

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:) Case No. 09-10422(KJC)
) (JOINTLY ADMINISTERED)
) Chapter 11
MUZAK HOLDINGS, LLC., et al.,)
) Courtroom 5
) 824 Market Street
Debtors.) Wilmington, Delaware 19801
)
) June 16, 2009
) 1:03 P.M.

TRANSCRIPT OF OMNIBUS HEARING
BEFORE HONORABLE KEVIN J. CAREY
UNITED STATES CHIEF BANKRUPTCY JUDGE

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1 THE COURT: Good afternoon, everyone. Listen, I'm
2 sorry to bring all this high price help into the courtroom, but
3 there were two reasons for that. I know most of the matters
4 had come off.

5 The first was with respect to the -- Number 1 on the
6 agenda in which I entered a bridge order. And in the absence
7 of objection, the relief requested beyond that is appropriate.
8 But because of the way in which that came up, I wanted to at
9 least get to the hearing date and time to make sure there were
10 no objections, no further objections.

11 So, let me ask if anyone cares to be heard in
12 connection with that matter?

13 (No audible response heard)

14 THE COURT: I hear no response. If you have a final
15 order to submit, I will sign it.

16 MR. SUSSBERG: I do, Your Honor. I will pass it up
17 if you don't have an issue with that at the moment.

18 THE COURT: No.

19 MR. SUSSBERG: Thank you.

20 THE COURT: I do not. It was just a process thing,
21 that's all. Thank you.

22 MR. SUSSBERG: And, Your Honor, just to be clear on
23 that, we do appreciate the entry of the bridge order. There
24 was an interpretation of the Code versus the local rule, which
25 we think necessitated the filing and request of the bridge

1 order as almost a belt and suspenders --

2 THE COURT: I think your reading of the Code is
3 correct. So, -- and that's why I entered the order, it was
4 appropriate under the circumstances. We should talk about that
5 at one of our bench and bar meetings.

6 Okay. The only other matter that I did want to
7 discuss was the Fee Review Committee, but tell me where Number
8 4 stands.

9 MR. SUSSBERG: Sure, Your Honor. And just for the
10 record, Joshua Sussberg from Kirkland & Ellis on behalf of the
11 debtors, along with my colleagues, Domenic Pacitti, Mike
12 Yurkewicz from Klehr Harrison. And also in the courtroom today
13 is Michael Zendan, general counsel of Muzak.

14 Your Honor, as you mentioned, Item Number 4 on the
15 agenda is a cash collateral amendment. I think it goes without
16 saying that everyone in the room today is supportive of the
17 debtors' continued use of cash collateral.

18 And the reason for the request today, and the reason
19 that the debtors engaged the lenders in a conversation was
20 because of the original milestone dates that had been included
21 in the cash collateral order that Your Honor had entered
22 several months back.

23 And I think it also goes without saying that we have
24 made the reality in these cases come true. That this truly is
25 not an operational restructuring, but it's simply a balance

1 sheet restructuring. And we're here to restructure
2 approximately \$430 million of debt obligations.

3 And, as no surprise, it's not been easy. And various
4 constituencies have various thoughts and thinking as to how the
5 restructuring should occur, and where value lies, and who
6 should and shouldn't receive certain consideration.

7 And over the last several months, there have been
8 ongoing discussions and, in fact, term sheets being circulated.
9 And all of this, as I understand for Your Honor, is in the
10 background, and we tried not to bring any of our issues to the
11 Court. And, in fact, we've been successful in resolving
12 everything on a consensual basis. But the debtor has now,
13 along with the Committee, reviewed these proposals and believes
14 the time to act is upon us and will be moving forward very
15 quickly in the plan process.

16 But with that, it necessitated an extension of time.
17 And the lenders were amenable to that extension.

18 So, the amendment, which is fairly straightforward,
19 results in a 60-day extension of the milestone deadlines. So,
20 that the filing of a plan and disclosure statement is now moved
21 to August 10th. A disclosure statement order will be presented
22 to Your Honor on September 21st, or as soon thereafter as the
23 schedule may concur.

24 And, in addition, November 16th will be the final
25 milestone in these cases for the entry of a confirmation

1 order.

2 In connection with the extension, we also will enter
3 into an extended budget under the cash collateral order. And
4 that needs to be agreed to by July 1st as between the debtors
5 and the required lenders, and that is in process.

6 And in addition, the debtors will be filing a motion
7 before Your Honor to seek authority at the debtors' discretion
8 to pay certain work fees and diligence fees in connection with
9 our efforts to procure exit financing in compliance with
10 Paragraph 11(e) of the cash collateral order, as Your Honor may
11 recall, it included a provision that required the debtors to
12 use reasonable efforts to seek financing that would pay the
13 required lenders -- excuse me. All lenders in full, in cash on
14 the effective date of a plan. And those efforts are underway,
15 and we are continuing to do everything in our power to see if
16 that can become a reality.

17 And finally I will note that the amendment also
18 includes a provision that states to the extent a plan and
19 disclosure statement is not filed on or before August 10th,
20 2009, the debtors are required to make a payment of \$5 million,
21 which will be a principal payment, to the lenders. And at the
22 time of that payment, all of the milestone deadlines will be
23 extended an additional 30 days.

24 Suffice it to say the debtors are extremely
25 motivated, as I know the Committee is, as well. And certainly

1 all parties in interest, including the senior noteholder ad hoc
2 committee, SilverPoint and the banks, to move this process
3 along quickly. And we are going to do everything in our
4 power --

5 (Announcement on Intercom system)

6 THE COURT: Go off the record.

7 (Off the record/On the record)

8 THE COURT: You may continue.

9 MR. SUSSBERG: As I was mentioning, Your Honor, it's
10 a 30-day extension that requires a \$5 million payment. And we
11 are extremely motivated to ensure that plan is on file within
12 the current time frames so that we can avoid making that
13 payment and keeping that cash on hand and using it to
14 effectuate our plan.

15 As I mentioned, there had been no objections to this.
16 Parties are all of the like mindset that the company needs cash
17 to operate and a cash collateral fight at this point would be
18 unnecessary and an unnecessary use of estate funds. And we
19 don't think anyone is prejudiced by this relief, and it's
20 certainly within the debtors' business judgment.

21 So, with that, I'm happy to answer any questions Your
22 Honor may have.

23 THE COURT: I do not. But let me ask if anyone else
24 wishes to be heard in connection with this matter?

25 (No audible response heard)

1 THE COURT: I hear no response.

2 MR. SUSSBERG: Thank you. And, Your Honor, that
3 leaves the status conference on the fee procedures order.

4 THE COURT: Do you have a form of order for me?

5 MR. SUSSBERG: I do, Your Honor.

6 THE COURT: Bring it up.

7 MR. SUSSBERG: May I pass it up?

8 THE COURT: Yes, thank you. Thank you.

9 (Pause)

10 MR. SUSSBERG: Your Honor, with these fee
11 procedures, we certainly do recognize that this is something
12 new in the District of Delaware.

13 But as we've mentioned before when we've discussed
14 the fee procedures, we have, in fact, utilized similar, if not
15 identical procedures, in other proceedings, including the
16 Chapter 11 case of Calpine in the Southern District of New
17 York, and that's what we used to model these procedures.

18 They have gone back and forth several iterations as
19 between the debtors, the Committee, and the United States
20 Trustee. And I've reconfirmed today that all three of those
21 parties, who will designate a member to be on the Committee,
22 have approved of these procedures.

23 So, Your Honor, I am happy to answer any questions
24 you may have, as I know you have a few. And hopefully we can
25 address those.

1 THE COURT: Yes. My first question is with respect
2 to the procedures -- proposed interim compensation procedures
3 on Page 3, Romanette viii.

4 MR. SUSSBERG: No less than seven days?

5 THE COURT: Yes. The -- at least as I've had it in
6 my experience with the fee auditor, fee auditors completed a
7 review, send out comments, comments have come back to the fee
8 auditor, and then the fee auditor has made a final comment
9 after that. And then it comes to the Court -- all of that
10 comes to the Court in the fee binders.

11 It seems to me that under this procedure, I wouldn't
12 have had the benefit of the back and forth prior to the time of
13 hearing, if I'm reading it correctly.

14 MR. SUSSBERG: And I actually think, Your Honor, and
15 we can certainly address that if it's an issue. But that was
16 an intended result. What we were trying to do with these
17 procedures was minimize the back and forth that, at least in
18 our experience, has resulted in unnecessary expenses for the
19 estate.

20 So, we've tried to make this as informal as possible
21 and have -- engaging of conversations between the Fee Review
22 Committee and the professionals, and see if you can even broker
23 and resolve issues on a consensual basis, rather than resorting
24 to formal writing.

25 THE COURT: Well, and I don't think that's a bad

1 thing necessarily.

2 But let me put you in my shoes for a minute. What
3 that does is, as I approach the hearing, while we'll conduct
4 whatever review we conduct, it doesn't tell me what's been
5 resolved.

6 And for reasons which are obvious, I would normally
7 focus more heavily on those things which were not resolved.
8 So, tell me how we make the use of the Court's time efficient?

9 MR. SUSSBERG: Sure. And I think that's a difference
10 of a nuance point, and I think we can address that. I think to
11 the extent that there is a back and forth, and this is
12 obviously subject to confirm with the Committee and the U.S.
13 Trustee. But to the extent there is, in fact, a discussion and
14 potentially concessions provided by one of the professionals in
15 response to a question, we can certainly document that and
16 provide that with a report to the Court so that you see what
17 has transpired over the course of those discussions.

18 THE COURT: Well, if you could deliver that at the
19 time of the hearing binder, that probably would give us enough
20 time.

21 MR. SUSSBERG: I would think that that would be okay
22 with everyone but --

23 MR. SAVIN: That's certainly -- that's certainly okay
24 with the Committee, Your Honor. And obviously, as counsel
25 stated, the purpose of this was to try to have the Fee

1 Committee work a little bit like the Office of the United
2 States Trustee works in terms of, you know, calling
3 professionals to the extent there's an issue to working them
4 out.

5 And obviously it's intended --

6 THE COURT: Now, wait. Did you just say you wanted
7 to model a process after what the government had suggested?

8 (Laughter)

9 MR. SAVIN: I did, Your Honor.

10 THE COURT: I just wanted to make sure I heard that
11 correctly.

12 MR. SAVIN: I'm on record as such, Your Honor.

13 THE COURT: Okay.

14 MR. SAVIN: And the other part of the process is to
15 the extent that there is open issues that haven't resolved,
16 which Your Honor said that's what you would focus on, obviously
17 the intent is to the extent that the Fee Committee has an open
18 issue that is not resolved with a professional, it would be
19 presented to the Court as an open issue that the Fee Committee
20 would express its view on, and the professional obviously could
21 respond. And that's -- and Your Honor would be made aware of
22 that.

23 THE COURT: Okay.

24 MR. SAVIN: And that's always what was intended by
25 these procedures.

1 THE COURT: All right. Thank you.

2 MR. SUSSBERG: So, Your Honor, I think we can add
3 some clarifying language in one of these items to memorialize
4 exactly what Your Honor has stated.

5 THE COURT: Okay. Bear with me for a moment.

6 (Pause)

7 THE COURT: I guess that could be covered in -- on
8 the next page in Romanette xi where it says, "The FRC may file
9 a statement." I guess maybe as -- what we should provide --
10 and, again, I'll leave it to the parties to discuss for final
11 suggestion. But maybe that it should provide that to the
12 extent this dispute isn't resolved, it should file -- it must
13 file a statement, it will file a statement.

14 And if that comes in at the time of the hearing
15 binder, that should give me sufficient time to focus on what I
16 need to focus on.

17 MR. SUSSBERG: That makes sense, Your Honor.

18 THE COURT: Okay. Now, looking down -- farther down
19 that same page, in Romanette xv and xvi, while the Committee
20 members aren't to be compensated for their work, both of those
21 provisions permit the use of the members' own professionals, or
22 -- but specifically the debtors' or Committee's professionals,
23 to assist them in doing their work.

24 Now, that will involve some cost to the estate. And
25 I just wanted to note that as a, you know, possible concern.

1 MR. SUSSBERG: Well, Your Honor, and I think we can
2 address that. The intent there was to state that debtor
3 professionals and Committee professionals can help facilitate
4 the filing of court documents or the transmission of reports to
5 Your Honor such that a third party professional doesn't need to
6 be engaged for that purpose. I don't think it was ever the
7 intent that the debtors' professionals would be involved in a
8 review with the Committee member that was appointed by the
9 debtors.

10 THE COURT: Okay. Well, with that explanation, I'm
11 satisfied.

12 MR. KLAUDER: Your Honor, just to -- David Klauder
13 for the United States Trustee.

14 Just to add to that. I always -- since I'll probably
15 be the one sitting on the Committee for the U.S. Trustee, I
16 always envision that to the extent pleadings were going to be
17 required, and reports would be something that I would probably
18 be drafting, but Mr. Sussberg is right. We would submit them
19 probably to the debtors to put together into the binders and
20 get them over to Your Honor. That's kind of the way I had
21 envisioned it would happen.

22 THE COURT: Okay. Thank you. Well, that -- those
23 were the questions I had, and I'm content with the resolution
24 that's been discussed.

25 When they come in revised, I'm content to sign the

1 order and we'll see how it goes.

2 MR. SUSSBERG: Great. Thank you, Your Honor. We
3 will make that change expeditiously and we'll get an order to
4 your chambers.

5 THE COURT: Okay. Anything further for today?

6 MR. SUSSBERG: That is all that is on the agenda for
7 today. We certainly do appreciate Your Honor's time, and
8 appreciate you entering the other orders prior to the hearing.

9 THE COURT: And I thank you for coming in today.

10 MR. SUSSBERG: Thank you, Your Honor.

11 THE COURT: That concludes this hearing. Court will
12 stand in recess.

13 MR. SUSSBERG: Thank you.

14 (Whereupon, at 1:18, the hearing was adjourned.)

15

16 CERTIFICATE

17

18 I certify that the foregoing is a correct transcript from
19 the electronic sound recording of the proceedings in the
20 above-entitled matter.

21

22

23 /s/ Karen Hartmann AAERT CET**D0475 Date: September 8, 2009

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UNITED STATES BANKRUPTCY COURT
District of Delaware

In Re:

Muzak Holdings LLC
3318 Lakemont Blvd.
Fort Mill, SC 29708

Chapter: 11

EIN: 04-3433730
Musi-Cal, Audio Environments
Osborn Sound & Communications of GA
ACN Holdings, LLC
American Music/American Music Network
On Hold Communications

Case No.: 09-10422-KJC

NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND REDACTION


A transcript of the proceeding held on 6/16/2009 was filed on 9/14/2009 . The following deadlines apply:

The parties have seven days to file with the court a *Notice of Intent to Request Redaction* of this transcript. The deadline for filing a *request for redaction* is 10/5/2009 .

If a request for redaction is filed, the redacted transcript is due 10/15/2009 .

If no such notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is 12/14/2009 unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber (see docket for Transcriber's information) or you may view the document at the clerk's office public terminal.



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