

1 for the \$500,000 owing to Dr. Anastassatos. The initial bidder is shown as Smile Fitness,
2 PLLC, an entity owned and controlled by Dr. Gordon.

3 Unsurprisingly, Dr. Anastassatos objected to the Sale Motions. Importantly, Dr.
4 Anastassatos objected to many of the bidding procedures claiming that they were
5 designed to prevent him from making a competitive bid.

6 The Court held an initial hearing on the matter on August 23, 2010. During the
7 hearing the Court advised the parties that he was seriously considering appointing a
8 trustee if the parties could not agree to an appropriate bid procedure before the next
9 hearing before the Court. The Court set a continued hearing date for September 13,
10 2010.

11 At the continued hearing it was apparent that the parties had not agreed to bid
12 procedures. When asked by the Court why a trustee should not be appointed the Debtor
13 replied that Dr. Anastassatos' bid would be dependent on the assumption of the lease and
14 that the time period to assume would expire on September 20, 2010. Thus, a trustee
15 would not have ample time to familiarize herself with the case before the lease would be
16 rejected as a matter of law. All parties agreed that the current assumption deadline is
17 September 20, 2010. When pressed by the Court, Sun Construction, Limited
18 ("Landlord") stated that it would not extend the time to assume the lease. Further, it
19 claimed that an assumption by Dr. Anastassatos would not offer adequate assurance of
20 future performance as required under 11 U.S.C. §365(f)(2)(B).

21 Because of the compressed time frame, the Court immediately held an evidentiary
22 hearing to determine if Dr. Anastassatos or his designee has the financial wherewithal to
23 offer adequate assurance to the Landlord. Dr. Anastassatos testified and presented
24 evidence at the hearing. The Court took the matter under advisement at the conclusion
25 of the hearing and set September 20, 2010 as a continued hearing date on these matters.
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1 **Analysis**

2 Pursuant to §365(f)(2)(B) an executory contract can be assigned only if “adequate
3 assurance of future performance by the assignee of such contract or lease is provided,
4 whether or not there has been a default in such contract or lease.” To purchase the
5 Debtor’s assets Dr. Anastassatos formed Tooth Gypsy, PLLC. Dr. Anastassatos must
6 show that Tooth Gypsy can offer adequate assurance to the Landlord.

7 Dr. Anastassatos testified that he currently owns and operates a dental practice in
8 Ahwatukee, ECA Investments LLC (“ECA”), which he works at three-and-a-half days a
9 week. By comparison, the Debtor operates seven days a week; including evenings. Dr.
10 Anastassatos claims that he can effectively operate both practices because he will spend
11 mornings in Ahwatukee, evenings and weekends at the Debtor, and will hire new
12 dentists. To acquire the Debtor’s assets, Dr. Anastassatos formed Tooth Gypsy. As
13 such, it has no financial history or records. A review of Dr. Anastassatos’ financial
14 records and Tooth Gypsy’s business plan show the Landlord will not be given adequate
15 assurance.

16 Dr. Anastassatos’ statement of financial condition and ECA’s profit and loss
17 statement do not show an ability to subsidize Tooth Gypsy’s operation. First, the
18 financial records are incomplete and unreliable with many of the assets self valued and
19 lacking appraisals. For instance, the financial statement shows a monthly salary of
20 \$12,000 and Dr. Anastassatos testified that, but for July 2010, his 2010 monthly salary
21 was approximately \$12,000. However, ECA’s profit and loss statement for January
22 through July 2010 shows Dr. Anastassatos’ salary as just over \$6,600 per month and the
23 ECA profit and loss statement for July 1, 2010 through August 17, 2010 shows a six-
24 week salary of only \$3,108. These numbers do not match.

25 Further, Dr. and Mrs. Anastassatos list an \$8,350 monthly payment to Village
26 Bank on their financial statement. But, the Village Bank payments are on a debt owed
27 by ECA. Because of these inconsistencies, the Court has little faith in the accuracy of
28 Dr. Anastassatos’ financial statements

1 Tooth Gypsy’s business plan is similarly deficient. Neither Dr. Anastassatos nor
2 Tooth Gypsy has experience in running multiple dental practices at multiple locations.
3 Further, the assumptions contained in the business plan are uncertified by a financial
4 professional. Moreover, the Plan states that the practice will require \$50,000 in start up
5 capital. It is unclear to the Court whether this is an investment, a loan, or some other sort
6 of funding mechanism. The business plan also indicates that the purchase of the practice
7 requires a loan. However, there is no detail regarding the amount of the loan, payment
8 terms, interest rate or other pertinent details. The Court also notes that loan repayment is
9 not shown as a line item on the expenses of the practice. Additionally, there are no
10 disciplined pro forma containing projections of future performance. There is a yearly
11 pro forma, but this lacks the monthly detail showing how the business will survive on a
12 month to month basis.

13 Finally, Tooth Gypsy plans on hiring dentists to provide services when Dr.
14 Anastassatos is unavailable, but there is no detail on how this will be accomplished.
15 Currently, there are no concrete commitments from dentists that they will practice at
16 Tooth Gypsy. Dr. Anastassatos does not detail how much time he will commit to running
17 the businesses versus serving his patients. The business plan does list annual “Doctor’s
18 Salaries” of just over \$200,000. Based on Dr. Anastassatos’ testimony of his own salary,
19 the Court assumes that one or possibly two additional dentists could be hired for this
20 amount. But nowhere in the business plan does Dr. Anastassatos explain how he will
21 operate a seven day a week dental practice on this level of staffing.

22

23 **Conclusion**

24 In the end, the Court does not doubt that Dr. Anastassatos, via Tooth Gypsy,
25 sincerely believes he can purchase Westside Dental and run it professionally and
26 profitably. However, viewing Dr. Anastassatos’ financial condition and Tooth Gypsy’s
27 business plan objectively, the Court concludes that it cannot provide adequate assurance
28 to the Landlord.

1 The continued hearings currently scheduled for September 20, 2010 are vacated.
2 Debtor's counsel is directed to schedule and notice a new continued hearing date and
3 time.

4 Nothing in this decision should be construed as approving the Plan or the Sale
5 Motions or determining that the Plan and Sale Motions have been undertaken in good
6 faith.

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8 **So ordered.**

9 DATED: September 17, 2010

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11 CHARLES G. CASE II
12 UNITED STATES BANKRUPTCY JUDGE

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15 **COPY** of the foregoing mailed by the BNC and/or
16 sent by auto-generated mail to:

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