Case No. 00-389 (MFW))
	)	
ALLIANCE ASSOCIATES,	)	
	)	
Movant,	)	
	)	
v.	)	Reference No. 1196
	)	
INTEGRATED HEALTH SERVICES, INC., et al.,	)	
	)	
Respondents.	)	

MEMORANDUM OPINION[1]

I. INTRODUCTION

This matter is before the Court on the Motion of Alliance Associates ("Alliance") for Relief from the Automatic Stay. After consideration of the Debtors' Objection and argument of counsel at the hearing held on July 7, 2000, we grant the Motion for the reasons set forth below.

[1] This Opinion Constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052, which is made applicable to contested matters by Federal Rule of Bankruptcy Procedure 9014.

II. FACTUAL BACKGROUND

On February 2, 2000, Integrated Health Services, Inc., and certain of its direct and indirect subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

Prior to the petition date, on or about February 14, 1990, Alliance Associates Limited Partnership and Horizon Healthcare Corporation entered into a Lease of premises located at 1785 S. Freshly Avenue, Alliance, Ohio, consisting of a 100 bed nursing home ("the Premises"). The term of the Lease was ten years, expiring on February 29, 2000; subject to two five year renewal options. The renewal option required that the tenant give notice of the exercise of the renewal 90 days prior to the expiration of the Lease. Through a series of assignments the parties to the Lease are now Alliance and one or more of the Debtors.[2]

The Debtors failed to exercise the renewal option within the time required by the Lease. When they discovered their mistake, prior to the expiration of the Lease term, they did attempt to exercise the option.

Subsequently, on March 24, 2000, the Debtors filed a Motion to extend the time within which they may assume or reject all

[2] While the Debtors initially asserted that Alliance was not a party to the Lease, Alliance presented an affidavit confirming its standing. The Debtors did not contest that point at the hearing and, apparently, now concede that Alliance is the landlord under the Lease.

their leases.[3] On April 14, 2000, Alliance filed an objection to the Motion, on the basis that the Lease had expired by its own terms because the Debtors had failed to exercise the renewal option on time. We granted the Debtors Motion at the hearing held on April 17, 2000, concluding that we were extending the deadline only as to any leases which were still extant. Alliance filed a Motion for relief from the stay on May 15, 2000, seeking a determination that its Lease had terminated. The Debtors objected and a hearing on the Motion was held on July 7, 2000.

III. JURISDICTION

This Court has jurisdiction over this matter, which is a core proceeding, pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(G).

IV. DISCUSSION

Section 362(b)(1) permits the Court to grant relief from the stay "for cause." The term "cause" as used in section 362(d) has no obvious definition and is determined on a case-by-case basis. A three-factor test has been adopted for determining whether "cause" exists, applying the following criteria:

> (a) [Whether] any great prejudice to either the bankrupt estate or the debtor will result from the continuation of the civil suit;

[3] The Debtors have in excess of 1,500 leases to which they are parties.

(b) [Whether] the hardship to the [non-bankrupt party] by maintenance of the stay considerably outweighs the hardship of the debtor; and

(c) [Whether] the creditor has a probability of prevailing on the merits.

See, e.g., In re Rexene Products Co., 141 B.R. 574, 576 (Bankr. D. Del. 1992) (citations omitted).

Alliance asserts that it is clear that it will prevail on the merits since, under its express terms, the Lease expired on February 29, 2000. The Debtors concede that their exercise of the renewal option was not timely but assert that, under Ohio law,[4] equitable grounds support a finding that their late action was sufficient to retain their rights in the Lease. See, e.g., Ward v. Washington Dist., Inc., 67 Ohio App. 2d 49 (Ohio Ct. App. 1980). In the Ward case, the Court concluded that "Equity will relieve a lessee from the consequences of a failure to give notice at the time, or in the form and manner, required as a condition precedent to the renewal of a lease, where such failure results from accident, fraud, surprise or honest mistake, and has not prejudiced the lessor. . . ." Id. at 53. The Debtors assert that their delay in exercising the option arose from an honest mistake and did not prejudice Alliance since it was exercised before the end of the Lease term and Alliance had not found

[4] The parties concede that Ohio law governs interpretation of the Lease.

another tenant by then or otherwise changed its position in reliance on the Debtors' failure to act.

Alliance asserts that equitable relief from the express terms of the Lease is not available to the Debtors under Ohio law because, in order to obtain relief from the effect of its mistake, the Debtors must actually affirm their intent to comply with the terms of the Lease as extended. See, e.g., Paterakis v. Estate of Tuma, 66 Ohio App.3d 373 (Ohio Ct. App.), appeal den. 52 Ohio St.3d 706, rehrg den. 53 Ohio St. 3d 711 (Ohio 1990) (equitable defense not available because tenants never actually exercised their renewal option). To avail itself of such an equitable defense under Ohio law, Alliance asserts that the Debtors must actually exercise the option and demonstrate that they are ready, willing and able to perform under the Lease. Paterakis, 66 Ohio App.3d at 376. Alliance asserts the Debtors have not affirmed their intention to be bound by the terms of the Lease sufficient to warrant the extraordinary relief from their mistake that they seek because they have not assumed the Lease.

The Debtors argue that Alliance's argument is really in opposition to their request for an extension of time to decide whether to assume or reject the Lease. They assert that it is the Bankruptcy Code (and our Order dated April 17, 2000) which have already given them the extension of time. The Debtors assert that the Lease may be a valuable asset of their estate and

argue that their interest in the Lease should be preserved until they have decided whether to assume or reject the Lease.

Alliance further argues that there is prejudice to it by granting the Debtors relief from their mistake because it has found a new tenant for both the Lease and another lease which Alliance had with another debtor in this Court, Mariner Health Group, Inc. ("the Rosegate Lease"). Alliance has obtained the rejection of the Rosegate Lease but the tenant insists on obtaining both leases. Thus, Alliance asserts it is severely prejudiced, not just by the loss of this Lease but by its loss of ability to lease the Rosegate property. Any delay prejudices its rights.

The Debtors argue that the only prejudice that we should consider is whether the landlord changed its position between the time that the renewal was required to be exercised and the time it was actually exercised. See, e.g., Fletcher v. Frisbee, 404 A.2d 1106 (N.H. 1979). The Debtors argue that Alliance did not find a new tenant within that time, and in fact was only in a position to lease the two facilities to the new tenant on July 7, 2000, when it obtained the rejection of the Rosegate Lease in the Mariner case.

We disagree with the Debtors' argument that we may consider only the prejudice which Alliance may have suffered in the time before the option was actually exercised. While this may be true under the equities applied by the state courts in circumstances

where a tenant is in danger of a lease forfeiture, we note that the Bankruptcy Court is a court of equity and that we are required to consider all the equities of this case. In particular, relief from the stay is an equitable remedy and we are required to balance the harms to the debtor and the movant in considering whether such relief should be granted. See Rexene Products, 141 B.R. at 576.

In this case, we conclude that the equities favor Alliance. While it is true that equity abhors a forfeiture and that forfeitures of lease rights in bankruptcy cases are not favored,[5] one who seeks equity must do equity.[6] In particular, one who seeks equitable relief may not sleep on his rights.[7] That is what the Debtors have done in this case. The Debtors, cognizant of the argument of Alliance that the Lease has terminated, have taken no action to seek relief from that alleged forfeiture, either in this court or in the state court. See, e.g., Fletcher, 404 A.2d at 1107 (tenant brought declaratory judgment action). Instead, they sought to extend their time to determine what they wanted to do with that Lease (along with all their other leases).

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[5] See, e.g., Finn v. Meighan, 325 U.S. 300, 301 (1945).

[6] See, e.g., Insurance Co. of N.A. v. Travelers Ins. Co., 118 Ohio App.3d 302, 328 (Ohio Ct. App. 1997)(equitable maxims must be applied flexibly so that no equitable rule is applied that will operate inequitably).

[7] See, e.g., Williams v. Erie Ins. Group, 86 Ohio App.3d 660, 665 (Ohio Ct. App. 1993)(equitable relief denied to one who failed to act to protect its rights).

At the hearing on their extension request (April 17, 2000), the Debtors were put on notice of Alliance's position. Yet they still took no action. In fact, they have not even determined whether the Lease is a valuable asset of this estate and should be assumed. Clearly, the Debtors have sat on their rights.

In the interim, Alliance has found another tenant which requires the Lease in order to consummate the Rosegate lease. Alliance is prejudiced by the Debtors' delay.

Balancing the equities, we conclude that the Debtors are not entitled to relief from their mistake in failing to exercise the Lease renewal option timely and that Alliance is entitled to relief from the stay to obtain the Premises.

V. CONCLUSION

For the reasons set forth above, we grant the Motion for relief from the stay filed by Alliance. An appropriate order is attached.

BY THE COURT:

Dated: August 11, 2000

_____
Mary F. Walrath
United States Bankruptcy Judge

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O R D E R

AND NOW, this **11TH** day of **AUGUST, 2000**, upon consideration of the Motion of Alliance Associates for Relief from the Automatic Stay, and after a hearing held in this matter on July 7, 2000, for the reasons set forth in the accompanying Opinion, it is hereby

ORDERED that the Motion is **GRANTED**; and it is further

ORDERED that the automatic stay is lifted to permit Alliance Associates to exercise its rights to the Premises.

BY THE COURT:

_____
Mary F. Walrath
United States Bankruptcy Judge

cc: See attached

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