



1. On July 17, 2023, the HCHK Creditors filed their Motion to Intervene in this Adversary Proceeding (ECF No. 60). On July 19, counsel for the Trustee wrote to counsel for the HCHK Creditors to request a meet-and-confer “to discuss a schedule for the taking of discovery from” the HCHCK Creditors. Counsel spoke by phone the following day, and counsel for the Trustee represented the Trustee’s intentions to serve, that day, discovery requests including requests for admission, interrogatories, requests for production, subpoenas and deposition notices. Counsel for the HCHK Creditors responded that the HCHK Creditors would object and advised that they did not believe the Trustee had authority to serve such requests for various reasons, including that the parties to the Adversary Proceeding had not held a discovery planning conference as required by FRCP Rule 26(f).

2. Despite the Trustee’s counsel’s representation that they intended to serve the discovery on Thursday, July 20, it was not until after 6:00 pm on a summer Friday (July 21) that the Trustee served his discovery requests (the “Discovery Requests”). The Discovery Requests comprise more than 600 pages and include requests for the production of documents pursuant to FRCP Rule 34, interrogatories pursuant to FRCP Rule 33, and requests for admissions pursuant to FRCP Rule 36 (none of which are authorized for service on non-parties such as the HCHK Creditors). The Discovery Requests demand answers to the interrogatories and requests to admit and document production by Thursday, July 27, in addition to three depositions by August 3.

3. On Tuesday, July 25, counsel for the HCHK Creditors told counsel for the Trustee that they would object and on Wednesday, July 26, the third business day after the Discovery Requests were served, the HCHK Creditors served the Trustee with written objections to the Discovery Requests based on, among other reasons, the Trustee’s unambiguous failure to follow the Federal Rules of Civil Procedure that govern discovery. (*See* ECF No. 67, Exh. E).

4. On July 27, without an email or phone call or any attempt to confer with the HCHK Creditors to resolve their objections or discuss the discovery issues “in detail in a good faith effort to eliminate or reduce the area of controversy” as required by the Local Rules,<sup>1</sup> or a request for an extension of time to oppose the Motion to Intervene, the Trustee filed a Motion to Authorize and Compel Discovery on the HCHK Creditors and Authorizing Discovery on Additional Parties (the “Motion to Compel,” ECF No. 67). On the same day, the Trustee filed the “Emergency” Motion. (ECF No. 68).

5. The “Emergency” Motion seeks a hearing on the Motion to Compel on Tuesday, August 1, five days after the filing of the Motion to Compel, and seeks to require the HCHK Creditors to file their opposition to the Motion to Compel no later than 24 hours prior to the hearing. The basis for the “Emergency” Motion is Bankruptcy Rule 9006(c)(1), which states that “the court for cause shown may in its discretion” reduce times designated by the Bankruptcy Rules. Respectfully, the Trustee has failed to provide any just cause for his request. There is no “emergency” that would justify the expedited relief he seeks.

6. The Trustee argues that he requires the voluminous discovery he has demanded “to properly respond to the Motion to Intervene, **which response is due by August 7, 2023.**” (ECF No. 68 ¶ 14 (emphasis in original)). As the HCHK Creditors stated in their Objection, we are aware of no authority for the proposition that a party is entitled to discovery before he is required to respond to a motion to intervene, and the Trustee has cited none in his Motion to Compel. There certainly does not appear to be any authority for requiring proposed intervenors to provide

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<sup>1</sup> See D. Conn. L. Civ. R. 37 as adopted by Local Bankr.R.7037-1. The Trustee contends that counsel’s telephone conversation on July 20 satisfied any obligation to meet and confer. That discussion, however, which occurred prior to the HCHK Creditors’ counsel’s receipt of the Discovery Requests and prior to the Trustee’s counsel’s receipt of the HCHK Creditors’ Objection, did not and could not constitute a discussion of the discovery issues “in detail” or a “good faith effort to eliminate or reduce the area of controversy.” Counsel for the HCHK Creditors had not yet even seen the Discovery Requests and therefore did not even know the detail of what was requested.

discovery on an extremely expedited basis so that a party can use that discovery to oppose a motion to intervene. But putting all of that aside, if the Trustee believed that discovery was necessary and authorized by the Federal Rules, he simply could have requested an extension of time to respond to the Motion to Intervene. The HCHK Creditors would have consented to a reasonable extension of time. The Trustee's failure to do so, and his choice to instead move for extremely expedited discovery and an extremely expedited hearing, reveals his true motive: to impose undue burden and expense on the HCHK Creditors for their insistence that their rights be respected.

7. The Trustee also suggests that an immediate hearing on his Motion to Compel is "vital" to enable him "to prevent the Debtor and his associates from improperly interfering with the Trustee and depriving creditors from the benefit of assets that are property of the estate." (ECF No. 68 ¶ 14). Apparently, the Trustee believes that the HCHK Creditors' efforts to exercise their legal rights constitutes an "interference" that must be "prevented." In other words, the Trustee's position (consistent with his position in prior papers) is that nothing and no one should stand in the way of his obtaining the relief he has requested in the Complaint, without any need for him to prove his case.<sup>2</sup> That, of course, is not how our legal system works.

8. In short, the Trustee will suffer no prejudice if this discovery dispute is considered in a deliberate and orderly fashion on a standard schedule. The HCHK Creditors, however, will be prejudiced if they are put to the burden and expense of filing an opposition to the Trustee's Motion to Compel in less than three business days. The HCHK Creditors plan to submit at the appropriate time their opposition to the Trustee's Motion to Compel, which, absent any legal authority, seeks to impose onerous, unreasonable burdens on third parties in a manner contrary to the Federal Rules of Civil Procedure and Bankruptcy Rules.

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<sup>2</sup> See, e.g., ECF No. 25 ¶¶ 28, 30; ECF No. 26 ¶ 11.

9. For the foregoing reasons, the HCHK Creditors respectfully request that the “Emergency” Motion be denied, and that a hearing on the Trustee’s Motion to Compel and a reasonable deadline for the HCHK Creditors to file their opposition be scheduled according to the Court’s standard practice.

Dated: July 27, 2023  
Stamford, Connecticut

**HCHK CREDITORS**

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