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*Counsel for the Debtor
and Debtor in Possession***UNITED STATES BANKRUPTCY COURT****NORTHERN DISTRICT OF CALIFORNIA****OAKLAND DIVISION**

In re:

THE ROMAN CATHOLIC BISHOP OF
OAKLAND, a California corporation sole,

Debtor.

Case No. 23-40523 WJL

Chapter 11

**DEBTOR'S LIMITED OBJECTION TO THE
OFFICIAL COMMITTEE OF UNSECURED
CREDITORS' APPLICATION FOR ORDER
AUTHORIZING THE RETENTION OF
STOUT RISIUS ROSS, LLC AS REAL
ESTATE CONSULTANT AND EXPERT
WITNESS**

Judge: Hon. William J. Lafferty



1 The Roman Catholic Bishop of Oakland, a California corporation sole and the debtor and debtor
2 in possession (the “Debtor”) in the above-captioned chapter 11 bankruptcy case (the “Chapter 11 Case”),
3 hereby files this *Limited Objection* (the “Limited Objection”) to the *Application for Order Authorizing the*
4 *Retention of Stout Risius Ross, LLC as Real Estate Consultant and Expert Witness* [Docket. No. 1887]
5 (the “Application”) filed by the Official Committee of Unsecured Creditors (the “Committee”).

6 The Application presents more of the same from the Committee: spending the estate’s limited
7 resources searching for something – anything – it can use to argue for a greater payout to Abuse Claimants
8 than the \$143.5 million (plus an insurance rights assignment worth at least that much) proposed in the
9 Debtor’s Plan [Docket No. 1830]. The Committee has already spent more than \$2.7 *million*¹ in
10 professional fees investigating the assets of the Debtor and the assets of various non-debtors. The
11 Committee’s latest gambit is to try to expand the retention of its claims analyst, Stout Risius Ross, LLC
12 (“Stout”), to value all “real property titled in the name of the Debtor, **as well as the Debtor’s affiliates,**”
13 including the “**market value** and/or liquidation value for the properties,” and to serve as an expert witness
14 at the confirmation hearing. [Application at 3-4 (emphasis added).] The Debtor does not object to Stout
15 assessing the liquidation values of real estate titled in the Debtor’s name or serving as an expert witness
16 on that subject. The Debtor files this Limited Objection because:

- 17 1. The Committee should not be permitted to hire a *second* valuation expert to complete work
18 already done by Douglas Wilson Companies (“DWC”), the Committee’s current valuation
19 expert who has already completed and been paid for its report on the fair market value of the
20 real property titled in the name of the Debtor, and whose scope of retention expressly includes
21 expert witness testimony; and
- 22 2. The Committee should not be permitted to hire any valuation expert to value the assets of non-
23 debtors when those assets have not been determined to be property of the Debtor’s estate.

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26 ¹ This number was derived from reviewing the fee statements of Lowenstein Sandler LLP and Berkeley Research Group for
27 specifically designated categories for asset analysis, but the Debtor notes that the actual figure is likely higher because
28 Lowenstein has also included asset analysis in its Bankruptcy Litigation task code.

1 First, the Committee already has performed – and the Debtor has already paid for – a valuation of
2 all real property titled in the name of the Debtor.

3 On September 5, 2024, the Court entered an order approving the Committee’s retention of DWC
4 as its “real estate consultant.” [Docket No. 1332] (the “DWC Order”). The Committee’s *Second Amended*
5 *Application for Entry of an Order Authorizing Retention of Douglas Wilson Companies as Real Estate*
6 *Consultant to the Official Committee of Unsecured Creditors* (the “DWC Application”) [Docket No.
7 1293] states DWC will “provide the Committee with an estimate of the value of [Debtor’s real property].”
8 [DWC Application, p. 4]. This work included valuation of 231 properties identified by the Committee,
9 with valuation of vacant land both as-zoned (its market value) and assuming re-zoning for highest and
10 best use. [*Id.*, p. 5 and Ex. B]. One of the properties DWC valued was the 122.5-acre agricultural land in
11 Livermore, California, referred to in court filings as the “Livermore Property,” which DWC valued both
12 as currently zoned and assuming re-zoning for residential development. [Docket. No. 1293-2 at 11 (Ex. B
13 to the DWC Agreement as defined below)].

14 DWC’s retention agreement, attached to the DWC Application as Exhibit B (the “DWC
15 Agreement”), required “[a] draft report [to] be finalized and issued within 60 days” and “[a] final report
16 will be finalized and issued within 90 days.”² [DWC Application, Ex. B]. For these services, the Debtor
17 was required to pay DWC a flat fee of \$130,000, plus additional expenses for third-party consultants to
18 be retained by DWC, estimated to be \$30,000. [See DWC Order, para. 5, 6]. In fact, the third-party
19 consultant fees ended up being \$84,000 for work outsourced to CBRE, almost three times the estimated
20 expense amount. [See Docket No. 1737 (DWC’s First Interim Fee Application).]

21 The Committee wants to retain Stout effective April 1, 2025. “Affirmative Expert Reports” are
22 due June 23, 2025, 84 days later. [Docket. No. 1893 at 2.] That means the Committee wants Stout to do
23 the same valuation analysis the Debtor already paid DWC \$214,000 to do, **plus** value a multitude of
24 additional real estate parcels owned by non-debtors, **plus** perform a liquidation analysis on all Debtor and
25 non-debtor real estate, in **less** time than DWC had to do it. And it wants Stout to bill by the hour with no
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27 ² Each of these time periods is from the “Effective Date,” which was the date of the original version of the DWC Agreement.

cap on its fees or expenses, at hourly rates which are much higher than the amounts the Debtor has already paid DWC for some of this same work.

Further, the Committee asked for approval, and the Court authorized the Committee, to use DWC as a testifying expert. The DWC Application states: “In addition to the Services, DWC may, if requested by the Committee, and agreed to by DWC in its sole and absolute discretion, provide advisory services and/or Litigation Support Services (defined in the Application).” [DWC Application, p. 5-6]. The DWC Agreement contemplates that the “Litigation Support Services” will be “including as consulting experts, and, possibly, as testifying experts” and further defines the services as follows:

“***Litigation Support Services***” means reviews of opposing experts’ reports and testimony, preparation of expert reports, forensic real property investigations, document reviews, assistance in preparing cross examination, DWC’s own file review and preparation for deposition and/or trial testimony, actual testimony, and any other related services.

[DWC Agreement, para. 3.5]. And the DWC Order pre-authorizes DWC to perform Litigation Support Services without further order of the Court. [DWC Order, para. 7 (“If requested by the Committee and agreed to by DWC, in its sole and absolute discretion, **DWC is authorized to provide Litigation Support Services**”) (emphasis added)].

The DWC Order says nothing about DWC’s services being limited to use in mediation. There is no evidence DWC is unwilling to provide the Litigation Support Services. And the Committee obviously believes DWC is qualified to do so, since it hired DWC in the first place. The declaration in support of the DWC Application confirms this: “DWC is qualified to provide opinions of the value of both improved and vacant land nationwide, and possesses particular expertise with evaluating properties in the state of California. Accordingly, DWC is qualified to provide an opinion of value of the Properties and to otherwise perform the Services set forth in the [DWC Agreement].” [Docket No. 1294].

The Committee’s statement in the Application that “DWC was not retained as an expert nor was it ever contemplated it would act as one” is therefore demonstrably false. [Application at 2 n.1.] The Committee’s statement in the Application that “DWC was asked to do a high-level analysis of the Debtor’s real property in a relatively short period of time” is also demonstrably false. [*Id.*] There is nothing in any

1 of DWC's retention papers limiting DWC's work to a "high-level analysis," whatever that means, and the
2 DWC report itself belies this description. The DWC report is titled "231 Parcel Valuations – Roman
3 Catholic Bishop of Oakland" and for each of the 231 real estate parcels titled in the name of the Debtor,
4 the DWC report concludes a "low" and a "high" "as is market value" and a "low" and a "high" "Sales
5 Comparison Approach" value. The DWC Report also includes a section captioned "Appraisals" for 30
6 properties concluding again a "low" and a "high" "as is market value" and a "low" and a "high" "Sales
7 Comparison Approach" value.³ Moreover, DWC had more time (90 days) to do its narrower analysis than
8 Stout would have (84 days) to do its vastly overbroad and unnecessary analysis, so it makes no sense for
9 the Committee to dismiss DWC's report on the basis of its turnaround time.

10 This is all pretextual, anyway. The obvious explanation for the Application is that the Committee
11 does not like DWC's value conclusions and wants the Debtor to pay for a do-over. It no doubt thinks
12 DWC's valuations of Church properties are lower than the Committee would like. And the Committee
13 really does not want the Court to know DWC's valuation for the Livermore Property, because it will
14 expose the hollowness of the Committee's claims that the Livermore Property would be nothing but a
15 burden to the Survivors' Trust. Through the Application, the Committee seeks to engage a second
16 valuation expert to (among other things) redo market valuations for all the real estate titled in the name of
17 the Debtor with the hope it will assign a higher value than DWC to every real estate asset except the
18 Livermore Property. The cost of this gamesmanship would be exceedingly burdensome to the Debtor's
19 estate. The Committee provides no legitimate reason why it should be allowed a do-over on DWC's work,
20 why DWC's valuations are inadequate, or why it needs a different testifying expert on these matters.

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23 ³ The Debtor chose not to attach the DWC Report to this Objection as a courtesy to the Committee. The Debtor would be within
24 its rights, however, to utilize the DWC Report and its valuations in this case, for two reasons. First, as set forth above, the
25 Committee misrepresented DWC's retention terms in the Application, and the Debtor is entitled to use the DWC Report to
26 set the record straight. Second, the Committee attempted to use its findings to defeat the Debtor's motion to approve its
27 disclosure statement, arguing in Court a specific range of value for the real estate titled in the name of the Debtor which
28 obviously came from the DWC report. [See, e.g., Docket No. 1518 (Committee's first objection to Disclosure Statement) at
18 ("... the Debtor is excluding somewhere between \$400 million and \$700 million of real property assets from its liquidation
analysis"); 12/18/24 Hrg. Tr. at 84:23-85:1 (Mr. Weisenberg: "... "The churches – conservatively, the real property is worth
400 to 700 million dollars, Your Honor. Okay? This is a billion-dollar real estate enterprise.".)] The Committee has blown
whatever privilege exists on the DWC Report by using it offensively in these proceedings, albeit indirectly.

Second, Stout should not be retained to value assets owned by non-debtors. The Committee has already spent more than \$2.7 million in professional fees to investigate the assets of not just the Debtor but also non-debtors, including over \$170,000 of fees incurred by Berkeley Research Group specifically on investigation of non-debtor assets. Property of affiliated non-debtor entities is not property of the bankruptcy estate and is not subject to the jurisdiction of this court. Property of the estate includes “all legal or equitable interests of the debtor in property as of the commencement of the [bankruptcy] case.” 11 U.S.C. § 541(a)(1). It is black-letter law that the Debtor’s legal and equitable interests in property, and therefore what is “property of the estate” under § 541, is a matter of state law. *See Butner v. U.S.*, 440 U.S. 48, 55 (1979) (“Property interests are created and defined by state law.”). In California, a corporation is regarded as a legal entity that is separate and distinct from its shareholders, officers and directors, and other affiliated entities; only in certain circumstances may that corporate identity be disregarded under the extraordinary remedy of alter ego. *See, e.g., Mou v. SSC San Jose Operating Co. LP*, 415 F. Supp. 3d 918, 929-31 (N.D. Cal. 2019) (noting courts may disregard a corporate identity by piercing the corporate veil or under the doctrine of alter ego). Further, seeking turnover of property of the estate from a non-debtor requires an adversary proceeding. Fed. R. Bankr. Proc. 7001(a)(1); *see also In re Mobley*, 2012 Bankr. LEXIS 5658, at *9 (Bankr. N.D. Ohio Dec. 6, 2012); *In re Wheeler Tech., Inc.*, 139 B.R. 235 (B.A.P. 9th Cir. 1992) (Rule 7001 requires an action to recover property to be brought as an adversary proceeding.). It is not appropriate to use limited estate resources to value property that is not part of the bankruptcy estate and not subject to the jurisdiction of this court.

The Committee persists in the fiction that the assets of RCC (cemeteries), RCWC (schools), Adventus (real estate), and OPF (investment fund) have already been determined to be property of the Debtor's estate. Of course, they have not. Earlier this month, the Court dismissed the Committee's complaint in Adversary Proceeding No. 24-04051 as to all counts, including that 11 U.S.C. § 303 bars substantive consolidation of OPF's assets under 11 U.S.C. §§ 105 and 541(a), and that the Committee did not adequately plead a state law veil-piercing claim. [AP 23-04051, Docket No. 34]. The Debtor has urged the Court to dismiss Adversary Proceeding No. 24-04053, seeking substantive consolidation of the assets of non-debtors RCC and RCWC, on the same grounds. The Debtor cannot be forced to utilize or liquidate

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LLC AS REAL ESTATE CONSULTANT AND EXPERT WITNESS

1 non-debtor assets in support of the Plan unless and until the Court orders it to do so. The valuation of non-
2 debtor assets is therefore not relevant to Plan confirmation.

3 Again, the Debtor does not object to Stout being retained to analyze the *liquidation value* of real
4 estate titled in the name of the Debtor, because the Debtor understands DWC did not already do that work.
5 Also, the Debtor acknowledges the Committee ought to be permitted to retain an expert to try to rebut the
6 liquidation analysis performed by the Debtor's professionals. But the Committee ought not be permitted
7 to use the Debtor's limited resources on a "do-over" of DWC's real estate valuation. Nor should the Debtor
8 be forced to pay for a valuation of assets that are not part of the estate or part of the Plan.

9 For these reasons, the Court should approve the Committee's retention of Stout only for the limited
10 purpose of analyzing the liquidation value of the Debtor's real estate assets and expert testimony related
11 thereto. The Court should deny the remainder of the Application.

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13 DATED: April 18, 2025

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/s/ Shane J. Moses

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28 DEBTOR'S LIMITED OBJECTION TO COMMITTEE APPLICATION FOR RETENTION OF STOUT RISIUS ROSS,
LLC AS REAL ESTATE CONSULTANT AND EXPERT WITNESS