



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed November 15, 2017

Handwritten signature of Mark X. Mullin in black ink.

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	Chapter 11
	§	
PREFERRED CARE, INC., et. al.	§	Case No.: 17-44642
	§	
Debtors.	§	(Joint Administration Requested)
	§	

**INTERIM ORDER (I) AUTHORIZING CERTAIN DEBTORS TO USE
CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION TO
PREPETITION LENDERS AND (III) SCHEDULING A FINAL HEARING
PURSUANT TO BANKRUPTCY RULE 4001(b)**

Pending before the Court is the *Motion for Interim and Final Orders (I) Authorizing Certain Debtors to Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, and (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(B)* [Docket No. 18], (the “**Motion**”)¹ filed by the Omega and FC Domino Debtors,² as debtors and

¹ Capitalized terms not otherwise defined herein have the definition ascribed in the Motion.

debtors in possession for interim and final orders under sections 105, 361, 362, 363, 507 and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (as amended, the “**Bankruptcy Code**”), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the “**Bankruptcy Rules**”), seeking:

- a. authorization for the Omega and FC Domino Debtors to use Cash Collateral and the granting of adequate protection to the Omega and FC Domino (the “**Secured Parties**”) for, among other things, such use of Cash Collateral and all any diminution in value of the their respective interests in their Cash Collateral, whether existing on the Petition Date or arising pursuant to this Order;
- b. pursuant to Bankruptcy Rule 4001, that an interim hearing (the “**Interim Hearing**”) on the Motion be held before this Court to consider entry of the this Order;
- c. authorization to vacate the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Order;
- d. that this Court schedule a final hearing (the “**Final Hearing**”) to consider entry of a Final Order authorizing the use of Cash Collateral and the grant of adequate protection on a final basis; and,
- e. waiver of any applicable stay with respect to the effectiveness and enforceability of this Interim Order (including a waiver pursuant to Bankruptcy Rule 6004(h)).

The Interim Hearing having been held by this Court on November 15, 2017; and upon the record made by the Omega Debtors and FC Domino Debtors at the Interim Hearing (including, without limitation, the First Day Declaration); and this Court having heard and resolved or overruled all objections to the interim relief requested in the Motion; and it appearing that the interim relief requested in the Motion is in the best interests of the Omega Debtors and FC

² The parties requesting relief in the Motion are defined as the Omega and FC Domino Debtors.

Domino Debtors, their estates and creditors; and after due deliberation and consideration and sufficient cause appearing therefor,

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. On November 13, 2017 (the “**Petition Date**”), the Omega and FC Domino Debtors filed their voluntary petitions under chapter 11 of the United States Bankruptcy Code.

2. The Omega Debtors and FC Domino Debtors are in possession of their property and continues to operate and manage their businesses as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

3. *The Motion.* The Motion is granted on an interim basis as set forth herein (this “**Interim Order**”). Any objection to the Motion to the extent not withdrawn or resolved is hereby overruled.

4. *Jurisdiction.* This Court has core jurisdiction over the cases commenced on the Petition Date, this Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. The predicates for relief granted pursuant to this Order are sections 105(a), 362, 363, 364, 503, and 507 of the Bankruptcy Code, Rules 6003 and 6004 of the Bankruptcy Rules, and Rules 4001-1, 4002-1, and 9013-1 of the Bankruptcy Local Rules. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. *Committee Formation.* A statutory committee of unsecured creditors (if appointed, the “**Committee**”) has not been appointed in the Cases.

6. *Notice.* Notice of the Motion, the relief requested therein and the Interim Hearing was served by the Omega Debtors and FC Domino Debtors, whether by telecopy, email, overnight courier or hand delivery, on (i) the Office of the United States Trustee for the Northern District of Texas; (ii) the Secured Parties; (iii) counsel to the Secured Parties; (iv) the thirty (30)

largest unsecured creditors of the Debtors' bankruptcy estates on a consolidated basis; (v) the Internal Revenue Service; and (vi) all parties in interest who have formally appeared and requested notice. Under the circumstances, the notice given by the Omega and FC Domino Debtors of the Motion, the relief requested therein and of the Interim Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 2002, 4001(b), (c) and (d).

7. *Debtors' Assertions.* Preferred Care Inc. ("**Preferred Care**"), the Omega Debtors, and the FC Domino Debtors assert that they are parties to the following agreements with the Secured Parties, and that the Secured Parties claim security interest in assets of certain Debtors organized into groups of facilities within the Debtors' corporate structure:

FC Domino Group ("**FC Domino Group**"). Preferred Care is party to that certain Amended and Restated Master Lease Agreement, dated as of July 1, 2015, (the "**FC Domino Master Lease**") between Preferred Care, as lessee, and certain affiliates of FC Domino, as lessors, pursuant to which Preferred Care granted the FC Domino affiliate lessors a security interest in certain assets, including the accounts receivable from operation of the leased Kentucky facilities. The FC Domino Debtors are parties to certain Sublease Agreements, dated as of July 1, 2012 and October 1, 2012 (as applicable), (the "**FC Domino Subleases**" and together with the FC Domino Master Lease, the "**FC Domino Group Documents**") between the applicable Debtor, as sublessee, and Preferred Care, as sublandlord, pursuant to which the FC Domino Debtors granted the FC Domino affiliate lessors a security interest in certain assets, including the accounts receivable from operation of the leased Kentucky facilities.

Omega Group (the "**Omega Group**"). The Omega Debtors are parties to certain lease agreements (the "**Omega Leases**") between the applicable Debtor, as lessee and affiliates of Omega pursuant to which the Omega Debtors granted the Omega affiliate lessors a security interest in certain assets, including the accounts receivable from operation of the leased New Mexico facilities.

8. The terms of the use of Cash Collateral, including the grant of the proposed adequate protection set forth below, are fair and reasonable, proposed in good faith, and reflect the Omega and FC Domino Debtors' exercise of prudent business judgment.

9. The use of cash collateral by the Omega and FC Domino Debtors is reasonable and necessary to prevent irreparable injury, loss, or damage to their estates. This Court concludes, and the parties agree, that entry of this Order is in the best interests of the estate at this time because its implementation will, among other things, allow for the continued operation of Omega and FC Domino Debtors' existing businesses and preservation of value for all constituents.

10. At the present time, the Omega and FC Domino Debtors have a need to use cash collateral as set forth below.

11. The Secured Parties have agreed to the Omega and FC Domino Debtors' use of cash collateral under the terms set forth in this Interim Order.

ACCORDINGLY, IT IS HEREBY ORDERED:

12. **Use of Cash Collateral.** The Omega and FC Domino Debtors are authorized to use the cash collateral of the Secured Parties to continue the use of their Cash Management System pursuant to which the Cash Collateral of the Secured Parties will be deposited in the Concentration Account and applied to the claims of Wells Fargo (at the discretion of the Wells Fargo in its capacity as "DIP Agent" under the Debtors' debtor in possession financing facility with Wells Fargo); *provided, however*, that the Debtors' authorization to use Cash Collateral shall immediately terminate upon the expiration of the Default Notice Period (as defined below) following the occurrence of an Event of Default (as defined below).

13. . Nothing contained in the Order authorizing the Debtors' use of Cash Collateral during the period after the Petition Date shall constitute a consent or waiver of any rights, claims, causes of action, or remedies of FC Domino or its affiliates under the FC Domino Master Lease, the FC Domino Subleases, or with respect to the Debtors' use of Cash Collateral during the period prior to the Petition Date.

14. **Adequate Protection.** The adequate protection provided to the Secured Parties in this Order is only to the extent (i) that the asserted liens and security interests by the Secured Parties in the Omega and FC Domino Debtors' pre-Petition Date property interests are perfected, valid, and not avoidable as of the Petition Date and (ii) of a decrease in the value of such entity's asserted pre-Petition Date security interests has occurred. The following adequate protection ("**Adequate Protection**") is provided to the Secured Parties as adequate protection of their asserted pre-Petition Date security interests *nunc pro tunc* to the Petition Date, in each case solely against the Debtors and assets thereof that are encumbered under each such Secured Party's respective prepetition agreements (i.e., FC Domino's adequate protection liens and claims shall be against the FC Domino Debtors and Omega's adequate protection liens and claims shall be against the Omega Debtors) not withstanding anything to the contrary in the following subparagraphs:

- a. The Omega and FC Domino Debtors will remain current on their regularly scheduled rental payments to Omega and FC Domino (through January 31, 2018, unless otherwise extended by written agreement between the Omega and FC Domino Debtors and the Secured Parties, as applicable);
- b. Omega and FC Domino shall be entitled to any periodic reports for Wells Fargo Bank, N.A. as "DIP Lender" and/or "DIP Agent" pursuant to any debtor-in-financing order entered with respect to the Omega and FC Domino Debtors. The Omega and FC Domino Debtors shall also permit representatives, agents, or employees of Omega and FC Domino (as applicable) or their affiliates upon written notice to have reasonable access to personnel employed at the Omega and FC Domino Debtors and provide

Omega and FC Domino, as applicable, non-privileged information as they may reasonably request with respect to the such Facilities.

- c. The Omega and FC Domino Debtors shall maintain appropriate insurance on the Omega and FC Domino Debtors' assets in amounts consistent with prepetition practices.
- d. The Omega and FC Domino Debtors shall maintain appropriate and necessary licensing with respect to operating the facilities consistent with prepetition practices.
- e. The Secured Parties are hereby granted, from and after the Petition Date, allowed administrative expense claims with priority over any and all administrative expenses, adequate protection claims, and all other claims against the Omega and FC Domino Debtors, now existing or hereinafter arising, of any kind whatsoever, as provided under 507(b) of the Bankruptcy Code, subject and junior **only** to any superpriority claims granted to Wells Fargo Bank, N.A. pursuant to an order of this Court relating to post-petition debtor-in-possession financing and any "Carve-Out" defined therein;
- f. The Secured Parties are hereby granted, from and after the Petition Date, replacement liens and security interests in all accounts and inventory acquired by the Omega and FC Domino Debtors after the Petition Date, specifically including all cash proceeds arising from such accounts and inventory acquired by the Debtors after the Petition Date, in the same nature, extent, priority, and validity that any such liens asserted by the Secured Parties existed on the Petition Date, **which liens shall constitute perfected liens and shall be subordinate only to any liens granted to Wells Fargo Bank, N.A. on the same property pursuant to an order of this Court relating to post-petition debtor-in-possession financing.**
- g. As of the Petition Date, said replacement liens and security interests granted to the Secured Parties shall be valid, perfected, enforceable and effective against the Omega and FC Domino Debtors, their successors and assigns, including any trustee or receiver in this or any superseding chapter 7 case, without any further action by Debtors or the Secured Parties and without the execution, delivery, filing or recordation of any promissory notes, financing statements, security agreements or other documents. Notwithstanding the foregoing, this Interim Order shall be deemed a security agreement and may be filed as a financing statement and the Omega and FC Domino Debtors shall execute and deliver such notes, security agreements, assignments, financing statements and other documents that the Secured Parties shall reasonably request to further evidence the liens and security interests granted hereby.

- h. The Secured Parties shall have all the rights and remedies of a secured creditor in connection with the liens and security interests granted by this Order in all collateral, except to the extent that such rights and remedies may be affected by the Bankruptcy Code, the Omega and FC Domino Debtors' agreements with Wells Fargo, and otherwise.

15. **Events of Default.** The following shall constitute events of default under this Interim Order ("**Events of Default**"):

- a. If any representation made by Preferred Care, the Omega Debtors, and the FC Domino Debtors (or any of them) after the commencement of this chapter 11 case in any report or financial statement delivered to the Secured Parties proves to have been false or misleading in any material respect as of the time when made or given (including by omission of material information necessary to make such representation, warranty or statement not misleading);
- b. Preferred Care, the Omega Debtors, and the FC Domino Debtors (or any of them) fail to provide any reports or accounting information when due or access to its books and records within a reasonable time after such access is requested;
- c. If a trustee or examiner, with authority to affect the operation of Preferred Care, the Omega Debtors, and the FC Domino Debtors (or any of them), as applicable, business is appointed in the Omega or FC Domino Debtors' chapter 11 proceedings without the consent of the applicable Debtors and FC Domino or Omega, as applicable;
- d. If Preferred Care, the Omega Debtors, and the FC Domino Debtors' (or any of them), as applicable, cases are converted to a case under chapter 7; or
- e. If Preferred Care, the Omega Debtors, and the FC Domino Debtors' (or any of them), as applicable, cases are dismissed.

16. **Remedies Upon Default.** The authorization to use Cash Collateral granted herein shall automatically and immediately terminate five (5) business days after the provision of written notice to the Omega and FC Domino Debtors (with a copy of such notice provided to counsel for the Debtors, counsel for Wells Fargo, counsel to the Committee, and the U.S. Trustee) (the "**Default Notice Period**") of an Event of Default. Upon the occurrence of an Event

of Default, the Debtors shall be entitled to an emergency hearing with the Bankruptcy Court to occur within the Default Notice Period. Upon the occurrence of an Event of Default (and following the expiration of the Default Notice Period), the automatic stay provisions of section 362 of the Bankruptcy Code shall be automatically vacated and modified to the extent necessary to permit the Secured Parties, as applicable, to exercise all rights and remedies provided in this Order and to take any or all of the following actions, as applicable, without further order of or application to this Court:

- a. the immediate termination of the Omega and FC Domino Debtors' use of the Secured Parties' cash collateral;
- b. the entry of an order prohibiting or limiting the Omega and FC Domino Debtors' further use of the Secured Parties' cash collateral; and,
- c. such further or other relief as provided in the Bankruptcy Code, this Interim Order or applicable non-bankruptcy law.

17. The automatic stay under section 362(a) of the Bankruptcy Code shall be automatically vacated and modified as provided in paragraph 16 above, effective following the expiration of the Default Notice Period, unless the Court has determined that an Event of Default has not occurred and/or is not continuing. The rights and remedies of the Secured Parties specified herein are cumulative and not exclusive of any rights or remedies that the Secured Parties may respectively have under the prepetition agreements, as applicable, or otherwise. The Debtors shall cooperate fully with the Secured Parties in any permitted exercise of rights and remedies.

18. **Term.** Unless otherwise ordered by the Court or extended by written agreement between the Omega and FC Domino Debtors and the Secured Parties, the Omega and FC Domino Debtors' right to use Lender's cash collateral hereunder shall commence on the date hereof and expire at a time to be agreed upon by the Omega and FC Domino Debtors and the

Secured Parties. Notwithstanding such expiration or other termination, or modification hereof, the Secured Parties shall be entitled to the liens, priorities and other rights provided herein to the extent that the Omega and FC Domino Debtors have used the Secured Parties' cash collateral following the date hereof.

19. **Continuing Effect of Order.** If an order dismissing any of the cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (x) the superpriority claims and the adequate protection liens granted herein shall continue in full force and effect and shall maintain their priorities as provided in this Order until all adequate protection obligations shall have been paid and satisfied in full (and that such claims and liens shall, notwithstanding such dismissal, remain binding on all persons), and (y) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) above.

20. **Modification of Automatic Stay.** The automatic stay under Bankruptcy Code section 362(a) is hereby modified as necessary to effectuate all of the terms and provisions of this Order, including, without limitation, to: (a) the Omega and FC Domino Debtors to grant the adequate protection liens and incur the superpriority claims; (b) permit the Omega and FC Domino Debtors to perform such acts as may be needed to assure the perfection and priority of the liens granted herein; (c) permit the Omega and FC Domino Debtors to incur all liabilities and obligations under the terms of this Order; and (d) authorize the Debtors to pay, and Omega and FC Domino to retain and apply, any payments made in accordance with the terms of this Order.

21. **Notice and Hearing; Reservation of Rights to Object.** A final hearing (the “**Final Hearing**”) shall be scheduled for **December 11, 2017 at 2:00 PM.** to consider further

relief. This Interim Order shall be binding upon, and inure to the benefit of the Secured Parties, the Omega and FC Domino Debtors, any official committee(s) that may be appointed and their respective successors and assigns including, without limitation, any trustee appointed in this chapter 11 case or any superseding chapter 7 case.

22. **Notices.** Except as otherwise stated herein, all notices and demands hereunder shall be in writing and shall be deemed given when addressed as follows: on the earlier of (a) when they are actually delivered to the addressees by hand delivery, facsimile transmission, e-mail or otherwise, or (b) at 11:00 a.m. Chicago time on the Banking Day next following the deposit thereof with any recognized national overnight delivery service properly addressed to the addressees.

23. **Other.** The findings of fact and conclusions of law of this Court pursuant to this Interim Order shall be deemed effective upon the entry of this Order. To the extent that such findings may constitute conclusions, and vice versa, they hereby are deemed such.

24. To the extent necessary, the Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm. To the extent applicable, the requirements of Bankruptcy Rule 6004(a) are waived. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

25. Notwithstanding anything in this Order, all rights, protections, claims, and liens, granted to the Secured Parties herein, shall be, in all respects, subject to that certain Intercreditor Agreement dated as of June 12, 2017 by and among Wells Fargo and those certain Landlords (affiliates of FC Domino Acquisition, LLC) party thereto (the “**FC Domino Intercreditor**”) and that certain Subordination and Intercreditor Agreement dated as of November 10, 2017, by and

among Wells Fargo and those Landlords (affiliates of Omega Healthcare Investors, Inc.) party thereto (the “**Omega Intercreditor**,” and together with the FC Domino Intercreditor, the “**Intercreditor Agreements**”), and to the extent of any inconsistency with respect to the claims, rights, and liens of Wells Fargo under this Order and the Intercreditor Agreements, the Intercreditor Agreements shall govern.

26. This Interim Order is immediately valid and fully effective upon its entry by the Court.

###END OF ORDER###

Respectfully submitted by:

/s/ Stephen A. McCartin

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