affirmed on appeal and remanded for further proceedings 08/24/01

not intended for publication

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

IN RE

RETIREMENT GROUP, L.L.C., **Case No. 99-11347**

Debtor. **Chapter 11**

RETIREMENT GROUP, L.L.C.,

Plaintiff,

v. **Adv. Pro. No. 99-5409**

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION, and RUBEN KING-SHAW, JR., DIRECTOR, STATE OF FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION,

Defendants.

MEMORANDUM OPINION AND ORDER RE
MOTION TO DISMISS IN RESPONSE TO COMPLAINT FOR TURNOVER
AND OTHER RELIEF

The State of Florida, Agency for Health Care Administration, has moved to dismiss the "Plaintiff's First Amended Complaint for Turnover and Other Relief" for lack of jurisdiction. This Motion was originally filed on December 22, 1999, and amended on June 6, 2000, to include Ruben J. King-Shaw, Jr., Director of Florida's Agency for Health Care Administration. as an additional moving party. In oral argument before the Court on June 6, 2000, the Plaintiff consented to the dismissal of the State of Florida, Agency for Health Care Administration, (hereinafter "Agency"), as a relief Defendant, leaving only Ruben J. King-Shaw, Jr., (hereinafter "King-Shaw"), as a relief Defendant.

The Court conducted a hearing on the Defendants' "Motion to Dismiss" on June 6, 2000. FED. R. BANKR. P. 9014. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the hearing and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

I. FINDINGS OF FACT

In their "Amended Complaint for Turnover," the Plaintiffs seek prospective injunctive relief against King-Shaw with regard to the Certificate of Need for the Magnolia Manor Nursing Home to prevent a continuing violation of 11 U.S.C. § 362, the Order for Relief entered by this Court, and the Order of Eviction. Since September 7, 1999, King-Shaw and his subordinates have continued to assert that the Plaintiff may not obtain a license to operate the Magnolia Manor facility because Magnolia Manor does not possess a Certificate of Need based on the assertion that Bibb Health and Rehabilitation, ("Bibb") and Sun Healthcare Group, Inc., ("Sun"), surrendered the license for the Magnolia Manor facility to King-Shaw or his subordinates on or about that date. On June 12, 2000, this Court granted the Plaintiff's "Application for Preliminary Injunction" and enjoined the State of Florida, Agency for Health Care Administration, and Ruben J. King-Shaw, Jr., as Director of the Agency for Health Care Administration, from refusing to process the licensure applications, and any supplements and amendments thereto, filed by the Plaintiff in this case, Retirement Group, L.L.C., or anyone on its behalf, with respect to the Magnolia Manor Nursing Home, in the ordinary course of business, on account of the assertion that the Magnolia Manor Nursing Home does not have the appropriate, valid Certificate of Need, #4412.

II. CONCLUSIONS OF LAW

While the Plaintiff acknowledges that the Eleventh Amendment to the United States Constitution, as recently interpreted by the Supreme Court of the United States, bars the particular action against the State of Florida,[1] the Plaintiff alleges that the doctrine set forth in *Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908), allows the complaint to go forward against King-Shaw to allow prospective relief from a continuing violation of federal law and the orders of this federal Court issued pursuant to, and in furtherance of, that law. The Defendants, on the other hand, allege that the *Ex Parte Young* doctrine does not grant the Court jurisdiction over King-Shaw.

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[1]Because the Plaintiffs consented to the dismissal of the State of Florida, Agency for Health Care Administration, as a relief defendant at the June 6, 2000, hearing, the Court will only discuss the "Motion to Dismiss" in this Memorandum Opinion and Order as it relates to King-Shaw.

The Plaintiff initiated this adversary proceeding to prevent King-Shaw and his subordinates from continuing to assert control over Magnolia Manor's Certificate of Need, such that the Plaintiff and its management company may not obtain a license to operate Magnolia Manor as a nursing home facility. The Plaintiff does not seek compensatory relief from King-Shaw, nor does Plaintiff seek punitive relief in order to deter King-Shaw and his subordinates in their actions in the future. Rather, the Plaintiff seeks only limited, prospective, injunctive relief: that King-Shaw and his subordinates be enjoined from refusing to license Magnolia Manor under the Certificate of Need it possessed on September 1, 1999, on account of the void and contemptuous actions of Bibb and Sun in violation of 11 U.S.C. § 362, the Order for Relief and the Eviction Order.

The recent decision by the United States Supreme Court in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 116 S.Ct. 1114, 134 L.#d.2d 252 (1996), held that direct actions against a State or a State agency were prohibited by the Eleventh Amendment. *Id.* at 53. In so holding, however, the U.S. Supreme Court affirmed that actions against state officials for continuing violations of federal law could be brought under the *Ex Parte Young* doctrine. *Seminole*, 517 U.S. at 73. In the case of *Green v. Mansour*, 474 U.S. 64, 106 S.Ct. 423 (1985), the Supreme Court articulated that the *Ex Parte Young* doctrine states "that the Eleventh Amendment does not prevent federal courts from granting prospective injunctive relief to prevent a continuing violation of federal law." *Mansour*, 474 U.S. at 66. Chief Justice Rehnquist, writing for the majority in *Mansour*, noted that "the availability of prospective relief of the sort awarded in *Ex Parte Young* gives life to the Supremacy Clause. Remedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law." *Mansour*, 474 U.S. at 68.

Without some sort of resort to federal courts, individuals such as the Plaintiff would be unable to enforce federal law and federal court orders, with respect to state officials, except in the state courts of those state officials. There would be no federal remedy for violations of federal law by state officials and federal judges would be dependent upon the good graces of state court judges for the enforcement of their own orders.

The relief sought herein by the Plaintiff is exactly that as contemplated by *Ex Parte Young* and as affirmed in *Mansour*. Notably, the Plaintiffs here do not seek compensatory or deterrent relief, or

retrospective relief; rather, the Plaintiff seeks only limited prospective relief, prohibiting King-Shaw from taking actions which are in violation of the Order for Relief and the Eviction Order.

The decision in *Seminole* expressly affirmed *Ex Parte Young*, noting that "an individual can bring suit against a state officer in order to insure that the officer's conduct is in compliance with federal law." *Seminole*, 517 U.S. at 71, Note 14. This is precisely what the Plaintiff seeks in this action: to bring the state official's conduct into compliance with federal bankruptcy law, and with this Court's orders issued pursuant to and in furtherance of those laws.

The United States Supreme Court has recently held that the Plaintiff need only plead that which is sufficient to invoke the *Ex Parte Young* doctrine to allow a suit against a state official to go forward. "An allegation of an ongoing violation of federal law where the requested relief is prospective is ordinarily sufficient to invoke the *Young* fiction." *Idaho v. Couer d'Alene Tribe of Idaho*, 571 U.S. 261, 281, 117 S.Ct. 2028 (1997). This is a burden the Plaintiff must meet in order to defeat a "Motion to Dismiss" by a state official under the Eleventh Amendment. The Plaintiff, in the amended complaint, has met that burden. The Plaintiff has alleged an ongoing violation of federal law and has requested only prospective injunctive relief with respect to King-Shaw. Since the Plaintiff has made sufficient allegations to fall within the *Ex Parte Young* doctrine, this Court must allow the action against King-Shaw to go forward.

Finally, King-Shaw asserts that the amended complaint is barred from proceeding in federal bankruptcy court because there is an effective remedy available in the courts of the State of Florida. However, simply because the State of Florida has waived sovereign immunity with regard to suits against it in Florida courts does not deprive this Court of jurisdiction to hear this matter. *Ex Parte Young* has been applied "even if there is a prompt and effective remedy in state court." *Couer d'Alene Tribe of Idaho*, 521 U.S. at 274. As the Supreme Court noted, *Ex Parte Young* is available to "further the federal interest in vindicating federal law." *Id.* In the case at bar, the Court has an important federal interest in vindicating not only the federal Bankruptcy Code, but also this federal Court's orders.

For the reasons stated in this Memorandum Opinion and Order, the Court finds that the Defendants' "Motion to Dismiss" as it relates to King-Shaw should be denied. An order will be entered accordingly.

III. ORDER

It is therefore **ORDERED** that the Motion to Dismiss in Response to the Complaint for Turnover and Other Relief is **GRANTED as to the State of Florida, Agency for Health Care Administration.**

It is **FURTHER ORDERED** that the "Motion to Dismiss in Response to the Complaint for Turnover and Other Relief" is **DENIED as it relates to Ruben J. King-Shaw, Jr., Director, State of Florida, Agency for Health Care Administration.**

IT IS SO ORDERED.

By the Court,

G. Harvey Boswell
United States Bankruptcy Judge

Date: July 13, 2000