UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
(FT. LAUDERDALE DIVISION)

In re:	)	
	)	Chapter 11
MULTIMEDIA PLATFORMS WORLDWIDE, INC.	)	Case No. 16-23603-RBR
Debtor.	)	
In re:	)	
MULTIMEDIA PLATFORMS INC.	)	Chapter 11
	)	Case No. 16-23604-RBR
Debtor.	)	
In re:	)	
	)	Chapter 11
NEW FRONTIERS MEDIA HOLDINGS, LLC	)	Case No. 16-23605-RBR
Debtor.	)	

MOTION FOR APPOINTMENT OF CHAPTER 11 TRUSTEE AND TO PROHIBIT USE OF CASH COLLATERAL
(Emergency Hearing Requested)

Basis for Emergency Hearing

As detailed below, the Debtors have defrauded and converted the collateral of White Winston Select Assets Funds, LLC, and have ceased operations which involve the publication of several weekly periodicals. If a trustee is not appointed to salvage the Debtors' tradenames and goodwill, and perhaps commence a sale process to a new operator before advertisers and readers flee, the value of the collateral securing the loans made by White Winston to the Debtors will be severely and potentially permanently compromised. The Debtors have not moved for authority to use White Winston Select Asset Funds, LLC's cash collateral. White Winston Select Asset Funds, LLC does not consent to the use of its cash collateral.

White Winston Select Assets Funds, LLC ("White Winston"), by undersigned counsel, requests the entry of an order, on an emergency basis, appointing a chapter 11 trustee for the estates of each of the three related debtors, pursuant to 11 U.S.C. §1104(a)(1) and (2), and

prohibiting the Debtors from using White Winston's cash collateral pursuant to 11 U.S.C. 363(e), and as grounds in support therefor states as follows:

INTRODUCTION

1. 11 U.S.C. §§1104(a)(1) and (2) provide for the appointment of a chapter 11 trustee "for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor," or "if such appointment is in the interests of creditors." Abdulla v Klosinski, 523 Fed Appx 580, 587 (11th Cir 2013). White Winston, the first priority, senior secured lender of each of the above-referenced debtors Multimedia Platforms Worldwide, Inc. ("MPW"), Multimedia Platforms, Inc. ("MPI") and New Frontiers Media Holdings, LLC ("New Frontiers") (collectively "Debtors"), respectfully moves for appointment of a trustee pursuant to 11 U.S.C. §§1104(a)(1) and (2) for all of the Debtors for a simple reason – the Debtors and their management are dishonest and have defrauded White Winston, have breached their fiduciary duties to the Debtors and otherwise have continued to act in ways that are destructive of the Debtors' value and White Winston's collateral. The Debtors, with their non-debtor affiliate Columbia Funmap, Inc. ("CFI"), knowingly and intentionally diverted cash receivables they pledged as collateral to White Winston into a bank account in the name of Debtor MPW. MPW was not a borrower when these receivables were diverted to it. Indeed, MPW's existence was concealed by the Debtors, despite MPI's representation to White Winston that all of MPI's subsidiaries would join the loan, that all pledged collateral would be controlled by the borrowers, and that all cash receivables would be deposited into a specific lockbox account, pursuant to an Account Control agreement, which was under the ultimate control of White Winston. After White Winston discovered Debtors' fraud and demanded that diverted cash collections be conveyed to the lockbox account, MPI's CEO and three board members promptly resigned,

leaving Bobby Blair as the sole director, Chairman, Chief Executive Officer and President. The borrowers failed to make the very first payment due and the loan went into default. The Debtors continue to refuse to account for the diverted receivables and transfer the cash collections to the lockbox, and instead have threatened to convey the cash collateral to other creditors, rather than White Winston.

2. Meanwhile, prior to the commencement of these cases, the Debtors terminated operations. As discussed below, the Debtors published multiple weekly and bi-weekly periodicals and magazines. The business, however, is terminal. Since becoming a public company, it appears MPI has never generated a profit and has cumulative losses through June 30, 2016 of ($12,711M). Management's misconduct leaves White Winston with no confidence that management can be relied upon to act honestly, to liquidate fairly or to pursue claims against those members of management responsible for the Debtors' fraud. A chapter 11 trustee should be appointed at the earliest available opportunity for all of the Debtors so that a prompt sale process of the Debtors' business can occur to limit the erosion of value available for creditors.

3. Finally, the Court should prohibit the Debtors from using White Winston's cash collateral pursuant to 11 U.S.C. §363(e). The Debtors have not requested White Winston to consent to their use of cash collateral. The Debtors have provided White Winston with absolutely no information whatsoever about their business plans and intentions regarding usage of cash collateral. Indeed, White Winston does not know even if the Debtors are using White Winston's cash collateral. White Winston does not consent to the Debtors' use of cash collateral. Where, as here, the Debtors have diverted White Winston's cash collateral prepetition and have instead wrongfully diverted and used White Winston's cash collateral nonconsensually for payment of expenses and other creditors, White Winston requests the Court, on an emergency basis, protect

them from harm that would result if the Debtors use White Winston's cash collateral in violation of the 11 U.S.C. §363(c)(2).

FACTS

A. The White Winston Loan

4. The Debtor MPI (OTCQB: MMPW) is a publicly traded company. MPI describes itself and its affiliates as a "multiplatform publishing and technology company that creates, curates, aggregates and distributes compelling, advertiser-friendly content to the LGBT community—an audience that represents some $884 billion in buying power in the U.S. alone."[1] The Debtor MPI contends it "has laid the foundation to become the world's biggest LGBT media company, bringing together the best in media and technology to create and distribute the highest quality news, lifestyle, entertainment and video content for the global LGBT community." MPI's "*Ex-Parte Motion for Entry of an Order Directing Joint Administration*" [Dkt. No. 3 in case 16-23603-RBR], ¶16 at 3-4. MPI contends the Debtors' brands "currently represent 7.5 million readers and 4+ million online visitors annually, and represents three of America's most populous LGBT markets: California, New York and Florida." Id. at ¶17 at 4. In addition to the Debtors' on-line and digital media, MPI contends it produces five (5) "iconic print brands. . . ." Id. ¶18 at 4.

5. Upon information and belief, at all relevant times, Bobby Blair was and remains MPI's Chairman. Declaration of T.M. Enright, hereinafter, the "Enright Dec." at ¶ 6. Mr. Blair also served at various times as MPI's Chief Executive Officer and, upon information and belief, serves in that capacity now. Id. Upon information and belief, Mr. Blair returned as CEO only on September 23, 2016, amid a substantial reshuffling of MPI's board and management shortly after

[1] http://multimediaplatformsinc.com/ (last visited Oct. 5, 2016).

White Winston confronted the Debtors with evidence of their wrongdoing and declared its loan to the Debtors in default.[2] White Winston believes Mr. Blair has been the individual at MPI most responsible for MPI's wrongful conduct, as alleged below. Id. However, neither Mr. Blair nor MPI has been forthcoming with all relevant facts and information - indeed, as explained below, at various times MPI, under Mr. Blair's direction or control, has engaged in gross misconduct, including fraud perpetrated against White Winston. Id. Accordingly, White Winston reserves its rights, including its right to clarify or supplement the information set forth in this Motion, based upon further developments in this case and the results of any discovery it may conduct regarding Mr. Blair, MPI, or either of them.

6. In July 2016, White Winston provided financing to Debtors to fund ongoing operations and possible expansion. Enright Dec. at ¶ 7. White Winston funded $1,116,934.40 at closing in return for a secured promissory note in the amount of $1,750,000 (the "Loan"). Id. The Loan was structured to enable Debtors to request further advances or draws, up to the face value of the note, which White Winston would approve or deny within ten business days of receipt of the request based on commercially reasonable efforts, provided no default had occurred. Id. At the loan closing on July 29, 2016, the parties executed a number of documents including a Master Credit Facility Agreement, Secured Promissory Note, Securities Pledge Agreement, Escrow Agreement, and Security Agreement (collectively the "Loan Documents").[3] Id., ¶ 7.

7. Due to Debtors' immediate need for cash to prevent a default on a then-existing senior unsecured convertible note, White Winston agreed to close and initially fund the Loan on

[2] See MPI's September 23, 2016 8-K report at https://www.sec.gov/Archives/edgar/data/1424328/000147793216012661/mmpw_8k.htm.

[3] Genuine copies of the Loan Documents are attached as Exhibits A-E to the Enright Dec.

short notice, with the majority of the due diligence to be conducted immediately post-closing. Id., ¶ 8.[4] In agreeing to close the Loan prior to substantive due-diligence, White Winston expressly relied upon several material representations and warranties set forth in the Loan Documents, including that MPI and all of its subsidiaries would join the loan and that MPI and its disclosed subsidiaries owned and controlled all pledged collateral. Id. As part of this arrangement, White Winston and Debtors further agreed that the necessary due diligence would occur in Los Angeles immediately after White Winston funded the loan. Id.

8. As an inducement for White Winston to make the loan, Debtors pledged various forms of security, including all of Debtors' accounts receivable and collections (the "A/R"). Id., ¶ 9. Pursuant to the Loan Documents, the A/R was required to be funneled into a "lockbox account" at Boston Private Bank that ultimately would be controlled by White Winston pursuant to an Account Control Agreement executed in conjunction with the closing of the Loan. Enright Dec., Ex. A, § 1.6(b). Debtors represented and warranted to White Winston, via a detailed accounts receivable schedule included as part of the Loan, that the total amount of accounts receivable owned by Debtors as of closing was $382,027.70. Id., ¶ 9. Debtors further agreed to deposit all incoming accounts receivable and collections into the lockbox account. Id.

[4] The Debtors falsely suggest the Loan somehow is sinister. *Debtors' Motion for Authority to Use Cash Collateral and Request for Expedited Hearing* ("Cash Collateral Motion"), ¶¶32-38. For example, the Debtors imply that they "only" received $50,000 in cash at closing of the Loan. Id. ¶35 and that they used some of the proceeds to refinance and satisfy a pre-existing unsecured debt to a third party (Lincoln Park Capital Fund LLC, hereinafter, "Lincoln Park"). The Debtors overlook the fact that the Loan, in the original principal amount of up to $1,750,000, provided substantially greater liquidity to the Debtors than did the $800,000 loan from Lincoln Park that the Debtors refinanced with the Loan. While "only" $50,000 was advanced to the Debtors from the Loan at closing, the total advanced at closing on account of the Loan was approximately $1,100,000. Id. at ¶30. Thus, after closing, the Debtors had approximately $650,000 of additional availability under the Loan. Indeed, over the course of the five weeks following the closing of the Loan, MPI made five separate draw requests on the Loan – on August 19, August 23, August 26, August 30, and September 1, 2016. White Winston approved each of these requests, funding Debtors in the additional, aggregate amount of $140,367.71. Enright Dec., ¶11.

9. MPI's then CEO, Robert Weiss, informed White Winston's principal, Todd Enright, that senior management (particularly Peter Frank, MPI's then Chief Financial Officer) would meet with him in California the next business day following the closing for the express purpose of providing due diligence materials and information to White Winston. Id. ¶ 10. When Mr. Enright arrived in Los Angeles for post-closing due diligence, he was not provided access to Debtors' books and records or to Mr. Frank as promised. Id. Mr. Weiss informed Mr. Enright that Mr. Frank was ill with an acute case of influenza which, White Winston was told several days later was actually a severe case of meningitis which allegedly hospitalized Mr. Frank for several days and then was further ordered by his physician to adhere to strict bed-rest upon release for several weeks. Mr. Weiss reported to Mr. Enright that nobody other than Mr. Frank could provide access to the financial information that Mr. Enright needed to review. Id.

10. Over the course of the five weeks following the closing of the Loan, MPI made five separate draw requests on the Loan – on August 19, August 23, August 26, August 30, and September 1, 2016. White Winston approved each of these requests, funding Debtors in the additional, aggregate amount of $140,367.71. Id., ¶ 11.

11. Each draw request was signed by MPI's CEO, through which he represented and warranted that the Debtors had little or no operating funds in their bank account. Id. ¶12. In their explanation for the expected use of funds, the Debtors stated that they were requesting the funding to cover all of their operating expenses on each such date. Id. Between September 7 and September 16, 2016, and as part of the initial due diligence disclosures concerning Debtors' financial condition and operations, Debtors provided White Winston with a schedule of their actual cash receipts, invoicing and actual revenues for the months of June, July and August 2016, as well as forecasted revenues for the months of September and October 2016. Id. Debtors also

provided White Winston with daily reports of certain financial measures which report was known as a "Daily Flash Report." Id. Based on the foregoing disclosures, White Winston calculated material discrepancies in the amount of funds being reported to White Winston. Id. Moreover, despite having a lien on all of the Debtors' assets, including but not including the Debtors' A/R and collections to be deposited into the lockbox account, none of Debtors' cash nor its account receivables stood in the name of any of the borrowers, nor was virtually any of the cash collected from MPI's receivables delivered to the lockbox account as required under the Loan. Id.

12. On September 1, 2016, Debtors failed to make the very first required debt payment due under the Loan. Id., ¶ 13. White Winston issued a Notice of Default to Debtors pursuant to the Loan on September 9, 2016. Id. Among its remedies for default, White Winston has the right to require Debtors to assemble all the pledged collateral and make it available to White Winston at a place and time convenient to White Winston. Enright Dec., Ex. A, at ¶ 14. White Winston instructed the Debtors to deliver all proceeds of accounts receivable into the lockbox at Boston Private Bank. Id., ¶13.

13. That same day, Mr. Weiss reported to Mr. Enright that he (Mr. Weiss) had determined that Mr. Frank was, in fact, never ill, but instead had become incapacitated as a result of a substantial substance abuse problem. Id., ¶14. Apparently unconvinced of Mr. Frank representations that he was stricken with meningitis, and ordered by his physician to adhere to strict bed-rest, Mr. Weiss went to Peter Frank's residence and found him intoxicated. Id. Mr. Weiss reported to Mr. Enright that Mr. Frank was absent without leave for a period of nearly six weeks due to substance abuse issues which were purposefully not disclosed to White Winston. Id. Had White Winston known that Mr. Frank, MPI's CFO, who controls the Debtors' finances,

had wholly abandoned his job responsibilities in the manner and to the extent he had, White Winston would not have approved or disbursed any of the four advances made to Debtors under the Loan. Id. According to a Form 8-K report filed by MPI with the United States Securities and Exchange Commission ("SEC") on September 23, 2016,[5] Mr. Frank

> was removed from his position as a member of the board of directors (the "Board") of [MPI]. Mr. Frank's removal from the Board was due to certain concerns with respect to Mr. Frank's health. On September 23, 2016, Mr. Frank and the Company agreed to reassign Mr. Frank from his role as Chief Financial Officer of the Company to Senior Vice President of Finance and Strategic Development."

14. White Winston further discovered that Debtors intentionally misrepresented certain material representations and warranties set forth in the Loan Documents, and which White Winston reasonably relied on in agreeing to fund Debtors' business operations. Enright Dec., ¶15. White Winston discovered, for example, that the Debtors failed to disclose the identity of another MPI subsidiary (MPW) that actually owned and controlled critical collateral, specifically, the A/R and all cash collections coming in from the business. Id. Debtors affirmatively represented that the identity of all subsidiaries had been disclosed, each such subsidiary was joining the loan, and that MPI and its disclosed subsidiaries owned and controlled all of the assets, property, securities, and accounts that would collateralize the Loan, when in fact that was not true. Id.

15. Unbeknownst to White Winston, the Debtors intentionally and knowingly deposited their A/R and collections into a Wells Fargo bank account owned and controlled by MPW, an undisclosed subsidiary, rather than into the lockbox account (as required by the loan terms) or into a bank account owned by one of the three "Borrowers" under the Loan. Id., ¶ 16.

[5] The 8-K report can be found at https://www.sec.gov/Archives/edgar/data/1424328/000147793216012661/mmpw_8k.htm.

By and through this conduct, the Debtors intentionally and knowingly diverted White Winston's cash collateral to an account beyond its control for the purpose of depriving White Winston of the value of its collateral. Id. White Winston subsequently demanded that this undisclosed subsidiary sign a Guaranty under the Loan, which has since been signed. Id. However, the Debtors continue to refuse to transfer any of the cash collections to the proper lockbox account. Instead, Mr. Blair conceded to Mr. Enright that MPI intended to use the funds to pay MPI's expenses, in violation of the Loan. Id.

16. During the period of September 11-16, 2016, White Winston learned that in response to its various inquiries and disclosure of certain facts regarding the operations of the Debtors' business, MPI's CEO and not less than three of its Board Members have promptly resigned from MPI. Id., ¶ 17.[6] This mass exodus leaves the company at the mercy of Mr. Blair, with no senior management, no CFO/financial officer, and no functioning Board of Directors. Id.

17. According to its March 30, 2016 10K for the period ending December 30, 2015 and its August 15, 2016 10Q for the period ending June 30, 2016, MPI has gross revenue of $1,814,000 and $1,459,000 respectively and a Net Income of ($7,642) and ($4,699,000). Indeed, upon information and belief, since becoming a public company, it appears MPI has never generated a profit and has cumulative losses through June 30, 2016 of ($12,711M). Id. ¶18.

B. **The Debtors' Fraudulent Misrepresentations and Nondisclosures and Wrongful Conduct and Mismanagement**

18. As noted above, the Debtors have engaged in substantial wrongdoing, including the following:

a. ***Concealment of Affiliates and Subsidiaries***

[6] See n.4, supra.

19. In connection with the Loan, MPI represented to White Winston that all of its affiliates and subsidiaries would be parties to the Loan. Id., ¶19. It was critically important to White Winston that all affiliates and subsidiaries who might be involved in the Debtors' consolidated operations, and who might come into possession, custody or control of White Winston's collateral, be obligors to White Winston under the applicable loan documents and grant White Winston a security interest in all of its assets. Id. Such a structure insures that collateral does not "leak" away from White Winston because collateral becomes owned by an entity against which White Winston lacks recourse.

20. Consistently, MPI and its borrower affiliates made a variety of critical representations and warranties and promises to White Winston in the Loan Documents, including that the identity of all subsidiaries had been disclosed, each such subsidiary was joining the loan, and that MPI and its disclosed subsidiaries owned and controlled all of the assets, property, securities, and accounts that would collateralize the Loan, when in fact that was not true. Id., ¶15. For example, in paragraph 1 of the Securities Pledge Agreement (attached as Exhibit C), MPI and CFI, among others, pledged all of their "Equity Interests," "***whether now existing or hereafter arising, and all additional equity securities of the Subsidiaries from time to time acquired by [MPI and CFI]***. . . ." (emphasis added). Id. The term "Subsidiaries" is defined in paragraph B of the Securities Pledge Agreement as "***each direct and indirect subsidiary of MPI now or hereafter existing***, including (without limitation) [CFI and New Frontiers]. . . ." (emphasis added). Id. MPI and CFI, among others jointly and severally represented and warranted to White Winston that the pledged "Equity Interests" "do and will represent one hundred percent (100%) of the outstanding equity securities of the Subsidiaries and that there are and will be no other equity securities of Subsidiaries." Consistently, MPI and CFI, among

others, represented and warranted to White Winston in section 3.9 of the Master Credit Facility Agreement (Exhibit A hereto) that the "Borrower" [*i.e.*, MPI and its disclosed affiliates that were parties to the Master Credit Facility Agreement] is the owner of all Collateral purported to be owned by it . . . ." Id. These representations and warranties were not truthful. MPW's existence was not disclosed, and MPW's ownership of certain "Collateral" (*i.e.*, the A/R) made the representation and warranty in section 3.9 of the Master Credit Facility Agreement false and misleading. Id. MPI and the borrower affiliates represented and warranted to White Winston in section 3.11 of the Master Credit Facility Agreement that "The Borrower's interest in all personal property used in the ordinary course of the Borrower's business that is material to the Borrower's business is included in the Collateral." MPI represented to White Winston that CFI and New Frontiers were its only subsidiaries. Id. Consequently, White Winston obtained a collateral pledge only of the stock of CFI and New Frontiers. Id.

21. Unbeknownst to White Winston, and concealed by MPI, CFI and New Frontiers, MPI had multiple other subsidiaries and affiliates. Id., ¶21. Notably, the existence of MPW, an entity through which MPI directed virtually all of its cash flow and operations, was concealed by MPI. Thus, the cash and the accounts receivable from MPI's consolidated businesses – the most liquid of White Winston's collateral – was diverted to an entity that MPI concealed from White Winston and as to which White Winston had no contractual recourse.

22. As noted above, White Winston rectified MPI's omission by obtaining a guaranty and security interest from MPW. Accordingly, all of MPW's accounts receivable are White Winston's collateral. However, subsequently White Winston learned that MPI had even more undisclosed affiliates and subsidiaries. Id., ¶22. For example, MPI directly or indirectly owned or controlled Next Media Enterprises, Inc. MPI also directly or indirectly owned or controlled a

predecessor to MPW named Multimedia Platforms Management, LLC ("MMPM"). Id. These affiliates and subsidiaries are disclosed only incidentally, if at all, in MPI's public filings. Id. For example, MPW was not mentioned in MPI's 10-Q report for the periods ending March 31, 2016 or June 30, 2016, and was mentioned opaquely in a single sentence in MPI's 10-Q report for the period ending December 31, 2015.[7] Id. Next Media Enterprises, Inc., a former affiliate of the Debtor allegedly merged into MPW, was not mentioned in the 10-Q reports for the periods ending June 30, 2015, September 30, 2015, March 31, 2016 and June 30, 2016. Id. Nor was Next Media mentioned in MPI's annual 10-K report for the period ending December 31, 2015. Another affiliate of MPI, Wirld Media, Inc., was formed on February 9, 2016 and is not mentioned in MPI's 10-Q reports for the periods ending March 31, 2016 and June 30, 2016, although it appears in a press release dated June 8, 2016 issued by MPI (announcing the retention of a new CEO). Id.

23. The existence of these affiliates and subsidiaries was not disclosed to White Winston prior to the time it made the Loan and prior to the time it made advances under the Loan. Id. ¶23. White Winston would not have made the Loan nor made any advances under the Loan if it knew that non-borrower affiliates and subsidiaries of MPI existed, let alone that such affiliates and subsidiaries would control substantial portions of White Winston's collateral and operate substantial portions of the consolidated business. Id. In short, the untruthfulness of the relevant representations and warranties were hardly ministerial or technical misrepresentations –

[7] The single sentence appears in the eighth paragraph of the section of the 10-Q entitled "2016 Timeline" (at page 5) and reads:

"Guy magazine's rebranding as Next magazine took advantage of the complementary elements of Multimedia Platforms Worldwide's ownership of the leading LGBT publication in the Manhattan marketplace."

they went to the core of the structure White Winston insisted upon to ensure it had recourse to all of its collateral at all relevant times. Id.

b. Misrepresentations Regarding Unpaid Tax Obligations

24. MPI and its borrower affiliates represented and warranted to White Winston in section 3.5 of the Master Credit Facility Agreement that they had "paid or made arrangement for the payment of all taxes, assessments, and governmental charges and levies thereon, including any interest and penalties, to the extent the same have become due." Id., ¶24. The same parties also represented and warranted to White Winston in section 3.3 of the Master Credit Facility Agreement that "[t]he balance sheets, statements of income and retained earnings, federal tax returns, personal financial statements, and other financial statements and financial data of the Borrower furnished to [White Winston] to induce [White Winston] to enter into this Agreement are complete and correct in all material respects and fairly present the financial condition of the Borrower as of the dates thereof and the results of the operations of the Borrower for the periods covered by such statements." Id.

25. These representations and warranties were false when made. Id., ¶25. Upon information and belief, MPI's former affiliate MMPM owed unpaid payroll taxes of approximately $122,000 (excluding penalty and interest charges). Id. Upon information and belief, MMPM merged into MPW in early 2016. Id. Similarly, upon information and belief MPI's affiliate Next Media Enterprises had unpaid tax obligations for 2015 of approximately $34,000 (excluding interest and penalties). Id. To the extent these entities were merged into MPW, then MPW, as the surviving entity, presumably remains liable for these unpaid taxes. Also upon information and belief, MPW in its own right had unpaid payroll tax balances of approximately $164,000 through June 30, 2016 (excluding interest and penalties). Id.

26. MPI concealed the full extent of these unpaid tax obligations. Id. Section 3.14 of the Master Credit Facility Agreement provides that "[e]xcept as set forth in Schedule 3.14 of the Disclosure Schedule, the Borrower is current in all material corporate obligations, ***including payments related to any and all taxes*** and other personal and/or fees, obligations and assessments due and payable." (emphasis added). Id. Section 3.14, however, only discloses certain 2015 and 2016 payroll taxes in the amount of $138,000 and $2016 respectfully, White Winston would not have entered into the Loan or advanced any funds on account of the Loan if the Debtors had truthfully reported to it the extent of the outstanding tax obligations. Id.

c. Diversion of Collateral

27. As noted above, the Debtors diverted White Winston's collateral – the proceeds of collected accounts receivable – that the Debtors were obligated to turnover to White Winston and deposit in the Boston Private Bank lockbox controlled by White Winston. Id., ¶27. Instead, upon information and belief, MPI diverted the proceeds of collected receivables and deposited the funds in a bank account in the name of MPW at Wells Fargo Bank, and used those proceeds unlawfully for purposes other than to pay White Winston. Id. Upon information and belief, among other things, those funds were used to make payments on a loan to a third party unrelated to White Winston, and as to which Mr. Blair is personally liable either as a guarantor or direct obligor which is secured by all his personal holdings in MPI. Id. Also, upon information and belief, the Wells Fargo account was also used to fund certain un-documented for personal expenses of Mr. Blair in prior reporting periods, including the rent on an apartment in Los Angeles, California rented for Mr. Blair's use. Id.

C. The Massachusetts Temporary Restraining Order

28. On or about September 22, 2016, White Winston commenced a civil action in Massachusetts Superior Court[8] against MPI, CFI and New Frontiers ("Massachusetts Litigation"). Id, ¶28. On that same day, the Court entered a temporary restraining order against MPI, CFI and New Frontiers ("TRO"). A genuine copy of the TRO is attached as Exhibit G of the Enright Dec. Paragraphs 3 and 4 of the TRO restrained these parties "from conveying, transferring, concealing or otherwise disposing of any cash collateral or accounts receivables under their ownership or control, or under the ownership or control of any of [these parties'] wholly owned subsidiaries including but not limited to [MPW]" and from "conveying, transferring or otherwise disposing of any other collateral pledged under the parties' loan, and which collateral is under [Debtors'] ownership or control, or the ownership or control of any of [these parties'] wholly owned subsidiaries, until further Order of [the] Court." Id.

29. The Massachusetts Superior Court scheduled a hearing to consider extending the TRO as a preliminary injunction for October 4, 2016 at 2:00 p.m. Id. The Debtors filed their respective chapter 11 bankruptcy cases only moments before 2:00 p.m. on that date.[9] Id.

ARGUMENT AND AUTHORITIES

A. A Chapter 11 Trustee Should Be Appointed for All of the Debtors Pursuant to 11 U.S.C. §1104(a)(1)

30. 11 U.S.C. §1104(a)(1) requires the Court to order the appointment of a chapter 11 trustee for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the

[8] The applicable loan documents (see, e.g., §7.12 of the Master Credit Facility Agreement) provide that Massachusetts law governed all disputes among the parties and contained a forum selection clause requiring all litigation to occur in Massachusetts.

[9] Counsel for White Winston did not receive notice of the filing of these cases until after the October 4 hearing, and none of the Debtors appeared at the October 4 hearing. Accordingly, the preliminary injunction (copy attached as Exhibit G to the Enright Dec.) entered against the named defendants. Id., ¶29. Obviously, the automatic stay moots the injunction as to the Debtors. However, the injunction was entered and is enforceable against CFI, which to White Winston's knowledge has not filed bankruptcy.

affairs of the debtor by current management, either before or after the commencement of the case, or similar cause. "Once the court finds that cause exists under § 1104(a)(1), there is no discretion; an independent trustee must be appointed." In re SunCruz Casinos, LLC, 298 B.R. 821, 828–29 (Bankr SD Fla 2003), citing In re Oklahoma Refining Company, 838 F.2d 1133, 1136 (10th Cir.1988) (other citations omitted).

31. Here cause exists due to the Debtors' fraud. Section 1104 does not define fraud. Accordingly, cases defining fraud for purposes of section 1104(a)(1) do so by reference to state common law fraud elements. In re LHC, LLC, 497 B.R. 281, 306 (Bankr. N.D. Ill. 2013) (citation omitted). Under Massachusetts law[10] the elements of fraud are "[1] a false representation of material fact, [2] with knowledge of its falsity, [3] for the purpose of inducing the plaintiffs to act on this representation, [4] that the plaintiffs reasonably relied on the representation as true, and [5] that they acted upon it to their damage." Commonwealth v. Lucas, 472 Mass. 387, 394, 34 N.E.3d 1242, 1249 (2015), quoting Cumis Ins. Soc'y, Inc. v. BJ's Wholesale Club, Inc., 455 Mass. 458, 471, 918 N.E.2d 36 (2009). Similarly, a claim for fraudulent inducement is "misrepresentation of a material fact, made to induce action, and reasonable reliance on the false statement to the detriment of the person relying." Okoli v. Okoli, 81 Mass. App. Ct. 381, 391, 963 N.E.2d 737, 746 (2012), quoting Commerce Bank & Trust v. Hayeck, 46 Mass. App. Ct. 687, 692, 709 N.E.2d 1122 (1999), quoting from Hogan v. Riemer, 35 Mass. App. Ct. 360, 365, 619 N.E.2d 984 (1993).[11]

[10] See n.2, supra.

[11] Florida law is identical. See, Houri v. Boaziz, 196 So.3d 383, 393 (Fla. App. 2016) ("To establish fraud in the inducement, Boaziz had to allege and prove (1) that Houri made a statement concerning a material fact; (2) that he knew or should have known was false when made; (3) that he intended that Boaziz to act on his false statement; and (4) that Boaziz reasonably acted thereon and was damaged as a result").

32. Here the actions and omissions of the Debtors and their management meet the definition of fraud. The Debtors misrepresented material facts (regarding the health and status of key members of management, the existence of substantial unpaid tax obligations, that they had disclosed all affiliates, when in fact they had concealed the existence of MPW, that they would deposit all collections into the lockbox, when in fact they were diverting collections to MPW), made to induce White Winston to make the Loan (which White Winston made in reasonable reliance on the false representations and material nondisclosures[12] to its detriment). These false representations were representations of material facts, made with knowledge of their falsity, to induce White Winston to make the Loan and advances, that White Winston reasonably believed were true and upon which White Winston acted to its detriment.

33. Accordingly, cause exists sufficient to justify appointment of a chapter 11 trustee for all of the Debtors pursuant to 11 U.S.C. §1104(a)(1) for cause, including the Debtors' fraud and concomitant dishonesty, which constitutes gross mismanagement. Although there is a strong presumption that a debtor in possession should remain in control "[t]he willingness of Congress to leave a debtor in possession is premised on the expectation that current management can be depended upon to carry out the fiduciary responsibilities of a trustee." In re SunCruz Casinos, LLC, 298 B.R. at 830, quoting In re Marvel, 140 F.3d 463, 474 (3d Cir. 1998) (internal quotation omitted). Where, as here, cause for appointment of a trustee exists, "the appointment of a trustee

[12] Fraudulent nondisclosure is actionable and is virtually indistinguishable from fraudulent inducement. See, Greenleaf Arms Realty Trust I, LLC v. New Boston Fund, Inc., 81 Mass. App. Ct. 282, 291–92, 962 N.E.2d 221, 230 (2012) "even in an arms-length transaction, though there may be no duty otherwise imposed, if a party does speak "to a given point of information, voluntarily or [otherwise], he is bound to speak honestly and to divulge all the material facts bearing upon the point that lie within his [or her] knowledge. Fragmentary information may be as misleading ... as active misrepresentation, and half-truths may be as actionable as whole lies.") (quoting) Kannavos v. Annino, 356 Mass. 42, 48, 247 N.E.2d 708 (1969) (quotation *omitted*). Florida law is identical. See, Philip Morris USA, Inc. v. Naugle, 103 So.3d 944, 946-47 (Fla. App. 2012) ("Fraud can occur by omission, and one who undertakes to disclose material information has a duty to disclose that information fully.") (citations omitted).

is a power which is critical for the Court to exercise in order to preserve the integrity of the bankruptcy process and to insure that the interests of creditors are served." Id., quoting In re Matter of Intercat, Inc., 247 B.R. 911, 920 (Bankr.S.D.Ga.2000). The "integrity of the bankruptcy process" and the interests of creditors would be seriously challenged absent appointment of a chapter 11 trustee for all of the Debtors where, as here, management has perpetrated blatant fraud on White Winston. Accordingly, the Court should appoint a chapter 11 trustee for each of the Debtors for cause pursuant to 11 U.S.C. §1104(a)(1).

B. **Appointment of a Chapter 11 Trustee for All of the Debtors is in the Interest of Creditors and Should be Ordered Pursuant to 11 U.S.C. §1104(a)(2)**

34. 11 U.S.C. §1104(a)(2) provides for the appointment of a chapter 11 trustee, inter alia, "if such appointment is in the interest of creditors . . . and other interests of the estate." Unlike the "cause" standard of section 1104(a)(1), the Court has discretion under section 1104(a)(2) to consider a variety of factors even if no cause for appointment of a trustee exists under section 1104(a)(1). In re Sundale, Ltd., 400 B.R. 890, 901 (Bankr. S.D. Fla. 2009). The Court should consider the cumulative totality of the circumstances. See, id. at 912. Factors that courts have used to determine whether a trustee should be appointed under this subsection include (1) the trustworthiness of the debtor; (2) the debtor in possession's past and present performance and prospects for the debtor's rehabilitation; (3) the confidence—or lack thereof—of the business community and of creditors in present management; and (4) the benefits derived by the appointment of a trustee, balanced against the cost of the appointment. Id.

35. All of the factors the Court should consider weigh in favor of appointment of a trustee under section 1104(a)(2). The Debtors are not trustworthy. They have squandered, diverted or through fraud wrongfully obtained substantial sums. The Debtors past and present performance and prospects for the Debtors' rehabilitation similarly supports appointment of a

trustee. The Debtors have terminated operations and, upon information and belief, have no viable means or plans to raise the capital necessary to resume operations. Enright Dec., ¶30. Indeed, in light of the entry of the TRO, the pendency of these bankruptcy cases and the Debtors' prior fraud, it is difficult to envision any lender injecting the funds necessary to enable the Debtors to resume operations and preserve going concern value or reorganization value under current management. Id.

36. The third factor - the lack of confidence in present management – weighs particularly heavily in favor of appointment of a chapter 11 trustee. "Loss of confidence, or extreme acrimony, have each been held by courts to constitute elements relevant to the decision of whether it is in the best interests of creditors and others under section 1104(a)(2) to appoint a trustee." In re Sundale, Ltd., 400 B.R. at 909, citing In re Marvel Entm't Group, 140 F.3d 463 (3d Cir.1998), Official Comm. of Asbestos Appellants v. G-I Holdings, Inc. (In re G–I Holdings, Inc.), 385 F.3d 313, 316 (3d Cir. 2004). Appointment of a trustee is particularly important under this standard where the Debtors would be unable to fulfill fiduciary duties or obtain confirmation of a chapter 11 plan. In re Marvel Enm't Group, 140 F.3d at 475 citing In re The Bible Speaks, 74 B.R. 511, 512 (Bankr. D. Mass. 1987) (appointing trustee when "friction [had] developed between the Debtor and the Creditors' Committee which threatened to engulf this estate in costly and legalistic bickering over the entire range of the reorganization process"), see, In re Sundale, Ltd., 400 B.R. at 912 (appointment of a trustee under section 1104(a)(2) would be warranted if the Debtors become unable to confirm a plan due to rancor and acrimony).

37. Here the Debtors will be unable to fulfill their fiduciary duties and will be unable to confirm a plan under current management. "Fiduciary obligations include the duty of loyalty and good faith which forbid "directors and other business operators from using their position of

trust and control over the rights of other parties to further their own private interest, either by usurping opportunities, holding undisclosed conflicts, or otherwise exploiting their position." In re SunCruz Casinos LLC, 298 B.R. at 830, quoting In re Microwave Prods. of Am., 102 B.R. 666, 672 (Bankr. W.D. Tenn. 1989). "[A] fiduciary—the debtor in possession—is proscribed from acting solely in its self interest to the exclusion of the other interests which the debtor in possession has the fiduciary obligation to protect." In re SunCruz Casinos LLC, 298 B.R. at 830, quoting In re Bellevue Place Assoc., 171 B.R. 615, 624 Bankr. N.D. Ill. 1994). There are significant claims against the Debtors' officers and directors resulting from their breaches of duties of loyalty and good faith. Current management cannot be expected to pursue the Debtors' claims against themselves. Enright Dec., ¶31. White Winston cannot conceive of any facts under which it would trust current management under a plan to continue operating the Debtors, and is not inclined to support such a plan. Id.

38. In short, current management cannot be trusted to go forward and formulate a confirmable plan that is in the best interests of these estates. The harm to creditors arising from the loss of value of the Debtors during disputes about these matters is significant. The Debtors are unlikely to be able to resume operations without the cooperation of White Winston and other creditors. Creditors can maximize the value of the Debtors' business best if the Debtors' assets, including its tradenames, print and digital outlets, are immediately put up for sale in a competitive sale process before the Debtors' advertisers and customers move on to other opportunities. Id. The value of the Debtors' tradenames may wither from disuse if not sold to a viable operator promptly. Id. A trustee should be appointed to remove management – the source of friction blocking creditors from maximizing the value of the Debtors – so that this case can

proceed efficiently and without further delay and the value of the Debtors' assets and business can be salvaged through a competitive sales process as soon as possible.

39. The final factor - the benefits derived by the appointment of a trustee, balanced against the cost of the appointment, also weighs in favor of appointing a trustee. As noted, the benefits of appointment of a trustee are substantial. The costs of appointing a trustee in these cases is minimized by the rapid appointment of a trustee, to avoid squandering resources and incurring costs that will occur if appointment of a trustee is delayed amid ongoing disputes between White Winston and current management.

C. The Court Should Prohibit the Debtors from Using White Winston's Cash Collateral Pursuant to 11 U.S.C. §363(e)

40. 11 U.S.C. §363(c)(2) provides that the Debtors "may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless— (A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." Upon information and belief, the Debtors have no cash that is not White Winston's cash collateral. Accordingly, the Debtors may not use White Winston's cash collateral other than pursuant to 11 U.S.C. §363(c)(2).

41. The Debtors may not use White Winston's cash collateral pursuant to 11 U.S.C. §363(c)(2)(A), as White Winston does not consent to the Debtors' use of the cash collateral – indeed, the Debtors have not even asked White Winston to consent. Similarly, the Debtors may not use cash collateral pursuant to 11 U.S.C. §363(c)(2)(B), as the Court has not entered, any order authorizing the Debtors to use White Winston's cash collateral.

42. 11 U.S.C. §363(e) provides in relevant part that upon White Winston's request, "the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest." White Winston requests that the

Court enter an order prohibiting the Debtors from using cash collateral. White Winston has virtually no information on the Debtors' postpetition activities or intentions regarding the use of cash collateral. The Debtors have the burden of proof on the issue of adequate protection (11 U.S.C. §363(p)(1)), yet have provided neither the Court nor White Winston with any information sufficient to allow for parties to evaluate, let alone for the Court to conclude, that White Winston is adequately protected. At most the Debtors propose adequate protection in the form of postpetition accounts receivable. Yet the Debtors have provided no information that suggests, let alone proves, that they have any realistic prospect of generating any postpetition receivables. The Debtors have provided no business plan to suggest that the dramatic alteration of the Debtors' business – from a print and digital media business to solely a digital business, is viable or can reasonably be expected to produce revenues sufficient to adequately protect White Winston. The risk of continued wrongdoing and diversion of accounts receivable further risks eroding the value of White Winston's interest in the Debtors' assets. The Debtors' prior wrongdoing, and their continued denial that such wrongdoing occurred and caused harm to White Winston, cast serious doubt there are any circumstances under which the Debtors can meet their burden of providing White Winston with adequate protection sufficient to enable them to use cash collateral nonconsensually under 11 U.S.C. §363(c)(2)(B).

CONCLUSION

43. Appointment of a chapter 11 trustee for the Debtors is mandated by 11 U.S.C. §1104(a)(1) for cause. It would insult the integrity of the bankruptcy process to allow fraudsters to remain in control of the Debtors. Appointment of a chapter 11 trustee is warranted as well under 11 U.S.C. §1104(a)(2), as the interests of these estates will benefit by realizing maximum value for the Debtors' assets if management is replaced by an independent, disinterested and

honest fiduciary who can engage in a prompt and competitive sale process for the Debtors' business and assets, and who can pursue claims against the Debtors' insiders to hold them to account for the harm they have caused. The Court should allow this motion and appoint a chapter 11 trustee for the Debtors as soon as possible. The Court should prohibit the Debtors from using White Winston's cash collateral pursuant to 11 U.S.C. §363(e).

44. The undersigned spoke with counsel for the Debtors. The Debtors do not consent to the relief requested in this Motion.

WHEREFORE, White Winston Select Assets Funds, LLC respectfully requests that the Court, upon an emergency hearing of this cause, grant this Motion and appoint a Chapter 11 trustee in each of the Debtors' chapter 11 cases, prohibit the Debtors from using White Winston's cash collateral, and for such other and further relief as the Court deems just and proper.

Respectfully submitted this 13th day of October, 2016.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Motion for the Appointment of a Chapter 11 Trustee* was served on the 13th day of October, 2016, via the Court's CM/ECF system upon Debtors' counsel and registered CM/ECF users in this case.

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