

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:)
) Case No. 17-32417
CT Care, LLC) Chapter 11
) Judge Janet S. Baer
Debtor/Debtor-in-Possession.)

NOTICE OF MOTION

TO: ATTACHED SERVICE LIST:

PLEASE TAKE NOTICE that on the 2nd day of November, 2017 at 9:30 a.m. or as soon thereafter as counsel can be heard, I shall appear before the Honorable Janet S. Baer, Bankruptcy Judge, in the room usually occupied by her as courtroom 615, in the United States Bankruptcy Court in the Everett McKinley Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois, or before any other Judge who may be sitting in her place and stead and shall present the **Motion For Authority to Use Cash Collateral and For Related Relief**, a copy of which is attached hereto and herewith served upon you, and shall pray for the entry of an Order in compliance therewith.

AT WHICH TIME and place you may appear if you see fit.

/s/David K. Welch
Crane, Heyman, Simon, Welch & Clar
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CERTIFICATE OF SERVICE

The undersigned, being first duly sworn on oath deposes and states that he caused a copy of the foregoing Notice and attached Motion to be served on all the parties listed on the attached Service List via Federal Express Delivery (where indicated), via facsimile (where indicated) and via Email (where indicated), on the 31st day of October, 2017.

/s/David K. Welch

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	
)	Case No. 17-32417
CT CARE, LLC,)	Chapter 11
)	Judge Janet S. Baer
)	
<i>Debtor/Debtor-in-Possession.</i>)	

**MOTION FOR AUTHORITY TO USE
CASH COLLATERAL AND FOR RELATED RELIEF**

CT CARE, LLC, Debtor/Debtor-in-Possession herein ("Debtor"), by and through its Attorneys, makes its Motion pursuant to Section 363 of the Bankruptcy Code, Rules 4001(b), 9006(d) and 9013 of the Federal Rules of Bankruptcy Procedure and Rule 4001-2 of the Local Rules of this Court For Authority to Use Cash Collateral and For Related Relief; and in support thereof, states as follows:

Introduction

1. On October 30, 2017, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code ("Petition Date"). This Chapter 11 case is related to nine (9) other Chapter 11 cases that were simultaneously filed in this Court. The following table identifies each of the Chapter 11 cases now pending in this Court. The nine (9) related Debtors are collectively referred to herein as the "Related Debtors".

DEBTOR	CASE NUMBER
CC CARE, LLC ("CC CARE")	17-32406
BT BOURBONNAIS CARE, LLC ("BT CARE")	17-32411
CT CARE, LLC ("CT CARE")	17-32417
FT CARE, LLC ("FT CARE")	17-32423

JT CARE, LLC ("JT CARE")	17-32425
KT CARE, LLC ("KT CARE")	17-32427
SV CARE, LLC ("SV CARE")	17-32430
TN CARE, LLC ("TN CARE")	17-32429
WCT CARE, LLC ("WCT CARE")	17-32433
JLM FINANCIAL HEALTHCARE, LP ("JLM")	17-32421

2. The Debtor is operating its business and managing its financial affairs as a Debtor-in-Possession. No trustee, examiner or committee of unsecured creditors has been appointed to serve in this reorganization case.

3. By this Motion, the Debtor requests that this Court authorize it to use certain cash and cash equivalents that allegedly serve as collateral for claims asserted against the Debtor and its property by MidCap Funding IV, LLC ("MidCap"). Additionally, the U.S. Department of Housing and Urban Development ("HUD") is also asserting liens against the Debtor's assets, including cash collateral, to secure an aggregate indebtedness of approximately \$96,000,000.00 owed to HUD by certain related non-Debtors for mortgages extended to such non-Debtors. These mortgages are on the properties from which the Related Debtors operate their businesses.

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.

5. This matter is a "core" proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (M) and (O).

6. The statutory predicates for the relief requested in this Motion are Section 363 of the Bankruptcy Code, Rules 4001(b), 9006(d) and 9013 of the Federal Rules of Bankruptcy Procedure and Rule 4001-2 of the Local Rules of this Court.

Relevant Background

7. The Debtor and Related Debtors,¹ exclusive of JLM, are Delaware limited liability companies that operate long-term care facilities that provide nursing, healthcare, therapeutic and social services to the chronically ill with a diagnosis of mental illness. The following chart identifies each particular facility operated by the particular Debtor:

DEBTOR	FACILITY NAME/LOCATION
CC CARE	Community Care Center 4314 S. Wabash Ave. Chicago, Illinois 60653
BT CARE	Bourbonnais Terrace Nursing Home 133 Mohawk Drive Bourbonnais, Illinois 60914
CT CARE	Crestwood Terrace Nursing Center 13301 S. Central Ave. Crestwood, Illinois 60445
FT CARE	Frankfort Terrace Nursing Center 40 N. Smith Street Frankfort, Illinois 60423
JT CARE	Joliet Terrace Nursing Center 2330 McDonough Street Joliet, Illinois 60436
KT CARE	Kankakee Terrace Nursing Center 100 Belle Aire Ave. Bourbonnais, Illinois 60914
SV CARE	Southview Manor 3311 S. Michigan Ave. Chicago, Illinois 60616
TN CARE	Terrace Nursing Home 1615 Sunset Ave. Waukegan, Illinois 60087
WCT CARE	West Chicago Terrace Nursing Home 928 Joliet Street West Chicago, Illinois 60185

8. JLM is a Texas limited partnership that is the sole member and owner of each of

¹ The Debtor and Related Debtors, exclusive of JLM, are, at times, referred to herein as the “Operating Debtors”.

the Operating Debtors. The Operating Debtors are “disregarded entities” for federal and state tax purposes and, as a result, a single tax return in the name of JLM is filed that accounts for the business activities of the Operating Debtors.

9. The underlying real estate upon which each of the Operating Debtors operates its facility is owned by a separate related entity, each of which is indebted to HUD under separate mortgages, all of which are purportedly cross-collateralized (the “HUD Mortgage Indebtedness”).² The HUD Mortgage Indebtedness aggregates in excess of \$96,000,000.00. While the Operating Debtors have pledged collateral to secure the HUD Mortgage Indebtedness, the Operating Debtors have no obligation to repay the HUD Mortgage Indebtedness.

10. The Operating Debtors are licensed by the State of Illinois to operate as nursing homes that provide specialized care for the mentally ill who are admitted from hospitals, community health systems, community programs and correctional facilities. The Operating Debtors, which are some of the largest providers in Illinois for patients diagnosed with chronic mental illness, primarily generate their revenue through Medicaid, which is a jointly funded federal and state government program that is designed to pay for qualified medically necessary services such as physician, hospital and long-term care. In Illinois, long-term care facilities, such as the nursing homes operated by the Operating Debtors, receive a *per diem* reimbursement (“Reimbursement Rate”) from the Illinois Department of Healthcare and Family Services (“IDHFS”) that is funded by shared Medicaid funds from the federal government and the State of Illinois. The Operating Debtors are dependent upon this funding in order to operate their businesses and to provide proper healthcare on an ongoing basis to their patients. The Operating Debtors

² These non-Debtor entities are collectively referred to herein as the (“Real Estate Entities”).

currently have approximately 1100 patients and approximately 1100 employees, some of which are covered by union collective bargaining agreements.

11. Since the acquisition of the facilities in June 2012 by the Operating Debtors, IDHFS has failed to establish and process the proper Reimbursement Rate for the Operating Debtors thereby resulting in significantly reduced sums being paid to the Operating Debtors by IDHFS. The Operating Debtors estimate that this shortfall may aggregate more than \$12,000,000.00.

12. As a result, the Operating Debtors filed a Complaint for Injunctive and Declaratory Relief against the Director of IDHFS pursuant to 42 U.S.C. § 1983 ("1983 Action") in the United States District Court for the Northern District of Illinois, Eastern Division ("District Court"), case number 16-5765. In the 1983 Action, the Operating Debtors seek injunctive and declaratory relief requiring IDHFS to conduct a process to set proper Reimbursement Rates for the Operating Debtors in accordance with the applicable provisions of relevant state and federal law.

13. The Director of IDHFS filed a Motion to Dismiss the 1983 Action. On September 19, 2016, the District Court issued its Memorandum Opinion and Order denying the relief requested in the Motion to Dismiss ("Dismissal Denial Order"). Thereafter, the Director of IDHFS filed an appeal from the Dismissal Denial Order in the United States Court of Appeals for the Seventh Circuit ("7th Circuit"). After full briefing and oral argument, the 7th Circuit entered its Memorandum Opinion affirming the entry of the Dismissal Denial Order by the District Court.

14. The 1983 Action is now pending in the District Court. The responsive pleading of the Director of IDHFS is due for filing in the 1983 Action by November 2, 2017. The Operating Debtors assert that, by prevailing in the 1983 Action, IDHFS will be required to provide the necessary process for establishing the proper Reimbursement Rate for the Operating Debtors. The

Operating Debtors further assert that this process will result in an increased Reimbursement Rate that, when implemented, will significantly increase the Medicaid payment recoveries to the Operating Debtors.

15. The financial troubles of the State of Illinois have been disastrous for all nursing homes in Illinois. These financial troubles are acutely problematic for the Operating Debtors in that the Operating Debtors are substantially funded through Medicaid. Over 95% of the Operating Debtors' patients are dependent upon Medicaid and over 85% of these patients also participate in Managed Medicaid Programs. Monthly payments from the State of Illinois have been slow, erratic and significantly less than what are due. This inadequate payment cycle from the State of Illinois has had adverse effects on the ability of the Operating Debtors to maintain and fund normal business operations.

16. Importantly, as of July 2017, the State of Illinois has finally enacted a budget that, coupled with the sale of special purpose bonds by the State of Illinois, should provide the mechanism for the payment of overdue financial obligations to parties such as the Operating Debtors.

The MidCap Loans

17. On or about July 2012, the Operating Debtors entered into a financing transaction with MidCap that was amended numerous times through the present (mostly to cover the needs of the Operating Debtors for over-advance funding from MidCap that was necessitated by the adverse payment practices of the State of Illinois) (the "MidCap Loans"). The MidCap Loans are in the nature of revolving credit lines funded from and secured by the accounts receivable of the Operating Debtors. Substantial funds due from the State of Illinois are more than 210 days overdue.

These overdue amounts are excluded from the borrowing base formula implemented by MidCap thereby reducing the borrowing capacity of the Operating Debtors. As of the commencement of the Chapter 11 cases of the Debtor and Related Debtors, the approximate balance due to MidCap is \$8,700,000.00 (the “MidCap Indebtedness”).

18. The MidCap Indebtedness is collateralized by liens on all of the assets of the Operating Debtors and is guaranteed by JLM.

19. The intent of the Operating Debtors in these Chapter 11 cases is to fund operations through the use of cash and cash equivalents that serve as collateral to MidCap and HUD.

Use of Cash Collateral

20. In order for the Debtor to continue to operate its business and manage its financial affairs in the ordinary course and effectuate an effective reorganization, it is essential that the Debtor be authorized to use cash collateral to pay its typical and customary operating expenses. Attached to this Motion as **Exhibit A** are the Debtor’s monthly cash flow projections for the week ending November 4, 2017, through the week ending December 30, 2017 (the “Budget”). The Budget itemizes the Debtor’s cash needs during the relevant period. Also, consolidated cash flow projections for all Operating Debtors for the same period is attached to this Motion as **Exhibit B**.

21. Use of cash collateral to pay the actual, necessary and ordinary expenses to maintain the Debtor’s business, as set forth in the Budget, will preserve the value of the Debtor’s assets and business and thereby ensure that the interests of creditors that have or may assert an interest in both cash collateral and the Debtor’s other assets are adequately protected within the meaning of Sections 361, 362 and 363 of the Bankruptcy Code.

22. The Debtor proposes, subject to the approval of this Court, to use cash collateral in which MidCap and HUD assert an interest. The Debtor’s proposal will permit the Debtor to sustain

its business operations and reorganize its financial affairs through the implementation of a successful Plan of Reorganization. Furthermore, the Debtor's proposal will adequately protect the purported secured interests of MidCap and HUD. Finally, and most importantly, the Debtor's use of cash collateral is essential to maintain the continuity of care for its patients. Without the care, support and training programs provided by the Debtor, the overwhelming majority of patients will return to crisis situations in hospital emergency rooms, homeless shelters, jail or other criminal justice type facilities.

23. Unless the Debtor is authorized to use cash collateral in which MidCap asserts an interest, the Debtor will be unable to continue to operate its business and manage its property, thereby eliminating any reasonable prospect for a successful reorganization. The cessation of normal business operations by the Debtor will cause irreparable harm to the Debtor, its creditors, this estate and its patients.

24. The Debtor proposes to use cash collateral and provide adequate protection to MidCap and HUD upon the following terms and conditions:

- a. The Debtor will permit MidCap and HUD to inspect, upon reasonable notice, within reasonable hours, the Debtor's books and records;
- b. The Debtor shall maintain and pay premiums for insurance to cover all of its assets from fire, theft and other damage;
- c. The Debtor shall, upon reasonable request, make available to MidCap and HUD evidence of that which purportedly constitutes their collateral or proceeds;
- d. The Debtor will properly maintain its assets in good repair and properly manage its business; and
- e. MidCap and HUD shall be granted valid, perfected, enforceable security interests in and to Debtor's post-petition assets, including all proceeds and products which are now or hereafter become property of this estate to the extent and priority of their alleged pre-petition liens, if valid, but only to the extent of any diminution in the value of such assets during the period from the commencement of the Debtor's Chapter 11 case through the next hearing on the use of cash collateral.

25. Further cash flow budgets, if necessary, will be submitted to this Court pursuant to this Motion. The Debtor will make the expenditures set forth on Exhibit A to this Motion plus no more than 10% of the total proposed expense payments, unless otherwise agreed by MidCap and HUD or upon further Order of this Court. Additionally, in the event of extreme emergencies that occur when prior approval of MidCap, HUD or this Court is impossible, and in order to preserve the health, welfare and safety of patients, the Debtor shall be authorized to expend cash to rectify such unexpected and unavoidable emergencies. In such event, MidCap and HUD will be notified of the emergency expenditures as soon as reasonably practicable. Finally, any expenses that are budgeted for payment in one month but are not paid in such month shall be carried over for payment in subsequent months.

Request For Related Relief

26. The Debtor requests, pursuant to Rule 4001(b)(2) of the Federal Rules of Bankruptcy Procedure, that this Court conduct a preliminary hearing to authorize the Debtor's interim use of cash collateral pending a final hearing on this Motion.

27. The Debtor has provided two (2) days notice of the relief requested in this Motion to the United States Trustee, IDHFS, HUD, MidCap, those having filed appearances in this case and the 20 largest unsecured creditors. Under the circumstances of this case, the Debtor requests that this Court deem such notice as sufficient.

Conclusion

28. The Debtor believes that it is in the best interests of the Debtor, its creditors, this estate and its patients to authorize it to use that portion of its cash collateral, in that, without the limited use of such cash as herein requested, the Debtor, creditors and this estate.

29. For the reasons set forth herein, this Court should grant the relief requested in this Motion.

WHEREFORE, CT CARE, LLC, as Debtor/Debtor-in-Possession herein, requests the entry of an Order as follows:

- a. Authorizing the Debtor to use cash collateral in which MidCap and HUD assert liens, upon the terms and conditions set forth in this Motion, until further Order of this Court;
- b. Preliminarily authorizing the Debtor to use cash collateral pending a final hearing on this Motion;
- c. Setting a final hearing on this Motion;
- d. Deeming the notice provided by the Debtor of the hearing on this Motion as sufficient under the circumstances of this case; and
- e. Granting such other relief as this Court deems just and appropriate.

CT CARE, LLC,
Debtor/Debtor-in-Possession

By: /s/David K. Welch
One of its Attorneys

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