

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

Hearing Date: July 10, 2024 at 10:00 a.m. (ET)

Objection Deadline: July 3, 2024 at 4:00 p.m. (ET)

DEBTORS' MOTION FOR ENTRY OF AN ORDER, PURSUANT TO SECTION 365(d)(4) OF THE BANKRUPTCY CODE, EXTENDING THE DEADLINE FOR THE DEBTORS TO ASSUME OR REJECT UNEXPIRED LEASES OF NON-RESIDENTIAL REAL PROPERTY UNDER WHICH THE DEBTORS ARE A LESSEE

The above-captioned debtors and debtors in possession (each, a “Debtor” and, collectively, the “Debtors”) hereby submit this motion (this “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to section 365(d)(4) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), granting the Debtors a ninety (90) day extension, through and including October 16, 2024, of the statutory deadline for the Debtors to assume or reject each of the leases and other agreements under which any of the Debtors are a lessee and that may be considered unexpired leases of non-residential real property under applicable law (collectively, the “Real Property Leases”). In support of this Motion, the Debtors respectfully state as follows:

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, whose cases are being jointly administered, 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 is available on a website of the Debtors’ claims and noticing agent at www.kccllc.net/Petersen.



JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012 (the “Amended Standing Order”). The Debtors confirm their consent, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, to the entry of a final order by the Court with respect to this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The legal predicate for the relief requested herein is section 365(d)(4) of the Bankruptcy Code.

BACKGROUND

I. General Background

4. On March 20, 2024 (the “Petition Date”), the Debtors each commenced with the Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors, with the exception of some inactive entities, are authorized to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On or about April 9, 2024, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors [Docket

No. 131] (the “Committee”). On April 16, 2024, the U.S. Trustee appointed a patient care ombudsman [Docket No. 160] (the “Patient Care Ombudsman”) in these chapter 11 cases. No trustee or examiner has been appointed in these chapter 11 cases.

6. The factual background regarding the Debtors, including their business operations, capital and debt structure, and the events leading to the filing of these chapter 11 cases is set forth in more detail in the *Declaration of David R. Campbell in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* [Docket No. 44] (the “First Day Declaration”).²

II. The Sale Process

4. As detailed in the *Debtors’ Motion for Entry of (A) an Order (I) Scheduling a Hearing on the Approval of the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures and Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof, (III) Authorizing the Debtors to Enter Into the Stalking Horse Purchase Agreement, and (IV) Granting Related Relief; and (B) an Order (I) Approving Asset Purchase Agreement, (II) Authorizing the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [Docket No. 264] (the “Bid Procedures Motion”), the Debtors are currently implementing a marketing and sale process through which the Debtors seek to consummate a value-maximizing transaction (or

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the First Day Declaration.

transactions) for their assets, including, as applicable, their executory contracts and unexpired leases.

5. On May 21, 2024, the Court entered an order [Docket No. 341] (the “Bid Procedures Order”) approving the Bid Procedures Motion and establishing, among other things, July 10, 2024, as the date to consider approval of a sale or a series of sales for all or substantially all of the Debtors’ assets.

RELIEF REQUESTED

6. Pursuant to section 365(d)(4) of the Bankruptcy Code, debtors have an initial 120-day period following the filing of a bankruptcy petition in which to elect to assume or reject unexpired leases of non-residential real property under which the debtors are a lessee. *See* 11 U.S.C. § 365(d)(4). Section 365(d)(4)(B) of the Bankruptcy Code provides, however, that, upon a motion by the debtors, the Court may extend the initial 120-day deadline by ninety (90) days “for cause.” 11 U.S.C. § 365(d)(4)(B). Any subsequent extensions of the deadline to assume or reject unexpired leases of non-residential real property under which the debtors are a lessee may only be granted with the prior written consent of the affected lessors. 11 U.S.C. § 365(d)(4)(B)(ii). Under section 365(d)(4) of the Bankruptcy Code, if a debtor fails to assume or reject an unexpired lease of non-residential real property under which it is a lessee prior to the applicable deadline, such lease will automatically be deemed rejected. 11 U.S.C. § 365(d)(4)(A).

7. Pursuant to section 365(d)(4) of the Bankruptcy Code, the Debtors initially have until July 18, 2024, to assume or reject any Real Property Leases (such period, the “Assumption/Rejection Period”).

8. By this Motion, the Debtors request that the Court enter the Proposed Order, extending the Assumption/Rejection Period by ninety (90) days, through and including October 16, 2024, pursuant to section 365(d)(4) of the Bankruptcy Code. Such an extension would be without prejudice to the Debtors' rights, pursuant to section 365(d)(4)(B)(ii) of the Bankruptcy Code, to request a further extension of the Assumption/Rejection Period with the consent of the affected lessor(s).

BASIS FOR RELIEF

9. The Debtors submit that ample cause exists to extend the Assumption/Rejection Period as requested herein. For the reasons set forth below, the Debtors require additional time to determine whether any of the Real Property Leases should ultimately be assumed or rejected. The requested extension of the Assumption/Rejection Period is consistent with the goals of the Bankruptcy Code, and will not unduly prejudice any lessors under any Real Property Leases (collectively, the "Lessors").³

10. Since the commencement of these chapter 11 cases, the Debtors have worked diligently to ensure a smooth transition into chapter 11 and to preserve and maximize the value of the Debtors' estates for the benefit of all stakeholders. To that end, the Debtors have, among other things: (i) achieved a consensual resolution of the contentious litigation concerning the "Receivership Debtors"⁴ with X-Caliber Funding, LLC [Docket No. 340]; (ii) negotiated a

³ Although the Debtors own the vast majority of the real properties in which they operate, the Debtors (particularly Debtors, Petersen Health & Wellness, LLC and Petersen Health Care – Illini, LLC) are lessees under Real Property Leases for the Newman Rehabilitation & Health Care Center and Illini Heritage Rehab & Health Care Center facilities.

⁴ The "Receivership Debtors" refer to Debtors El Paso HCC, LLC; Flanagan HCC, LLC; Kewanee AL, LLC; Knoxville AL, LLC; Legacy Estates AL, LLC; Marigold HCC, LLC; Monmouth AL, LLC; Polo, LLC; El Paso HCO, LLC; Flanagan HCO, LLC; CYE Kewanee HCO, LLC; CYE Knoxville HCO, LLC; Legacy HCO, LLC; Marigold HCO, LLC; CYE Monmouth HCO, LLC; and Polo HCO, LLC, whose chapter 11 cases are currently suspended.

complex and consensual resolution in connection with their postpetition financing needs, which was ultimately memorialized in a Court-approved debtor-in-possession financing facility (the “DIP Facility”) [Docket No. 313]; (iii) obtained entry of the Bid Procedures Order; (iv) coordinated due diligence and responded to a myriad of inquiries regarding the sale and potential assumption and assignment of executory contracts and leases, as applicable; (v) prepared and filed their Schedules of Assets and Liabilities and Statements of Financial Affairs; (vi) responded to various information requests from the Committee, the U.S. Trustee, and the Patient Care Ombudsman; (vii) responded to other general inquiries from interested parties; (viii) retained professionals; (ix) established a general bar date and provided notice to all parties; and (x) handled the various other tasks related to the administration of the Debtors’ bankruptcy estates and the chapter 11 cases.

11. The Debtors submit that these accomplishments since the commencement of these cases, among other things, provide ample cause to extend the Assumption/Rejection Deadline as requested herein. In the absence of an extension of the Assumption/Rejection Period, the Debtors would be forced to prematurely decide whether to assume or reject their Real Property Leases before the Debtors can determine, with certainty, whether there is a viable market for such assets. An extension of the Assumption/Rejection Period will enable the Debtors to make fully informed decisions regarding assumption or rejection following the sale hearing on July 10, 2024,⁵ when they anticipate knowing definitively whether the Real Property Leases will be assigned in connection with the sale of the Debtors’ assets.

⁵ The Debtors intend to decide whether to assume or reject the Real Property Leases in connection with the sale process. However, the Debtors request a ninety (90) day extension of the Assumption/Rejection Period out of an abundance of caution in the event that the sale process is extended or the Real Property Leases must be maintained by the estates after any sale transactions have been consummated.

12. The Third Circuit Court of Appeals has recognized that “nothing prevents a bankruptcy court from granting an extension because a particular debtor needs additional time to determine whether the assumption or rejection of particular leases is called for by the plan of reorganization that it is attempting to develop.” *In re Channel Home Ctrs., Inc.*, 989 F.2d 682, 689 (3rd Cir. 1993). As the bankruptcy court in one frequently cited decision observed, there are essentially three factors that are weighed by the courts in determining whether cause exists to extend the deadline to assume or reject unexpired leases of non-residential real property:

- (i) whether the leases are an important asset of the estate such that the decision to assume or reject would be central to any plan of reorganization that may be proposed by the debtors;
- (ii) whether the case is complex and involves large numbers of leases; and
- (iii) whether or not the debtors have had sufficient time to intelligently appraise the value of each lease for purposes of a plan of reorganization.

In re Wedtech Corp., 72 B.R. 464, 471-72 (Bankr. S.D.N.Y. 1987); accord *Channel Home Ctrs.*, 989 F.2d at 689 (noting that “it is permissible for a bankruptcy court to consider a particular debtor’s need for more time in order to analyze leases in light of the plan it is formulating”).

13. The Debtors submit that the *Wedtech* factors are readily satisfied in these chapter 11 cases. First, until the Debtors, in their business judgment, determine otherwise, any Real Property Leases may have value to interested buyers and, therefore, the decision to assume or reject any Real Property Lease is part of the Debtors’ efforts to maximize value for all stakeholders.

14. Given the inherent fluidity in these chapter 11 cases, circumstances may arise that would cause the Debtors to re-evaluate the need to continue leasing a particular property. In the absence of an extension of the Assumption/Rejection Period, the Debtors would

be prematurely forced to assume Real Property Leases that may later prove to be burdensome, which could give rise to unnecessary administrative expense claims against the Debtors' estates, and jeopardize the Debtors' ability to successfully prosecute these chapter 11 cases. Alternatively, the Debtors could be prematurely forced to reject certain Real Property Leases that ultimately could benefit the Debtors' estates or, in the event that the Real Property Leases are not assigned, the Debtors may need to continue using the Real Property Leases until applicable facility operations are wound down.

15. Furthermore, there should be no prejudice to the Lessors as a result of the requested extension of the Assumption/Rejection Period. Pending their election to assume or reject any Real Property Leases, the Debtors will perform their undisputed obligations arising from and after the Petition Date in a timely fashion and as required by the Bankruptcy Code. As a result, the requested extension will afford the Debtors the opportunity to preserve and maximize estate value, without prejudicing the rights of the Lessors.

NOTICE

16. Notice of this Motion has been provided to: (a) the U.S. Trustee; (b) counsel to the Committee; (c) the office of the attorney general for each of the states in which the Debtors operate; (d) United States Attorney's Office for the District of Delaware; (e) Prepetition Lenders; (f) the DIP Lender; (g) counsel to the Patient Care Ombudsman; (h) the Lessors; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

CONCLUSION

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

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Dated: June 26, 2024
Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

/s/ Shella Borovinskaya

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Possession*

**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

Objection Deadline: July 3, 2024 at 4:00 p.m. (ET)

Hearing Date: July 10, 2024 at 10:00 a.m. (ET)

NOTICE OF MOTION

PLEASE TAKE NOTICE that, on June 26, 2024, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion for Entry of an Order, Pursuant to Section 365(d)(4) of the Bankruptcy Code, Extending the Deadline for the Debtors to Assume or Reject Unexpired Leases of Non-Residential Real Property Under Which the Debtors are a Lessee* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed on or before **July 3, 2024 at 4:00 p.m. (ET)** (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon the proposed undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON JULY 10, 2024 AT 10:00 A.M. (ET) BEFORE THE HONORABLE THOMAS M. HORAN, UNITED STATES BANKRUPTCY COURT JUDGE FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 5TH FLOOR, COURTROOM NO. 6, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE THAT, IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR A HEARING.

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Dated: June 26, 2024
Wilmington, Delaware

Respectfully submitted,

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*Counsel for the Debtors and Debtors in
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EXHIBIT A

Proposed Order

**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

Ref. Docket No. ____

**ORDER, PURSUANT TO SECTION 365(d)(4) OF THE BANKRUPTCY
CODE, EXTENDING THE DEADLINE FOR THE DEBTORS TO ASSUME
OR REJECT UNEXPIRED LEASES OF NON-RESIDENTIAL REAL
PROPERTY UNDER WHICH THE DEBTORS ARE A LESSEE**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”) for the entry of an order, pursuant to section 365(d)(4) of the Bankruptcy Code, granting the Debtors an extension, through and including October 16, 2024, of the statutory deadline for the Debtors to assume or reject the Real Property Leases; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required except as otherwise provided herein; and it appearing that this Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having determined that the relief

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

requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor, **IT IS**

HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Pursuant to section 365(d)(4) of the Bankruptcy Code, the deadline under section 365(d)(4) of the Bankruptcy Code for the Debtors to assume or reject any Real Property Leases is hereby extended through and including October 16, 2024 (the “Assumption/Rejection Period”).
3. This Order shall be without prejudice to the Debtors’ right to seek a further extension of the Assumption/Rejection Period with the consent of the affected Lessor(s).
4. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.