

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE:	)	Case No. 26-31894
	)	
LOURDES UNIVERSITY and	)	CHAPTER 11
LOURDES PROPERTIES, LLC, ¹	)	
Jointly Administered Debtors-in-Possession	)	Judge Mary Ann Whipple

**RESPONSE AND OBJECTION OF THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., AS BOND TRUSTEE, TO MOTION OF THE DEBTORS FOR
ENTRY OF ORDER AUTHORIZING DEBTORS TO (I) MAINTAIN RESTRICTED
ACCOUNTS AND BOND ACCOUNTS, AND (II) RECEIVE A WAIVER OF CERTAIN
OPERATING GUIDELINES RELATING TO RESTRICTED ACCOUNTS**

The Bank of New York Mellon Trust Company, N.A. (“BNY” or “Trustee”), in its capacity as bond trustee under the Indenture (as defined below), by and through its undersigned counsel, hereby files this response and objection (the “Objection”) to the *Motion of the Debtors for Entry of Order Authorizing Debtors to (I) Maintain Restricted Accounts and Bond Accounts, and (II) Receive a Waiver of Certain Operating Guidelines Relating to Restricted Accounts* [Docket No. 130] (the “Motion”).² In support of the Objection, BNY respectfully states as follows:

PRELIMINARY STATEMENT

1. BNY files this Objection to address (a) the Motion’s characterization of the restricted status of the Bond Accounts, and (b) specific provisions of the proposed order, attached to the Motion as Exhibit A (the “Proposed Order”), that could be read to authorize unilateral Debtor access to, or to impair BNY’s rights in, those accounts. BNY does not object to the Debtors continuing to maintain the Bond Accounts in their current form and location pending further

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor’s federal tax identification number are: Lourdes University (6547); and Lourdes Properties, LLC (8998). The location of the Debtors’ principal place of business is 6832 Convent Blvd., Sylvania, Ohio 43560.

² Capitalized terms used but not defined in this Objection have the meanings given in the Motion, the Indenture, or the Lease (each such term as defined below), as the context requires.

proceedings; however, BNY does set forth herein the correct reading of the bond documents showing why further proceedings may be unnecessary.

2. The Motion treats the Bond Accounts as a potential source of funds for distribution to creditors once the Debtors determine, unilaterally, that the funds are “unrestricted.” Such a reading is inconsistent with the Indenture (as defined below). BNY asks—at a minimum—that any order entered on the Motion include language, as described herein, that preserves the status quo and the parties’ respective rights, which is consistent with the Debtors’ own stated intention to seek Court approval, on notice, before making any distribution from the Bond Accounts (which approach is also consistent with the Indenture).

BACKGROUND

3. BNY is the successor trustee under the Trust Indenture, dated as of August 15, 1988 (the “Base Indenture”), between the Toledo-Lucas County Port Authority (the “Authority”) and Trustcorp Bank, Ohio, as predecessor trustee to BNY, as amended by the Ninety-First Supplemental Trust Indenture, dated as of June 1, 2020 (the “Supplemental Indenture” and, together with the Base Indenture, the “Indenture”), between the Authority and BNY, pursuant to which the Authority’s \$10,480,000 Development Revenue Bonds (Northwest Ohio Bond Fund) Series 2020B (Lourdes Commons Project) (the “Bonds”) were issued and are outstanding.

4. Pursuant to the Lease, dated as of June 1, 2020 (the “Lease”), between the Authority, as lessor, and Lourdes Properties, LLC (“Lourdes Properties”), as lessee, the Authority leased the Series 2020B Project to Lourdes Properties and Lourdes Properties agreed to pay Rent Payments to BNY, as trustee and assignee of the Authority, at such times and in such amounts as to enable the Authority to pay the Bond Service Charges on the Bonds. Payment of Lourdes

Properties' obligations under the Lease is guaranteed by Lourdes University ("Lourdes University"), pursuant to a Guaranty, dated as of June 25, 2020.

5. The Motion identifies three (3) Bond Accounts at BNY: (i) the "Project Account" ending in 7131, with a balance of \$16,362.99; (ii) the "Interest Reserve" ending in 7146, with a balance of \$131,504.63; and (iii) the "Bond Reserve Account" ending in 7089, with a balance of \$1,080,675.91. Motion ¶ 32.

6. According to the Motion, the Debtors intend for the Bond Accounts to "stay open pending future disposition." *Id.* Specifically, the Motion provides that (i) with respect to the Project Account, "[t]he Debtor believes that the funds remaining in this account [will] constitute property of the estate"; (ii) with respect to the Interest Reserve, "[i]t is unclear as to whether these funds are still restricted, but the Debtor does not believe so"; and (iii) with respect to the Bond Reserve Account, "[n]o determination has yet been made as to whether these fun[d]s are restricted." Motion ¶¶ 33-35.

7. The Motion further states that once restriction determinations are made, any Bond Account funds determined to be unrestricted "will be moved to the Properties DIP Operating Account and become property of the estate available for distribution to creditors," and that the Debtors will seek Court approval, on notice to the Notice Parties, before making distributions from the Bond Accounts. Motion ¶¶ 39-40.

8. Separately, the Motion discloses that a reserve account at Signature Bank containing \$1,846,525.39, which the Motion describes as the "Port Authority Interest Account," was "swept by BNY immediately before the filing of these cases." Motion ¶ 16. The Motion is inaccurate; BNY did not sweep any accounts.

RESPONSE AND OBJECTION

A. The Bond Reserve Account Is Held in Trust for the Holders and Is Not Property of the Estate.

9. The Debtors describe the Bond Reserve Account as having “originally held 10% of the amount of the Bond issuance” and as having been “used to pay rents due to BNY under the Bond documents.” Motion ¶ 35. The governing Bond documents identify that account more precisely. The Supplemental Indenture fixes the Bond Reserve Deposit for the Bonds at \$1,048,000, which is 10% of the \$10,480,000 issuance. *See* Supp. Indenture, p. 4 (“Bond Reserve Deposit”). In turn, the Bond Reserve Deposit is funded with Bond proceeds and deposited by BNY in the Series 2020B PRF Principal Subaccount in the Series 2020B PRF Account in the Primary Reserve Fund. Section 6(b) of the Supplemental Indenture creates the Series 2020B PRF Account “in the custody of the Trustee as a separate account in the Primary Reserve Fund,” consisting of a Principal Subaccount and an Excess Value and Interest Subaccount. Supp. Indenture § 6(b). Accordingly, BNY understands the Debtors’ “Bond Reserve Account” to refer to the Series 2020B PRF Principal Subaccount, which is held within the Series 2020B PRF Account in the Primary Reserve Fund.

10. Section 3.1 of the Lease provides that, except for interests that may arise under sections 5.07 and 5.09 of the Base Indenture, “neither [Lourdes Properties] nor the [Authority] has any interest in the Special Funds as defined in the [Base] Indenture, and any moneys deposited in those Funds shall be in the custody of and held by the Trustee in trust for the benefit of the Holders.” Lease § 3.1. Notably, the Primary Reserve Fund is an enumerated “Special Fund” under the Base Indenture. Base Indenture, § 1.01 (“Special Funds”). Thus, the Debtors do not possess any interest in those funds, and the moneys are held by BNY in trust for the benefit of the Holders.

11. In addition, under the Base Indenture, the Authority assigned to BNY, as trustee, all of its right, title, and interest in and to, among other things, all moneys and investments in the Special Funds, including the Primary Reserve Fund, together with all income and profit from their investment, to secure payment of Bond Service Charges on the Bonds and the performance of all of the covenants, agreements, obligations, and conditions contained therein. *See* Base Indenture, Granting Clauses; § 1.01 (“Pledged Revenues”).

12. Section 4.6 of the Lease requires Lourdes Properties, as additional security, to maintain the Bond Reserve Deposit with the Trustee at all times before payment in full of all Bond Service Charges. *See* Lease § 4.6. Any amount remaining in the Series 2020B PRF Account is to be paid to Lourdes Properties only “after the payment of all Rent Payments and Additional Payments due or to become due under th[e] Lease,” and then only if “the Trustee shall have first given the Authority 10 days’ notice of its intent to make such payment and the Authority shall have made no written objection to that payment.” *Id.* Neither condition has occurred.

13. Accordingly, no “determination” is needed as to the Bond Reserve Account. The Indenture and the Lease already establish that the funds in the Bond Reserve Account are held by BNY in trust for the Holders and are not property of the Debtors’ estates.

B. The Project Account Is Encumbered and Use-Restricted Even if It Is Property of the Estate.

14. The Motion describes the Project Account as an account “established at bond issuance for dorm building maintenance, from which ongoing project costs were reimbursed.” Motion ¶ 33. Based on that stated purpose, and upon information and belief, the “Project Account” corresponds to the Series 2020B PF Account in the Project Fund, including the Series 2020B Project Subaccount. Under section 4.2 of the Lease, BNY makes disbursements from that account to pay or reimburse Series 2020B Project Costs.

15. Unlike the Bond Reserve Account, the Lease does not disclaim Lourdes Properties' (or the Authority's) interest in Project Fund proceeds. Instead, section 4.1 of the Lease provides that, pending disbursement, those proceeds and any investment earnings "shall be subject to a lien in favor of the Trustee as provided in the Indenture and the Bond Legislation." Lease § 4.1.

16. The use of these funds is also restricted by the terms of the Lease. Section 4.2 of the Lease enumerates permitted uses of disbursements from the Series 2020B PF Account, none of which include the transfer of funds to an operating account for creditor distribution. *See* Lease § 4.2.

17. Accordingly, any disposition of the Project Account should proceed only in compliance with section 4.2 of the Lease and on notice to BNY.

C. The Interest Reserve Is Restricted Under Either Plausible Identification, Though the Governing Mechanism Differs.

18. The Motion describes the Interest Reserve as "an escrow account set up at the Bond inception into which \$2 million was deposited as security for the rent payments under the Bond," reduced twice a year by the amount of the payments, with the released amounts becoming "available for the Debtors' unrestricted use." Motion ¶ 34. That description matches the Reserve Account under section 3.7 of the Lease, but that account is not held at BNY. Rather, it is the Signature Bank deposit account subject to the Security Agreement, dated as of June 25, 2020 (the "Security Agreement") and the Deposit Account Control Agreement, dated as of June 25, 2020 (the "DACA"), identified in Exhibit A to the DACA as Lourdes Properties' account ending in 8947. The Motion separately states that BNY swept that account before the Petition Date. Motion ¶ 16. The Motion is inaccurate on this point. BNY cannot confirm, on the record before it, that the "Interest Reserve" is the Reserve Account under section 3.7 of the Lease.

19. Upon information and belief, based on its name, balance, and location at BNY alongside the Bond Reserve Account, the “Interest Reserve” is more plausibly the Series 2020B PRF Excess Value and Interest Subaccount created within the Series 2020B PRF Account in the Primary Reserve Fund under section 6(b) of the Supplemental Indenture.

20. If the Interest Reserve is the Reserve Account, section 2 of the Security Agreement permits Lourdes Properties “to withdraw from time to time any interest earned on the Account.” Security Agreement § 2. Otherwise, except as provided in section 3.7 of the Lease, Lourdes Properties may not spend, withdraw, reduce, pledge, transfer, assign, or otherwise dispose of the Account. Security Agreement § 2(a). Further, “[a]mounts on deposit in the Reserve Account shall be used solely to pay any Rent Payments, Additional Payments, or other amounts due from [Lourdes Properties] under th[e] Lease, the Series 2020B Mortgage, or any other document or instrument executed in connection with them following an Event of Default.” Lease § 3.7.

21. If the Interest Reserve is the Series 2020B PRF Excess Value and Interest Subaccount, under section 6(b) of the Supplemental Indenture, this subaccount receives “(i) interest earnings on the Bond Reserve Deposit and (ii) amounts on deposit in the Series 2020B PRF Principal Subaccount in excess of the required Bond Reserve Deposit calculated as of the immediately preceding November 16.” Supp. Indenture § 6(b). Moneys on deposit in the subaccount “shall not constitute a part of the Bond Reserve Deposit and shall be paid to the Contracting Party after December 1 but prior to December 31 of each year.” *Id.* BNY acknowledges that this is a routine annual payment, administered by the Trustee, to Lourdes Properties. Nevertheless, until the scheduled December payment date, amounts in this subaccount remain in the Primary Reserve Fund, an enumerated Special Fund under the Base Indenture. As

described in Section A of this Objection, the Debtors do not have any interest in the Special Funds while they are held by the Trustee.

22. BNY takes no position at this time on which identification is correct and the Debtors must confirm to which account the “Interest Reserve” corresponds. Under either reading, the funds in the Interest Reserve are not presently available for unrestricted transfer to the Properties DIP Operating Account.

D. Requested Modifications to the Proposed Order.

23. BNY does not oppose entry of an order permitting the Debtors to maintain the Bond Accounts in their current form and location. BNY does, however, request four modifications to the Proposed Order, each of which preserves the parties’ respective rights. BNY’s proposed language for each modification is set out below.

24. The Proposed Order does not address whether the funds in the Bond Accounts are property of the Debtors’ estates, and paragraph 11 reserves parties’ rights only in connection with further interim or final orders on the Motion. To ensure that entry of the order does not prejudice BNY’s rights under the relevant Bond documents, BNY requests that the following new paragraph be added to the Proposed Order:

Notwithstanding anything to the contrary in the Motion or this Order, nothing in this Order shall (a) constitute a finding or determination as to whether any funds held in the Bond Accounts constitute property of the Debtors’ estates, or (b) impair, modify, or otherwise affect any rights, liens, claims, interests, remedies, or defenses of The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), under the Trust Indenture, dated as of August 15, 1988, between the Toledo-Lucas County Port Authority (the “Authority”) and Trustcorp Bank, Ohio, as predecessor trustee to BNY, the Bonds, any related agreement, or applicable law.

25. BNY further requests that the following proviso be added at the end of paragraph 3 of the Proposed Order to confirm that it does not authorize Debtor-directed disbursements from the Bond Accounts:

provided, however, that nothing in this paragraph 3 authorizes any disbursement, transfer, or withdrawal of funds from the Bond Accounts at the direction of the Debtors absent the prior written consent of the Trustee or further order of this Court.

26. Paragraph 4 of the Proposed Order would prohibit BNY, as trustee, from offsetting, freezing, or otherwise impeding the Debtors' use of funds in the Bond Accounts. BNY requests that the original reference to "Bond Accounts" in paragraph 4 be removed and the following proviso be added at the end of paragraph 4 of the Proposed Order:

provided, however, that this paragraph shall not apply to the Bond Accounts or limit the rights of the Trustee with respect to the Bond Accounts under the Indenture, the Bonds, and/or any other related agreements.

27. The Motion states that the Debtors will seek Court approval, on notice to the Notice Parties, before making distributions from the Bond Accounts. Motion ¶ 40. BNY requests that the order memorialize that commitment by adding the following new paragraph:

The Debtors shall not transfer, withdraw, or otherwise use any funds held in the Bond Accounts except pursuant to further order of this Court. Any motion seeking such relief shall be filed by the Debtors and served on the Trustee and the Authority on not less than fourteen (14) days' notice, and the Trustee and the Authority shall have the opportunity to object to such motion.

RESERVATION OF RIGHTS

28. The Objection is filed without prejudice to, and with a full reservation of, BNY's rights to supplement and amend the Objection, to introduce evidence at any hearing relating to the Objection, and to further object to the Motion, including any amendment thereto, on any grounds that may be appropriate.

29. BNY further reserves all rights, claims, and defenses available to it as Trustee, including with respect to the characterization, ownership, and disposition of the Bond Accounts.

CONCLUSION

For the reasons stated above, BNY respectfully requests that this Court require that the Proposed Order granting the Motion be revised in accordance with the terms hereof and grant such other relief as is appropriate.

Dated: October 9, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2026, I caused a true and correct copy of the foregoing *Response and Objection of The Bank of New York Mellon Trust Company, N.A., as Bond Trustee, to Motion of the Debtors for Entry of Order Authorizing Debtors to (I) Maintain Restricted Accounts and Bond Accounts, and (II) Receive a Waiver of Certain Operating Guidelines Relating to Restricted Accounts* to be filed electronically through the Court's CM/ECF filing system, which caused notice of this filing to be sent to all parties registered to receive electronic notices in this case, and further served this filing via e-mail to the following:

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