

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE: )  
)  
PATRICK REILY MURPHY, JR. ) Case No. 20-11714  
and MITSY JAMES MURPHY, )  
Debtors. )

ORDER SETTING DEADLINES AND HEARING ON MOTION FOR CONSOLIDATION,  
INCLUDING DEADLINE FOR CREDITORS TO OBJECT

The chapter 7 trustee has filed a motion for substantive consolidation (doc. 69). The trustee proposes to substantively consolidate this bankruptcy case with the following non-debtor entities: RTR Holdings, Inc.; Point Clear Services, LLC; Point Clear Insurance Partners, LLC; and PRM Real Estate, LLC. The trustee’s motion asks the court to make those entities debtors in this bankruptcy case and to handle all the assets and liabilities of the Murphys and those entities together in the same bankruptcy case.

“Substantive consolidation is an equitable remedy that should be used sparingly, but is allowed by courts to [e]nsure the equitable treatment of all creditors.” *In re AAA Bronze Statues & Antiques, Inc.*, 598 B.R. 27, 31 (Bankr. N.D. Fla. 2019) (citation and quotation marks omitted). A substantive consolidation order “combine[s] the assets and liabilities of separate and distinct – but related – legal entities into a single pool and treat[s] them as though they belong to a single entity.” *In re Mihranian*, 937 F.3d 1214, 1216 (9th Cir. 2019) (citation and quotation marks omitted). “The consolidated assets create a single fund from which all claims against the consolidated debtors are satisfied.” *Id.* (citation, quotation marks, and ellipses omitted).

In this circuit, “the proponent of consolidation must demonstrate that: [1] there is substantial identity between the entities to be consolidated; and [2] consolidation is necessary to avoid some harm or to realize some benefit.” *See In re AAA Bronze Statues*, 598 B.R. at 32; *In*

*re S & G Fin. Servs. of S. Fla., Inc.*, 451 B.R. 573, 583-84 (Bankr. S.D. Fla. 2011). The following seven factors are instructive in this analysis:

- (1) The degree of difficulty in segregating and ascertaining individual assets and liability;
- (2) The presence or absence of consolidated financial statements;
- (3) The profitability of consolidation at a single physical location;
- (4) The commingling of assets and business functions;
- (5) The unity of interests and ownership between the various corporate entities;
- (6) The existence of parent and inter-corporate guarantees on loans; and
- (7) The transfer of assets without formal observance of corporate formalities.

*See In re S & G Fin. Servs.*, 451 B.R. at 584 (Bankr. S.D. Fla. 2011). However, “these factors are not exclusive and no single factor is likely to be determinative of the court’s inquiry.” *See id.* (citation and quotation marks omitted).

If the proponent of substantive consolidation makes “a prima facie case for substantive consolidation, the burden then shifts to an objecting creditor to show that (1) it has relied on the separate credit of one of the entities to be consolidated; and (2) it will be prejudiced by substantive consolidation.” *See id.* Accordingly, “due to the nature of substantive consolidation of debtor and non-debtor entities, notice must be provided to all creditors, and such creditors must have an opportunity to be heard.” *See id.* at 585; *see also generally In re Mihranian*, 937 F.3d 1214.

The court thus orders as follows:

1. The court will hold a telephonic evidentiary hearing on the motion for substantive consolidation on January 25, 2021 at 1:30 p.m. Central time. The conference call dial-in number is 1-877-336-1831, access code 1356129#, security code 1886#.

2. If the trustee knows of any creditor of any of the non-debtor entities outlined above that is not listed on the current creditor mailing matrix for this case, he must notify the court's law clerk at [jennifer\\_morgan@alsb.uscourts.gov](mailto:jennifer_morgan@alsb.uscourts.gov) within 7 days of the date of this order.

3. If any creditor objects to substantive consolidation, the creditor must file a written objection by January 19, 2021 outlining its position and appear telephonically at the hearing on January 25, 2021.

4. Witness and exhibit lists shall be filed and exhibits exchanged by January 15, 2021. Witnesses and exhibits not listed may not be used at the hearing except for impeachment.

5. Marked copies of all exhibits should be emailed to the court's law clerk at [jennifer\\_morgan@alsb.uscourts.gov](mailto:jennifer_morgan@alsb.uscourts.gov), with a cc to all other counsel, by 5:00 p.m. on January 20, 2021. If the exhibits exceed 50 pages total, counsel should also arrange to deliver 3 hard copies of the exhibits in exhibit notebooks with tabs for each exhibit to the undersigned's chambers by January 21, 2021.

6. The trustee must file a short brief specifically addressing the elements of substantive consolidation and what he expects the evidence to be on each element by January 15, 2021. Briefs are not required from any other party, but if another party wants to file a brief, it must do so by January 21, 2021.

Dated: December 16, 2020

  
HENRY A. CALLAWAY  
CHIEF U.S. BANKRUPTCY JUDGE