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In re LHC, LLC

United States Bankruptcy Court, N.D. Illinois, Eastern Division - July 16, 2013 - Slip Copy - 2013 WL 3760109

Debtor is a not-for-profit enterprise that owns and operates an ice-skating rink. The Rink sells ice time to various skating organizations in Illinois as well as to the general public. The sole member of the Debtor and largest customer of the Rink is the Leafs Hockey Club (the "Club"), an amateur hockey organization. Although the Debtor is a taxable limited liability company, its income is passed through to the Club. The Club does not pay tax on the income received from the Debtor because the Debtor is a non-profit company. The Debtor owes \$20 million to bondholders represented by Wells Fargo, the indenture trustee for the bondholders. The Club has guaranteed repayment of that debt.

When the owner of a Chapter 11 debtor is also the chief customer of that debtor, does the owner's dual role automatically constitute "cause" for appointing a Chapter 11 trustee under 11 U.S.C. § 1104(a)(1)?

Wells Fargo argues that under § 1104(a)(1) the Court is required as a matter of law to appoint a Chapter 11 trustee where the Club is both owner and customer of the Debtor, because it must be presumed as a matter of law that the Club will always elevate its interests as customer over its interests as owner of the Debtor.

The court concluded, based on the totality of the evidence, that Wells Fargo had not demonstrated by clear and convincing evidence that a Chapter 11 trustee should be appointed under § 1104(a)(1) or (a)(2). Wells Fargo has not demonstrated evidence of "cause" including fraud, gross mismanagement, or dishonesty on the part of the Debtor, or that it would be in the interests of creditors, equity security holders, and other interests of the estate to appoint a trustee.