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Toppenish

HONORABLE WHITMAN L. HOLT

8 UNITED STATES BANKRUPTCY COURT
9 EASTERN DISTRICT OF WASHINGTON

10 In re

11 ASTRIA HEALTH, et al.,¹

12 Debtor.

Case No. 19-01189-WHL11

13 YAKIMA HMA, LLC and YAKIMA HMA
14 PHYSICIAN MANAGEMENT, LLC,

15 Plaintiffs,

16 v.

17 SHC MEDICAL CENTER – YAKIMA and
18 SHC MEDICAL CENTER – TOPPENISH,

19 Defendants.

Adv. No.: 20-80018-WLH

REPLY IN SUPPORT OF MOTION
TO DISMISS FOR FAILURE TO
STATE A CLAIM ON WHICH
RELIEF CAN BE GRANTED
PURSUANT TO FEDERAL RULE
OF CIVIL PROCEDURE 12(b)(6)

20
21 ¹ The Debtors, along with their case numbers, are as follows: Astria Health (19-01189-11), Glacier
22 Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings, LLC (19-01194-11), Oxbow Summit, LLC (19-
23 01195-11), SHC Holdco, LLC (19-01196-11), SHC Medical Center-Toppenish (19-01190-11), SHC Medical
Center-Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-11), Sunnyside
Community Hospital Home Medical Supply, LLC (19-01197-11), Sunnyside Home Health (19-01198-11),
Sunnyside Professional Services, LLC (19-01199-11), Yakima Home Care Holdings, LLC (19-01201-11), and
Yakima HMA Home Health, LLC (19-01200-11).

REPLY IN SUPPORT OF MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM ON WHICH
RELIEF CAN BE GRANTED PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6) –

BUSH KORNFIELD LLP
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1 Debtors SHC Medical Center – Yakima and SHC Medical Center – Toppenish
2 (the “Defendants”), defendants herein, submit this reply in support of their Motion to
3 Dismiss for Failure to State a Claim on Which Relief Can be Granted Pursuant to
4 Federal Rule of Civil Procedure 12(b)(6) (the “Motion”). Capitalized terms herein
5 have the meaning set forth in the Motion unless otherwise indicated.

6 Plaintiffs correctly acknowledge that “the instant adversary proceeding is
7 brought pursuant to the parties’ contract.” Response at 4:16-17. The Complaint neither
8 asserts prepetition breach of contract as a cause of action nor seeks a corresponding
9 prepetition unsecured claim for damages as the requested relief.

10 Instead, Defendants’ Complaint seeks one avenue of relief: judgment “requiring
11 the Defendants to *turn over* to Plaintiffs all funds the Defendants received resulting
12 from cost reports for periods before the Asset Purchase Agreement became effective.”
13 Complaint at 13-18. It is axiomatic that in order for this to be an available form of
14 relief, Defendants must actually have the funds sought to be turned over. This fact
15 remains unpled by Plaintiffs and thus, the Complaint does not state a claim upon which
16 relief can be granted.

17 Plaintiffs assert that Defendants’ obligations are “akin to a bailment.” Response
18 at 4:18. Notably, Plaintiffs did not assert a bailment in their Complaint, nor do they
19 explain how that would entitle them to the relief requested in the Complaint absent
20 Defendants’ possession of the funds. In any event, under Washington law, a bailment
21 arises when “an owner of personal property delivers it to another for some particular
22 purpose with an express or implied contract to redeliver it when the purpose is
23 fulfilled.” *Gingrich v. Unigard Sec. Ins. Co.*, 57 Wn. App. 424, 788 P.2d 1096 (1990).

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1 These are not the facts alleged by Plaintiffs. The Complaint and Exhibit 1 thereto make
2 clear that any payments to the Defendants on account of the Excluded Receivables
3 were made by third parties, not the Plaintiffs, with no expectation of redelivery. *See*
4 Complaint at ¶ 13 and APA at § 10.8. The situation does not constitute a bailment.

5 Plaintiffs further assert that Defendants conduct “could be characterized as
6 conversion.” Response at 5:12. Defendants were free to, but did not, assert such a
7 claim in their Complaint, likely because they are well aware that such a claim would
8 give rise only to a prepetition general unsecured claim. Plaintiffs have already filed a
9 proof of claim which will be administered by the Debtors in due course.

10 Defendants assert that factual allegations in the Complaint “state a plausible
11 claim for relief.” Response at 3:6-7. The facts pled in the Complaint, if true, may
12 support a prepetition general unsecured claim in favor of Plaintiffs for breach of
13 contract. However, that is not the claim asserted nor the relief sought in the Complaint.
14 There is nothing alleged in the Complaint that supports a claim that would entitle
15 Plaintiffs to the relief *actually* requested, i.e., turnover of funds to the Plaintiffs post-
16 petition, prior to all other prepetition unsecured creditors.

17 Defendants respectfully renew their request that the Court dismiss the Complaint
18 pursuant to Federal Rule of Civil Procedure 12(b)(6).

19 DATED this 21st day of September, 2020.

20 BUSH KORNFELD LLP

21 By /s/ Christine M. Tobin-Presser
22 Christine M. Tobin-Presser, WSBA #27628
23 Attorneys for Defendants

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