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Hearing Date: March 5, 2014 @ 11:00 a.m.
Objection Deadline: February 26, 2014 @ 11:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	**Chapter 11**
ST. FRANCIS' HOSPITAL, POUGHKEEPSIE, NEW YORK, *et al.*,[1]	**Case No. 13-37725 (CGM)**
Debtors.	**(Jointly Administered)**

DEBTORS' MOTION FOR AN ORDER AUTHORIZING DEBTORS TO REJECT CERTAIN NON-RESIDENTIAL LEASES

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

St. Francis' Hospital, Poughkeepsie, New York ("St. Francis") and its affiliated debtors, as debtors in possession (collectively, the "Debtors"), respectfully represent:

BACKGROUND

1. On December 17, 2013 (the "Petition Date"), the Debtors commenced voluntary cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in this

[1] The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number include: St. Francis' Hospital, Poughkeepsie, New York (8503), Saint Francis Home Care Services Corporation (3842), SFH Ventures, Inc. (0024), Saint Francis Health Care Foundation, Inc. (5066), and Saint Francis Hospital Preschool Program (1079).

Court. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On December 23, 2013, the United States Trustee appointed an Official Committee of Unsecured Creditors (the "Committee"). No trustee or examiner has been appointed in these chapter 11 cases.

3. The Debtors chapter 11 cases were consolidated for procedural purposes only and jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

The Debtors' Business

4. Founded in 1914, St. Francis has been dedicated to serving the healthcare needs of the residents of the Hudson Valley for a century.

5. The Debtors serve more than 125,000 patients annually (excluding added homecare patients) and employ approximately 2,000 full and part-time employees. In 2012, the Debtors serviced approximately 8,000 inpatient discharges, 32,000 emergency room visits, 38,000 home care visits, and 150,000 outpatient visits. The hospital has 333 beds and the capability to serve patients with various physical and mental health issues. In 2012, the Debtors had gross revenues of almost $150 million and an operating loss of approximately $7.7 million.

6. The Debtors provide a wide array of medical service to their community, including:

A. Emergency Treatment: The Debtors are the home to the area's only Level II Trauma center that provides lifesaving care to severely injured patients. Over 9,000 trauma victims are cared for annually, making St. Francis' Level II Trauma center the busiest Level II Trauma Center in New York State.

B. Mental Health and Addiction Services: The Debtors are the region's recognized leader in providing mental health services. In addition, the Turning Point at St. Francis is a comprehensive not-for-profit chemical dependency treatment program that provides inpatient medically-managed detoxification from alcohol and all other types of substances, inpatient and outpatient rehabilitation, and a variety of specialized intensive outpatient programs, outpatient counseling, and support groups.

C. Robotic Surgery: The Center for Robotic Surgery offers patients an array of minimally-invasive surgical approaches through the use of the da Vinci surgical system. Robotic surgery is available for patients undergoing a wide variety of thoracic, urological, gynecological and oncological procedures.

D. Physical and Occupational Therapy: The Debtors' Physical and Occupational Therapy program treats a whole spectrum of diagnoses, including; neck pain, back pain, knee pain, foot and ankle pain, hand and wrist pain, shoulder pain, pre-surgical and post-surgical therapy needs, auto accidents and sports injuries, fractures, dizziness/light-headedness, balance problems, weakness, cancer related problems and stroke.

E. Cancer Treatment: The Herb & Sue Ann Redl Center for Cancer Care offers advanced treatments for all major cancers including breast, lung, colon, and other digestive tract, prostate, bladder, lymphoma and melanoma.

F. Home Care: The Debtors provide home health services, including nursing care, physical therapy, occupational therapy and speech therapy to patients in the comfort of their homes.

G. Special Needs Preschool: The Debtors also run a Special Needs Preschool Program and Center for Communication Disorders, which are regional leaders in providing language-based rehabilitation services to children and adults. The special needs preschool program serves children from 18 months to 5 years that have been diagnosed with developmental disabilities. It is the county's only program for autistic preschool-aged children and also provides early intervention services for children under 3 years of age, in addition to evaluation and treatment for speech, language, hearing and swallowing. The center is also a Center for Communication Disorders satellite site serving adults and children with speech, hearing and swallowing disorders.

7. The "CREST of Values" serves as the guiding principles for the Debtors' mission. Each member of the Debtors' team works individually and collaboratively to make their core values of Compassionate Care, Respect, Excellence, Service and Teamwork present in all internal dealings within the hospital community and in their interactions with those the Debtors are privileged to serve.

8. Beginning in September 2012, the Debtors implemented a series of new comprehensive information systems in an effort to increase the Debtors' operational efficiency. By October 2012, the Debtors determined that the implementation of the software had failed.

9. The failure of the software implementation under previous management and governance had a significant impact on the Debtors' financial reporting and revenue cycle functions. The implementation failed because, among other things, the Debtors' medical records department and patient billing and collection department were understaffed and

underperforming. In addition, material aspects of the customer defined tables in the software were inadequately prepared.

10. In an effort to rectify these issues, the Debtors engaged several consulting organizations during late 2012 and early 2013. Unfortunately, not enough of the previous and rapidly aging accounts receivable were collected. In addition, ongoing billing issues during later 2012 and early 2013 further strained cash flow.

11. As a result of the failed software implementation, increasing operational costs, increasingly regulated environment, and decreasing admittance levels, the Debtors were forced to explore their restructuring options, including the sale of substantially all of their assets. Ultimately, the Debtors determined that the filing of these chapter 11 cases was in the best interests of their creditors, patients, and other parties in interest.

St. Francis' Relationship with Saint Francis Physician Services PLLC

12. On January 1, 2012, St. Francis entered into an Employment Agreement with J. Keith Festa, M.D. (the "Festa Employment Agreement"), a true and correct copy of which is attached hereto as Exhibit A.

13. Pursuant to the Festa Employment Agreement, Dr. Festa, already St. Francis' Chief Medical Officer, agreed to establish a professional limited liability company, Saint Francis Physicians, PLLC (the "PLLC") and hold the sole membership interest therein for the benefit of St. Francis.

14. St. Francis and the PLLC are parties to a Resource Agreement, dated February 1, 2012 (the "Resource Agreement"), a true and correct copy of which is attached hereto as Exhibit B.

15. Pursuant to the Resource Agreement, St. Francis provides support services to the PLLC, including but not limited to administration and staff employees, day-to-day operations management, and book and record keeping.

16. St. Francis "arrange[s] for medical office space at locations at which the PLLC desires to establish practice sites" and "negotiate[s] leases or subleases."

17. In exchange, the PLLC pays St. Francis a service fee equal to a percentage of the PLLC's net income.

The PLLC Leases

18. In accordance with its obligations under the Resource Agreement, St. Francis entered into three leases of medical office space (collectively the "PLLC Leases"):

A. The Festa Lease: a lease of a medical building, located at 1678 Route 9W, Milton, New York 12547, from James Keith Festa, M.D., dated August 1, 2012, a true and correct copy of which is attached hereto as Exhibit C;

B. The Milton Lease: a lease of a medical building, located at 1687 Route 9W, Milton, New York 12547, from James Keith Festa, M.D., dated August 1, 2012, a true and correct copy of which is attached hereto as Exhibit D; and

C. The Basciano Sublease: a sublease of a building, located at Pleasant Valley Medical Arts Building, Suite 4, 1335 Route 44, Pleasant Valley, New York 12569, from Anthony J. Basciano, M.D., dated February 1, 2012, a true and correct copy of which is attached hereto as Exhibit E.

19. The Festa Lease expires on July 31, 2015.

20. The Milton Lease expires on July 31, 2015.

21. The Basciano Sublease expires on January 31, 2015.

22. The PLLC currently operates in 1678 Route 9W, Milton, New York 12547, 1687 Route 9W, Milton, New York 12547, and Pleasant Valley Medical Arts Building, Suite 4, 1335 Route 44, Pleasant Valley, New York 12569 (collectively the "Leased Premises").

23. Recently, Dr. Festa, in conjunction with St. Francis, has determined that the PLLC's medical practice is not financially viable.

24. The PLLC currently operates at a loss of approximately $1 million per year and will run out of cash by the end of February 2014.

25. In order to avoid patient abandonment issues and ensure an orderly transition of patients and practices, the PLLC must be closed as soon as possible.

26. As such, on February 28, 2014, the PLLC will cease operations and close all three of its existing practice locations.

27. At close of business on February 28, 2013 Debtors will vacate the Leased Premises and surrender possession to Drs. Festa and Basciano (collectively the "Landlords").

28. Closure of the PLLC is in the best interests of the Debtors' estates and their creditors because it eliminates what has heretofore been a source of negative cash flow.

29. Once the PLLC closes, Debtors will have no use for the Leased Premises.

JURISDICTION

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

RELIEF REQUESTED

31. Pursuant to Section 365(a) of the Bankruptcy Code, Debtors seek approval of the rejection of the PLLC Leases.

32. Sections 365(a) and 1107(a) of the Bankruptcy Code permit a debtor-in-possession to assume or reject any unexpired lease of the debtor, subject to the court's approval.

33. Courts employ a "business judgment" review of a debtor's decision to reject an unexpired lease. *See In re Orion Pictures Corp.*, 4 F.3d 1095, 1098-99 (2d Cir. 1993).

34. "A rejection is a court-authorized breach of an executory contract. When the exercise of business judgment makes such advisable, the estate can, by rejection, be relieved of the duty of continuing post-petition performance on a contract . . . . The ability to reject provides the trustee or debtor-in-possession with the means to relieve the estate of the duty to perform on burdensome obligations at the expense of all of the estate's other creditors, and to avoid the incurrence of additional administrative expenses which lack a corresponding benefit to the estate." *In re Ames Dep't Stores, Inc.*, 306 B.R. 43, 51-52 (Bankr. S.D.N.Y. 2004).

35. "Particularly in the case of commercial real estate leases—with respect to which, during the pre-rejection period, the estate must comply with post-petition obligations under section 365(d)(3) irrespective of the corresponding benefit to the estate—the ability to reject burdensome post-petition obligations is one of the most fundamental rights of a trustee or debtor-in-possession (and thus the creditor body generally) under the Bankruptcy Code." *Id.* at 52.

36. As the PLLC will close on February 28, 2014, the Debtors have determined that the PLLC Leases are of no utility or value to them.

37. It is not in the Debtors' best interests to market the PLLC Leases for sale or to sublease the Premises.

38. The PLLC Leases are, therefore, a cash drain on the Debtors' estates.

39. In consideration of the foregoing, the Debtors have determined, in the exercise of their business judgment, that it is in their best interests to reject the PLLC Leases.

40. The Debtors submit that the rejection of the Leases should be effective as of February 28, 2014, the date the Debtors intend to surrender possession of the Premises to their respective Landlords.

NOTICE

41. The Debtors have provided notice of this Motion in accordance with the *Order Pursuant to Bankruptcy Code Section 105(a) and Bankruptcy Rules 1015(c) and 9007 to Implement Certain Notice and Case Management Procedures* [Dkt. No. 38].

42. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: February 12, 2013
New York, New York

/s/ Christopher M. Desiderio

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