

**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

**OBJECTION OF SERVISFIRST BANK TO CONFIRMATION OF
JOINT CHAPTER 11 PLAN OF LIQUIDATION**

ServisFirst Bank, by and through counsel, hereby files this Objection (the “Objection”) to Confirmation of the Joint Chapter 11 Plan of Liquidation (the “Plan”)(Docket Entry #834) proposed by the Debtors and the Official Committee of Unsecured Creditors, and in support hereof, respectfully states as follows:

JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334(b) and the standing order of reference of the District Court. This matter is a core proceeding. 28 U.S.C. § 157(b)(1), (B)(2)(A), (B)(2)(L). Venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND FACTS

2. On August 24, 2018 (the “Petition Date”), each of the Debtors filed a voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). The Debtors continue to operate their businesses and manage their

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).

properties as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases.

3. On September 6, 2018, the official committee of unsecured creditors was appointed.

4. As of the Petition Date, the Debtors operated three hospitals in Mississippi (each a “Hospital”, and collectively, the “Hospitals”): the three hospitals are the Gilmore Memorial Hospital located in Amory, Mississippi (“Amory Hospital”), Northwest Mississippi Medical Center located in Clarksdale, Mississippi (“Clarksdale Hospital”) and the Panola Medical Center located in Batesville, Mississippi (“Batesville Hospital”).

5. As of the date of the filing of this Objections, the Debtors have sold the Amory Hospital and the Batesville Hospital. The Clarksdale Hospital is the subject of an interim management agreement whereby CHS/Community Health Systems has agreed to manage the date to day operations of the Clarksdale Hospital.

6. On November 14, 2018 ServisFirst Bank filed a secured proof of claim in the Debtors’ bankruptcy case in the amount of \$18,773,834.20. As of the date of this Objection, ServisFirst Bank is the sole first priority lender of the Debtors with liens and security interests in virtually all of the assets of the Debtors, and the proceeds of assets previously sold. ServisFirst Bank’s claim, security interests and liens are subject to the objections raised in the adversary proceeding filed against ServisFirst Bank by the Official Committee of Unsecured Creditors under Adversary Proceeding Case No. 18-05665, which objections ServisFirst believes are not valid.

7. The Amory Hospital sold for net cash to the Debtors of \$9,428,703.15 plus a \$2,000,000.00 cash escrow. The bulk of the cash sale proceeds were paid to MidCap Financial,

the DIP lender for the Debtors. From the remaining cash proceeds of the Amory Hospital sale, ServisFirst Bank holds \$1,667,056.00 in escrow to apply to its claim. It is unclear what portion, if any, of the cash escrow will be released and thus available to be applied to the claim of ServisFirst.

8. The Batesville hospital was sold for \$2,500,000.00. A portion of the sale price is evidenced by seller financing and collection is not guaranteed. ServisFirst Bank received cash in the amount of \$1,711,000.00 to apply to its secured claim against the Debtors plus notes totaling about \$500,000.00 which will be applied to its secured claim as and when collected.

9. In connection with the Interim Management Agreement entered into with CHS/Community Health Systems, Inc., CHS purchased the inventory at the Clarksdale Hospital. ServisFirst Bank holds in escrow \$1,210,936.00 from the inventory sale.

10. As of February 28, 2019, the Debtors' projected accounts receivable totaled \$10,273,019. Whether or not the Debtors will receive all of the projected accounts receivable remains to be seen.

11. In March 2019, following the sale of the Batesville Hospital, the DIP Loan to MidCap was paid off. The payoff was about \$6,000,000 consisting of \$4,000,000 of the proceeds of the Amory Hospital Sale plus funds related to Russellville Alabama plus a portion of the escrow from the sale of the Clarksdale Inventory. Subsequent to the payoff of the MidCap loan, the Debtors and ServisFirst agreed to further interim use of cash collateral. The budgeted expenses related to such use of cash collateral were \$3,116,129.00. As adequate protection for the use of cash collateral in which ServisFirst claimed an interest, ServisFirst was granted replacement liens and a superpriority administrative expense claim (ServisFirst also had previously been granted replacement liens and a superpriority administrative expense claim in

prior orders authorizing use of cash collateral). Upon information and belief, ServisFirst alleges that its collateral has diminished in value and ServisFirst is entitled to enforce its replacement liens and assert its super priority administrative expense claim in amounts to be determined.

12. Upon information and belief, ServisFirst Bank believes that the Debtors hold no other significant assets in order to pay the secured claim and superpriority administrative expense claim of ServisFirst Bank other than the proceeds from the sale of the Clarksdale Hospital if and when such a sale might occur.

13. Based upon the foregoing, it would appear that application of the Debtors' remaining assets to the claims of ServisFirst Bank will result in less than full payment to ServisFirst Bank:

Secured Claim Amount	\$18,773,834.20
Less Amory Hospital Sale Proceeds	\$1,667,056.00
Less Amory Escrow of \$2,000,000.00	Unknown
Less Batesville Hospital Sale Proceeds	\$1,711,000.00
Less Clarksdale Hospital Inventory Sale Proceeds	\$1,210,936.00
Less Clarksdale Hospital Sale Proceeds	Unknown
Less Net AR assuming 100% collection (\$10,273,019.00) and no variation in budgeted expenses (\$3,116,129.00)	\$7,156,890.00
Less Seller Financing for Batesville Hospital (assuming collection)	\$208,000.00
Less Seller Financing for Batesville Hospital Inventory (assuming collection)	\$350,000.00
Shortfall in Payment of ServisFirst Bank's claims	\$6,469,952.20

INITIAL DISCUSSION

14. ServisFirst Bank objects to the Debtors' Plan given that the Plan is not feasible, the Debtors do not have enough cash on hand to pay the administrative expense claims as of confirmation of the Plan, and ServisFirst Bank would receive more through a Chapter 7 liquidation than is being proposed by the Debtors' Plan.

15. As to feasibility, ServisFirst Bank objects to the Debtors' Plan because ServisFirst Bank believes that the Debtors' cannot show that the Plan is feasible, *i.e.*, the Debtors are not likely to be successful in carrying out the provisions of the Plan.

16. The State of Mississippi Division of Medicaid and Owens & Minor, Inc. have filed motions for payment of administrative expenses by the Estate of over \$4,000,000 which were not included in the budget nor contemplated in the Orders authorizing use of cash collateral. Other administrative expense claims that are not included in the budget or contemplated in the orders authorizing use of cash collateral may be forthcoming. ServisFirst Bank believes that the Debtors do not have enough cash on hand in order to pay all the administrative expense claims as of confirmation of the Plan or immediately thereafter.

17. Under the Plan, ServisFirst Bank would receive less than what it would be entitled to receive if the Debtors were liquidated under a Chapter 7 bankruptcy. ServisFirst Bank holds the Class 2 Secured Claim under the Debtors' Plan. ServisFirst holds replacement liens and a superpriority administrative expense claim granted as adequate protection in connection with the use of cash collateral. The rights of ServisFirst are superior to administrative expense claimants, except to the extent set out in the Orders authorizing use of cash collateral. However, the Debtors' propose to pay allowed administrative expense claims in full in connection with Plan

confirmation thereby paying to ServisFirst Bank less than it would receive in a Chapter 7 liquidation.

FEASIBILITY

18. As to the feasibility requirement set forth in Section 1129(a)(11) of the Bankruptcy Code, the concern is not whether confirmation is likely to be followed by a liquidation given that the Debtors' are proposing a liquidating plan. Instead, the concern is whether the Plan can be a success. The test for feasibility contains an examination of several factors. These factors are set forth in *In re Mallard Pond Limited*, 217 B.R. 782 (Bankr. M.D. Tenn. 1997). The factors are as follows:

“(1) the adequacy of the [debtor's] capital structure; (2) the earning power of the [debtor's] business; (3) economic conditions [that the debtor will face during the plan period]; (4) the ability of [the debtor's present] management; (5) the probability of the continuation of the same management; and (6) any other related matter which determines the prospects of a sufficiently successful operation to enable performance of the provisions of the plan.

In re Mallard Pond Limited, 217 B.R. at 785.

In the present case the issue is with respect to factor (6) above regarding any other related matter which determines the prospects of a sufficiently successful operation to enable performance of the provisions of the plan. The Debtors cannot succeed and carry their burden of showing by a preponderance of the evidence that the Plan is feasible because the Debtors do not have sufficient cash on hand in order to pay the amounts payable to ServisFirst Bank in a Chapter 7 liquidation and all the administrative expense claims. As the Court noted in *In re Mallard Pond*, the “plan proponent need not guarantee success, but a court cannot confirm a visionary scheme that promises creditors more than the debtor can possibly attain after confirmation, “notwithstanding the proponent's sincerity, honesty and willingness to make a best efforts attempt to perform according to the terms of the plan.” *In re Mallard Pond Limited*, 217

Page 6

B.R. at 785, citing *Rack Eng'g Co.*, 200 B.R. at 305 (quoting 5 COLLIER ON BANKRUPTCY ¶ 1129.02[11], at 1129–61 to 63 (1996)); *In re Ridgewood Apartments of DeKalb County, Ltd.*, 183 B.R. 784, 789 (Bankr. S.D. Ohio 1995) (not required to prove that debtor will for certain meet economic projections, but cannot confirm a visionary scheme); *In re IPC Atlanta Ltd. Partnership*, 142 B.R. 547, 559–60 (Bankr. N.D. Ga.1992) (Code does not require guarantee of successful reorganization, but plan must offer reasonable prospect of success); *In re Lakeside Global II, Ltd.*, 116 B.R. 499, 507 (Bankr. S.D. Tex. 1989) (must demonstrate a reasonable assurance of commercial viability).

19. The Bankruptcy Court for the Eastern District of Tennessee noted favorably in *In re Cross Creek Apartments, Ltd.*, 213 B.R. 521 (Bankr. E.D. Tenn. 1997) that to establish feasibility, a proponent must demonstrate that its plan has a reasonable prospect of success and is workable. *In re Cross Creek Apartments, Ltd.*, 213 B.R. at 539. As the court noted in *In re Cross Creek*, the “test of whether a debtor “can accomplish what the plan proposes is a practical one”” *In re Cross Creek Apartments, Ltd.*, 213 B.R. at 539. Practically speaking, the Debtor cannot perform under the Plan given the lack of cash.

20. Given the shortfall in the proposed payment of ServisFirst Bank’s claims, the Debtors’ having no other known assets from which to pay ServisFirst Bank’s secured claim, superpriority administrative expense claim, and all the other administrative expenses, the Plan is not feasible.

**THE DEBTORS DO NOT HAVE THE ABILITY TO PAY
ADMINISTRATIVE EXPENSE CLAIMS**

21. The proponents of the Plan have not complied with the applicable provisions of the Bankruptcy Code as required by 11 U.S.C. § 1129(a)(9)(A) because they cannot pay all administrative expense claims. See generally, *In re Trevarrow Lanes, Inc.*, 183 B.R. 475, 480

Page 7

(Bankr. E.D. Mich. 1995)(“[u]nless the claimholder agrees otherwise, a plan must provide for full and immediate payment of administrative claims.”)

22. The State of Mississippi has asserted an administrative expense claim against the Estate in the amount of \$3,855,018.13 as of April 9, 2019, as detailed in the State of Mississippi’s Objection to the Plan, Docket Entry #942. Additionally, Owens & Minor, Inc. seeks an administrative expense claim in the amount of \$267,429.85 pursuant to that certain Motion for Allowance and Immediate Payment of Administrative Expenses and Unsecured Claims, Docket Entry #927. The total of both administrative expense claims is \$4,122,447.98. Neither of these claims is included in the budget for which the Debtors are authorized to pay using cash collateral. Upon information and belief ServisFirst alleges there will be additional administrative expenses between now and confirmation that are not included in the budget and thus for which there will be no source of payment.

23. In looking at the feasibility requirements and the success of the Plan, and the requirement to pay administrative expense claims at or near confirmation, the Debtors simply do not have enough cash on hand to pay the administrative expense claims.

24. ServisFirst Bank objects to the administrative expense claims and states that the claims cannot be paid out of ServisFirst Bank’s collateral. No agreement with the Debtors exists in order to pay the administrative expense claims from ServisFirst Bank’s collateral.

25. Given the foregoing, the Debtors are not able to comply with 11 U.S.C. § 1129(a)(9)(A) and the Plan cannot be confirmed.

SERVISFIRST BANK WOULD RECEIVE MORE IN A CHAPTER 7 CASE

26. If the Debtors were liquidated in a Chapter 7 proceeding, ServisFirst Bank as the remaining secured creditor secured by substantially all of the assets of the Debtors’ estates would

receive the balance of all proceeds payable in connection with such liquidation. However, two administrative expense claims have been filed against the Estate which the Debtors would need to pay in order to confirm their Plan. Pulling these funds from the funds otherwise payable to ServisFirst Bank would violate the requirement of 11 U.S.C. § 1129(a)(7) and result in ServisFirst Bank receiving less than what it would receive in a Chapter 7 liquidation of the Debtors' assets.

27. The requirements of 11 U.S.C. § 1129(a)(7) are commonly referred to as the Best Interest of Creditors test and are thoroughly explained in *In re American Homepatient, Inc.*, 298 B.R. 152, 166-167 (Bankr. M.D. Tenn. 2003) (“[i]n summary, the court must compare what the Lenders would receive upon liquidation to what it will receive under the plan. The proponent of the plan bears the burden of proof to show that this requirement is satisfied.”).

CONCLUSION

28. The Debtors' Plan runs afoul of the feasibility requirement, the requirement to pay administrative expense claims at or near confirmation, and would result in ServisFirst Bank receiving less than what it would receive in a Chapter 7 liquidation. Given all of the foregoing, ServisFirst Bank objects to the Debtors' Plan for failure to meet the feasibility requirement, the administrative expense claim payment requirement, and for violation of the requirement to pay ServisFirst Bank at least what it would receive in a Chapter 7 liquidation.

WHEREFORE, ServisFirst Bank respectfully requests that the Court sustain this Objection, enter an order (i) denying confirmation of the Plan; and (ii) granting ServisFirst Bank such other and further relief to which they may be entitled.

Dated: April 17, 2019

Respectfully submitted,

NEAL & HARWELL, PLC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served through the Bankruptcy Court's ECF system on all parties registered to receive electronic notice in this case on this the 17th day of April, 2019.

/s/ David G. Thompson