

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

SC HEALTHCARE HOLDINGS, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 24-10443 (TMH)

(Jointly Administered)

Related Docket No. 264

Court Hearing: July 10, 2024 at 10:00AM EST

Objection Deadline:

OBJECTION OF BANK OF RANTOUL 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

Bank of Rantoul, by and through undersigned counsel, hereby submits this objection ("Objection") 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*

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.



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 filed by SC Healthcare Holding, LLC(DE 264) and hereby shows as follows:

INTRODUCTION

1. Bank of Rantoul is a bank located in Rantoul, Illinois, and is a creditor of several Debtors (the "Bank"). Bank of Rantoul has a first mortgage in the approximate amount of \$2.2 million in favor of Bank of Rantoul on the Debtors' property commonly known as 100 Harvest View Lane., Herscher, IL 60941 (the "Herscher Property"). Additionally, the Bank has liens in the total amount of approximately \$505,000.00 on ten 2022 Chrysler Voyager LX motor vehicles with ten different debtors.

PROCEDURAL STATUS

2. The Bank was just informed by the Purchaser of its position that the Purchaser is

purchasing the ten vehicles without paying for them, which are subject to the Bank's loans and liens in the total approximate amount of \$505K. Up until this moment, the Debtors have been paying on the loans for the vehicles including on a Post-Petition basis and are due only for July, 2024. Since before the 4th of Holiday weekend, the Debtors and the Bank having been discussing the vehicles and the Debtors' position was that the loans on the vehicles would be assumed and assigned, and that it was a mistake that they were not included on the Debtor's Motion for assumption and assignment

3. The Debtors acknowledge the secured loan and mortgage of the Bank of Rantoul as the "Rantoul Facility" in Section 14(b) of the DIP Motion, Local Bank Loans, (b) Bank of Rantoul:

"Bank of Rantoul – Debtor Petersen Health Systems, Inc. is the borrower under a certain loan facility with Bank of Rantoul, as lender ("Rantoul Facility") secured by a mortgage and assignment of rents pertaining to the Courtyard Estates of Herscher healthcare Facility. Mark Petersen personally guarantees the obligations under the Rantoul Facility. The Rantoul Facility will mature on June 1, 2027. As of the Petition Date, approximately \$2,352,907 in principal amount is outstanding under the Rantoul Facility."

4. Bank of Rantoul additionally has approximately \$505,000.00 in secured liens on approximately ten (10) 2022 Chrysler Voyager; LX with ten (10) different debtors.²

5. The Bank filed its Objection and Joinder to the Debtor's DIP Order on May 8, 2024 at D.E. 277.

6. The Debtor also acknowledged the Bank's loan and mortgage in Section R of the

² Marigold HCO, LLC; Prairie City HCO, LLC; Rosiclare HCO, LLC; Shelbyville HCO, LLC; Charleston HCO, LLC; Aledo HCO, LLC; CYE Sullivan HCO, LLC; Eastview HCO, LLC; Legacy HCO, LLC; and Petersen Healthcare-Farmer City, LLC

DIP Order:

Bank of Rantoul. Debtor Petersen Health Systems, Inc. is the borrower under a certain loan facility with Bank of Rantoul, as lender (“Rantoul Facility”) secured by a mortgage and assignment of rents pertaining to the Courtyard Estates of Herscher healthcare facility located at 100 Harvest View Lane, Herscher, IL. As of the Petition Date, approximately \$2,352,907 in principal amount is outstanding under the Rantoul Facility.

7. The Bank and the Debtors have entered into an informal agreement for the Debtors to pay the post-petition monthly payments on the vehicles. The Bank has provided the details of the loan histories and copies of all loan documents to the Committee. Debtors informed the Bank that the loans on the motor vehicles are on the list to be assumed and assigned to purchaser.

8. On May 14, 2024, the Court entered the Debtors DIP Order (DE 313), with the following language in Section 43 agreed upon by the Debtors and the Bank, which rendered the Bank as a Consenting Lender:

Notwithstanding anything to the contrary herein, the Bank of Rantoul retains the right to object to any revised Cost Allocation that includes an Attributable Cost Allocation to the Bank of Rantoul’s real property Collateral in excess of \$156,000.00. The current amount of the Bank of Rantoul’s loan and mortgage on the Herscher property is \$2,352,907. The priming DIP Lien shall not prime the Bank of Rantoul’s lien of approximately \$505,000 on approximately 10 motor vehicles, to the extent that such liens, mortgages, and other security interests are valid and perfected, and have priority status. The Bank of Rantoul reserves all rights including the rights to object to the sale and to request that its liens attach to the proceeds of the sale and that the Bank of Rantoul shall be immediately paid in full at the closing of the sale, including additional applicable penalties, interest, costs and fees, and the right to seek relief from stay to repossess the vehicles as depreciating assets. As a result of the foregoing, the Bank of Rantoul shall be a Consenting Lender.

9. Section 33 of the Motion provides: “(i) authorizing and approving the Sale, *free and clear of all encumbrances* other than assumed liabilities and permitted encumbrances on the terms contemplated in the Stalking Horse Purchase Agreement or, in the event that the

Stalking Horse Bidder is not the Successful Bidder, then an Alternative A.” (emphasis added)

10. The partial title of Debtor’s Motion is “(II) authorizing the Sale of all or substantially all of the Debtors’ acquired assets *free and clear of all liens, claims, interests, and encumbrances*. Section 14 of the proposed Sale Order provides that: “the consideration given by Buyer shall constitute valid and valuable consideration for the releases of any potential Encumbrances pursuant to this Sale Order, *which releases shall be deemed to have been given in favor of Buyer by all holders of Encumbrances or liens against*, or interests in or claims against, any of the Debtors or any of the Acquired Assets, other than with respect to the Assumed Liabilities or Permitted Encumbrances.” (emphasis added)

11. The Bank filed its Objection to the sale on May 15, 2024 at DE 316.

12. The Bank filed its secured Proof of Claim for the Mortgage on the Herscher Facility on June 27th, 2024. The Bank has been trying to file its secured proofs of claim for the 10 vehicles, but the claims agent has been having technical difficulties for approximately a week.

OBJECTION

13. The Bank objects on the basis of timeliness and due process regarding lack of adequate notice of the Debtors plans for allocation. It appears that the cash portion of the stalking horse agreement is approximately \$118K. The Bank understands that this amount is far less than sufficient to adequately pay in full all secured lenders such as the Bank. On Monday morning at approximately 9AM, the Debtors filed their Notice of Allocation which severely undervalues the Herscher Facility at \$1.565M, which is the Bank’s collateral on its secured mortgage. The

Bank objects to this improper loan allocation.

14. In its chart for values in the DIP Motion and Order, the Debtors valued the Herscher Property at approximately \$4M. The current approximate balance on the Bank's secured mortgage loan is approximately \$2.5M. Attached however to the Mark L. Myers Declaration at DE 288 is the Walker & Dunlop Report which has values listed for the Herscher Property as high \$3,150,000, med \$2,100,000, and low \$1,050,000. The Bank has been unable despite its effort to obtain a current appraisal of the facility since the petition date. In about 2008, the Bank had the property appraised at value of approximately \$5.3M using cost summation approach, \$4.5M using income capitalization approach, and \$4.5M using sales comparison approach. There is little doubt that the values have decreased since 2008 and more likely have substantially increased.

15. The Bank is prejudiced that the Debtors without adequate notice or on 24 hour notice chose to allocate less than full value or the full payoff amount currently due to the Bank. In fact, on Monday morning, July 1, 2024, approximately only three hours prior to the Bid Deadline, the Debtors and Purchaser provided their allocation of the purchase price. Only \$1.565M has been allocated to the Herscher Property. This did not give the bank sufficient time to plan to credit bid. Furthermore, the information below shows that the lowball allocation is incorrect.

16. The Debtors have continuously pushed back their schedules such that the Debtors did not announce notice of their allocations of the sale purchase price until Monday morning on the same day that bids are due at noon on Monday, June 1, 2024. This lack of notice did not provide sufficient time for the Bank to review and understand the implications of the Debtors

allocations.

17. This lack of Notice has severely prejudiced the Bank with regard to determining how to protect its position. For example, the Bank did not have sufficient time in order to determine whether it should consider credit bidding by the current bid deadline of noon on Monday, July 1, 2024.

18. The Debtors have previously indicated that intend to Cure, Assume, and Assign the 10 motor vehicle loans, but that they were inadvertently omitted from the prior Notice. Unless the Debtors confirm acceptable Cure, Assumption, and Assignment, The Bank objects to the sale of the vehicles. The vehicles are depreciating assets. The Bank can repossess and sell the vehicles without nearly the loss anticipated from the Debtors' sale. Unless the Bank is immediately paid in full from the proceeds of the Sale for the full amount of the vehicle loans in the approximate amount of \$505K, the Bank demands that the Debtors immediately return all such vehicles to the Bank.

19. On Tuesday, July 9, 2024, at approximately 1:00PM, the Purchaser informed the Bank of its position that the MotorVehicles are included in the sale, without further obligation to pay on the Notes to the Bank. The Purchaser relies on section 2.02(q) on page 106 of the APA, which states as follows (apparently with regard to "excluded assets"):

(q) any vehicles used at any Facility that are not titled in the name of Seller (which, for clarification, shall not include vans used at any Facility but shall include various cars that are titled in the name of one or more holding companies of Seller)

First, this language is at best convoluted and confusing . More importantly, the Parties had been representing to the Bank (until the afternoon before the Court Hearing) that the Loan Agreements on the vehicles *would be assumed and assigned*. Further, since the vehicles *are in the name of the Debtors*, they are *excluded from the sale*, not included.

20. The Bank of Rantoul objects to the Debtors' allocations regarding the Purchase Price as they relate to the Herscher facility and property which is subject to the Bank's mortgage and the approximate 10 motor vehicles which are subject to the Bank's liens.

21. The Bank objects to the sale of the Herscher facility and property which is subject to the Bank's mortgage without adequate protections. At a minimum, the Sale Order should provide that the Bank's lien should attach to the proceeds of any such sale, and further, that the Bank should be immediately paid in full upon such sale, including additional interests, penalties, costs, and attorneys' fees, as provided under the loan documents.

ARGUMENT

22. Allowing Debtors to hold a sale where bids are due less than 24 hours (in fact, in less than 3 hours) after secured creditors are informed of the allocation of the sale price does not fulfill the requirements of Rule 2002(c)(1) and could render the sale voidable. Bankruptcy Rule 2002(a)(2) requires 21 days' notice be given to parties in interest of any proposed sale of property of the estate other than in the ordinary course of business. 2002(c)(1) provides in relevant part that:

23. We must consider the relevant Code and Rules provisions to determine whether the instant notice was defective to a degree warranting a decision to vacate. Under 11 U.S.C. §

363(b)(1), sales must occur “after notice and hearing,” which is defined by 11 U.S.C. § 102(1)(A) to mean “... after such notice as is appropriate in the particular circumstances, and such opportunity for hearing as is appropriate in the particular circumstances ...” *See also* N.B.R. 6004(a). The “particular circumstances” of this case include section 4 of the (Fourth Amended) Plan, which requires that all offers to purchase be given to the Court for final approval “... after notice and hearing to members of each class.”¹³ Rule 2002(a)(2) elaborates, by requiring twenty (20) days notice of such sales. The content of these notices is governed by Rule 2002(c)(1), which states that, subject to Rule 6004:

... the notice of a proposed use, sale, or lease of property required by subdivision (a)(2) of this rule shall include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections. The notice of a proposed use, sale or lease of property is sufficient if it generally describes the property.

(emphasis added). The case law³ does little to amplify this vague “terms and conditions” provision of Rule 2002(c)(1).

24. **Bankruptcy courts interpret notice procedures to balance important due process rights.** *See e.g., In re Siegler Bottling Co.*, 65 B.R. 117, 119 (Bankr.S.D.Oh.1986) (“... any such limiting of notices is always subject to the continuing constitutional concept of fundamental fairness embodied in the due process clause of the Fifth Amendment ...”); *In re Hanline*, 8 B.R. 449, 450, 7 B.C.D. 256 (Bankr.N.D.Oh.1981). (Although a court order is not required before the trustee sells property, he must still comply with the “after notice and hearing” provision of § 363(b)).

³ *In re F.A. Potts & Co., Inc.*, 86 B.R. 853, 861 (Bankr. E.D. Pa. 1988), *aff’d sub nom. Matter of F.A. Potts & Co., Inc.*, 93 B.R. 62 (E.D. Pa. 1988), *aff’d sub nom. In re F.A. Potts & Co., Inc.*, 891 F.2d 280 (3d Cir. 1989), and *aff’d sub nom. Appeal of Pagnotti Enterprises, Inc.*, 891 F.2d 282 (3d Cir. 1989)

JOINDER AND RESERVATION OF RIGHTS

25. The Bank joins other Objections filed by other creditors regarding the Debtors' allocations regarding Purchase Price and hereby adopts the objections, authorities, and arguments therein, to the extent not inconsistent with the Bank's positions. The Bank hereby reserves all of its rights, including without limitation, under the loan documents and under the DIP Order as a Consenting Lender, and the right to supplement this limited Objection where it may be necessary or appropriate. The Bank specifically joins in the Objection of the Committee with regard to the issue of allocation.

CONCLUSION

The Bank of Rantoul objects to the sale of the Herscher facility and property which is subject to the Bank's mortgage and the approximate 10 motor vehicles which are subject to the Bank's liens.

WHEREFORE, the Bank requests that:

(i.) The Court Order that the Bank be immediately paid in full from the Sale proceeds for the total amount due on the secured loans for the motor vehicles in the approximate amount of \$500K, together with additional applicable charges; Alternatively

(ii.) Alternatively the Court deny the Motion as to the motor vehicles which are secured by the Bank's liens and order the Debtors to surrender and return the vehicles to the Bank;

(iii.) The Court provide more time after Debtors' allocations for the Bank and the Court to challenge the allocation and to correctly determine valuation and allocation concerning the Bank's Mortgage and vehicle loans;

(iv.) The Court order that Bank's Mortgage and vehicle liens should attach to the proceeds of any such sale of the Hercher facility and/or the vehicles, and further, that the Bank should be immediately paid in full upon such sale, including additional interests, penalties, costs, and attorneys' fees, as provided under the loan documents;

(v.) that the Court should deny the Sale Motion as it relates to the Bank's loan and mortgage on the Herscher facility and vehicles; and,

(vi.) That the Court provide such further and additional relief as is just and equitable under the circumstances.

Dated: July 9th, 2024

/s/ Brian A. Sullivan

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Attorneys for Bank of Rantoul

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 9th, 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 matter, including:

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