

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In re:)	
)	Chapter 11
Curae Health, Inc., <i>et al.</i> ¹)	Case No. 18-05665
)	
1721 Midpark Road, Suite B200)	Judge Walker
Knoxville, TN 37921)	
Debtors.)	Jointly Administered

**SERVISFIRST BANK’S OBJECTION TO DEBTORS’ EXPEDITED MOTION
FOR ENTRY OF AN ORDER (I) AUTHORIZING THE SALE OF NORTHWEST
MISSISSIPPI REGIONAL MEDICAL CENTER FREE AND CLEAR OF ALL
LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS,
(II) APPROVING THE CLARKSDALE APA, (III) AUTHORIZING
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS
AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF**

ServisFirst Bank, by and through counsel, hereby files this Objection (the “Objection”) to Debtors’ Expedited Motion for Entry of an Order (I) Authorizing the Sale of Northwest Mississippi Regional Medical Center Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (II) Approving the Clarksdale APA, (III) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief filed on April 24, 2019 [Docket No. 962] (the “Motion”).

In furtherance hereof, ServisFirst Bank hereby states as follows:

1. ServisFirst Bank is a secured creditor of the Debtors. ServisFirst Bank has valid first priority liens in all or substantially all of the assets of the Debtors that arise from pre-petition financing provided by ServisFirst Bank to the Debtors and post-petition liens granted to ServisFirst

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Curae Health, Inc. (5638); Amory Regional Medical Center, Inc. (2640); Batesville Regional Medical Center, Inc. (7929); and Clarksdale Regional Medical Center, Inc. (4755); Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); Clarksdale Regional Physicians, LLC (5311).

Bank in connection with the DIP Loan previously provided by MidCap and the use of cash collateral agreed to by ServisFirst Bank.

2. Included in the collateral for the obligations owed to ServisFirst Bank are the assets of the Clarksdale Hospital.

3. The Debtors purchased the Clarksdale Hospital from CHS in November 2017 for approximately \$23,100,000.00.

4. In connection with the Interim Management Services Agreement, CHS purchased the inventory and pre-paid items associated with the Clarksdale Hospital for approximately \$1,210,000.00. Now the Debtor proposes to sell the rest of the Clarksdale Hospital to CHS for only \$500,000.00. Thus, the total consideration to be received by the Debtors would be approximately \$1,700,000.00 or about 7.5% of the original purchase price.

5. ServisFirst Bank alleges that the Debtors have had the equipment at the Clarksdale Hospital that is included in the assets to be sold to CHS appraised. The appraised value of the equipment that is to be sold is approximately \$4,000,000.00. That equipment is just a part of the assets being sold by the Debtors to CHS. The appraised value of the equipment alone is approximately eight times the sale price for all of the assets of the Clarksdale Hospital.

6. The appraised value of the equipment is an element this Court should consider when determining whether the Debtors have a good business reason to proceed with the proposed sale. *See Stephens Industries, Inc. v. McClung*, 789 F.2d 386, 389 (6th Cir. 1986)(citing *In re Lionel Corporation*, 722 F.2d 1063, 1071 (2d Cir.1983).

7. When compared to the original purchase price exclusive of inventory and pre-paid items (assuming that they are roughly the same) the purchase price for the remaining assets is only about 2.3% of the price paid by the Debtor for those same assets.

8. The sale by the Debtors to CHS of the Clarksdale Hospital (excluding inventory and pre-paid items) for only 2.3% of the price paid for those same items approximately eighteen months ago is unreasonably low. This Court should not approve this sale because of the low price.

9. The offered price of 2.3% of the amount paid by the Debtors to CHS also establishes that CHS is not a good faith purchaser, and the proposal to sell the assets to CHS at this price is not made in good faith by either CHS or the Debtors.

10. The proposed transaction does not provide for any competitive bidding. Instead of submitting an Asset Purchase Agreement and having a process for other parties to submit bids, the Debtors have chosen to offer what is in effect a sole buyer contract without the ability to test the marketplace to see if other parties would buy these assets. Upon information and belief, ServisFirst Bank alleges that the Debtors have made no efforts to market the Clarksdale Hospital or any part thereof to other parties for the last six months. Thus, the process of the sale is defective and should not be approved.

11. ServisFirst Bank further objects given that the proposed sale does not provide ServisFirst Bank the right to credit bid. ServisFirst Bank is a secured creditor having claims in excess of \$18,000,000.00. Those claims are secured by first priority liens granted by the Debtors for pre-petition financing and first priority liens granted by the Court to ServisFirst Bank in connection with the DIP Loan made by MidCap and following the payoff of MidCap, the use of cash collateral by ServisFirst Bank. ServisFirst Bank should be allowed to credit bid against its collateral.

12. ServisFirst Bank and CHS/Community Health Systems, Inc. are parties to that certain Debt Subordination Agreement dated May 1, 2017 (the "Debt Subordination Agreement") a copy of which is attached hereto as Exhibit A.

13. Pursuant to the Debt Subordination Agreement, CHS agreed that it would not “take any action (or permit or direct an action be taken) under the provisions of any state or federal law, including, without limitation, the Uniform Commercial Code, or under any contract or agreement, to enforce, foreclose upon, take possession or control of or sell, dispose or otherwise realize upon any property or assets of Debtor.” *See Debt Subordination Agreement*, §§ 22 and 1(b)(h).

14. ServisFirst Bank asserts that CHS’s proposal to purchase the assets of the Clarksdale Hospital will constitute a breach and violation of the Debt Subordination Agreement with ServisFirst Bank as the sale would allow CHS to take possession and control of ServisFirst Bank’s collateral and realize upon those assets by purchasing at a price that is lower than appraised value. ServisFirst Bank hereby reserves all of its rights and remedies against CHS under the Debt Subordination Agreement including, but not limited to, pursuing a breach of contract action against CHS in a court of competent jurisdiction.

15. ServisFirst Bank hereby requests this Court hold in connection with any ruling made on the Motion, that this Court has not and does not adjudicate the claims of ServisFirst Bank against CHS under the Debt Subordination Agreement, those claims being expressly reserved in favor of ServisFirst Bank.

WHEREFORE, ServisFirst Bank prays that the Court sustain its Objection, refuse to approve the sale to CHS on the terms set forth in the Motion, preserve ServisFirst Bank’s rights to pursue suit against CHS under the Debt Subordination Agreement, and grant ServisFirst Bank such other and further relief as the Court deems just and proper.

Respectfully submitted,

NEAL & HARWELL, PLC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Limited Objection has been served through the Bankruptcy Court's ECF system on all parties registered to receive electronic notice in this case on this the 3rd day of May, 2019.

/s/ James R. Kelley