

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:)	
)	
MIDWEST CHRISTIAN VILLAGES, INC.,)	Case No. 24-42473-659
et al.,)	Chapter 11
)	
Debtors.)	Jointly Administered
)	
)	

ORDER

The matter before the Court is the United States' Emergency Motion For Stay Pending Appeal of Final Order (1) Authorizing Debtors In Possession To Obtain Post-Petition Financing; (2) Authorizing Debtors In Possession To Use Cash Collateral; (3) Providing Adequate Protection; And (4) Granting Liens, Security Interests And Superpriority Claims (Doc. 315); Joint Objection Of Debtors And DIP Lender In Opposition To HUD's Oral And Written Motion For Stay Pending Appeal of Final DIP Financing Order (Doc. 323); Joinder Of The Official Committee Of Unsecured Creditors To Joint Objection Of Debtors And DIP Lender In Opposition To HUD's Oral And Written Motion For Stay Pending Appeal Of Final DIP Financing Order (Doc. 324); and United States' Reply In Further Support Of United States' Emergency Motion For Stay Pending Appeal of Final Order (1) Authorizing Debtors In Possession To Obtain Post-Petition Financing; (2) Authorizing Debtors In Possession To Use Cash Collateral; (3) Providing Adequate Protection; And (4) Granting Liens, Security Interests And Superpriority Claims (Doc. 328). On September 13, 2024, the Court read its Order granting the DIP Financing Motion on a final basis on the record. Following this, the United States announced its intention to appeal the Court's decision and requested a stay pending appeal. The Court requested a written motion for stay pending appeal be filed, followed by the filing of any opposition to the motion for stay pending appeal and then a reply by the United States.

To this end, on September 16, 2024, the United States filed United States' Emergency Motion For Stay Pending Appeal of Final Order (1) Authorizing Debtors In Possession To Obtain Post-Petition Financing; (2) Authorizing Debtors In Posses



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Providing Adequate Protection; And (4) Granting Liens, Security Interests And Superpriority Claims (Doc. 315) (hereinafter “Emergency Motion for Stay Pending Appeal”). On September 17, 2024, Debtors and DIP Lender filed Joint Objection Of Debtors And DIP Lender In Opposition To HUD’s Oral And Written Motion For Stay Pending Appeal of Final DIP Financing Order (Doc. 323) (hereinafter “Joint Objection”). On September 17, 2024, the Official Committee of Unsecured Creditors filed Joinder Of The Official Committee Of Unsecured Creditors To Joint Objection Of Debtors And DIP Lender In Opposition To HUD’s Oral And Written Motion For Stay Pending Appeal Of Final DIP Financing Order (Doc. 324) (hereinafter “Joinder in Opposition”). On September 18, 2024, the United States filed United States’ Reply In Further Support Of United States’ Emergency Motion For Stay Pending Appeal of Final Order (1) Authorizing Debtors In Possession To Obtain Post-Petition Financing; (2) Authorizing Debtors In Possession To Use Cash Collateral; (3) Providing Adequate Protection; And (4) Granting Liens, Security Interests And Superpriority Claims (Doc. 328) (hereinafter “Reply”). Upon consideration of the record as a whole, the Court makes the following **FINDINGS OF FACT AND CONCLUSIONS OF LAW**:

On July 16, 2024, Midwest Christian Villages, Inc. and its entities (hereinafter “Debtors”)¹ filed Voluntary Petitions under Chapter 11 of the Bankruptcy Code. Many of the Debtors have been in business for over 60 years providing senior living facilities as part of their Christian faith based not for profit mission. Debtors operate a combination of independent, assisted, and skilled senior living facilities and nursing campuses to over 1,000 residents in 10 locations across the Midwest. Debtors operate a pharmacy that currently serves nearly all of Debtors’ entities along with 11 facilities outside of Christian Horizons. Debtors also employ approximately 960 employees and acquire individuals from staffing agencies to run their operations.

¹ Safe Haven Hospice, LLC later filed its Voluntary Petition under Chapter 11 on August 21, 2024.

Also, on July 16, 2024, Debtors filed Debtors' Motion for Interim and Final Orders (1) Authorizing The Debtors To Obtain Post-Petition Financing, (2) Authorizing Debtors In Possession To Use Cash Collateral, (3) Providing Adequate Protection, (4) Granting Liens, Security Interest And Superpriority Claims; And (5) Scheduling A Final Hearing (hereinafter "DIP Financing Motion") requesting the Court, among other things, enter an order on an interim basis authorizing post-petition financing with the DIP Lender. Doc. 11; see Doc. 43 Ex. A p. 30 and 37. Debtors state that in exchange for funding and use of Cash Collateral the DIP Lender requires a priming lien to remain senior to the Bond Trustee's Pre-Petition Liens and constitute as first priority in all Post-Petition Collateral, inclusive of the HUD Financed Properties. *Id.* at ¶ 27. Debtors state it is necessary to its capital, administrative, and operational needs as a going concern to obtain post-petition financing under a DIP Facility with the DIP Lender. *Id.* at ¶ 22. Debtors state the DIP Facility is the only means of providing the financing required as Debtors are unable to obtain post-petition financing on an unsecured basis pursuant to §§ 364(c)(1) or 503(b)(1) or secured basis under §§ 364(c)(2), 364(c)(3), and 364(d)(1) from sources other than the DIP Lender. *Id.* at ¶¶ 22-23. The Court granted the DIP Financing Motion on an interim basis at the initial hearing on first day motions on July 17, 2024, and at subsequent hearings. See Doc. 160, 309, and 334.

On August 13, 2024, Lument filed Preliminary Objection And Reservation Of Rights Of Lument Real Estate Capital, LLC To Debtors' Motion For Interim And Final Orders (1) Authorizing The Debtors To Obtain Postpetition Financing, (2) Authorizing Debtors In Possession To Use Cash Collateral, (3) Providing Adequate Protection, (4) Granting Liens, Security Interests And Superpriority Claims; And (5) Scheduling A Final Hearing (Doc. 133), its preliminary objection to the DIP Financing Motion and on September 9, 2024, filed Objection Of Lument Real Estate Capital, LLC To Debtors' Motion For Interim And Final Orders (1) Authorizing The Debtors To Obtain Postpetition Financing, (2) Authorizing Debtors In

Possession To Use Cash Collateral, (3) Providing Adequate Protection, (4) Granting Liens, Security Interests And Superpriority Claims; And (5) Scheduling A Final Hearing (Doc. 268).

On September 4, 2024, the United States filed United States' Objection To Debtors' Motion For Interim And Final Orders (1) Authorizing The Debtors To Obtain Post-Petition Financing, (2) Authorizing Debtors In Possession To Use Cash Collateral, (3) Providing Adequate Protection, (4) Granting Liens, Security Interests And Superpriority Claims; And (5) Scheduling A Final Hearing (Doc. 271).

On September 4, 2024, the Official Committee of Unsecured Creditors filed Limited Response And Reservation Of Rights Of The Official Committee Of Unsecured Creditors To Debtors' Motion For A Final Order (1) Authorizing The Debtors To Obtain Post-Petition Financing, (2) Authorizing Debtors In Possession To Use Cash Collateral, (3) Providing Adequate Protection, and (4) Granting Liens, Security Interests And Superpriority Claims (Doc. 264).

On September 9, 2024, Debtors and the DIP Lender filed Joint Omnibus Reply Of Debtors And DIP Lender In Support Of Entry Of The Final DIP Financing Order (Doc. 287).

On September 11, 2024, an evidentiary hearing was held on the DIP Financing Motion. On September 13, 2024, the Court issued its ruling granting the DIP Financing Motion on a final basis for two reasons. First, the HUD Debtors are not separate entities of Debtors and are part of the Chapter 11 bankruptcy. Second, 11 U.S.C. § 364(d) is plain on its face and guides courts on how to prime liens against a secured holder. Pursuant to § 364(d) a debtor must prove (1) there was no other DIP lender available to finance given the situation and terms and (2) the primed secured lender is adequately protected. 11 U.S.C. § 364(d). The Court determined Debtors met their burden as to both elements. The Court further considered the balance of harms and policy ramifications considering the fact that the lender here was the United States. After its analysis, the Court ruled in favor of Debtors granting the DIP Financing Motion on a final basis.

In the Emergency Motion For Stay Pending Appeal, the United States argues that it is entitled to a stay pending appeal pursuant to Bankruptcy Rule 8007(a)(1)(A). The United States argues it satisfies the four factors required for a stay pending appeal, see *Org. for Black Struggle v. Ashcroft*, 978 F.3d 603, 607 (8th Cir. 2020): one, the United States has a strong likelihood of prevailing on the merits of the appeal because the DIP Facility is not fair, reasonable, or necessary or in the best interest of the HUD Debtors and the priming of the HUD-insured liens violate the National Housing Act; two, the United States will suffer irreparable harm if the stay is not granted as to the HUD-insured properties; three, Debtors will not be substantially harmed if the Court grants the stay pending appeal because the United States' request is limited to the HUD Debtors' properties; and four, the public interest is served if the Court grants the stay pending appeal because the flood gates could open through the Court's ruling on the DIP Financing Motion allowing priming the HUD-insured liens. See Doc. 315.

In the Joint Objection and the Joinder in Opposition, Debtors, the DIP Lender, and Committee request the Court deny the Emergency Motion For Stay Pending Appeal for the United States' failure to meet its burden of proving it is entitled to a stay pending appeal because it cannot establish a likelihood of success on the merits. In the Joinder in Opposition, the Committee further states that the United States does not present any evidence to show that "lending under the HUD program will suffer substantial injury if one single HUD-insured lender with a mortgage loan on a significantly overcollateralized property is subject to a limited duration priming lien in these Chapter 11 Cases." Doc. 324 p. 3.

On September 18, 2024, the United States filed Reply arguing that the Joint Objection and the Joinder in Opposition are inaccurate and restating its arguments in support of the Emergency Motion For Stay Pending Appeal.

Under Bankruptcy Rule 8007(a)(1), a party must first move in the bankruptcy court for a stay pending appeal. Fed. R. Bankr. P. 8001(a)(1)(A). There are four factors the Court must consider in determining whether to issue a stay pending appeal: "(1) whether the party seeking

the stay has demonstrated a strong likelihood of success on the merits; (2) whether the party seeking the stay will be irreparably injured without a stay; (3) whether a stay would substantially injure other parties; and (4) the public's interest.” *Org. for Black Struggle v. Ashcroft*, 978 F.3d 603, 607 (8th Cir. 2020) (citing *Brakebill v. Jaeger*, 905 F.3d 553, 557 (8th Cir. 2018) (citing *Hilton v. Braunskill*, 481 U.S. 770, 776, 107 S. Ct. 2113, 95 L. Ed. 2d 724 (1987))). Though the factors are all important, the factor given the most weight in the Eighth Circuit is the likelihood of success on the merits followed by a showing of irreparable injury. *Id.*

A. Likelihood of Success on the Merits

“A movant shows a likelihood of success on the merits when it demonstrates a ‘fair chance,’ not necessarily ‘greater than fifty percent,’ that it will ultimately prevail under applicable law.” *Cigna Corp. v. Bricker*, 103 F.4th 1336, 1343 (8th Cir. 2024) (quoting *Heartland Acad. Cmty. Church v. Waddle*, 335 F.3d 684, 690 (8th Cir. 2003)). The United States argues that it has a strong likelihood of prevailing on the merits on appeal and the DIP Facility is not fair, reasonable, or necessary to and not in the best interests of the HUD Debtors. The United States further argues that the Bankruptcy Code does not trump the National Housing Act, which affords HUD Lenders first priority secured status.

As the Court stated in its Order granting the DIP Financing Motion, the HUD Debtors are not separate from Debtors here and are part of this bankruptcy. The Court acknowledges and it is undisputed that Wabash Estates and Washington Villages properties are financially stable compared to other related Debtors. Further, the Court determined that § 364(d) of the Bankruptcy Code is clear – if the debtor can show (1) no other DIP lender could provide the necessary financing to debtor given the terms and (2) the primed secured lender is adequately protected then the lien can be primed. See 11 U.S.C. § 364(d). Debtors unequivocally proved both factors through its filings, testimony, exhibits, and arguments at the evidentiary hearing. Thus, the United States does not have a strong likelihood of prevailing on the merits. Therefore, the first factor is not satisfied.

B. Balance of Harms

The Court will balance the likely irreparable injury to the United States with that of the likely substantial injury to Debtors. See *Country Squire Assocs., L.P. v. Rochester Community Sav. Bank (In re Country Squire Assocs., L.P.)*, 203 B.R. 182, 184 (B.A.P. 2d 1996) (“In measuring whether any such injury [to the non-moving parties] would be ‘substantial,’ it is appropriate to compare it with the irreparable harm [the movant] will suffer”); see *Iowa Utils. Bd. v. FCC*, 109 F.3d 418, 426 (8th Cir. 1996). Thus, the movant must show that the harm “is certain and great and of such imminence that there is a clear and present need for equitable relief.” *H&R Block, Inc. v. Block, Inc.*, 58 F.4th 939, 951 (8th Cir. 2023); see *Novus Franchising, Inc. v. Dawson*, 725 F.3d 885, 895 (8th Cir. 2013); see also *Padda v. Becerra*, 37 F.4th 1376, 1384 (8th Cir. 2022). The United States argues it faces irreparable harm from the likely elimination of its appeal rights if the Order granting the DIP Financing Motion is not stayed as to the HUD Debtors. The Court disagrees.

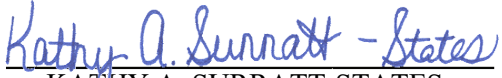
The Court in its Order granting the DIP Financing Motion considered the balance of harms between the parties. There is no other remedy afforded to Debtors given the circumstances here. Debtors attempted to obtain financing from other DIP lenders, even the HUD Lender Lument, prior to settling on the DIP Lender here. As the Court noted in the Order granting the DIP Financing Motion, DIP lenders need some form of material unencumbered assets in exchange for funding the loan. For Debtors here, Wabash Estates and Washington Villages provide such exchange. If Debtors exclude the HUD Debtors from the DIP Agreement, it is unlikely that the DIP Lender will proceed with providing the loan. The Court further notes that this is a limited instance in which the Court, considering the United States as a creditor coupled with the policy of HUD and the National Housing Act, must warrant priming to protect the over 1,000 senior residents and maintain the employment of the approximate 960 employees. Thus, the balance of harms tips in Debtors’ favor. Therefore, the second and third factors are not satisfied.

C. The Public Interest

The United States cites to *United States v. Reed* for the proposition that the “government’s interest is in large part presumed to be the public’s interest.” *United States v. Reed*, 2009 WL 10727786, at *2 (N.D. Iowa May 12, 2009) (quoting *U.S. v. Rural Elec. Convenience Cooperative Co.*, 922 F.2d 429, 440 (7th Cir. 1991)). However, the public interest “favors the expedient administration of bankruptcy proceedings” and disfavors the issuance of stays pending appeal. See *In re Savage & Assocs., P.C.*, 2005 WL 488643, at *2 (S.D.N.Y. Feb. 28, 2005); see also *In re Health Diagnostic Lab’y, Inc.*, 2015 WL 4915621, at *5 (Bankr. E.D. Va. Aug. 17, 2015). The United States argues many other cases will follow where the loss of the HUD mortgage insurance would expose commercial lenders to loss upon the default of the borrower chilling private lenders from extending § 232 loans on favorable terms. The public is interested in both scenarios: the Court’s granting of the DIP Financing Motion to protect the 1,000 senior residents and ensure employment of the approximate 960 employees and also the likely HUD implications as well.

Because the United States does not have a strong likelihood of prevailing on the merits and the balance of harms weighing more in favor of Debtors, the Court will deny the Emergency Motion For Stay Pending Appeal. Therefore,

IT IS ORDERED THAT the United States’ Emergency Motion For Stay Pending Appeal of Final Order (1) Authorizing Debtors In Possession To Obtain Post-Petition Financing; (2) Authorizing Debtors In Possession To Use Cash Collateral; (3) Providing Adequate Protection; And (4) Granting Liens, Security Interests And Superpriority Claims is **DENIED**.


KATHY A. SURRATT-STATES
United States Bankruptcy Judge

DATED: September 27, 2024
St. Louis, Missouri

Copies to:
All Creditors and Parties in Interest.