

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____)
In re) Chapter 11, No. 14-14-30961
)
HAMPDEN COUNTY PHYSICIAN)
ASSOCIATES, LLC)
)
Debtor)
_____)

MOTION FOR INTERIM AND FINAL USE OF CASH COLLATERAL

To the HONORABLE HENRY J. BOROFF, Bankruptcy Judge:

Now comes HAMPDEN COUNTY PHYSICIAN ASSOCIATES, LLC ("Debtor"), the Debtor in the above-captioned matter, and it does hereby move this Court, pursuant to 11 U.S.C. §§ 105(a), 361, and 363, and 364(c), Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure, and Rule 4001-2 of Massachusetts Local Bankruptcy Rules ("MLBR"), for the entry of an Order: (i) authorizing the interim use of cash collateral; (ii) scheduling a further hearing on the final use of cash collateral; and (iii) authorizing the final use of cash collateral. In support of this Motion, the Debtor represents as follows:

BACKGROUND

1. On October 2, 2014 ("Petition Date"), the Debtor filed a Voluntary Petition under the provisions of Chapter 11 of the United States Bankruptcy Code ("Bankruptcy Code") with the United States Bankruptcy Court for the District of Massachusetts ("Bankruptcy Court").

2. Pursuant to the provisions of §§ 1107 and 1108 of the Bankruptcy Code, the Debtor has continued to operate its business and manage its business affairs as a Debtor-in-Possession. No Trustee or Examiner has been requested or appointed.

3. Founded in 1974, the Debtor is a multi-specialist physician group engaged in the practice of medicine in Western Massachusetts. Its approximately sixty-eight (68) healthcare providers serve about 55,000 patients. The business enterprise employs a total of approximately 300 individuals and operates fourteen (14) offices primarily located throughout Hampden County, Massachusetts. In addition, the Debtor and its staff serve patients at local hospitals, skilled-nursing facilities, and long-term care facilities. The Debtor operates its own laboratory, sleep disorder center, and urgent care center.

4. The filing of the Debtor's bankruptcy case was precipitated by a series of events that resulted in a decrease in revenue and increase in certain expenses. Over the course of approximately the last two years, several healthcare providers have retired or departed from the Debtor for a variety of reasons. During this same period of time, the Debtor attempted to expand its practice by leasing new office space, purchasing new equipment, and attempting to recruit new healthcare providers. These circumstances necessitate Chapter 11 relief.

5. As of the Petition Date, the principal assets of the business consisted of cash in the approximate amount of \$28,000.00, accounts receivable in the approximate amount of \$2,003,881.00, software and licenses having an uncertain value, and contract rights having an uncertain value, and other

personal property having an approximate value of \$1,630,025.00.

6. As of the Petition Date, the creditors holding security interests in the assets of the Debtor that constitute cash collateral, include: TD Bank, N.A. holding a secured claim in the approximate amount of 2,335,000.00; and Sisters of Providence Health System, Inc. holding a claim in the approximate amount of \$1,000,000.00.

7. Other unsecured debt is estimated to be approximately \$4,500,000.00.

JURISDICTION

8. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core matter within the meaning of 28 U.S.C. § 157(b)(2). Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

SUMMARY OF RELIEF REQUESTED

9. The Debtor seeks authorization to use "Cash Collateral" as defined in § 363(a) of the Bankruptcy Code. Pursuant to Rule 4001(b)(1)(B) of the Federal Rules of Bankruptcy Procedure, the Debtor represents as follows:

a) Parties Claiming an Interest in Cash Collateral.

i) On or about April 25, 2001, the Debtor entered into a financing transaction with First Massachusetts Bank, N.A. ("First Massachusetts") whereby First Massachusetts loaned the Debtor the total sum of \$1,035,000.00 pursuant to a Loan and Security Agreement and other loan documents.

The Loan and Security Agreement granted First Massachusetts a security interest in all of the Debtor's assets including, but not limited to, all accounts, accounts receivable, inventory, general intangibles, equipment, deposit accounts, and their proceeds (collectively the "Collateral").

TD Bank, N.A. ("TD Bank") is the successor in interest to First Massachusetts under the Loan and Security Agreement. TD Bank holds a first-priority security interest in the Collateral.

Pursuant to a series of amendments to the Loan and Security Agreement, there are currently four (4) outstanding loans owed to TD Bank and a Letter of Credit in the amount of \$84,843.46 (collectively the "Pre-Petition Obligations"). The total balance due on account of the Pre-Petition Obligations, is approximately \$2,335,000.00. TD Bank, N.A is fully secured.

ii) On or about January 23, 2014, the Debtor entered into a financing transaction with Sisters of Providence Health System, Inc. ("SPHS") whereby SPHS loaned the Debtor the total sum of \$1,000,000.00 pursuant to a Loan and Security Agreement and other loan documents. The Loan and Security Agreement granted SPHS a security interest in all of the Debtor's assets including the Collateral. SPHS holds a second-priority security interest in the collateral securing debt in the approximate amount of \$1,000,000.00. SPHS is fully secured.

iii) TD Bank and SPHS (collectively the "Secured

Creditors") hold valid, enforceable, and perfected security interests in the Debtor's cash collateral.

b) Purposes for Use of Cash Collateral. The Debtor requires the use of cash collateral to continue its business operations uninterrupted. The Debtor intends to use the cash collateral to pay employees, to purchase supplies, to pay service providers, to pay administrative expenses incurred by the Debtor's Bankruptcy Estate, and to pay other ongoing usual and necessary expenses incurred in the day-to-day operation of the practice. The Debtor seeks authority to use certain assets of the Debtor that may constitute cash collateral substantially in accordance with the Budget annexed hereto as Exhibit "A".

c) Material Terms of Use of Cash Collateral; Duration. The Debtor requests the use of cash collateral in accordance with, and on the same terms as, the underlying loan documents, between the Debtor and parties holding valid, perfected security interests in the cash collateral. The Debtor seeks authorization to use cash collateral during the term of any Interim Order that may be entered in connection with this Motion and during the term of the Chapter 11 case upon the entry of any Final Order on this Motion.

d) Liens and Cash Payments to be Provided. The Secured Creditors will each be granted a replacement lien in all post-petition property of the Debtor, of the same nature, to the same extent, and with the same priority as the lien existing as of the Petition Date ("Post-Petition Liens"). In addition, the Debtor proposes to make monthly interest payments, at the contract rate, to TD Bank, plus a monthly principal payment in the amount of \$24,130.42 ("Post-Petition Payments").

e) Reporting.

(a) Commencing on the second Tuesday following the commencement bankruptcy case, and bi-weekly thereafter, the Debtor shall provide TD Bank with the following, in each case certified by an authorized financial or accounting officer of Borrower:

(1) a cash flow projection covering a 4-week period on a rolling basis, in format satisfactory to Lender;

(2) updated actual versus budget cash flow comparisons for the previous two week period ;

(3) an aged report of accounts receivable and post-petition accounts payable as of the previous Friday; and

(4) such other information regarding the Debtor's business or financial affairs as TD Bank may reasonably request.

(b) Within two (2) business days after filing, Debtor shall give TD Bank copies of each report filed with the Office of the U.S. Trustee.

RELIEF REQUESTED

10. By this Motion, and pursuant to § 363 of the Bankruptcy Code, Rule 4001 of the Federal Rules of Bankruptcy Procedure and Rule 4001-1 of the Massachusetts Local Bankruptcy Rules, the Debtor requests the use of cash collateral.

11. The Debtor requires the immediate use of cash

collateral to fund operational and administrative expenses. Absent the use of cash collateral, the Debtor will be forced to cease operations, destroying the going concern value of the Debtor's business to the detriment of the Debtor, its Estate, and its creditors. Approximately 300 jobs would be eliminated in the event that the practice closed. Further, because the Debtor's business is a large physician practice, the closure of the business would abruptly eliminate critical medical services to the Debtor's approximately 55,000 patients.

12. Use of the cash collateral is, therefore, critical to preserve and maintain the Debtor's Estate, to promote a successful reorganization of this Chapter 11 bankruptcy case, and to ensure the safety of the Debtor's patients. Granting the requested relief, therefore, is necessary to prevent immediate and irreparable harm to the Debtor, its Estate, the Secured Creditors, the Debtor's employees, and its patients.

13. Section 363(e) of the Bankruptcy Code provides, in relevant part, that the use of property subject to a security interest shall not be permitted unless the secured creditor consents or the secured interest in such property is adequately protected. 11 U.S.C. § 363(e).

14. Subject to the entry of a Court Order: (i) granting the Post-Petition Liens, (ii) authorizing and directing the Debtor to pay the Post-Petition Payments, and (iii) granting certain other relief, the Debtor anticipates that TD Bank and SPHS will consent to the Debtor's proposed use of cash collateral.

15. In the event that either TD Bank or SPHS fail to consent to the entry of an Order authorizing the use of cash

collateral, the Debtor submits that TD Bank and SPHS enjoy an equity cushion that constitutes "adequate protection" of their interest in the Collateral because the estimated value of the Collateral exceeds the total amount due on account of the secured claims.

16. The Debtor also submits that the interests of TD Bank and SPHS in the Collateral will be adequately protected by the granting of the Post-Petition Liens and the entry of an Order authorizing and directing the Debtor to make the Post-Petition Payments as set forth in Paragraph 9(d) above.

17. The Debtor says that the Budget, Exhibit "A", demonstrates that income generated by the Debtor's continued operation of the business will generate sufficient cash flow to pay the accruing obligations, including operational and administrative expenses.

NOTICE

18. Pursuant to MLBR 4001-2, notice of this Motion has been given to: (i) TD Bank; (ii) Peter Shrair, Esq., Cooley Shrair, P.C., counsel to TD Bank; (iii) SPHS; (iv) Edward Green, Esq., Foley & Lardner, LLP, counsel to SPHS; (v) taxing authorities; (vi) the largest twenty (20) unsecured creditors; (vii) all creditors having requested notice pursuant to Rule 2002; and (viii) the Office of the United States Trustee.

19. The Debtor requests that the Bankruptcy Court schedule a final hearing on this Motion ("Final Hearing") and deem service of notice of such Final Hearing by serving a copy of the Interim Order providing for the use of cash collateral and a Notice of Final Hearing to: (i) TD Bank; (ii) Peter Shrair,

Esq., Cooley Shrair, P.C., counsel to TD Bank; (iii) SPHS; (iv) Edward Green, Esq., Foley & Lardner, LLP, counsel to SPHS; (v) the tax authorities; (vi) the largest twenty (20) unsecured creditors; (vii) all creditors having requested notice pursuant to Rule 2002; (viii) the Office of the United States Trustee; and (ix) counsel for any committee appointed pursuant to § 1102 of the Bankruptcy Code, to be sufficient notice under Rule 4001 of the Federal Rules of Bankruptcy Procedure.

20. The Debtor requests that a hearing on this Motion be scheduled as soon as possible because the use of cash is essential to avoid immediate and irreparable harm to the Debtor, its employees, and its thousands of patients.

WHEREFORE, the Debtor respectfully requests the entry of the attached Interim Order: i) authorizing the interim use of cash collateral; ii) scheduling a Final Hearing on this Motion, prescribing the form and manner of the Notice of the final hearing authorizing the use of cash collateral; and iii) providing such other and further relief as the Court deems just and proper.

HAMPDEN COUNTY PHYSICIAN
ASSOCIATES, LLC

Dated: October 2, 2014

By: /s/ Joseph B. Collins
JOSEPH B. COLLINS, ESQ.
(BBO No. 092660)
HENRY E. GEBERTH, JR., ESQ.
(BBO No. 187940)
ANDREA M. O'CONNOR, ESQ.
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For HENDEL & COLLINS, P.C.
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aoconnor@hendelcollins.com

Exhibit "A"

	October 3 -31	November	December
Revenues	\$ 2,690,104.00	\$ 2,830,701.00	\$ 2,842,071.00
Total Revenues	2,690,104.00	2,830,701.00	2,842,071.00
Expenses			
Salaries & wages	1,226,510.82	1,534,010.82	1,534,010.82
Employee benefits	219,353.68	218,052.32	224,152.87
Rents	227,000.00	184,000.00	184,000.00
Purchased services	190,835.14	123,137.35	146,682.81
Drugs, medical and lab supplies	175,000.00	175,000.00	175,000.00
Payroll taxes	90,000.00	90,000.00	90,000.00
Billing services	134,597.92	134,098.96	134,000.00
Utilities	123,997.63	123,587.14	123,949.88
Insurance	70,000.00	22,537.05	18,533.42
Legal and accounting	0.00	60,000.00	60,000.00
TD Bank Principal & Interest	32,500.00	32,000.00	32,000.00
Maintenance & janitorial	15,816.74	20,897.39	4,849.20
Marketing and advertising	12,878.36	7,310.18	0.00
Continuing education	12,794.28	8,629.77	17,190.89
Meeting and travel expense	11,338.95	19,686.51	9,723.99
Information Technology	10,481.39	7,362.65	7,071.23
Miscellaneous	10,370.03	11,704.79	11,323.74
Administrative Supplies	10,000.00	10,000.00	10,000.00
Laundry	10,000.00	10,000.00	10,000.00
Dues, licenses & subscriptions	7,396.08	7,604.45	8,240.28
Credentialing	6,100.02	6,078.84	6,397.52
Postage and freight	6,000.00	6,000.00	6,000.00
Printing	5,646.46	9,634.46	1,370.98
Taxes	1,514.20	1,856.86	2,038.95
Total Expenses	2,610,131.70	2,823,189.54	2,816,536.58
Net Income	\$ 79,972.30	\$ 7,511.46	\$ 25,534.42
		3 month sub-total	\$ 113,018.18

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In re) Chapter 11, No. 14-
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HAMPDEN COUNTY PHYSICIAN))
ASSOCIATES, LLC))
))
Debtor))
_____)

CERTIFICATE OF SERVICE

I, JOSEPH B. COLLINS, of the law firm of HENDEL & COLLINS, P.C., 101 State Street, Springfield, Massachusetts do hereby certify that I caused a copy of the attached Motion to be served by first class mail, postage prepaid, to any of the parties listed on the attached Exhibit "A" not noted as having received service through the Court's CM/ECF system on the 2nd day of October, 2014.

Dated: October 2, 2014

/s/ Joseph B. Collins

JOSEPH B. COLLINS, ESQ.
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Exhibit "A"

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Mr. Daniel P. Moen
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Exhibit "A"

Mr. Thomas Robert
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MERCY INTERNAL MEDICINE SERVICES
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Exhibit "A"

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Springfield, MA 01103

SYSTEM COORDINATED SERVICES, INC.
c/o Sisters of Providence
1233 Main Street
Holyoke, MA 01040

LYON OFFICES, LLC
P.O. Box 180
West Springfield, MA 01090

PRIORITY HEALTHCARE DISTRIBUTION, INC.
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Exhibit "A"

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