

SO ORDERED: August 2, 2018.



Basil H. Lorch III

Basil H. Lorch III
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

IN RE:)	Chapter 11
)	
HLS PHARMACIES, INC.)	Case No. 17-71197-BHL-11
dba HLS HEALTH & WELLNESS)	
dba FLICK'S LONG TERM CARE PHARMACY)	
dba HLS HOME MEDICAL)	
dba BUCHANAN HOMETOWN-PHARMACY)	
dba FLICK'S HOMETOWN-PHARMACY)	
dba LOVINS HOMETOWN-PHARMACY)	
)	
Debtor.)	

**ORDER AUTHORIZING SALE OF DEBTOR'S
DURABLE MEDICAL EQUIPMENT TO SPECIFIED BUYER FREE
AND CLEAR PURSUANT TO 11 U.S.C. §363**

This matter came before the Court on *Debtor's Motion Pursuant to 11 U.S.C. §363 for an Order Authorizing and Approving the Sale of Debtor's Durable Medical Equipment to Specified Buyer Free and Clear of Liens, Claims, Interests, and Encumbrances with Valid Liens to Attach to*

Sale Proceeds [Docket #153] (the “DME Sale Motion”) filed by HLS Pharmacies, Inc. (the “Debtor”), by counsel, on July 25, 2018, whereby the Debtor sought authority to sell its personal property assets consisting of durable medical equipment located at the Debtor’s various locations and also in patients’ residences, the related contracts, if any, and the customer lists, customer files, phone (cell and landlines) and fax numbers maintained by Debtor in then operation of the business, prescription files computer data and client list, and HME Accounts Receivable (as defined by the APA referenced below), except those HME Accounts Receivable arising out of the Princeton, Kentucky site (collectively the “DME Assets”) to Williams Bros. Health Care Pharmacy Inc. (the “Buyer”) pursuant to 11 U.S.C §§ 363(b) and (f); the Federal Rules of Bankruptcy Procedure 2002 and 6004; and Local Bankruptcy Rules B-6004-1 and B-6004-2.

On July 31, 2018, the Court held a hearing on the DME Sale Motion, which was attended by counsel for the Debtor, the Buyer, the United States Trustee, and German American Bank (“GAB”). At the hearing, the Debtor’s counsel advised that the sale proceeds should be paid to GAB pursuant to the *Agreed Entry on First Day Motion for Entry of Interim and Final Orders (A) Authorizing Debtor to Use Cash Collateral Pursuant to 11 U.S.C. §363, and (B) Granting Adequate Protection to Pre-Petition Secured Bank Pursuant to 11 U.S.C. §361, Nunc Pro Tunc to Petition Date* [Docket #60] filed on February 14, 2018 (the “Agreed Entry”), and the order approving the Agreed Entry [Docket #74] entered on March 5, 2018. The Court, having held a hearing on the DME Sale Motion, having taken notice that no objection was filed thereto and being otherwise duly advised in the premises, now finds that the DME Sale Motion should be granted.

IT IS THEREFORE HEREBY ORDERED that

A. The DME Sale Motion is hereby granted, and all terms of the Asset Purchase and Sale Agreement, attached hereto as Exhibit “A” (the “APA”) and incorporated herein are approved.

B. The Debtor is authorized to sell the DME Assets to Buyer with any valid liens to attach to the sale proceeds.

C. The sale proceeds shall be paid to GAB.

D. The Buyer is a good-faith purchaser entitled to the protections of 11 U.S.C. §§ 363(m) and (n).

E. The durable medical equipment, including specifically the oxygen equipment in the possession of customers shall be and hereby is determined to be lost and abandoned for purposes of applicable Medicare regulations, including without limitation, the Medicare Claims Processing Manual, Chapter 20 Section 50.4.

F. The 14-day stay imposed by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure is waived.

G. All persons or entities holding liens, claims, interests, and encumbrances in, on, to, or against the DME Assets shall be, and hereby are, forever barred, estopped and permanently enjoined from asserting such liens against the Buyer, its assigns, or the DME Assets.

H. The provisions of this Order shall become effective immediately.

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ASSET PURCHASE AND SALE AGREEMENT

(Home/Durable Medical Equipment Business)

THIS AGREEMENT, duly made and entered into this 31 day of July, 2018, by and between **HLS PHARMACIES, INC.**, an Indiana corporation (hereinafter referred to as the "Seller") and **WILLIAMS BROS. HEALTH CARE PHARMACY, INC.**, an Indiana corporation (hereinafter referred to as "Purchaser");

Recitals

- A. On or about December 14, 2017, Seller filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Indiana as Case No. 17-71197-BHL-11 (the "Bankruptcy Matter").
- B. The Seller desires to sell and Purchaser desires to Purchase certain assets of the Seller relating to its durable medical equipment business for all of the Seller's locations or in the alternative and subject to a price adjustment all locations with the exception of Princeton, Kentucky (the "Business"), provided that Purchaser can purchase the assets free and clear of any interests pursuant to Section 363(f) of the United States Bankruptcy Code.

Terms

NOW, THEREFORE, for and in consideration of the recitals aforesaid and in consideration of the mutual promises, covenants, and agreements herein contained, and the performance thereof by the respective parties hereto, it is hereby mutually understood and agreed by and between the parties hereto as follows:

ARTICLE I PURCHASE AND SALE OF ASSETS

1.1 **Assets to be Purchased and Sold.** Subject to the terms and conditions of this Agreement, Seller agrees to sell, convey, transfer and deliver to Purchaser at the Closing (as hereinafter defined), substantially all of the (i) inventory in the Seller's possession or retail locations and in the field with customers (the "HME Inventory"), (ii) any contracts (if any) relating to the HME Inventory, (iii) customer lists, customer files, prescription files, computer data, client lists, and phone (cell and landline) and fax numbers maintained by Seller in the operation of the Business, (iv) all "HME Accounts Receivable," which shall mean all trade accounts receivable and other rights to payment from customers of Seller, in respect of HME Inventory shipped or sold or related services through the Closing and any claims, remedies and other rights related thereto, and (v) the furniture fixtures and equipment associated with Seller's Princeton, Kentucky location (all of which shall be collectively referred to herein as the "Assets"). Prior to the Closing, Seller shall provide written

notice to Purchaser of whether or not the Assets shall include the assets enumerated above and associated with the Princeton, Kentucky location of Seller (the "Princeton Assets").

1.2 No Assumption of Liabilities. Purchaser shall not assume any liabilities or obligations of Seller. Without limiting the foregoing, it is agreed that Purchaser is not undertaking, and in no event shall be deemed to have obligated itself, to assume, pay, discharge or become obligated in respect of any obligation or liability of the Seller.

1.3 HME Accounts Receivable Obligations. Purchaser shall make commercially reasonable efforts to collect all HME Accounts Receivable in the ordinary course of business (without the necessity of legal proceedings) for a period of not less than one hundred eighty (180) days following Closing in accordance with their terms and at the aggregate recorded amounts thereof. Within thirty (30) days of actual collection of HME Accounts Receivable, Purchaser shall remit fifty percent (50%) of such collected amounts to German American Bancorp.

1.4 Further Assurances. The parties shall cooperate reasonably and in good faith with each other in (i) the transition of the Business to the Buyer, and (ii) the wind down of Seller's operations, including, but not limited to, sharing of Seller's computer servers to effectuate the transition of Seller's customers and the collection of HME Accounts Receivable and seeking the cooperation of landlords until HME Inventory can be relocated by Purchaser. In furtherance of such efforts, the parties shall (a) furnish upon request to each other such further information; (b) execute and deliver to each other such other documents; and (c) do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement, the obligations hereunder, and the transactions contemplated herein.

ARTICLE II PURCHASE PRICE

2.1 Purchase Price. In the event that the Assets include the Princeton Assets, the purchase price shall be Six Hundred Thousand Dollars (\$600,000.00), but in the event that the Assets do not include the Princeton Assets, the purchase price shall be Five Hundred Fifty Thousand Dollars (\$550,000) (the "Purchase Price"). The Purchase Price shall be paid at Closing in readily available funds.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

The Seller warrants and represents to Purchaser, with the knowledge that Purchaser is relying upon such representations and warranties, and all of which are made to Purchaser for the purpose of inducing Purchaser to enter into and execute this Agreement and Purchaser shall be entitled to rely thereon notwithstanding any investigation it may cause to be made into the Business and affairs of Seller, and all of which shall be true and correct in all respects as of the Closing, as follows:

3.1 Corporate Organization. Seller is an Indiana corporation duly organized, validly existing and in good standing under the laws of Indiana. The Seller has full power and authority to

carry on its Business as it is now being conducted and to own, or hold under lease, the properties and Assets it now owns and holds under lease, and is duly qualified to do business and is in good standing in those states or other jurisdictions whereby qualification as a foreign corporation is required.

3.2 Authorization. The execution, delivery and performance of this Agreement by the Seller, including, without limitation, the sale, conveyance, transfer and delivery of the Assets contemplated hereby, have been duly and effectively authorized by all the shareholders of the Seller, all as required by law, is not in contravention of any agreement to which the Seller is a party or by which it is bound, and the Seller is fully authorized to execute this Agreement and to perform the terms and provisions hereof, and this Agreement is valid and enforceable against the Seller in accordance with its terms.

3.3 Title to Assets. As of the Closing the Seller shall convey the Assets; free and clear of all liens, claims, charges, security interests, options or other title defects or encumbrances, and no claims have been made or threatened which, if substantiated, would make the aforesaid warranty untrue. Any and all inventory not located in the field shall be in new and saleable condition.

3.4 Litigation and Investigation. There are no investigations by any governmental agency pending, or to the knowledge of Seller, threatened against or adversely affecting the Seller or the Assets or the Business, and there is no action, suit, proceeding or claim pending, or to the knowledge of Seller, threatened against the Seller, or the Assets or the Business, which might have a material adverse effect on the Seller, or otherwise affecting the transaction contemplated by this Agreement, nor is there any basis known to the Seller for any such action, suit, proceeding, investigation or claim, other than the Bankruptcy Matter. There is no outstanding order, writ, injunction or decree of any court, government, or governmental agency against or affecting the Seller, or the Assets or the Business, other than the Bankruptcy Matter.

3.5 Compliance with Laws. To Seller's knowledge, Seller has complied in all respects with all federal, state and local laws, rules, regulations, orders and ordinances pertaining to the Seller, the Assets or the conduct of the Business, including but not limited to all regulations relating to the purchase and sale of the Drug Inventory. To Seller's knowledge, the consummation of the transaction contemplated hereunder shall not violate any applicable federal, state and local law, rule, regulation, order or ordinance.

3.6 Successor Liability. With respect to the consummation of the transactions contemplated by this Agreement, there has been no occurrence, nor to the knowledge of Seller, are there any facts as to any occurrence, which does, could or may result in the imposition of any successor liability upon Purchaser under any law.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PURCHASER

The Purchaser warrants and represents to Seller as follows:

4.1 Organization. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Indiana and has full power and authority to carry on business in the State of Indiana.

4.2 Authorization. Purchaser has full corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby. The shareholders of the Purchaser have duly authorized the executions and delivery of this Agreement and the transaction contemplated hereby.

ARTICLE V CONDITIONS PRECEDENT TO THE CLOSING BY PURCHASER

5.1 Conditions Precedent. The obligation of Purchaser to consummate on the Closing the transactions contemplated by this Agreement shall be subject to the satisfaction or waiver by Purchaser, prior to or concurrently with the Closing on the Closing, of the conditions set forth as follows, each of which is hereby individually deemed material:

- 5.1.1 The representations and warranties of Seller shall be true and correct at and as of the Closing with the same effect as though such representations were made at and as of such date.
- 5.1.2 Seller shall have performed all obligations to be performed by it under this Agreement prior to the Closing and shall have delivered all documents required to be delivered hereunder.
- 5.1.3 Purchaser shall, in its sole discretion, be satisfied with the results of its due diligence investigation of the Assets.
- 5.1.4 At the Closing, all the deliveries set forth in Section 8.2 have been be delivered by Seller to Purchaser, as applicable.

ARTICLE VI CONDITIONS PRECEDENT TO THE CLOSING BY SELLER

6.1 Conditions Precedent. The obligations of the Seller to consummate on the Closing of the transactions contemplated by this Agreement shall be subject to the satisfaction or waiver by Seller, prior to or concurrently with the Closing on the Closing, of the conditions set forth as follows, each of which is hereby individually deemed material:

- 6.1.1 The representations of the Purchaser shall be true and correct as of the Closing with the same effect as though such representations were made at and as of such date.

- 6.1.2 Purchaser shall have performed all obligations to be performed by it under this Agreement prior to the Closing and shall have delivered all documents required to be delivered hereunder.

ARTICLE VII CONDITIONS TO BOTH PARTIES' OBLIGATIONS

7.1 Conditions to Both Parties' Obligations. The obligations of the Seller, on the one hand, and Purchaser, on the other hand, under this Agreement to consummate the Sale on the Closing Date shall be subject to satisfaction of each of the following conditions, none of which may be waived by either party:

- 7.1.1 The Bankruptcy Court for the Southern District of Indiana shall have entered an order in the Bankruptcy Matter pursuant to 11 U.S.C. 363(f) approving the sale of the Asset free and clear of any interests (the "Approved Order");
- 7.1.2 The Approval Order shall have become a Final Order. For purposes of this Agreement, the term "Final Order" shall mean that (i) the implementation or operation of the order shall not have been stayed, and (ii) the time to appeal, petition for certiorari or move for reargument or rehearing shall have expired, and no appeal, petition for certiorari or motion for reargument or rehearing shall then be pending or, in the event that an appeal, writ of certiorari, reargument or rehearing thereof has been sought, such order shall have been determined by the highest court to which such order was appealed, or certiorari, reargument or rehearing was sought, shall have been denied and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; and
- 7.1.3 No judicial, administrative or arbitral action, suite or proceeding shall have been commenced, the purpose of which is, or which might result in, preventing the consummation of the sale of the Assets to the Purchaser, or the Approved Order waives the stay period provided in Bankruptcy Rule 4001.
- 7.1.4 The Seller and Purchaser shall have agreed, in writing, on a value of the Drug Inventory and established the Purchase Price within three (3) days from Closing.

ARTICLE VIII CLOSING

8.1 Closing. The closing of the transactions provided for herein shall take place on or before July 31, 2018, through the exchange of documents contemplated herein and as otherwise may be agreed by mutual consent in writing of the parties hereto. The date of the closing is referred to in this Agreement as the "Closing." The transfer of title to the Assets will be effective as of the issuance of the Approved Order.

8.2 Seller's Deliveries at Closing. The Seller shall deliver to the Purchaser, at or prior to the Closing, the following documents in consummation of the transaction provided for herein:

8.2.1 Bill of Sale, executed by the Seller, for all of the Assets in the form of Exhibit 8.2.1, attached hereto and made a part hereof.

8.2.2 The resolution(s) of the Board of Directors of Seller, authorizing the making, execution, and delivery of this Agreement and the consummation of the transactions contemplated hereby.

8.3 Purchaser's Deliveries. At Closing, the Purchaser shall deliver to Seller, a cashier's check or wire transfer in the amount of the Purchase Price.

8.4 Risk of Loss. Prior to and up to the Closing, Seller shall bear the risk of loss of or damage to the Assets. After the Closing, the Purchaser shall bear the risk of loss.

8.5 Taxes. All personal property taxes, ad valorem obligations and similar taxes assessed or imposed on the Assets on or before the Closing Date, shall be paid by the Seller. Purchaser shall pay and be responsible for any and all personal property taxes, ad valorem obligations or similar taxes assessed on the Assets and are due and payable after the Closing Date.

ARTICLE IX NOTICES

9.1 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered to, or mailed first class, postage prepaid, certified mail, return receipt requested, addressed to:

If to Seller:

HLS Pharmacies, Inc.
P.O. Box 8215
Evansville, Indiana 47716

With a copy to:

David R. Krebs
Hester Baker Krebs LLC
One Indiana Square, Suite 1600
Indianapolis, Indiana 46204

If to Purchaser:

Williams Bros. Health Care Pharmacy, Inc.
10 Williams Bros. Drive
Washington, IN 47501
Attention: Charles C. Williams

With a copy to:

Nick Cirignano
Ziemer, Stayman, Weitzel & Shoulders, LLP
20 NW First Street, 9th Floor
P.O. Box 916
Evansville, Indiana 47706

Any address to which any such notice, request or other communication shall be addressed, or the person to whose attention the same shall be sent, may be changed by a notice in writing given in the manner provided hereinbefore. Personal service of any such written notice, request, demand and other communication in writing may be made upon any party by personal service upon the person to whom any notice thereof transmitted by mail is to be directed.

ARTICLE X MISCELLANEOUS PROVISIONS

10.1 Miscellaneous. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements and understandings between the parties hereto respecting such matters. If any provision of this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, that provision shall not affect the validity, legality or enforceability of any other provision of this Agreement. Whenever the singular or plural number, masculine, feminine or neuter gender is used herein, it shall equally include the other. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, strictly neither for nor against either Purchaser or Seller, and without implying a presumption that the terms hereof shall be more strictly construed against one (1) party by reason of any rule of construction. Neither party may assign or transfer their rights or obligations under this Agreement without the prior written consent of the other party first obtained. The parties hereto hereby represent and warrant that they are duly authorized to execute such instruments and to enter into the transaction provided for herein. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. The parties hereto agree to take such further actions and to execute, acknowledge and deliver, in proper form, any further instruments or documents as may be reasonably requested in order to effectuate the intent of this Agreement. This Agreement may not be amended except in a writing signed by both parties hereto. This Agreement shall be binding upon the parties, their respective successors and assigns. This Agreement shall be construed and enforced in accordance with the laws of the State of Indiana. The parties hereto agree that any action filed pursuant hereto shall be filed in a court of competent jurisdiction in Daviess County, Indiana.

10.2 Expenses. Except as otherwise provided for herein, the parties shall pay their own fees and expenses, including their own counsel fees, incurred in connection with this Agreement or any transaction contemplated hereby.

10.3 Attorneys' Fees and Litigation Costs. In the event of litigation to enforce the terms of this Agreement or any document or instrument executed pursuant hereto, the prevailing party shall be

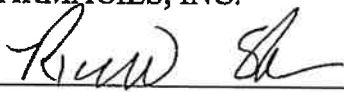
entitled to a judgment for its attorneys' fees, paralegal fees, collection costs, and prejudgment interest on any damage claim.

10.4 Waivers. No waiver by any party of, or consent by such party to, a variation from, or breach of, or default under any provision of this Agreement shall be effective unless made in a written instrument duly executed on behalf of such party by its duly authorized officer or such individual (as the case may be), and any such waiver or consent shall be limited solely to those rights or conditions expressly so waived or consented to.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SELLER:

HLS PHARMACIES, INC.

By:  PMS
Rick Stradtner, President

PURCHASER:

WILLIAMS BROS. HEALTH CARE PHARMACY, INC.

By: _____
Charles C. Williams, President

entitled to a judgment for its attorneys' fees, paralegal fees, collection costs, and prejudgment interest on any damage claim.

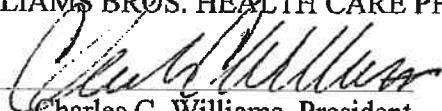
10.4 Waivers. No waiver by any party of, or consent by such party to, a variation from, or breach of, or default under any provision of this Agreement shall be effective unless made in a written instrument duly executed on behalf of such party by its duly authorized officer or such individual (as the case may be), and any such waiver or consent shall be limited solely to those rights or conditions expressly so waived or consented to.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SELLER: HLS PHARMACIES, INC.

By: _____
Rick Stradtner, President

PURCHASER: WILLIAMS BROS. HEALTH CARE PHARMACY, INC.

By: 
Charles C. Williams, President

LIST OF SCHEDULES

None

LIST OF EXHIBITS

Exhibit 8.2.1 Bill of Sale

EXHIBIT 8.2.1
BILL OF SALE

(Home/Durable Medical Equipment Business)

THIS BILL OF SALE is made effective as of the ____ day of July, 2018 by and between **HLS PHARMACIES, INC.**, an Indiana corporation (“Seller”) and **WILLIAMS BROS. HEALTH CARE PHARMACY, INC.**, an Indiana corporation (the “Purchaser”).

WHEREAS, Purchaser and Seller have entered into a certain Asset Purchase and Sale Agreement (Home/Durable Medical Equipment Business) dated July ____, 2018 (hereinafter referred to as the “Purchase Agreement”).

NOW, THEREFORE, pursuant to the Purchase Agreement and in consideration of the premises, and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed that:

1. Conveyance. Seller does hereby sell, assign, convey, warrant and deliver to Purchaser the Assets, as defined in the Purchase Agreement.

2. Authority to Execute. The undersigned persons executing and delivering this Bill of Sale, or consenting to this Bill of Sale, on behalf of the respective parties hereto represent and certify that they are duly authorized and fully empowered to execute and deliver this Agreement on behalf of the respective parties hereto, and that all necessary action for the execution of this Agreement has been taken and done.

3. Binding Effect. All the terms and provisions of this Bill of Sale shall be binding upon the Seller, its successors and assigns, and inure to the benefit of the Purchaser and the Purchaser’s successors and assigns.

IN WITNESS WHEREOF, the undersigned have caused the execution of this Bill of Sale by its duly authorized officer as of the date first written above.

SELLER:
HLS PHARMACIES, INC.

By: _____
Rick Stradtner, President

PURCHASER:
WILLIAMS BROS. HEALTH CARE
PHARMACY, INC.

By: _____
Charles C. Williams, President