

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) Case No. 24-55507-pmb
) Chapter 11
LAVIE CARE CENTERS, LLC¹) Cases Jointly Administered
)
Debtor.) JUDGE BAISIER

ESTATE OF MARY GARRETT)
Movant,)
) CONTESTED MATTER
V.)
)
1465 OAKFIELD DRIVE OPERATIONS,)
LLC D/B/A BRANDON HEALTH)
AND REHABILITATION CENTER)
)
Respondent.)

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT Movant, Estate of Mary Garrett, has filed a Motion for Relief from the Automatic Stay and related papers with the Court seeking an order on the Motion for Relief from the Automatic Stay.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the *Motion for Relief from the Automatic Stay* at **1:00 PM on September 30, 2024 in Courtroom 1202, United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303**, which may be attended in person or via the Court's Virtual Hearing Room. You may join the Virtual Hearing Room through the "Dial-in and Virtual Bankruptcy Hearing Information" link at the top of the homepage of the Court's website, www.ganb.uscourts.gov, or the link on the judge's webpage, which can also be found on the Court's website. Please also review the "Hearing Information" tab on the judge's webpage for further information about the hearing. You should be prepared to

¹ The last four digits of LaVie Care Centers, LLC's federal tax identification number are 5592. There are 282 Debtors in these chapter 11 cases, which are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://www.kccllc.net/LaVie>. The location of LaVie Care Centers, LLC's corporate headquarters and the Debtors' service address is 1040 Crown Pointe Parkway, Suite 600, Atlanta, GA 30338.



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appear at the hearing via video, but you may leave your camera in the off position until the Court instructs otherwise. Unrepresented persons who do not have video capability may use the telephone dial-in information on the judge's webpage.

Your rights may be affected by the Court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in these pleadings or if you want the Court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleadings with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk before the hearing. The address of the Clerk's Office is Clerk, U. S. Bankruptcy Court, Suite 1340, 75 Ted Turner Drive, Atlanta Georgia 30303. You must also mail a copy of your response to the undersigned at the address stated below.

If a hearing on the Motion cannot be held within thirty (30) days, Movant waives the requirement for holding a preliminary hearing within thirty days of filing the Motion and agrees to a hearing on the earliest possible date. Movant consents to the automatic stay remaining in effect until the Court orders otherwise.

Date: 09/13/2024

/s/ Erin M. Rose Quinn
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**UNITED STATES BANKRUPTCY COURT
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LAVIE CARE CENTERS, LLC ²)	Cases Jointly Administered
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AND REHABILITATION CENTER)	
)	
Respondent.)	

**MOTION FOR RELIEF FROM AUTOMATIC STAY
TO PROCEED AGAINST INSURANCE WITH WAIVER
OF 30-DAY REQUIREMENT OF 11 U.S.C. SECTION 362(e)**

COMES NOW, Estate of Mary Garrett (“Movant”), by and through counsel, and moves this Court to enter an order granting its request for relief from the automatic stay imposed by 11 U.S.C. § 362 to proceed against insurance and waiver of 30-day requirement of 11 U.S.C. § 362(e). Movant respectfully shows the Court as follows:

BACKGROUND

1. On June 2, 2024, the Debtor filed a petition with the Bankruptcy Court for the Northern District of Georgia under Chapter 11 of Title 11 of the United States Bankruptcy Code.

² The last four digits of LaVie Care Centers, LLC’s federal tax identification number are 5592. There are 282 Debtors in these chapter 11 cases, which are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.kccllc.net/LaVie>. The location of LaVie Care Centers, LLC’s corporate headquarters and the Debtors’ service address is 1040 Crown Pointe Parkway, Suite 600, Atlanta, GA 30338.

2. Joint Debtor, 1465 Oakfiled Drive Operations, LLC, was a Florida Limited Liability Company doing business as Brandon Health and Rehabilitation Center (hereinafter, the “Rehabilitation Center”), located at 1465 Oakfiled Drive, Brandon, FL 33511.

3. Movant was a resident of the Rehabilitation Center from on or about February 2023 through August 2023.

4. Movant was admitted to the Rehabilitation Center for rehabilitation following a surgery to her ankle from a fall.

5. While there, Movant suffered an infection as a result of the Rehabilitation Center’s breach of duty to provide adequate wound care to the surgery site.

6. As a result of the infection, Movant was forced to return to the hospital for additional procedures on her ankle.

7. Movant was then returned to the Rehabilitation Center where again, it failed provide adequate wound care, which caused Movant to be forced to return to the hospital for additional procedures.

8. This cycle continued until Movant, through the assistance of loved ones, stopped returning to the Rehabilitation Center.

9. However, due to the Rehabilitation Center failing to provide adequate wound care on several occasions, Movant was forced to have her leg amputated.

10. On February 14, 2024, Movant commenced litigation in the Circuit Court of the Thirteen Judicial Circuit in and for Hillsborough County, Civil Division, Case No. 2024-CA-001314 (“Civil Case”) against the Rehabilitation Center and other culpable defendants.

11. On June 7, 2024, the Rehabilitation Center filed a Suggestion of Bankruptcy in the Civil Case.

RELIEF REQUESTED

12. Movant desires to continue the Civil Case for the purpose of liquidating her claim against the Rehabilitation Center, in addition to the other defendants, to the extent of the Rehabilitation Center's available insurance.

13. Movant asserts that the above constitutes cause to modify the automatic stay to the extent requested herein.

14. 11 U.S.C. §362(d)(1) provides that stay relief should be granted "for cause, including the lack of adequate protection of an interest in property of such party in interest." The language of §362(d)(1) has been interpreted to include a wide variety of circumstances that constitute "cause" for stay relief. *In re Bryan Road, LLC*, 382 B.R. 844, 854-855 (Bankr. S.D. Fla. 2008) (citing *In re Dixie Broad, Inc.*, 871 F.2d 1023, 1026 (11th Cir. 1989)).

15. The totality of the circumstances in each particular case must be considered when making this determination. *Id.* (citing *In re Aloisi*, 261 B.R. 504, 508 (Bankr. M.D. Fla. 2001); *In re Wilson*, 116 F.3d 87, 90 (3rd Cir. 1997); *see also In re Emerald Cove Villas, LLC*, 2007 Bankr. LEXIS 864, 8 (Bankr. M.D. Fla. Mar. 2, 2007)).

16. Bankruptcy courts conduct a case-by-case inquiry and apply a totality of the circumstances test to determine whether cause for relief from the automatic stay exists. *In re Laminate Kingdom LLC*, 2008 Bankr. LEXIS 1594 (Bankr. S.D. Fla. Mar. 13, 2008), citing *In re Aloisi*, 261 B.R. 504, 508 (Bankr. M.D. Fla. 2001). The decision to lift the stay is within the discretion of the Bankruptcy Court Judge. *In re Dixie Broadcasting, Inc.*, 871 F.2d 1023, 1026 (11th Cir. 1989).

17. The circumstances here warrant relief from the automatic stay for cause under 11 U.S.C. §362(d)(1).

18. Movant asserts that she has cognizable claim against the Rehabilitation Center and Movant desires to continue prosecuting the claim against the Rehabilitation Center solely for the purposes of liquidating the claim. Should Movant obtain a recovery or judgment against the Rehabilitation Center, then Movant intends to only seek to enforce it solely against the proceeds of insurance and will not seek to enforce the recovery or judgment against the Rehabilitation Center, property of the Rehabilitation Center or Property of the Estate.

WHEREFORE, Movant prays the Court as follows:

- a. Modify the Automatic Stay of 11 U.S.C. § 362(a) to permit Movant permitting Movant to take any and all steps necessary to exercise any and all rights it may have in the Civil Case, including liquidating the claim against Rehabilitation Center only to the extent of the available insurance;
- b. An award of attorney fees and cost incurred in conjunction with the filing of the instant motion; and
- c. Modify Rule 4001(a)(3) of the Bankruptcy Code so that it is not applicable in this case and so Movant may immediately enforce and implement this order granting relief from the automatic stay; and
- d. Grant Movant such other and further relief as the Court deems just and proper.

Date: 09/13/2024

/s/ Erin M. Rose Quinn
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UNITED STATES BANKRUPTCY COURT
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1465 OAKFIELD DRIVE OPERATIONS,)
LLC D/B/A BRANDON HEALTH)
AND REHABILITATION CENTER)
Respondent.)

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2024, I electronically filed the foregoing **Notice of Hearing and Motion for Relief from Automatic Stay** with the Clerk of Court using the CM/ECF system which will automatically send an e-mail notification of such filing to the parties or attorneys of record. I have also on this day caused a copy of the pleading to be placed in the first-class United States mail, postage prepaid, addressed to the following recipients not participating in the CM/ECF system as follows:

Nathan M. Bull
McDermott Will & Emery LLP
333 SE 2nd Avenue, Suite 4500
Miami, FL 33131

³ The last four digits of LaVie Care Centers, LLC's federal tax identification number are 5592. There are 282 Debtors in these chapter 11 cases, which are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://www.kccllc.net/LaVie>. The location of LaVie Care Centers, LLC's corporate headquarters and the Debtors' service address is 1040 Crown Pointe Parkway, Suite 600, Atlanta, GA 30338.

Jack Gabriel Haake
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Atlanta, GA 30303

Matthew R. Brooks
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(continued on next page)

Joanna J. Cline
Troutman Pepper Hamilton Sanders
LLP
Hercules Plaza, Suite 5100
1313 N. Market Street, P.O. Box 1709
Wilmington, DE 19899-1709

I further certify that on this day I caused a copy of this document to be served by depositing a copy of same in the United States Mail in a properly addressed envelope with adequate postage thereon the following parties at the address shown for each.

LaVie Care Centers, LLC
1040 Crown Pointe Pkwy
Suite 600
Atlanta, GA 30338

Date: 09/13/2024

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By: /s/ Erin M. Rose Quinn
Erin M. Rose Quinn, Esq.
Georgia Bar Number 547833

**IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

MARY GARRETT,

Plaintiff,

Case No.:

v.

**1465 OAKFIELD DRIVE OPERATIONS, LLC,
d/b/a BRANDON HEALTH AND REHABILITATION
CENTER, NSPRMC, LLC and TEKEL C. HARRISON,**

Defendants.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW, the Plaintiff, MARY GARRETT, by and through undersigned counsel, and hereby files this Complaint against Defendants, 1465 OAKFIELD DRIVE OPERATIONS, LLC, NSPRMC, LLC, and TEKEL C. HARRISON, Administrator, and alleges as follows:

GENERAL ALLEGATIONS

1. This is an action for damages in excess of Fifty Thousand Dollars (\$50,000.00), exclusive of costs and fees.
2. At all times material hereto, the Defendant, 1465 OAKFIELD DRIVE OPERATIONS, LLC, was a Florida Limited Liability Company, operating a place of business as the owner/licensee of BRANDON HEALTH AND REHABILITATION CENTER at 1465 Oakfield Drive, Brandon, FL 33511, in Hillsborough County, Florida.
3. MARY GARRETT was a resident of BRANDON HEALTH AND REHABILITATION CENTER, at 1465 Oakfield Drive, Brandon, FL 33511, from on or about February 2023, through August 2023.
4. The Defendant, 1465 OAKFIELD DRIVE OPERATIONS, LLC is a licensee that owned and/or operated BRANDON HEALTH AND REHABILITATION CENTER during MARY

GARRETT's residency and as such owed a duty to the Plaintiff to exercise reasonable care in its operation according to §400.023(3), Florida Statutes.

5. The Defendant, NSPRMC, LLC is a licensee that managed BRANDON HEALTH AND REHABILITATION CENTER during MARY GARRETT's residency and as such owed a duty to the Plaintiff to exercise reasonable care in its operation according to §400.023(3), Florida Statutes.
6. The Defendant TEKEL C. HARRISON is a licensee that served as the administrator for BRANDON HEALTH AND REHABILITATION CENTER during MARY GARRETT's residency and as such owed a duty to the Plaintiff to exercise reasonable care in its operation according to §400.023(3), Florida Statutes.
7. At all times material hereto Defendant 1465 OAKFIELD DRIVE OPERATIONS, LLC was a Florida Limited Liability Company with a principal place of business of 1465 Oakfield Drive, Brandon, FL 33511.
8. At all times material hereto Defendant NSPRMC, LLC was a Florida Limited Liability Company doing business as NSPIRE Healthcare, with a principal place of business of 3920 Rosewood Way Orlando, FL 32808.
9. At all times material hereto Defendant TEKEL C. HARRISON was a resident of the State of Florida, or in the alternative, said Defendant is a non-resident of the State of Florida or is a resident of the State of Florida who has been and presently is concealing his whereabouts and, by operating a motor vehicle within the State of Florida, constitutes the Secretary of State his agent for the service of process of this civil action.
10. MARY GARRETT was admitted to BRANDON HEALTH AND REHABILITATION CENTER for rehabilitation following a surgery to her ankle from a fall.
11. BRANDON HEALTH AND REHABILITATION CENTER, had a duty to provide wound care to MARY GARRETT at the site of the surgery.
12. While under the care of BRANDON HEALTH AND REHABILITATION CENTER, MARY

GARRETT failed to provide adequate wound care to the surgery site which resulted in infection.

13. As a result of the infection, MARY GARRETT was forced to return to the hospital for additional procedures on her ankle due to the infection.
14. MARY GARRETT was returned to BRANDON HEALTH AND REHABILITATION CENTER, where again, they failed to provide adequate wound care for MARY GARRETT, causing her to have to return to the hospital for additional procedures on her ankle due to the infection.
15. This cycle continued until ultimately MASRY GARRETT, with the assistance of her loved ones, stopped returning to BRANDON HEALTH AND REHABILITATION CENTER, however the damage to MARY GARRETT from BRANDON HEALTH AND REHABILITATION CENTER's failure to provide adequate wound care was already done, and ultimately MARY GARRET was forced to have her leg amputated.
16. This negligent care and treatment while MARY GARRETT was a resident at BRANDON HEALTH AND REHABILITATION CENTER, is also a direct violation of MARY GARRETT's Resident's Rights.
17. Pursuant to Florida Statute § 400.022, MARY GARRETT had the following rights, and the Defendants had a duty to assure the following rights were not violated:
 - a. The right to be adequately informed of the resident's medical condition and proposed treatment (F.S. §400.022(1)(j));
 - b. The right to be fully informed in advance of any nonemergency changes in care or treatment that might affect the resident's well-being (F.S. §400.022(1)(j));
 - c. The right to receive adequate and appropriate health care protective and support services, consistent with the resident care plan, with established and recognized practice standards within the community, and with rules as adopted by the agency (F.S. §400.022(1)(1));
 - d. The right to be treated courteously, fairly and with the fullest measure of dignity (F.S. §400.022(1)(n)); and
 - e. The right to be free from mental or physical abuse (F.S. §400.022(1)(o)).

18. Pursuant to Section 400.022, Florida Statutes, and the state and federal rules and regulations adopted and promulgated thereunder pursuant to 400.022(1)(1), all of which constitute a part of the established and recognized healthcare standards within the community, MARY GARRETT had statutory rights, and Defendants had a duty to assure these statutory rights were not violated

COMPLIANCE WITH PRE-SUIT REQUIREMENTS

19. All conditions precedent to the filing of this action, including compliance with Florida Statute, Sections 400.0233, have been performed or have been waived. In addition, Plaintiff served by Certified Mail, Return Receipt Requested, a seventy-five (75) day Notice of Intent to Initiate Litigation on the following Defendants on the following dates:

<u>DEFENDANT</u>	<u>DATE NOTICE SERVED</u>
1465 OAKFIELD DRIVE OPERATIONS, LLC	October 27, 2023
NSPRMC, LLC	October 31, 2023
TEKEL C. HARRISON, Administrator	October 27, 2023

20. Prior to the institution of this action, Plaintiff complied with all requirements of Florida Statute, Section 400.0233.
21. Prior to the filing of this Complaint, the Defendants responded to Plaintiffs Notice of Intent rejecting Plaintiffs claims during pre-suit period, without agreeing to Plaintiffs request for the mandatory pre-suit mediation, and without responding to or complying with Plaintiffs request for additional discovery.
22. Pursuant to Section 400.0233, Florida Statutes, all conditions precedent to the filing of this action have been satisfied or fulfilled by the Plaintiff.

CERTIFICATE OF COUNSEL

23. Pursuant to Florida Statute, Section 400.0233, the undersigned attorney of record does hereby certify that a reasonable investigation has been conducted as to the matters alleged herein, and it has been determined that there are grounds for a good faith belief that there was negligence in the

care and treatment of MARY GARRETT and that grounds exist for the filing of this action against the Defendant.

COUNT I
DEPRIVATION OR INFRINGEMENT OF RESIDENTS' RIGHTS

24. The Plaintiff, MARY GARRETT, deceased, incorporates and re-alleges paragraphs one (1) through twenty (20) above as though fully set forth herein.
25. During the time that MARY GARRETT was a resident of BRANDON HEALTH AND REHABILITATION CENTER, it was operated and licensed under F.S. Chapter 400.
26. BRANDON HEALTH AND REHABILITATION CENTER is a “facility” as defined in under F.S. §400.022, and therefore BRANDON HEALTH AND REHABILITATION CENTER had a statutorily mandated responsibility to MARY GARRETT to provide her with her nursing home resident’s rights as set forth in under F.S. §400.022(1).
27. At all times material hereto, the Defendants had a responsibility and obligation to MARY GARRETT to operate in compliance with the various requirements of F.S. Chapter 400, Chapter 59A-4, Florida Administrative Code, 42 Code of Federal Regulations (CFR), Chapter IV, Part 483, and various other federal and State statutes, regulations and rules.
28. At all material times hereto, the Defendants had a statutorily mandated responsibility to provide MARY GARRETT her residents’ rights as set forth in under F.S. §400.022.
29. Notwithstanding the responsibility of the Defendants to provide MARY GARRETT her statutorily mandated residents’ rights, MARY GARRETT was deprived of such rights by the acts or omissions of the Defendants.
30. The acts and omissions of the Defendant which deprived MARY GARRETT of her residents’ rights include, but are not limited to:
 - a. Failing to adequately inform MARY GARRETT of her medical condition and proposed treatment;
 - b. Failing to provide adequate and appropriate health care and protective and support

services;

- c. Failing to treat MARY GARRETT courteously, fairly, and with the fullest measure of dignity and to provide a written statement and an oral explanation of the services provided by, including those required to be offered on an as-needed basis; and
- d. Neglecting MARY GARRETT.

31. As a result, MARY GARRETT suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and aggravation of a previously existing condition.

WHEREFORE, the Plaintiff, MARY GARRETT, demands judgment against the Defendants for damages for the deprivation of her rights as stated above, and further demands a trial by jury.

COUNT II
NEGLIGENCE — BREACH OF STANDARD OF CARE

32. The Plaintiff, MARY GARRETT, incorporates and re-alleges paragraphs one (1) through twenty-eight (28) above as though fully set forth herein.

33. Licensed employees and consultants of the Defendants owed a duty to residents of BRANDON HEALTH AND REHABILITATION CENTER, including MARY GARRETT, to provide care and treatment which met the standard of care required of similarly situated, reasonably prudent employees and consultants who provide care and treatment to nursing home residents under the same or similar circumstances to those applicable to Plaintiffs cause of action, and as described herein according to accepted standards of care for similar professionals in Florida and similar communities.

34. Unlicensed employees of the Defendants owed a duty to residents of BRANDON HEALTH AND REHABILITATION CENTER, including MARY GARRETT, to render custodial care and services and as a reasonably prudent and similarly situated employee would render care and

services, including but not limited to rendering care and services in a safe and beneficial manner.

35. BRANDON HEALTH AND REHABILITATION CENTER and its employees and consultants had a duty to protect a particular class of persons, aged and disabled persons, including residents of nursing home facilities, from an inability to protect themselves.

36. The Defendants' responsibilities and duties to MARY GARRETT are nondelegable, such that the Defendants are directly liable for violations, deprivations and infringements by any person or entity under Defendants' control, directly or indirectly, including its employees, agents, consultants and independent contractors, whether in-house or outside entities, individuals, agencies or pools, or caused by the Defendants' policies, whether written or unwritten, or common practices. The Defendants which breached their duties owed to MARY GARRETT by:

- a. Failing to adequately inform MARY GARRETT of her medical condition and proposed treatment;
- b. Failing to provide adequate and appropriate health care and protective and support services;
- c. Failing to treat MARY GARRETT courteously, fairly, and with the fullest measure of dignity and to provide a written statement and an oral explanation of the services provided by, including those required to be offered on an as-needed basis; and
- d. Neglecting MARY GARRETT.

37. As a direct and proximate cause of the Defendants' acts and omissions in breaching their duties, MARY GARRETT suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and aggravation of a previously existing condition.

WHEREFORE, the Plaintiff, MARY GARRETT, demands judgement against the Defendants for damages for negligence as stated above, and further demands a trial by jury.

**NOTICE OF DESIGNATION OF PRIMARY E-MAIL ADDRESS FOR
SERVICE BY ELECTRONIC MAIL**

The Apex Law Firm files this appearance as attorney of record for Plaintiff in the above-styled cause, and pursuant to FL R. Jud. Admin 2.516, designates the following e-mail address for service by electronic mail: service@apexfirm.com.

DATED this 14th day of February, 2024.

Respectfully Submitted,

/s/ Christopher J. Castillo, Esq.

Christopher J. Castillo, Esquire

Florida Bar No. 97843

APEX Law Firm

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Attorney for Plaintiff