

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

)))	
In re:))	Chapter 11)	
)))	
SC HEALTHCARE HOLDING, LLC, <i>et al.</i> ,))	Case No. 24-10443)	
)))	
Debtors. ¹))	Jointly Administered)	
)))	
))	Related to Docket Nos. 264; 341; 564; 608)	

OBJECTION OF GMF PETERSEN NOTE, LLC TO 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

GMF Petersen Note, LLC (“GMF”), a secured lender to the debtors in the above-captioned cases (collectively, the “Debtors”), files this objection (the “Objection”) to the Debtors’ motion (the “Sale Motion”)² seeking approval of a proposed sale of substantially all the Debtors’ assets. In support of the Objection, GMF respectfully states 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 jointly administered chapter 11 cases, 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 at www.kccllc.net/Petersen.

² Docket No. 264. Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Sale Motion or the Bidding Procedures attached to the Sale Motion as Exhibit 1, as applicable.



OBJECTION

1. GMF objects to the selection of the Stalking Horse Bid as the Successful Bid. As discussed below, the Debtors cannot demonstrate that the Stalking Horse Bid represents the highest and best available Bid due to significant defects in the process yielding that bid.

2. GMF is lender under that certain *Amended and Restated Loan Agreement*, dated August 5, 2020 (with any amendments or modifications thereto, the “GMF Loan Agreement”). GMF is owed not less than \$30 million under the GMF Loan Agreement (the “GMF Obligations”). The GMF Obligations are secured by perfected liens on certain real and personal property of the Debtors, including certain of the Debtors’ facilities upon which GMF holds a valid, binding, and enforceable properly perfected second lien (the “Sector / Column Financial Portfolio”) and an additional facility upon which GMF holds a valid, binding, and enforceable properly perfected first lien.

3. On May 1, 2024, the Debtors filed the Sale Motion. On May 21, 2024, the Court entered the Bidding Procedures Order,³ which established the Bidding Procedures that would govern the sale process. The Bidding Procedures provide that persons or entities holding a security interest in the relevant Assets may submit a Credit Bid to the extent permitted by applicable law, any Court order, and the documents governing the credit facilities.⁴

4. The Bidding Procedures also permitted the Debtors to designate a Stalking Horse Bidder. On June 26, 2024, the Debtors filed a notice (the “Stalking Horse Notice”),⁵ which designated Petersen Acquisitions, LLC as the Stalking Horse Bidder and proposed certain Stalking Horse Bid Protections. Attached to the Stalking Horse Notice was a draft stalking horse

³ Docket No. 341.

⁴ *Id.*, Exhibit 1, at 9 (addressing “Credit Bids”).

⁵ Docket No. 564.

asset purchase agreement (the “Stalking Horse APA”). Section 3.06 of the Stalking Horse APA provided that the allocation of the purchase price would be set forth on Exhibit E thereto (the “Allocation”).⁶ Exhibit E, however, was not completed, and the Allocation remained undetermined. The Stalking Horse APA, thereby, failed to satisfy the Bidding Procedures’ explicit requirement that a Bid “clearly state the allocation of Purchase Price among particular Assets, as applicable.”⁷

5. Following entry of the Bidding Procedures Order, the Debtors began holding weekly calls with interested parties, including GMF. Based upon the Debtors’ representations during those calls, GMF believed that a vigorous process—one that ultimately would culminate in a robust Auction resulting in a value that would provide a significant recovery for GMF—was underway. Moreover, the Debtors did not advise as to a change in expectation of values from what was set forth in their prior pleadings for any of their facilities. It was not until the sale process was coming to its end that GMF came to discover that the Auction would be anything but robust—indeed, as is relevant to the substantial majority of the Sector / Column Financial Portfolio, the Auction involved just a single party—and that the values ascribed to the Debtors’ assets would be significantly less than expected as recently as some three months prior.

6. Subsequent adjournments of key dates prescribed by the Bidding Procedures further inhibited the ability to formulate a Qualified Bid. The Bidding Procedures as originally approved by the Court provided that the Stalking Horse Deadline would be June 14 and the Bid Deadline would be June 23, providing a 9-day window between the Stalking Horse Bid being disclosed and the Bid Deadline.⁸ However, following multiple extensions of the relevant dates,

⁶ Docket No. 564, Exhibit A, at § 3.06.

⁷ Docket No. 341, Exhibit 1, at 8.

⁸ Bidding Procedures Order, ¶ 3.

the Stalking Horse Deadline and the Bid Deadline ultimately were adjourned to June 25⁹ and July 1,¹⁰ respectively, giving parties just 5 days to evaluate the Stalking Horse Bid and determine whether to submit a competing Bid.

7. This already-truncated period was compressed even further by the Debtors' failure to provide information regarding the Stalking Horse Bid on a timely basis. First, as mentioned above, the Debtors' third notice of revised dates provided that the Stalking Horse Deadline would be extended until June 25, but the Debtors did not file the Stalking Horse Notice until the afternoon hours on June 26. Second, on a June 27 call with counsel for GMF, the Debtors stated that the Allocation—the production of which had already been delayed—would be made available by Sunday, June 30. The Allocation, however, was not circulated until Monday, July 1 at 8:15 a.m. (Eastern)—just hours before the 1:00 p.m. (Eastern) Bid Deadline.

8. What is more, certain terms of the Stalking Horse APA, which was filed very late in the process (just days before the Bid Deadline), fundamentally changed the nature of a prospective Credit Bid. Specifically, its provision allowing the Debtors to exclude a maximum of fifteen (15) facilities from the Stalking Horse Bid,¹¹ left GMF almost¹² uniquely situated and at a distinct disadvantage relative to most of the Debtors' other pre-petition secured lenders. Due to the size of its collateral package, comprising more than twice the number of excludable

⁹ Docket No. 545.

¹⁰ Docket No. 562.

¹¹ See Docket No. 564, Exhibit A, at § 2.09.

¹² Column Financial, Inc., as successor in interest to Sector Financial Inc., also holds liens on the Sector / Column Financial Portfolio. See *Column Financial, Inc.'s Limited Objection 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* [Docket No. 78] at ¶ 4.

facilities, GMF was rendered unable to submit a Credit Bid solely for its collateral package. Rather, it was left with the choice between submitting a Credit Bid for fifteen (15) facilities or for the entire portfolio of Acquired Assets, comprising seventy-nine (79) facilities.

9. As a result of the described delays and the hurdle presented by the nature of the Stalking Horse Bid, GMF requested an extension of the Bid Deadline from July 1 at 1:00 p.m. (Eastern) until July 2 at 10 a.m. (Eastern) so that GMF could evaluate the Allocation and work toward formulating a competing Bid. Further, because the Bid Procedures require that each Bid, including any Credit Bid, provide cash consideration sufficient to satisfy certain amounts,¹³ GMF required time to ensure that it could access the capital needed to satisfy that requirement.

10. On July 2, prior to the Auction, counsel to GMF apprised the Debtors that GMF was continuing its efforts to put together a Credit Bid and requested, based upon the short turnaround time, that the Debtors keep the Auction open at the conclusion of the proceedings in order to give time for a higher and better Bid to materialize. Counsel to GMF made the same request on the record of the Auction at the commencement of the proceedings relevant to the Stalking Horse Bid.

11. At the conclusion of the Auction proceedings at approximately 6:00 p.m. (Eastern) on July 2, the Debtors announced on the record of the Auction that they would continue the Auction to 9:00 a.m. (Eastern) on Wednesday, July 3, to consider any proposal from GMF. Unfortunately, the additional time was insufficient to allow GMF to compose a Credit Bid. On the record of the continued Auction at 9:02 a.m. (Eastern) on Wednesday, July 3, the Debtors noted that no Credit Bid from GMF had been received and closed the record of the Auction. Counsel to GMF thereafter requested to make a statement on the record of the

¹³ Docket No. 341, Exhibit 1, at 8 (addressing the “Cash Consideration Amount” for Qualified Bids).

continued Auction in order to note (i) GMF's objection to proceeding with the designation of the Stalking Horse Bid as the Successful Bid on the timeline prescribed by the revised Bidding Procedures and (ii) its continuing efforts to compose a Credit Bid, but was not permitted to do so.

12. The inadequacy of the Debtors' sale process is reflected in the inadequacy of the Stalking Horse Bid, which comprised the only Bid for the substantial majority of the Debtors' assets. At the outset of these cases, the Debtors represented that the market value of their facilities ranged from approximately \$216 million to \$305 million, with the Sector / Column Financial Portfolio alone having a low-end value of \$112 million.¹⁴ The Debtors subsequently submitted a declaration providing a recovery estimate for certain of the Debtors' facilities, including a number of facilities in the Sector / Column Financial Portfolio.¹⁵ That analysis showed that the properties in the Sector / Column Financial Portfolio that are identified on Exhibit B thereto had a low-end valuation of over \$90 million. Yet, despite the Debtors' representations on the record of these cases regarding their facilities' value, the total amount of the Stalking Horse Bid is a mere \$118 million, with only a portion of that amount being allocated to the Sector / Column Financial Portfolio.

13. As noted, GMF continues to endeavor to formulate a competitive Bid that provides a better return to the Debtors' stakeholders. The objective of any bankruptcy sale process should be to maximize the value of the estate for the benefit of the estates' creditors. In this case, however, the abbreviated timeline and the Debtors' inability to provide crucial information in a timely fashion has undermined that goal. The Debtors' desire to close the Sale

¹⁴ Docket No. 40, Exhibit A (Facility Valuation).

¹⁵ Docket No. 288.

on their desired timeline cannot justify an inadequate process. GMF therefore requests that the Sale Motion be denied so that the Debtors can consider all Bids before designating the Stalking Horse Bid as the Successful Bid.

14. Finally, insofar as the Court is inclined to approve the Sale, GMF requests that the Court reject the Allocation. The Bidding Procedures expressly provide that “any such allocation of the Purchase Price among Assets shall not be binding on the Debtors or any third-party and shall remain subject to determination by the Court.”¹⁶ The Debtors’ multi-day delay in providing the Allocation, in violation of the Bidding Procedures, prejudiced GMF’s ability to formulate a Credit Bid to protect its collateral. Accordingly, GMF submits that the Allocation should be rejected in favor of an allocation that reflects the ratable percentage of total outstanding secured debt secured by the Sector / Column Financial Portfolio.

RESERVATION OF RIGHTS

15. GMF reserves all its rights, including, without limitation, (1) to assert other and further objections to the Sale Motion and Sale; (2) to supplement the legal or factual arguments set forth in the Objection; and (3) to submit testimony or evidence at the hearing to consider the relief requested by the Sale Motion.

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¹⁶ Docket No. 341, Exhibit 1, at 9.

CONCLUSION

WHEREFORE, GMF respectfully requests that the Court sustain the Objection, deny approval of the Sale Motion, and grant such other and further relief as the Court deems appropriate.

Dated: July 3, 2024
Wilmington, Delaware

MCDERMOTT WILL & EMERY LLP

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