

STATE OF NEW YORK
SURROGATE’S COURT: COUNTY OF MONROE

IN THE MATTER OF THE APPLICATION OF

THOMAS F. BONADIO,
AS CO-EXECUTOR OF THE ESTATE OF

ANTHONY J. COSTELLO,

DECEASED.

AFFIDAVIT

FILE No. 2016-787/F

FOR ADVICE AND DIRECTION PURSUANT TO
SURROGATE’S COURT PROCEDURE ACT §2107 AND §2102(6)

STATE OF NEW YORK)
COUNTY OF MONROE) ^{ss}

I, LYNETTE COSTELLO WARD, am making this affidavit in full and unequivocal support of the Petition of Thomas F. Bonadio dated July 31, 2017 (the “Petition”).

1. I am one of Anthony Costello’s four children and a remainderperson of one of the trusts established under his Will (identified in the Will as “Trust B”).

2. The discussion in the Petition about my father’s enterprises--the Clinton Crossings complex, The Reserve, CityGate project and the airport operation--is accurate. I wish to offer only a few comments. First, each of these enterprises is of a different type of business operation. Clinton Crossings is a medical office complex; The Reserve is a residential housing development (single family and townhouses); CityGate is a retail project with one restaurant and a possible hotel or motel component; and the airport operation provides various services to aircraft (for example, fueling, de-icing and chartering). The enterprises also differ in scale (with

Clinton Crossings the largest) and degree of completion (Clinton Crossings and the airport operation are mature while The Reserve and CityGate are still in a “build out” phase).

3. As detailed in Exhibit C to the Petition, my father created various entities, primarily limited liability companies (LLCs) and Subchapter S Corporations. The entities, particularly the LLCs, generally were named after family members. To avoid confusion, I will discuss the enterprises without relating any particular LLC or S Corporation to one of enterprises.

4. The Petition seeks (a) direction as to the validity of the direction under my father’s Will that business matters be under the sole and exclusive control of my brother, Brett Costello, (b) authority for Thomas F. Bonadio to assume control of my father’s business interests pursuant to a plan proposed by Thomas F. Bonadio, which includes authority to retain appropriate professionals to assist in management and disposition of certain assets and, (c) Thomas F. Bonadio be directed to implement the management plan.

5. The Petition is essentially proposing a three part management plan: first, to sell Clinton Crossings and The Reserve; second, to complete CityGate; and, finally, to determine whether to retain CityGate and the airport operation.

6. While my father was alive, he oversaw the enterprises. To be sure, he had assistance: Timothy Reidy handled finances; Brett Costello was in charge of the airport operations; and my father also had various individuals to handle “back office” operations.

7. I understand that surrogate’s courts are reluctant to adjudicate business disputes unless there are extraordinary circumstances. I believe that clearly these circumstances exist with my father’s Estate. Tom and Brett have profound differences about the strategic direction of the Estate and the continuing trusts. They have these differences against the backdrop of large

and continuing losses in The Reserve, which I will discuss below. As the Court is aware, over \$108 million of claims have been filed in the Estate. Finally, Brett, as an employee of the various enterprises or who otherwise receives compensation from the enterprises, has a conflict of interest in the continued retention of the enterprises.

8. I understand that The Reserve has experienced substantial losses in the last two years. I also understand that the debt on the enterprise is significant and, as structured, is an impediment to profitability in the near term. Northwest Bank has filed a claim in this Court in November 2016 for \$14.24 million. My father's federal estate tax return shows a receivable of \$8.4 million from the entity owning The Reserve. To date, the beneficiaries have not received a plan that would show for \$X investment, they could expect Y% as a rate of return. The hole is simply too deep, and no amount of additional investment will result in profitability. It is past time to limit the loss.

9. The Petition rightly points out the lack of diversification of the assets. Apart from interenterprise borrowings, the enterprises have no synergy. Clinton Crossings and The Reserve can be sold without affecting CityGate or the airport operation. As for interenterprise borrowings: if CityGate cannot attract third party financing, that speaks volumes about the attractiveness and viability of the enterprise.

10. The Petition cites Brett's vacillation as a reason for the Court's involvement. I believe that the Petition is entirely accurate in this respect as shown by the failure to sell the Hydroacoustics building in Henrietta. The building has no connection with any of the other enterprises, and yet 18 months into the administration, the building remains unsold.

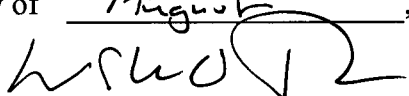
11. The amount of claims that have been filed exceeds \$100 million. Even with the proceeds of a recent refinancing of an entity, there will still be unpaid suppliers to the entities. My father's death most likely represents an event of default on the borrowings. Thus, the orderly administration of the Estate is susceptible to the forbearance of the various lenders and suppliers. In short, we can have an orderly liquidation of Clinton Crossings and The Reserve that the Estate controls or a liquidation instigated and controlled by the creditors of the Estate and the enterprises in which the Estate will have little, if any, control.

12. I respectfully request that the Court grant the relief sought in the Petition.



LYNETTE COSTELLO WARD

Severally sworn to before me this 25th
day of August, 2017.



Notary Public

MARTIN W. OTOOLE
Notary Public, State of New York
Qualified in Monroe County
Commission Expires June 30, 2019

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Harter Secret & Emery LLP

ATTORNEYS AND COUNSELORS

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August 30, 2017

VIA MESSENGER

Hon. John M. Owens
Monroe County Surrogate's Court
541 Hall of Justice
Rochester, NY 14614-2186

Re: Estate of Anthony J. Costello
File No. 2016-787/F

Dear Judge Owens:

Enclosed please find an affidavit by my client, Lynette Costello Ward, in support of the relief requested in the petition of Thomas F. Bonadio dated July 31.

As the Court will note, we have included counsel for Northwest Bank on the letter because counsel appeared on the return date on August 24. This is to advise the Court that we take no position at this time as to whether Northwest Bank is a proper party to the proceeding.

Thank you for the Court's attention.

Respectfully submitted,

Harter Secret & Emery LLP

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MWO:sm
Enclosure

cc: Edward P. Hourihan Jr., Esq. (w/enc.)
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William J. Brongo, Esq. (w/enc.)

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