

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re:)
)
AUTO SALES & SERVICE, INC.,)
)
Debtor.)

Chapter 11
Case No. 10-14528-JNF

In re:)
)
GENERAL TRADING COMPANY,)
)
Debtor.)

Chapter 11
Case No. 10-14532-JNF

In re:)
)
FRANK SAWYER CORPORATION,)
)
Debtor.)

Chapter 11
Case No. 10-14533-JNF

In re:)
)
100 STUART STREET LLC,)
)
Debtor.)

Chapter 11
Case No. 10-14534-JNF

In re:)
)
SW BOSTON HOTEL VENTURE LLC,)
)
Debtor.)

Chapter 11
Case No. 10-14535-JNF

**MOTION BY DEBTORS AND DEBTORS-IN-POSSESSION FOR ENTRY OF
ORDER DIRECTING JOINT ADMINISTRATION OF CHAPTER 11 CASES**
(Emergency Hearing Requested)

Auto Sales & Service, Inc., General Trading Company, Frank Sawyer Corporation, 100
Stuart Street LLC and SW Boston Hotel Venture LLC (collectively the “Debtors”), hereby move
this Court for the entry of an order pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy
Procedure (“FRBP”) and Rule 1015-1(a) of the Massachusetts Local Bankruptcy Rules

(“MLBR”) directing the joint administration of their Chapter 11 cases. The requested joint administration would be for procedural purposes only. The Debtors are affiliates as defined under 11 U.S.C. §101, *et seq.* (the “Bankruptcy Code”). Approval of this motion will dispense with otherwise unnecessary and potentially duplicative filings and will ease the administrative burden on the Court and all interested parties. The Debtors request that this Court designate the case captioned as *In re SW Boston Hotel Venture LLC* (Chapter 11 Case No. 10- 14535-JNF) as the lead case in these bankruptcy proceedings. In further support of this motion, the Debtors state as follows:

BACKGROUND

1. On April 28, 2010 (the “Petition Date”), the Debtors filed voluntary petitions under Chapter 11 of 11 U.S.C. § 101, *et seq.* (“Bankruptcy Code”) with this Court.

2. The Debtors continue to operate as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code and no trustee or committee has been appointed in these cases.

A. The Project.

3. The W Boston Hotel and Residences project (the “Project”) opened on October 29, 2009, and comprises a 350,650 square foot, 26-story building located at 100 Stuart Street in the heart of Boston’s Theatre District. The Project contains the 235–room, four-star Hotel, the 122 condominium units, and a two-level underground parking garage with capacity for 142 vehicles (the “Garage”).

4. The Project was designed by the internationally-known architectural firm of William Rawn and Associates Architects, together with the architect of record TRO/Jung Brannen, Inc.

5. The Hotel is branded as a “W” Hotel – the only W Hotel in New England – and serves Boston’s many national and international business travelers and tourists. The Hotel is operated by Starwood Hotels and Resorts Worldwide, Inc. (“Starwood”) through its affiliate, W Hotel Management, Inc. (the “Hotel Operator”). The Hotel includes a retail store operated by Wink Retail Group, Inc., an affiliate of Starwood, a signature restaurant operated by Cullinary Concepts (Boston) LLC (the “Restaurant Operator”) at a prominent location along Tremont Street, and will also include a second floor spa with a first floor entrance and related retail space on the Stuart Street side of the Project (the “Spa”). The Hotel is also planned to include a below-grade theme bar/lounge with an entrance adjacent to the spa entrance on Stuart Street (the “Theme Lounge”). The Spa is in the final stages of construction and the Theme Lounge is planned to open in the fall. The Hotel Operator will operate the Spa and the Theme Lounge.

6. The Hotel restaurant, Market by Jean-Georges Vongrichten, is a 6,000 square foot, first-class, full-service restaurant that occupies the entire first floor of the Hotel along Tremont Street. Market is an important amenity for the city’s visitors and theatre-goers.

7. The condominium units consist of 122 studio, one (1), two (2) or three (3) bedroom luxury condominium units. The list prices for the condominium units range from \$600,000 to over \$4,000,000. As of the Petition Date, SW Boston had sold twelve (12) of the condominium units and had entered into binding purchase and sale contracts for eleven (11) units.¹

¹ Details regarding the pending sales are more fully described in the *Debtors’ Motion For Authority to (A) Assume And Consummate Pending Purchase And Sale Agreements For Condominium Units; (B) Make And Consummate New Sales For Condominium Units; And (C) For Related Relief*, which has been filed contemporaneously with this motion.

B. The Debtors.

8. SW Boston is a Delaware limited liability company formed by a local family, descendants of the late taxicab/parking businessman Frank Sawyer, to develop and own the Project.

9. Stuart Street is a Delaware limited liability company that owns 100% of the membership interests in SW Boston. Stuart Street is a single purpose entity formed to own the membership interests in SW Boston.

10. Sawyer Corporation is a Massachusetts corporation that owns approximately sixty-five percent (65%) of Stuart Street. Sawyer Corporation manages Stuart Street.

11. General Trading is a Massachusetts corporation all of whose stock is owned by the Trust. General Trading does business as Sawyer Enterprises, and provides administrative services for the Debtors as well as various non-debtor affiliates of the Debtors. The Chief Executive Officer of General Trading is Carol Sawyer Parks, and the Vice President in charge of overseeing the development and operation of the Project is John P. Connolly.

12. Auto Sales is a Massachusetts corporation.

C. Management of The Hotel And Parking Garage.

13. The Hotel is managed and operated by the Hotel Operator pursuant to a management contract with SW Boston dated August 23, 2005, as amended (the "Hotel Contract"). Pursuant to the Hotel Contract, the Spa and the Theme Lounge will also be managed and operated by Starwood.

14. Starwood is one of the nation's premier hotel operators. Starwood operates the Westin, St. Regis, and Le Meridian families of hotels, as well as hotel properties operating under the Sheraton and Sherwood banners and 28 first-class hotels carrying the "W" brand. Boston has

one of the largest concentrations of Starwood-affiliated hotels in the country, including the Westin Copley Square hotel, Westin Convention Center hotel, and Sheraton hotels, as well as numerous hotels outside of Boston proper.

15. Under the Hotel Contract, the Hotel's revenue (the "Hotel Revenue") is maintained in operating accounts in the name of SW Boston from which the expenses of operating the Hotel, including Starwood's management fee, are paid by Starwood. The employees of the Hotel are employees of Starwood. Starwood disburses to SW Boston the Hotel revenue remaining after the payment of the operating expenses of the Hotel. Pursuant to the Hotel Contract, SW Boston and the Hotel Operator agreed to an annual operating plan prior to the Petition Date, and the Hotel is operating in accordance with that plan.

16. The Garage is managed and operated by Ultimate Parking, LLC ("Ultimate") pursuant to a contract with SW Boston dated September 30, 2009, as amended (the "Garage Contract").

17. Under the Garage Contract, the Garage's revenue (the "Garage Revenue") is maintained in an operating account in the name of SW Boston from which the expenses of operating the Garage, including Ultimate's management fee, are paid by Ultimate. The employees of the Garage are employees of Ultimate. Ultimate disburses to SW Boston the Garage revenue remaining after the payment of the operating expenses of the Garage. Pursuant to the Garage Contract, SW Boston and Ultimate agreed to an annual operating plan prior to the Petition Date, and the Garage is operating in accordance with that plan.

D. Events Precipitating The Bankruptcy Filings.

18. The Hotel (including the restaurant) and the Garage opened on October 29, 2009, and have operated at or better than projected. Construction of a portion of the condominium units was completed and closings on those floors commenced immediately. Construction of the remaining floors of the condominium units was completed in January 2010. Sales of the condominium units, however, have been slower than initially projected at the time of the closing of the senior loan on the Project (January 2008) due largely to the nearly unprecedented global economic crisis, the near-collapse of the national capital markets, and the accompanying softening of the residential real estate market.

19. Prior to the Petition Date, SW Boston had extensive discussions with The Prudential Insurance Company of America, on behalf of and solely for the benefit of, and with its liability limited to the assets of, its insurance company separate account, PRISA (“Prudential”) the senior lender on the construction loan for the Project (the “Senior Loan”) regarding the restructuring of the Senior Loan to reflect the dramatic downturn in the global economy, the near collapse of the national and international capital markets for commercial real estate and the dramatic downturn in the local real estate market. Prudential declined to restructure its loan on terms acceptable to the Debtor, thereby exposing the Debtors’ bank accounts and assets to seizure, forcing the Debtors to file these bankruptcy proceedings in order to preserve the value of their assets and their opportunity to reorganize and restructure the Senior Loan.

RELIEF REQUESTED

20. Federal Rule of Bankruptcy Procedure 1015(b) provides that if two or more petitions are pending in the same court by or against a debtor and an affiliate, “the court may order a joint administration of the estates.”

21. MLBR 1015-1(a) provides that “the court shall grant the motion for joint administration if it is likely to ease the administrative burden on the parties and the court.”

22. The Debtors are all affiliates and the filing of each of the bankruptcy cases was caused by the dispute over the Project.

23. Joint administration of the Debtors’ cases is appropriate. The Debtors expect to file notices, applications, motions, and other pleadings and orders that are applicable to all Debtors. Joint administration will permit all parties in interest to include all of the Debtors’ respective cases in a single caption on the documents that will be filed and served in these cases. Joint administration will also enable parties in interest in each case to remain apprised of the various matters before the Court in all of the cases and will enable all of the Debtors to utilize a single creditor service list, eliminating duplication.

24. Joint administration will permit the Clerk of the Court to utilize a single general docket for these cases and combine notices to creditors of all of the Debtors’ respective estates and other parties in interest. Joint administration will simplify the supervision of the administrative aspects of the Chapter 11 Cases by the Court and the Office of the United States Trustee.

25. The entry of an order of joint administration will significantly reduce the number of pleadings that otherwise would be filed with the Clerk of this Court, render the completion of various administrative tasks less costly, and minimize the number of unnecessary delays.

26. The Debtors are not aware of any facts that would give rise to actual or potential conflicts of interest caused by joint administration. The Debtors are not seeking substantive consolidation of the Chapter 11 cases through this motion. The rights of the creditors of each of

the Debtors will not be adversely affected nor prejudiced by the entry of an order directing the joint administration of these cases.

27. To the extent that proofs of claim are required to be filed, each creditor will be entitled, and required, to file a claim against the particular estate that is indebted to such creditor (unless substantive consolidation is otherwise requested and granted). Should this Motion be allowed, each of the Debtors will keep separate and account for the assets and liabilities of each of their respective estates.

28. For all of the foregoing reasons, the Debtors respectfully request that the Court enter an Order providing for the joint administration of the Debtors' cases. The Debtors believe that joint administration of the respective Debtors' estates is warranted and will ease the administrative burden for the Court and the parties.

NOTICE

29. The Debtors have served this Motion by this Court's ECF System, overnight mail, facsimile or electronic mail, upon (a) all known secured creditors, (b) taxing authorities, (c) the 20 largest unsecured creditors, (d) the Office of the United States Trustee, and (e) all parties who have filed a notice of appearance in this case. In light of the relief requested herein, the Debtors submit that no other or further notice is required.

WHEREFORE, the Debtors respectfully request the entry of an order, substantially in the form of the attached order: (a) authorizing the joint administration of the Debtors' Chapter 11 cases, (b) designating Jewelers' Chapter 11 case (*In re SW Boston Hotel Venture LLC* 10-14535-JNF) as the lead case, and (c) granting such other and further relief as the Court deems appropriate.

Respectfully submitted,

AUTO SALES & SERVICE, INC., GENERAL
TRADING COMPANY, FRANK SAWYER
CORPORATION, 100 STUART STREET LLC and
SW BOSTON HOTEL VENTURE LLC

By their proposed counsel,

/s/ Harold B. Murphy

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Dated: May 3, 2010

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EXHIBIT A TO

**MOTION BY DEBTORS AND
DEBTORS-IN-POSSESSION FOR ENTRY OF ORDER
DIRECTING JOINT ADMINISTRATION OF CHAPTER 11 CASES**

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION**

In re:)	
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)	Case No. 10-14528-JNF
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SW BOSTON HOTEL VENTURE LLC,)	Chapter 11
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**ORDER GRANTING MOTION BY DEBTORS AND
DEBTORS-IN-POSSESSION FOR ENTRY OF ORDER
DIRECTING JOINT ADMINISTRATION OF CHAPTER 11 CASES**

Auto Sales & Service, Inc., General Trading Company, Frank Sawyer Corporation, 100 Stuart Street LLC and SW Boston Hotel Venture LLC (collectively the “Debtors”) having filed the *Motion by Debtors and Debtors-in-Possession For Entry of*

Order Directing Joint Administration of Chapter 11 Cases (the “Motion for Joint Administration”) seeking entry of an order directing the joint administration of the above captioned cases; it appearing that notice of the Motion for Joint Administration was sufficient under the circumstances; and after due deliberation and sufficient cause therefore,

THIS COURT HEREBY FINDS THAT:

- A. Capitalized terms not otherwise defined in this Order shall have the respective meanings attributed to such terms in the Motion for Joint Administration.
- B. This Court has jurisdiction over the Debtors’ bankruptcy cases pursuant to 28 U.S.C. §§ 1334(a) and 157(b)(1). Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
- C. Notice of the Motion for Joint Administration was appropriate given the circumstances.
- D. The Debtors are seeking the joint administration of their respective cases for procedural purposes only. The Debtors are not seeking substantive consolidation of the Chapter 11 cases at this time.
- E. The joint administration of the Debtors’ bankruptcy cases is likely to ease the administrative burden on the parties and the court.
- F. No party will be prejudiced by this Order.
- G. Good and sufficient cause exists for the entry of this Order.

NOW THEREFORE, taking into consideration the foregoing findings and all of the evidence before the Court, it is HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Motion for Joint Administration is hereby granted. The Debtors' bankruptcy cases shall be jointly administered for procedural purposes only.
2. Barring further order of the Court and to the extent that proofs of claim are required to be filed, each creditor must file a claim against the particular estate that is indebted to such creditor.
3. *In re SW Boston Hotel Ventures LLC*, Chapter 11 Case No. 10-14535-JNF is designated as the lead case in the jointly administered bankruptcy proceedings.

Dated: _____, 2010

Joan N. Feeney,
United States Bankruptcy Judge

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