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Irvine, California 92614-7235
Telephone (949) 222-2930
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Lodged
Proposed
Order

2009 JUN 23 AM 10:08
CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

FILED

Attorneys for Defendants, PHILIPS SOUTH BEACH, LLC, an Illinois Limited Company, d.b.a. The Shore Club; PHILIPS SOUTH BEACH, LLC, a Delaware Limited Company, d.b.a. The Shore Club and MORGANS HOTEL GROUP MANAGEMENT, LLC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

BY FAX

In re:
MARION H. KNIGHT, JR.,
Debtor.

U.S. DISTRICT COURT CASE NO:
CV 09-00639 JFW
BANKRUPTCY CASE NO. 2:06-bk-11187 VZ
Chapter 11

MARION H. KNIGHT, JR.,
Plaintiff,
vs.
PHILIPS SOUTH BEACH, LLC, an Illinois limited liability company, d/b/a The Shore Club; PHILIPS SOUTH BEACH, LLC, a Delaware limited liability company, d/b/a The Shore Club; MORGANS HOTELS GROUP MANAGEMENT, LLC, d/b/a MGH Management Company; KANYE OMARI WEST, an individual; GETTING OUT OUR DREAMS, INC., a California corporation, d/b/a G.O.O.D. Music and d/b/a GOOD Music; and DOES 1 through 30, inclusive,
Defendants.

Adv. No. 02:08-ap-01378-VZ
DEFENDANTS PHILIPS SOUTH BEACH, LLC, an Illinois Limited Company, d.b.a. THE SHORE CLUB; PHILIPS SOUTH BEACH, LLC, a Delaware Limited Company, d.b.a. THE SHORE CLUB and MORGANS HOTEL GROUP MANAGEMENT, LLC'S MOTION TO WITHDRAW REFERENCE FROM BANKRUPTCY COURT AND MOTION TO TRANSFER ACTION TO U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA [28 USC Section 157; FRBP, RULE 5011 (a); 28 USC Section 1391]
DECLARATION OF SUSAN K. ANDERSEN;
MEMORANDUM OF POINTS AND AUTHORITIES:

[PROPOSED] ORDER
DATE: 2/23/09
TIME: 1:30 p.m.
DEPT: Spring, 176

N/S

1
2 TO ALL PARTIES AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT on _____, 2009 at ____ a.m., or as soon
4 thereafter as counsel may be heard, in Courtroom ____ of the above-entitled court located
5 at Edward R. Roybal Federal Building 255 East Temple Street, Los Angeles, California
6 90012-3300, defendants PHILIPS SOUTH BEACH, LLC, an Illinois Limited Company, d.b.a.
7 The Shore Club, PHILIPS SOUTH BEACH, LLC, a Delaware Limited Company, d.b.a. The
8 Shore Club and MORGANS HOTEL GROUP MANAGEMENT, LLC ("Hotel Defendants")
9 hereby move the District Court to withdraw reference to the United States Bankruptcy Court
10 of this action and thereafter transfer this action to the United States District Court for the
11 Southern District of Florida.

12 This motion to withdraw reference is made pursuant to 28 U.S.C. Sections 157(d)
13 and Bankruptcy Rule 5011. The motion to withdraw reference from the Bankruptcy Court is
14 based upon the grounds the Bankruptcy Court does not have subject matter jurisdiction
15 over the claims involved in plaintiff's adversary action, defendants are entitled to a jury trial
16 pursuant to the Seventh Amendment of the United States Constitution and the Hotel
17 Defendants do not consent to a jury trial of this action in the Bankruptcy Court.

18 The motion to transfer this action to the United States District Court in Miami Beach,
19 Florida is made pursuant to 28 U.S.C. Sections 157(6) and Section 1391(a)(2). The motion
20 to transfer is based on the grounds that plaintiff's action was brought in an improper venue
21 as the substantial part of the events/omissions giving rise to plaintiff's claims occurred at
22 The Shore Club hotel located at 1901 Collins Avenue, Miami Beach, Florida. Further, the
23 law of the state of Florida applies to this action and a significant number of witnesses reside
24 in Florida.

25 This motion is based upon this notice, the attached memorandum of points and
26 authorities, the attached declaration of Susan K. Andersen, the records and files herein,
27 and upon such other evidence as may be presented at the hearing of the motions.

28 This motion is made following the conference of counsel pursuant to L.R. 7-3 which


1 took place on December 24, 2008 and January 5, 2009.

2 Any party seeking to oppose this motion is required to serve and file opposition
3 papers within fourteen (14) days before the date designated for the hearing.

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DATED: January 26, 2009

MARSHALL, FRENCH & DEGRAVE

By: 
SUSAN K. ANDERSEN
Attorneys for Defendants, PHILIPS SOUTH BEACH, LLC, an Illinois Limited Company, d.b.a. The Shore Club; PHILIPS SOUTH BEACH, LLC, a Delaware Limited Company, d.b.a. The Shore Club and MORGANS HOTEL GROUP MANAGEMENT, LLC.

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3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **1. Introduction and Statement of Facts.**

5 On August 27, 2005, Marion H. "Suge" Knight, a founder of the Death Row Records
6 label, attended a party at The Shore Club hotel¹ in Miami Beach, Florida. The party was
7 hosted by rap star Kanye West and his record label, G.O.O.D Music, in connection with the
8 MTV Video Music Awards being held in Miami. While at the party, Knight was shot in the
9 right upper leg. The shooting was investigated by the local police and plaintiff received
10 medical treatment in Miami Beach, Florida following the shooting. Members of the Florida
11 Highway Patrol provided additional security for the event for defendants.

12 On April 4, 2006, Knight filed a voluntary Chapter 11 petition. A trustee was
13 appointed in March 2007. Knight and the trustee subsequently entered into an agreement
14 whereby the trustee sold to Knight the bankruptcy estate's right to sue for injuries and
15 damages arising from the shooting at The Shore Club. (The agreement also includes a
16 claim against the men's prison in Chino for failing to return a 15-carat diamond earring it
17 allegedly took from Knight when he was incarcerated at the facility.) The bankruptcy court
18 granted the trustee's motion to confirm the sale of both actions to Knight on March 18, 2008.
19 The court's order, entered April 9, 2008, prescribes that any recovery is to be split between
20 the bankruptcy estate, the IRS and Knight himself. The purchase and sale agreement
21 states that the Buyer (Suge Knight) will prosecute the actions in his own name. It further
22 states the neither the Trustee or the estate "shall have any involvement in or responsibility
23 for the handling of any litigation with regard to the Claims. The Debtor accepts full
24 responsibility for any damages arising as a result of his or his counsel's handling of any and
25 all litigation with regard to the Claims." Per the terms of the Agreement, however, the
26 Trustee will have the ability to enforce the agreement in the Bankruptcy Court, regardless of
27 where the action is venued.

28 On April 3, 2008, Knight filed this adversary proceeding. The initial status conference

¹ The Shore Club hotel is owned by the Philips South Beach entities and is managed by Morgans Hotel Group Management, LLC. For ease of reference, these entities will be referred to collectively as "The Hotel Defendants" in this memorandum.

1 was scheduled for June 16, 2008 and defendants timely submitted their challenges to the
2 court's jurisdiction over this matter and also challenged that this matter was a core
3 proceeding. The status conference was then continued to August 21, 2008. On August 21,
4 2008, the court granted defendants' motion to dismiss portions of plaintiff's original
5 complaint and granted plaintiff leave to amend. The status conference was then continued
6 to October 30, 2008 to allow for plaintiff to amend his complaint and defendants to respond
7 to it. Knight thereafter served and filed his amended complaint against the Hotel
8 Defendants. Knight's amended complaint alleges he was shot on August 28, 2005 while
9 attending a party hosted by co-defendants at The Shore Club located in Miami Beach,
10 Florida. (FAC, paras. 16 and 25.) He further alleges in his amended complaint that some
11 unknown employee of one of the named defendants "converted" one of his diamond
12 earrings following the incident. (FAC, paras. 30, 31, 32, 38 and 39.) Knight seeks damages
13 for his alleged personal injuries from the shooting, including pain and suffering, past and
14 future medical expenses, costs of private plane to transport him back to California and for
15 past and future loss of earnings/earning capacity. (FAC, para 29.) In addition, he seeks the
16 reasonable market value of his allegedly converted diamond earring of \$135,000.00. (FAC,
17 paras. 33-34.)

18 On October 30, 2008, the court denied defendant's motion to dismiss plaintiff's
19 conversion cause of action and ordered the defendants to answer plaintiff's amended
20 complaint. The court continued to the status conference to January 8, 2009. Defendants
21 thereafter filed and served timely answers to plaintiff's amended complaint and raised
22 affirmative defenses, including lack of subject of matter jurisdiction, lack of core proceeding
23 and improper venue. The Hotel Defendants also demanded a jury trial.

24 On January 8, 2009, the parties appeared for the scheduled status conference before
25 Judge Vincent P. Zurzolo. Judge Zurzolo ruled the adversary proceeding was "non-core"
26 and also determined the right for a jury trial existed for defendants.

27 The Hotel Defendants request that the District Court withdraw its reference to the
28 Bankruptcy Court because the Bankruptcy Court does not have subject matter jurisdiction

1 over this matter and defendants are entitled to a jury trial and do not consent to a jury trial in
2 the Bankruptcy Court. The Hotel Defendants also request the Court to transfer this action to
3 the U.S. District Court for the Southern District of Florida since that is where plaintiff's claim
4 arose. But for plaintiff's bankruptcy petition filed in the U.S. Bankruptcy Court in the Central
5 Judicial District in California, there is absolutely no connection between plaintiff's state tort
6 claims arising in Florida and this Judicial District. Further, if judgment is entered against
7 defendants in district court in Florida, the Trustee can still enforce its rights under the
8 Purchase & Sale agreement to obtain the Estate's agreed-upon share of the proceeds. If
9 the matter is settled, provisions can be made for defendants to include the Trustee on the
10 settlement draft to ensure payment or the Trustee can seek appropriate relief within the
11 Bankruptcy Court's jurisdiction pursuant to the terms of the Purchase and Sale Agreement.

12
13 **2. The Court Should Withdraw Reference to the**
14 **Bankruptcy Court to Hear this Adversary Proceeding.**

15 **1. Court's Authority to Withdraw:**

16 28 USC Section 157(d) provides in relevant part:

17 The district court may withdraw, in whole or in part, any case or proceeding
18 referred under this section, on its own motion or on timely motion of any party,
for cause shown.

19 Bankruptcy Rule 5011 provides in relevant part:

20 (a) Withdrawal. A motion for withdrawal of a case or proceeding shall by
21 heard by a district judge.

22 **2. The Motion to Withdraw Reference is Timely:**

23 Local Bankruptcy Rule 9015-2(g) governs the timing of a motion to withdraw

24 reference:

25 Within 5 days of the entry of the pretrial order, any party may file and serve a
26 motion to the district court to withdraw reference pursuant to Local Bankruptcy
27 Rule 9013-1(h). . . . Nothing in this Local Bankruptcy Rule shall preclude an
earlier motion to withdraw reference on the grounds set forth in 28 U.S.C.
Section 157(d).

28 There is no pretrial order governing this matter at this time and thus this motion is

1 timely.

2 **3. The Bankruptcy Court does not have subject matter jurisdiction over**

3 **Plaintiff's claims:**

4 28 U.S.C. Section 157(b)(5) provides:

5 **The district court shall order that personal injury tort and wrongful death**
6 **claims shall be tried in the district court in which the bankruptcy case is**
7 **pending, or in the district court in which the claim arose, as determined**
8 **by the district court in which the bankruptcy case is pending. (Emphasis**
9 **added.)**

10 Plaintiff's amended complaint alleges claims for negligence/personal injury/premises
11 liability and for conversion. Plaintiff alleges he was shot while attending a party hosted by
12 Kanye West at The Shore Club hotel located in Miami Beach, Florida on August 28, 2005.
13 He seeks damages for the personal injuries he claims were caused by the incident and he
14 also seeks the monetary value of a diamond earring he claims was converted by one of the
15 defendants' employees after the alleged shooting occurred. The Hotel Defendants have
16 demanded a trial by jury. The primary basis of plaintiff's claims against the defendants is for
17 the injuries he claims from being shot at the Miami Beach hotel. All of his tort claims are
18 based upon alleged conduct by defendants occurring solely within the State of Florida and
19 are based solely on the application of Florida law. All of plaintiff's claims would exist
20 irrespective of his Bankruptcy petition. **In other words, his claims do not arise in or**
21 **under Title 11 and are not subject to the jurisdiction of the Bankruptcy Court. (In re**
22 **Eastport Associates, 935 F.2d 1071, 1076 (9th Cir. 1991); In re ACI-HDT Supply Co., 205**
23 **B.R. 231, 234-235 (9th Cir. B.A.P. 1997; In re Hansen, 164 B.R. 482, 485-486, In re**
24 **Patterson, 150 B.R. 367, 368.) Indeed, the Bankruptcy Judge has already determined**
25 **this adversary proceeding is non-core.**

26 Plaintiff's amended complaint does not concern any relief against or for the Estate
27 and is not brought by the Trustee. Nor does plaintiff's amended complaint raise any
28 substantive bankruptcy claims or issues. It is a simple claim for personal injury based solely
on common law claims. Furthermore, plaintiff's claims against defendants no longer belong
to the bankruptcy estate since they were sold to plaintiff for plaintiff to pursue in his own

1 name.

2 While Congress has not provided a statutory definition of the "cause" required for a
3 district court to withdraw reference, courts have stated that district courts should consider 1)
4 the advancement of uniformity in bankruptcy administration, 2) decreasing forum shopping
5 and confusion, 3) promoting the economical use of the parties' resources, 4) facilitating the
6 bankruptcy process, 5) whether the claim is core or non-core, 6) efficient use of judicial
7 resources, 7) a jury demand and 8) prevention of delay to determine whether sufficient
8 cause exists to withdraw reference. (*Control Center, L.L.C. v Lauer* (2002) 288 B.R. 269,
9 274; *Dionne v. Simmons*, 200 F.3d. 738, 742 (11th Cir. 2000); *Hvide Marine Towing, Inc. v.*
10 *Kimbrell*, 248 B.R. 841, 844 (M.D. Fla. 2000).)

11 Applying these considerations to this case, it is most logical to withdraw reference
12 from the Bankruptcy Court. Judicial resources will be conserved if reference is withdrawn.
13 The defendants have demanded jury and have no intention of waiving their constitutional
14 right to a jury trial. There is no bankruptcy process that will be facilitated by allowing this
15 matter to remain with the Bankruptcy Court. There are no claims being sought by
16 defendants against or from the estate or the debtor. There is no connection between any of
17 the defendants and the Bankruptcy Court. There is simply no issue to be adjudicated in this
18 matter that requires adjudication by the Bankruptcy Court. Indeed, it would be a conflict of
19 interest for the Bankruptcy Court to adjudicate this claim. Withdrawal of the reference is
20 appropriate in this case.

21 **4. The Hotel Defendants are Entitled to Jury Trial:**

22 The Seventh Amendment of the United States Constitution, provides in relevant part:
23 In Suits at common law, where the value in controversy shall exceed twenty
24 dollars, the right of trial by jury shall be preserved.

25 One January 8, 2009, the U.S. Bankruptcy Judge assigned to this adversary
26 proceeding determined the right to a jury trial existed. This issue has been resolved in favor
27 of the defendants.

28

1 **3. The Court Should Transfer this Action**
2 **to the Proper Court in Florida.**

3 28 U.S.C. Section 157(b)(5) provides:

4 The district court shall order that personal injury tort and wrongful death claims
5 shall be tried in the district court in which the bankruptcy case is pending, or
6 in the district court in which the claim arose, as determined by the
7 district court in which the bankruptcy case is pending.

8 In *In re: Northwestern Corporation*, 2004 U.S. Dist. LEXIS 7701, United States
9 District Court for the District of Delaware, the Court granted the plaintiff's motion to withdraw
10 reference and to transfer the matter to U.S. District Court in the Judicial District of Montana,
11 Butte Division pursuant to Section 157(b)(5). In *Northwestern*, the court determined the
12 matter was properly withdrawn from the Bankruptcy Court because it involved claims for
13 wrongful death and thus non-core. It further determined the matter was proper for transfer
14 to Montana pursuant to Section 157(b)(5) since the alleged tortious actions that formed the
15 basis of the wrongful death action occurred in Montana and Montana's tort principles
16 applied. It further stated transfer was proper because the expert and fact witnesses resided
17 in Montana so judicial economy and witness convenience required the court to exercise its
18 discretion and transfer the action to the Montana District Court.

19 The same principles apply to this case. Plaintiff alleges he was injured solely by
20 allegedly tortious conduct that occurred in a Miami Beach, Florida hotel. His claims arose in
21 Florida and Florida's common laws apply to his claims. The incident was investigated by
22 the Miami Beach Police Department and other police agencies. The hotel employees are in
23 Florida. Plaintiff received medical treatment in Florida. This matter is properly transferred to
24 the Southern District of Florida pursuant to 28 U.S.C.S. Section 157 (b)(5).


25 The Court can also transfer this action due to improper venue. 28 USCS Section
26 1391 provides in relevant part:

27 (b) A civil action wherein jurisdiction is not founded solely on diversity or
28 citizenship may, except as otherwise provided by law, be brought only in . . .
(2) a judicial district in which a substantial part of the events or omissions
giving rise to the claim occurred, or a substantial part of property that is the
subject of the action is situated.

1 The facts and circumstances giving rise to plaintiff's claims all occurred in Miami
2 Beach, Florida. Defendants' employees with the information relating to the claims against
3 them are in Florida. The investigating police officers and agencies are all located in Miami
4 Beach, Florida. The applicable law governing plaintiff's claims is Florida's common law.
5 The proper venue for this lawsuit is in the district court in Miami Beach, Florida. That is the
6 jurisdiction that has the most interest in litigating these claims involving conduct that
7 occurred in its jurisdiction. This matter is thus properly transferred pursuant to 28 U.S.C.S.
8 Section 1391.

9
10 DATED: January 26, 2009

MARSHALL, FRENCH & DEGRAVE

11
12 By: 
13 **SUSAN K. ANDERSEN**
14 Attorneys for Defendants, PHILIPS SOUTH
15 BEACH, LLC, an Illinois Limited Company,
16 d.b.a. The Shore Club; PHILIPS SOUTH
17 BEACH, LLC, a Delaware Limited Company,
18 d.b.a. The Shore Club and MORGANS
19 HOTEL GROUP MANAGEMENT, LLC.
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1 between the bankruptcy estate, the IRS and Knight himself. The purchase and sale
2 agreement is attached as Exhibit 2 for the court's convenience.

3 5. By letter dated December 24, 2008 I advised all counsel of the intention of the
4 Hotel Defendants to file a motion to withdraw reference and to have the action transferred
5 to District Court in Florida. In this letter I requested a response indicating whether or not
6 there would be any opposition to such a motion by January 5, 2009. I thereafter received
7 an email response from West's attorneys advising that authority from their clients was
8 needed and had not yet been obtained. Plaintiff's attorney has not responded to this letter,
9 even after a subsequent email inquiry about plaintiff's position. Based upon the
10 December 24, 2008 letter is thus presumed plaintiff opposes such a motion. A true and
11 correct copy of the letter is attached as Exhibit 3.

12 6. Since the incident occurred in Miami Beach, Florida at a Miami Beach Hotel
13 there are several potential witnesses that are located in Florida, including hotel employees,
14 Florida Patrol Officers who were providing additional security for the event, Miami Beach
15 police officers and crime scene investigators who responded and investigated the accident
16 and other emergency and medical personnel who assisted plaintiff following the incident. It
17 is also likely there are other unknown witnesses relevant to the issues who reside in
18 Florida, such as other partygoers, hotel attendees and media. Therefore, substantial
19 discovery in Florida will be likely requiring substantial costs to all parties required to travel
20 to Florida. It will also be more difficult to obtain documents via subpoena in Florida.

21 7. Defendants will also be prejudiced if this matter remains in California since
22 several witnesses regarding liability and damages are in Florida and may have to appear
23 for trial in California either at defendants' cost or via video which does not have the same
24 effect on a jury.

25 8. The Hotel Defendants do not consent to the Bankruptcy Court trying this
26 action and do not waive their right to a jury trial.

27 9. Plaintiff will not be prejudiced if this matter is transferred to the appropriate
28 district court in southern Florida. The Bankruptcy Estate also will not be prejudiced if this

1 matter is transferred. The terms of the Purchase and Sale Agreement provide the Estate
2 with enforcement power to enforce the agreement in Bankruptcy Court. Further,
3 arrangements can be made to include the Estate on any settlement draft and/or judgment
4 so as to protect their potential interests in any recovery plaintiff obtains from any of the
5 defendants in this personal injury action.

6 10. On January 8, 2009, a status conference was conducted in the adversary
7 proceeding before the Honorable, Vincent P. Zurzolo in the U.S. Bankruptcy Court. Judge
8 Zurzolo ruled the adversary proceeding was non-core and the right to a jury trial existed.

9 I declare under penalty of perjury pursuant to the laws of the State of California that
10 the foregoing is true and correct and that this declaration was executed on the 20th day
11 of January, 2009, at Irvine, California.

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13 
14 SUSAN K. ANDERSEN, Declarant

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