

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

IN RE:

PUSHMATAHA COUNTY – CITY OF ANTLERS
HOSPITAL AUTHORITY,

Debtor.

Case No. 16-81001
(Chapter 9)

**DEBTOR’S MOTION FOR AN ORDER APPROVING STIPULATION
AUTHORIZING DEBTOR’S USE OF “CASH COLLATERAL”
AND GRANTING ADEQUATE PROTECTION, WITH BRIEF**

Pushmataha County – City of Antlers Hospital Authority ("Debtor"), moves this Court for an Order approving a Stipulation – entered among Debtor and its secured lenders (i) InterBank, (ii) the United States of America, acting through the United States Department of Agriculture Rural Housing Service (“RHS”), and (iii) FirstBank – permitting the Debtor’s continued use of certain revenues in return for adequate protection.

In support of this Motion, Debtor states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper under 28 U.S.C. §§ 1408 and 1409.

2. 11 U.S.C. §§ 105(a), 361, 506, 922, and 928 are the statutory predicates for the relief requested.

BACKGROUND

3. Debtor filed its Chapter 9 voluntary petition on September 23, 2016.

Debtor's Operations:

4. The Debtor is a public trust that operates Pushmataha Hospital located in Antlers, Oklahoma (the "Hospital").

5. The Hospital is a 25 bed, general medical hospital in Antlers, Oklahoma. It provides a wide array of in-patient and out-patient health care services.

6. The Hospital's 24-hour emergency department treats approximately 5,000 patients annually. The emergency department has four beds, including one trauma room. It is supported by 24-hour coverage of testing facilities, including laboratory and radiology.

7. The Court previously determined that Debtor is a "health care business" as set forth under 11 U.S.C. § 101(27A), and ordered the appointment of a Patient Care Ombudsman at Debtor's request. (See, Dkt. # 19).

Debtor's Secured Creditors:

8. In addition to service-generated revenues (the "Service Revenues"), the Hospital receives funds from the City of Antlers (the "City") via proceeds of a \$0.01 city sales tax (the "City Sales Tax"), as well as funds from Pushmataha County under a \$0.0075 County sales tax (the "County Sales Tax").

9. Debtor's secured debts consist solely of traditional loans through InterBank (through merger with First State Bank of Yukon), RHS, and FirstBank. Each of these creditors are listed on Debtor's lists of creditors attached to its Voluntary Petition filed as Dkt. # 1 in Debtor's bankruptcy case, as may be amended from time to time.

10. Through various loan related documents and agreements, Debtor's secured lenders InterBank and RHS claim parity first-lien secured interests in the Service Revenues, as well as the City Sales Tax and County Sales Tax funds that are paid over to Debtor.

11. Through other loan related documents and agreements, Debtor's secured lender FirstBank claims second-lien, secured interests in the Service Revenues, as well as the City Sales Tax and County Sales Tax funds that are paid over to Debtor.

12. Debtor is in discussions with its lenders, but has not yet agreed to the validity or extent of any purported liens claimed by these lenders (the "Liens").

13. If the Liens are valid, the Service Revenues, as well as funds received by the Debtor from the City Sales Tax and the County Sales Tax, would constitute cash collateral (the "Cash Collateral").

14. The Debtor continues to have an immediate and critical need to use the Cash Collateral to operate the Hospital and to avoid irreparable harm to the Debtor and to the community it serves. Use of Cash Collateral is also in the best interests of creditors and parties in interest.

Debtor's Stipulation with its Secured Creditors:

15. Debtor, InterBank, RHS and FirstBank have entered into a Stipulation Authorizing Debtor's Use of Cash Collateral and Granting Adequate Protection (the "Stipulation), a copy of which is attached hereto as **Exhibit A**.

16. Pursuant to this Stipulation, the Debtor is authorized to use Cash Collateral for all ordinary and necessary expenditures within the meaning of 11 U.S.C. § 928(b).

17. In return, Debtor grants InterBank, RHS and FirstBank replacement liens on all post-petition Cash Collateral of the same type, and in the same priority, as each had prepetition in order to secure their respective prepetition debt, in the amount of the Cash Collateral used by Debtor to the extent applicable under 11 U.S.C. § 928. The replacement liens and security interests granted to InterBank, RHS, and FirstBank under the Stipulation are to be deemed perfected without need for any further notice, filing, or order shall be required to effect or maintain such perfection.

18. In addition to the replacement liens, if and to the extent that InterBank, RHS, or FirstBank has an unsecured claim for any portion of the Debtor's obligations arising from its use of Cash Collateral, the Stipulation provides that the unsecured claim will have an administrative expense priority pursuant to 11 U.S.C. § 507(b) to the extent applicable under 11 U.S.C. §922(c).

19. The specified term of the Stipulation is 60 days from the date of entry (which was October 21, 2016). However, the parties have agreed that the Stipulation may be continued, by either another definite time period, or indefinitely, as the parties may agree, through the filing of a "Notice of Continuation".

20. Lastly, the Stipulation expressly and fully reserves the arguments of the parties regarding the nature, validity and extent of the Liens, as well as all other positions and arguments of the parties of any nature, without prejudice to their assertion and argument at a future date.

RELIEF REQUESTED

21. By this Motion, the Debtor seeks entry of an Order approving the Stipulation which authorizes (i) the Debtor to use the Cash Collateral, and (ii) grants InterBank, RHS and FirstBank (1) continuing liens to the extent applicable under 11 U.S.C. § 928(a) and (b), and (2) an administrative expense claim to the extent applicable under 11 U.S.C. § 922(c), all to the extent that these creditors should in the future be determined to have valid liens in and to the Cash Collateral, with each party reserving all arguments thereto.

22. Further, the Debtor requests that the Court's Order approving the Stipulation also provide that the Stipulation may be continued, by either a definite time period or indefinitely as the parties may agree, by the filing of a "Notice of Continuation".

23. A proposed Order granting this Motion is attached as **Exhibit B**.

BRIEF

24. 11 U.S.C. § 552 describes the effect bankruptcy on pre-petition secured liens. Generally, § 552 prevents pre-petition liens from attaching to post-petition property acquired by the estate or by the debtor.

25. 11 U.S.C. § 901 makes § 552 applicable to Chapter 9; however, § 522's applicability to "special revenues" - which are defined in § 902(2) - is severely curtailed by § 928, which states in full:

(a) Notwithstanding section 552(a) of this title and subject to subsection (b) of this section, special revenues acquired by the debtor after the commencement of the case shall remain subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.

(b) Any such lien on special revenues, other than municipal betterment assessments, derived from a project or system shall be subject to the necessary operating expenses of such project or system, as the case may be.

26. Section 363 of the Bankruptcy Code, which formally defines “cash collateral” is not formally grafted into Chapter 9 by § 901,

27. However, the concept of providing adequate protection to creditors secured by “special revenues,” which would otherwise fit § 363(a)’s definition of “cash collateral,” is brought into Chapter 9 through § 922, as well as §901(a)’s inclusion of § 361.

28. Under the terms of the Stipulation, InterBank, RHS and FirstBank have consented to Debtor’s ongoing use of the Cash Collateral in return for the protections of §§ 361, 922, and 928, which are provided for in the Stipulation.

CONCLUSION

In light of the above, the Debtor requests that the Court enter its Order approving the Stipulation, and awarding such further relief as the Court deems just and proper.

Respectfully Submitted,

/s/ Jeffrey E. Tate
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