

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

SC HEALTHCARE HOLDING, LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 24-10443 (TMH)

(Jointly Administered)

Related Docket No. 38

**LIMITED OBJECTION OF HICKORY POINT BANK & TRUST TO DEBTORS’
MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE
DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) GRANTING SECURITY
INTERESTS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (III)
GRANTING ADEQUATE PROTECTION TO CERTAIN PREPETITION SECURED
CREDIT PARTIES, (IV) MODIFYING THE AUTOMATIC STAY, (V) AUTHORIZING
THE DEBTORS TO ENTER INTO AGREEMENTS WITH JMB CAPITAL PARTNERS
LENDING, LLC, (VI) AUTHORIZING NON-CONSENSUAL USE OF CASH
COLLATERAL, (VII) SCHEDULING A FINAL HEARING,
AND (VIII) GRANTING RELATED RELIEF**

Hickory Point Bank & Trust (“Hickory”), by and through undersigned counsel, hereby submits this limited objection (this “Objection”) to the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Security Interests and Superpriority Administrative Expense Status, (III) Granting Adequate Protection to Certain Prepetition Secured Credit Parties, (IV) Modifying the Automatic Stay, (V) Authorizing the Debtors to Enter into Agreements with JMB Capital Partners Lending, LLC, (VI) Authorizing Non-Consensual Use of Cash Collateral, (VII) Scheduling a Final Hearing, and (VIII) Granting Related Relief* (the “DIP Motion”; D.I. 38)

¹ The last four digits of SC Healthcare Holding, LLC’s tax identification number are 2584. The mailing address for SC Healthcare Holding, LLC is c/o Petersen Health Care Management, LLC 830 West Trailcreek Dr., Peoria, IL 61614. Due to the large number of debtors in these Chapter 11 Cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information will be made available on a website of the Debtors’ proposed claims and noticing agent at www.kccllc.net/Petersen.



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1. On March 20, 2024 (the “Petition Date”), the Debtors filed voluntary petitions for relief under title 11 of chapter 11 of the United States Code, 11 U.S.C. §§ 101–1532, with the United States Bankruptcy Court for the District of Delaware (the “Court”).

2. On March 21, 2024, the Debtors filed the DIP Motion, requesting approval of a \$45 million superpriority senior secured loan facility provided by the DIP Lender.²

3. The DIP Facility requested by the Debtors contemplates priming the liens of several Prepetition Secured Parties, including Hickory, as noted at paragraph 8 of the DIP Motion.

4. Section 364(d)(1) of the Bankruptcy Code sets forth a two-prong test to obtain a priming lien to secure debtor-in-possession financing. Specifically, section 364(d)(1) provides, in pertinent part:

The court, after notice and hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on the property of the estate that is subject to a lien only if – (A) the trustee is unable to obtain such credit otherwise; and (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal like is proposed to be granted.

11 U.S.C. § 364(d)(1).

5. Under this two-prong test, a debtor must first demonstrate that it cannot obtain financing on any other basis. A debtor must then provide adequate protection to an interest to be primed. Said differently, priming is impermissible unless there is adequate protection to existing lien holders. *See In re First South Sav.*, 820 F.2d 700, 701-11 (5th Cir. 1987).

6. The debtor bears the burden of proof on the issue of adequate protection. 11 U.S.C. § 364(d)(2); *see also In re Fontainebleau Las Vegas Holdings, LLC*, 434 B.R. 716, 748 (S.D. Fla. 2010) (“Debtors, who bear the burden of establishing adequate protection, must...establish[] that

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the DIP Motion.

the relief granted to the Statutory Lienholders ‘will result in the realization by [the Statutory Lienholders] of the indubitable equivalent of [their] interest in such property.’ ”). In this case, the Debtors have not satisfied this second prong.

7. As of the Petition Date, Debtors were indebted to Hickory in the approximate amount of \$1,824,177.42, secured by a first mortgage and assignment of rents pertaining to the Courtyard Estates of Girard healthcare facility, as well as a commercial security agreement dated August 2, 2021, whereby Hickory was granted a security interest in substantially all of the assets of Debtor CYE Girard HCO, LLC.³

8. As described in paragraph 15 of the DIP Motion, the Debtors estimate that they owe approximately \$45,732,300 under healthcare facility loans insured by the United States Department of Housing and Urban Development (“HUD”). Holders of mortgages insured by HUD have objected to the DIP Motion on the basis that, *inter alia*, the priming effect and cross-collateralization of loans provided for by the DIP Facility violate the National Housing Act and are accordingly prohibited. *See, e.g.*, D.I. 57.

9. At Exhibit A of the *Declaration of David R. Campbell in Support of Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Security Interests and Superpriority Administrative Expense Status, (III) Granting Adequate Protection to Certain Prepetition Secured Credit Parties, (IV) Modifying the Automatic Stay, (V) Authorizing the Debtors to Enter Into Agreements With JMB Capital Partners Lending, LLC, (VI) Authorizing Non-Consensual Use of Cash Collateral, (VII) Scheduling a Final Hearing, and (VIII) Granting Related Relief* (the “Campbell Declaration”; D.I. 40), the outstanding

³ The Debtors’ chart attached as Exhibit A to the Campbell Declaration (D.I. 40) indicates a total principal and interest outstanding balance of \$2,049,696.

amounts owed to the Prepetition Secured Parties are detailed, including amounts owed under HUD-insured mortgages held by Berkadia, Grandbridge, Lument, Wells Fargo, and X-Caliber Capital.

10. In the Campbell Declaration, Mr. Campbell indicates that he “calculated an overall waterfall estimate analysis...calculating such funds to flow down to the DIP Facility repayment, following by first lien claims....” Campbell Declaration ¶ 18. However, the waterfall analysis does not take into account the scenario where the holders of HUD-insured mortgages prevail on their argument that those mortgage liens cannot be primed by the DIP Facility. In that scenario, the waterfall concerning holders of mortgages not insured by HUD would necessarily change for the worse.

11. Hickory has requested that Debtors show the math to demonstrate how the waterfall would change in the event that the holders of HUD-insured mortgages prevail on their objections, but the Debtors have not provided that information to date. Accordingly, Hickory lacks sufficient information to determine the allocations in that scenario and whether Hickory would have adequate assurance at that point, and Debtors have not met their burden to demonstrate such adequate assurance.

12. Without sufficient information available from the Debtors to determine whether it has adequate assurance, Hickory objects to the DIP Motion and approval of the DIP Facility to the extent that it would result in priming of Hickory’s prepetition secured lien.

JOINDER

13. Hickory hereby joins in objections to the DIP Motion filed by other parties in interest as and to the extent the same may be applicable.

Dated: May 6, 2024

GELLERT SEITZ BUSENKELL & BROWN, LLC

/s/ Michael Busenkell

Michael Busenkell (DE 3933)
Bradley P. Lehman (DE 5921)
1201 N. Orange St., Ste. 300
Wilmington, Delaware 19801
Telephone: (302) 425-5800
Facsimile: (302) 425-5814
mbusenkel@gsbblaw.com
blehman@gsbblaw.com

Attorneys for Hickory Point Bank & Trust

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 6, 2024, I caused a true and correct copy of the foregoing document to be electronically filed and served via CM/ECF upon all parties requesting electronic notices in this case and upon the parties below via email:

Debtors, Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601 (Attn.: Greg
Gartland, Dan McGuire and Joel Mudd) and
200 Park Avenue
New York, New York 10166
(Attn.: Carrie Hardman)

Office of the United States Trustee for the
District of Delaware
(Attn: Linda Richenderfer and Jon Lipshie)

Morris James LLP
500 Delaware Avenue, Suite 1500,
Wilmington, DE 19801 (Attn: Eric J. Monzo)

Landis Rath & Cobb LLP
919 Market Street, Suite 1800
P.O. Box 2087
Wilmington, DE 19899
(Attn: Adam Landis and Rick Cobb)

Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
(Attn.: Andrew L. Magaziner, Shella
Borovinskaya,
and Carol E. Cox)

Norton Rose Fulbright US LLP
1301 Avenue of the Americas
New York, NY 10019
(Attn: Robert Hirsh and Francisco Vazquez)
Holland & Knight, LLP
511 Union Street, Ste. 2700
Nashville, Tennessee 37219
(Attn: Tyler Layne)

/s/ Michael Busenkell
Michael Busenkell (DE 3933)