

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

In re:  HAMPDEN COUNTY PHYSICIAN ASSOCIATES, LLC  Debtor	) ) ) ) ) ) ) ) ) )	Chapter 11 Case No. 14-30961-HJB
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MOTION FOR RELIEF FROM STAY

AND

REQUEST FOR EMERGENCY DETERMINATION

AND

REQUEST FOR LIMITATION OF NOTICE

REQUEST FOR EMERGENCY DETERMINATION

TD Bank, N.A. (“TD Bank” or “the Bank”) hereby moves, pursuant to MLBR 9013-1(g), this Court to consider, on an expedited basis, the Motion For Relief From Stay (the “Relief Motion”) filed by TD Bank hereinafter contained. In support, TD Bank states:

1. The Relief Motion seeks relief from the automatic stay of 11 USC 362(a) so TD Bank may exercise its rights and remedies as the holder of a security interest against property in the Debtor’s estate.
  
2. The Court has scheduled a show cause hearing for November 3, 2014 on account of Debtor’s ongoing losses and the absence of a reasonable likelihood of rehabilitation.

3. In the meantime, there is an opportunity to possibly liquidate some of TD Bank's collateral, more specifically, furniture, fixtures and equipment, at this time at a materially greater value than may be obtainable if the Bank is unable to get relief from stay on an expedited basis on or before October 29, 2014.

WHEREFORE, TD Bank respectfully requests this Court, on an emergency basis, act upon the Relief Motion, the Request for Emergency Determination and the Request For Limitation Of Notice.

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REQUEST FOR LIMITATION OF NOTICE

1. To the extent any party, or its counsel, entitled to notice will not be receiving notice through the court's electronic filing system, the Bank believes service by ordinary mail will be impractical and seeks an order that permits service by telephone, facsimile or email in lieu of ordinary mail, that dispenses with service upon the creditors on the list of the 20 largest unsecured creditors unless otherwise requested, and that does not require service of the pleadings and exhibits unless requested.

WHEREFORE, the Bank respectfully requests this Court, on an emergency basis, act upon the Request for Limitation of Notice.

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MOTION FOR RELIEF FROM STAY

TD Bank moves, pursuant to Section 362(d), FRBP 4001, and MLBR 4001-1, that this Court grant it relief from the automatic stay of Section 362(a) so TD Bank may exercise its rights and remedies as the holder of a security interest in personal property. In support, TD Bank states:

1. On October 2, 2014, Debtor filed for relief under Chapter 11.

2. TD Bank is the present owner of loans and other indebtedness (the "Obligations") evidenced by:

(a) a Revolving Line of Credit Note by the Debtor in favor of First Massachusetts Bank, N.A. dated April 25, 2001, as amended by amendments dated April 18, 2008, June 27, 2003, March 1, 2006, April 28, 2008, May 19, 2009, January 26, 2010 and December 18, 2012, in the current maximum principal amount of \$3,000,000 (collectively the "Revolving Note");

(b) a Term Note by the Debtor in favor of TD Banknorth, N.A., dated March 1, 2006 in an original principal amount of \$175,000 (the "Term Note");

(c) a Non-Revolving Fixed Asset Line of Credit Note by the Debtor in favor of TD Bank dated May 19, 2009 in the original principal amount of \$900,000 (the "Non-Revolving Note A");

(d) a Non-Revolving Fixed Asset Line of Credit Note by the Debtor in favor of TD Bank dated August 21, 2009 in the original principal amount of \$400,000 (the "Non-Revolving Note B"); and

(e) a Master Letter of Credit Agreement dated November 11, 2011 between the Debtor and TD Bank, in the original amount of \$254,530, currently limited to \$84,843.46 (the "Letter of Credit Agreement").

The Revolving Note, Term Note, Non-Revolving Note A, Non-Revolving Note B and Letter of Credit Agreement are attached hereto as Exhibit "A."

3. The Obligations are in default.

4. With respect to the Revolving Note, there is outstanding thereunder, as of October 17, 2014, approximately \$2,015,512, excluding attorneys' fees and costs.

5. With respect to the Non-Revolver Note A, there is outstanding thereunder, as of October 17, 2014, approximately \$105,362, excluding attorneys' fees and costs.
6. With respect to the Non-Revolver Note B, there is outstanding thereunder, as of October 17, 2014, approximately \$149,260, excluding attorneys' fees and costs.
7. With respect to the Term Note, there is outstanding thereunder, as of October 17, 2014, approximately \$34,165.60, excluding attorneys' fees and costs.
8. With respect to the Letter of Credit, there is no present outstanding balance due TD Bank as of October 17, 2014, but there is the possibility of a draw by a beneficiary in an amount of up to \$84,843 on or before December 31, 2014.

The Obligations continue to accrue interest, in addition to collection costs, including attorneys' fees and costs.

9. TD Bank, as collateral security for the Obligations, holds a security interest with respect to all tangible and intangible personal property in the Debtor's estate (the "Collateral") evidenced by a Loan and Security Agreement between Lender and Debtor dated April 25, 2001, as amended by First Amendment dated December 11, 2002, Second Amendment dated June 27, 2003, Third Amendment dated March 1, 2006, Fourth Amendment dated July 31, 2006, Fifth Amendment dated April 28, 2008, Sixth Amendment dated May 19, 2009, Seventh Amendment dated August 21, 2009 and Eighth Amendment dated January 26, 2010, and Ninth Amendment dated December 18, 2012 (collectively the "Loan and Security Agreement"), and a UCC Financing Statement, together with continuations and an amendment relating thereto (collectively the "UCC Filings"), filed with the Delaware Secretary of State's Office. A copy of the Loan and Security Agreement is attached hereto as Exhibit "B," and copies of the UCC Filings are attached hereto as Exhibit "C."
10. Aside from the Collateral, there is no other property securing the Obligations.

11. On information and belief, the Collateral is principally comprised of furniture, fixtures and equipment (collectively the "Equipment") and account receivables (collectively the "Receivables").

12. On information and belief, the Equipment is located at approximately 13 different locations, all as more fully described as Locations A, B, C and D on Exhibit "D" attached hereto.

(a) The Equipment believed to be located at Location A is hereinafter referred to as "Equipment A". On information and belief, the liquidation value of Equipment A is in an approximate range of \$50,000 to \$100,000, based on a general inspection by Aaron Posnik & Co. and without the opportunity to formally appraise the items.

(b) The Equipment believed to be located at Location B is hereinafter referred to as "Equipment B". On information and belief, the liquidation value of Equipment B is approximately \$52,000 based on an appraisal done by Aaron Posnik & Co. and for which a written report is not available yet.

(c) The Equipment believed to be located at Location C is hereinafter referred to as "Equipment C". On information and belief, the fair market value of Equipment C may be \$835,380, based on an appraisal dated September 14, 2013 by National Valuations, Inc., a redacted copy of a portion of which is attached hereto as Exhibit "E" (the "NVI Appraisal Value Listing"), however, the Bank has not seen a more current appraisal or had the opportunity to inspect the property.

(d) The Equipment believed to be located at Location D is hereinafter referred to as "Equipment D". On information and belief, the fair market value of Equipment D may be \$147,660, based on the NVI Appraisal; however, the Bank has not seen a more current appraisal or had the opportunity to inspect the property.

13. On information and belief, the Receivables total approximately \$1,900,000, excluding a practice management receivable anticipated to be paid to the Debtor sometime before December 31, 2014 in a presently unknown amount but possibly in excess of \$100,000.

14. On information and belief, the Collateral may also include miscellaneous medical supplies and other medical office inventory (collectively the "Inventory") and computer software and related licenses (collectively the "Software Intangibles"); however, the Bank has not yet fully assessed the status and value of any such Inventory or Software Intangibles.

15. Upon information and belief, the Collateral is also subject to the following additional encumbrances. Copies of the filings to which described below are attached hereto as Exhibit "F":

(a) A possible security interest against miscellaneous equipment evidenced by a UCC Financing Statement in favor of General Electric Capital Corporation recorded with the Delaware Secretary of State's Office on March 27, 2008 as UCC Filing No. 2008 1064623, as affected by a continuation filed on February 1, 2013 as Filing No. 2013 0434838.

(b) A possible security interest against miscellaneous equipment evidenced by a UCC Financing Statement in favor of Susquehanna Commercial Finance, Inc. recorded with the Delaware Secretary of State's Office on November 4, 2010 as UCC Filing No. 2010 3879743.

(c) A security interest against miscellaneous equipment evidenced by a UCC Financing Statement in favor of U.S. Bancorp Business Equipment Finance Group recorded with the Delaware Secretary of State's Office on April 22, 2011 as UCC Filing No. 2011 1512584, as affected by an amendment filed on April 27, 2011 as Filing No. 2011 1563181.

(d) A possible security interest against all personal property evidenced by a UCC Financing Statement in favor of Leaf Capital Funding, LLC recorded with the Delaware Secretary of State's Office on September 27, 2012 as UCC Filing No. 2012 3725340, as affected by an amendment filed on November 26, 2012 as Filing No. 2012 4533214.

(e) A security interest against all personal property evidenced by a UCC Financing Statement in favor of Sisters of Providence Health Systems, Inc. recorded with the Delaware Secretary of State's Office on February 5, 2014 as UCC Filing No. 2014 0477653.

16. On information and belief, the liens, including TD Bank's security interest, encumbering the Debtor's interest in the Equipment and Receivables exceed the value of the Equipment and Receivables. On information and belief the security interest in favor of the Sisters of Providence Health Systems, Inc. secures debt in the approximate amount of \$1,000,000. The amount, if any, due General Electric Capital Corporation, U.S. Bancorp Business Equipment Finance Group, Leaf Capital Funding, LLC or Susquehanna Commercial Finance is presently unknown to TD Bank.

17. Pursuant to Section 362(d)(1), TD Bank is entitled to relief from the automatic stay because TD Bank's interest in the Collateral is not adequately protected. On information and belief, the Debtor's revenues are less than their expenses and the Debtor's use of cash collateral to pay Debtor's expenses exceeds the rate at which the Debtor is generating additional cash and accounts receivable.

18. Pursuant to Section 362(d)(2), TD Bank is entitled to relief from the automatic stay because Debtor has no equity in the Equipment and Receivables and such property is not necessary to effect the reorganization of the Debtor as the Debtor, on information and belief, is not capable of, nor seeks, a reorganization at this time.

19. TD Bank has not yet fully determined its intentions with respect to its security interest and all property subject thereto and continues to reserve all of its rights, and TD Bank's exercise of any right with respect to any of the Collateral remains at all times within TD Bank's sole discretion.

WHEREFORE, TD Bank respectfully requests that this Court:

1. enter an order, substantially in the form attached to this motion, granting TD Bank relief from the automatic stay of 11 U.S.C. §362(a) so that TD Bank, or any successor in interest, may, to the extent it so chooses in its sole discretion, and in accordance with state and federal law, exercise its rights and remedies as the holder of a security interest in the Collateral, and waiving the 14-day stay otherwise applicable to the order under FRBP 4001(a)(3); and
  
2. grant such other relief as is just and proper.

TD BANK, N.A.

Dated: October 24, 2014

/s/John W. Davis

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

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

ORDER

Upon the Motion For Relief From Stay filed by TD Bank, N.A. ("TD Bank") on October 24, 2014, this Court finds that due and adequate notice of the motion was given and orders that TD Bank is hereby granted relief from the automatic stay of 11 U.S.C. §362(a) so that TD Bank, or any successor in interest, may, to the extent it so chooses in its sole discretion, and in accordance with state and federal law, exercise its rights and remedies as the holder of security interest in the Collateral (as more fully described in the motion) and that the 14-day stay under FRBP 4001(a)(3) shall not apply to this order.

Dated: \_\_\_\_\_

\_\_\_\_\_  
HENRY J. BOROFF  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

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

CERTIFICATE OF SERVICE

I certify that on October 24, 2014 I caused a copy of the attached Motion For Relief From Stay, Request for Emergency Determination and Request for Limitation of Notice, proposed Order, and this Certificate, to be served by first-class United States mail, postage prepaid, or through the Court's electronic noticing system, upon each party listed below and on the attached service list:

Hampden County Physician Associates, LLC  
354 Birnie Avenue  
Springfield, MA 01107  
(Debtor)

Joseph Collins, Esq.  
Henry E. Geberth, Jr. Esq.  
Andrea M. O'Connor, Esq.  
(Debtor's Counsel)

Richard King  
Assistant U.S. Trustee  
(Office of the U.S. Trustee)

Brian Graven, CEO  
CT Physicians Services  
207 Main Street, 3<sup>rd</sup> floor  
Hartford, CT 06406  
(creditor Committee Chair)

Jonathan R. Goldsmith, Esq.  
(counsel for Lyon Offices, LLC)

BCHP Partners, LLC and Carew Chestnut  
Partners, LLC)

Gregory A. Schmidt, Esq.  
(counsel for Engineers Realty Corporation)

Lawrence M. Kraus, Esq.  
(counsel for Sisters of Providence Health System, Inc.)

Keri L. Wintle, Esq.  
(counsel for Connecticut Physician Services, LLC)

Steven Weiss, Esq.  
L. Alexandra Hogan, Esq.  
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David J. Noonan, Esq.  
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/s/ John W. Davis, Esq.  
JOHN W. DAVIS, ESQ.