UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	Chapter 11
GULF COAST HEALTH CARE, LLC, *et al.*,	Case No. 21-11336 (KBO)
Debtors.	(Jointly Administered)

OBJECTION OF THE NOTEHOLDER CLAIMANTS TO MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I) AUTHORIZING TRANSFER OF THE MANAGEMENT, OPERATIONS, AND RELATED ASSETS OF THE OMEGA FACILITIES FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; (II) APPROVING PROCEDURES FOR THE DEBTORS' FUTURE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (III) APPROVING REJECTION AND TERMINATION OF THE MASTER LEASE, AND THE ALLOWANCE OF THE OMEGA REJECTION DAMAGES CLAIM IN CONNECTION THEREWITH; (IV) APPROVING FORM OF MANAGEMENT AND OPERATIONS TRANSFER AGREEMENT; AND (V) GRANTING RELATED RELIEF

REIT Solutions II, LLC (f/k/a REIT Solutions, Inc.), SJB No. 2, LLC, JJT No. 1, LLC, Wet One, LLC and DLF No. 3, LLC (collectively, the "***Noteholder Claimants***") object (this "***Objection***") to the motion of the Debtors seeking approval to transition and assign certain facilities subject to Management and Operations Transfer Agreements ("***MOTA(s)***") and other related relief [D.I. 166] (the "***MOTA Motion***").[1] In support of their Objection, the Noteholder Claimants respectfully state:

I. INTRODUCTION

1. Through the MOTA Motion and related Restructuring Support Agreement ("***RSA***"), the Debtors seek to implement an expedited handover of their principal operating assets, along with a comprehensive settlement of claims among and between the Debtors, their equity sponsors, insider DIP Lender New Ark, the Omega Landlords and their respective affiliates. Once

[1] Capitalized terms used but not defined herein are intended to have the meanings ascribed to them in the MOTA Motion.

the transfers contemplated by the RSA and the MOTA Motion have occurred, these cases will be largely over. The Debtors' estates will be left with a handful of miscellaneous assets—4 operating facilities, pre-transfer accounts receivable from the transferred facilities and causes of action. *See* MOTA Motion, ¶ 20. And should plan confirmation be denied, the estates will be saddled with ruinous administrative claims that complicate if not preclude any alternative plan or transaction. The Debtors should not be permitted to surrender the majority of its facilities—for consideration insufficient to fund any distribution to unsecured creditors—without first demonstrating that the entire transaction is fair and equitable, More specifically, the Debtors should be required to show that they have made reasonable efforts to maximize recoveries for *all* stakeholders, and that they have considered and pursued alternative, value-maximizing transactions.

2. By their earlier objections to the Debtors' RSA and DIP credit facility, the Noteholder Claimants have raised a number of serious procedural and substantive concerns about the expedited restructuring transactions proposed by the Debtors, including those proposed in the MOTA Motion. *See generally* Objection of the Noteholder Claimants to the Motion of Debtors for Entry of Order Approving Assumption of Restructuring Support Agreement (D.I. 186) (the "***RSA Objection***"). These concerns include the benefits afforded to the Debtors' affiliates, equity sponsors and Omega Landlords, the lack of a meaningful market check, and the fact that the RSA amounts to a *sub rosa* plan without the safeguards and statutory compliance of a full plan confirmation hearing. *See* RSA Objection at ¶¶ 1-3, 24-41. These problems and deficiencies also permeate the MOTA Motion, and strongly counsel against granting the relief requested in that motion.

3. Taken together the MOTA and the RSA amount to a complete delegation to the New Manager of the rights, powers and discretion of the debtors-in-possession. Under the MOTA

and RSA, the Debtors have effectively granted the Omega Landlords the right to choose the "New Manager" for the Omega Facilities. The Omega Landlords have now chosen a New Manager, which the RSA obligates the Debtors to approve, without any evidence that the value the New Manager is willing to provide for the transfer of the Omega Facilities is at market or whether any efforts were made to determine if better offers were obtainable. Worse, once the Omega Facilities have been transferred to the New Manager free and clear of all liens, claims, and encumbrances, the New Manager has the unchecked ability to arrange for the "New Operator(s)" of its sole choosing to take over operations of the Omega Facilities on whatever terms the New Manager deems most beneficial to itself.

4. Clearly the proposed New Manager sees future value upside in participating in this transaction. The Court must seriously question why the Debtors have made such a limited effort to market check the transaction, and to identify other value-maximizing alternatives for their stakeholders. The MOTA Motion (along with the other RSA transactions) should not be approved because there is simply no evidence that this insider-driven private sale transaction represents the highest and best recovery available for the Debtors and their stakeholders, and because the only real beneficiaries of this transaction appear to be the Omega Landlords and the Debtors' insiders.

II. RELEVANT FACTS

5. Each Noteholder Claimant holds a $4,000,000 promissory note originally executed by CSE Mortgage LLC on November 30, 2006 (each, individually, a "***Note***", and, collectively, the "***Notes***"). *See* Declaration of Scott J. Bell, filed at D.I. 232 ("***Bell Declaration***" or "***Bell Dec.***") at ¶ 4; *see also* Proof of Claim of REIT Solutions II, LLC (f/k/a REIT Solutions, Inc.)(the "***REIT Solutions Claim***"), Proof of Claim of SJB No. 2, LLC (the "***SJB Claim***"), Proof of Claim of JJT No. 1, LLC (the "***JJT Claim***"), Proof of Claim of Wet One, LLC (the "***Wet One Claim***") and DLF

No. 3, LLC (the "***DLF Claim***" and, together with the REIT Solutions Claim, the SJB Claim, the JJT Claim and the DLF Claim, the "***Noteholder Claims***").[2]

5. On July 29, 2010, OHI Asset HUD Delta, LLC ("***OHI***" or the "***Omega Obligor***") entered into an Assignment and Assumption Agreement with CSE, and assumed CSE's obligations as payor under the Notes. *See* Bell Dec., ¶ 7, Exhibit 3.

6. The Omega Notes were executed and delivered to the Noteholder Claimants as part of the consideration for the sale of equity in certain healthcare facilities previously owned by the Noteholder Claimants' affiliates: Delta Health Group, LLC, Cordova Rehab, LLC and Pensacola Health Trust, LLC (collectively, the "***Delta Group***"). The Delta Group transferred these the equity ownership of these facilities to CSE, which is a predecessor of the Omega Obligor (the "***Florida Transaction***"). The terms of the Florida Transaction were set forth in a Purchase and Sale Agreement date as of August 22, 2006 (as amended, the "***PSA***" or the "***Purchase Agreement***").

7. Certain of the Omega Obligor's affiliates are landlords (the "***Omega Landlords***" and, together with the Omega Obligor and their respective affiliates, including OHI Asset Funding (DE), LLC, the "***Omega Entities***") to Debtor Gulf Coast Master Tenant I, LLC (the "***Gulf Coast Tenant***") under an Amended and Consolidated Master Lease (as amended, consolidated and restated, the "***Omega Master Lease***").

8. Under Section 2.10 of the Purchase Agreement executed in connection with the Florida Transaction, and subject to the terms and conditions in that Agreement, CSE was given the right to offset certain rent defaults under the Omega Master Lease against amounts owing under the Omega Notes. *See* Bell Dec., ¶ 6, Exhibit 2.

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[2] The Noteholder Claims were attached as Exhibit "A" to the Noteholder Claimants' objection to the Debtors' motion to quash the discovery requests that the Noteholder Claimants propounded in connection with their objection the RSA Motion. *See* D.I. 231 at Ex. A.

9. The Omega Obligor did not pay the Noteholder Claimants the interest installments due under the Notes on June 30, 2021 and September 30, 2021, resulting in deductions of $180,000 for each of the five claimants, and an aggregate deduction of $900,000. *S*ee Bell Dec., ¶¶ 9-10, Exhibit 3; *see also* Noteholder Claims.

10. On June 28, 2021, the Omega Obligor wrote the Noteholder Claimants and stated:

> we are providing this letter to you pursuant to section 2.10 of the PSA to advise you that a Rent Roll Default has occurred in respect of the Master Lease, which exceeds the amount of the pending interest payments due under the Promissory Notes. As such, ***OHI is exercising its right(s) of offset*** against interest payments due and owing to the Noteholders under the Promissory Notes.

See Bell Dec., ¶ 8, Exhibit 4 (emphasis added).

11. As of November 12, 2021, each of the Noteholder Claimants has submitted their respective Noteholder Claims to this Court through the Debtors' proposed claims and noticing agent.

12. On November 3, 2021, the Debtors filed their MOTA Motion.

13. On November 5, 2021, the Noteholder Claimants filed their RSA Objection and their related objection to the Debtors' motion for approval of debtor-in-possession financing (the "***DIP Objection***").

14. On November 7, 2021, the Noteholder Claimants served their Deposition Notices and Production Requests upon the Debtors and the Omega Entities.

15. On November 10, 2021, the Debtors filed their motion to quash the Noteholder Claimants' Deposition Notices and Production Requests (the "***Motion to Quash***"), arguing that the Noteholder Claimants lacked standing and status as a creditor in these bankruptcy cases. *See generally* D.I. 223. The Noteholder Claimants filed an objection to the Motion to Quash on November 11, 2021 along with the Bell Declaration. *See generally* D.I. 231.

16. At a hearing on November 12, 2021, the Court denied the Motion to Quash without prejudice to the Debtors' ability to pursue an objection to the claims of the Noteholder Claimants.

III. RESPONSE AND OBJECTION

17. Because the Debtors propose to implement transactions that are contemplated under the RSA, and are therefore intertwined with the RSA and the related DIP, the Noteholder Claimants incorporate herein by reference their RSA Objection and DIP Objection in their entirety as if fully set forth herein. Beyond the points raised in the RSA Objection and the DIP Objection, the MOTA Motion fails to persuade that the MOTA transaction is in the best interests of the Debtors and their stakeholders. Ultimately, the MOTA Motion, as the by-product of the RSA, does too much for the Debtors' insiders (including New Ark) and the Omega Entities and too little for the Debtors and their estates. The Court should deny the MOTA Motion along with the Debtors' related request to assume the RSA and approve the DIP.

A. The MOTA Motion Seeks to Offload the Responsibilities of the Debtors-in-Possession to the New Manager for the Principal Benefit of the Debtors' Insiders, the Omega Entities and Their Respective Affiliates.

18. Consistent with the dictates of the RSA, the MOTA Motion proposes to offload the Omega Facilities to the New Manager—beyond the Court's view, without any demonstration of the Debtors' efforts to maximize value for their estates. In light of that fact, and because this transaction primarily benefits the Omega Entities and the Debtors' insiders, the MOTA Motion should not be measured by the business judgment rule, but should instead be subjected to heightened scrutiny considering the overall integrity, fairness, and value-maximizing (if any) components of the transaction. *See* RSA Obj., D.I. 186 at ¶ 25; *see also In re Latam Airlines Grp. S.A.*, 620 B.R. 722, 769 (Bankr. S.D.N.Y. 2020); *In re Innkeepers USA Trust*, 442 B.R. 227, 231 (Bankr. S.D.N.Y. 2010).

19. Per the MOTA Motion (and consistent with the RSA), the Omega Landlords have chosen the "New Manager" to take over management of the 24 Omega Facilities. *See* D.I. 166 at ¶ 4. The New Manager is identified as NSPRMC II, LLC. *See id.* No additional detail about the identity and affiliation of the New Manager is provided. *See generally* D.I. 166. It is therefore an open question as to the suitability and financial strength of the New Manager to assure the health and safety of the residents.

20. Once the 24 Omega Facilities are transferred to the New Manager pursuant to the MOTAs, the MOTA Motion purports to give the New Manager free reign in determining how to maximize the value of the Omega Facilities' operations for itself, its affiliates, or any other party of the New Managers' choosing. *See id.* at ¶ 4. More specifically, the MOTA Motion provides that, once the initial transfer of the Facilities' management occurs, "New Manager will then either (i) elect to become the new operator for some or all of the Omega Facilities or (ii) select one or more new, licensed operators (collectively, "New Operator") and subsequently assign the MOTA to New Operator on the date that New Operator has obtained all requisite approval and licenses to operate the applicable Facility (the "License Transfer Date")." *Id.* (internal footnotes omitted).

21. While the Debtors would no longer bear the expenses of the Omega Facilities' operations after the transfers, *see id.*, the Debtors' estates would lose the ability to benefit from any value upside that may be achieved once the New Manager identifies itself, its affiliates, or some other entity as the "New Operators" of the Omega Facilities. This element of the structure is problematic when considering that, as discussed in the Noteholder Claimants' RSA Objection, the Debtors have not identified, much less market-tested, the potential go-forward value of the Omega Facilities' operations.

22. The net effect of the MOTA structure is that the Debtors have essentially offloaded their responsibilities and economics to the New Manager. Under the MOTA, the New Manager is retaining net operating income as its fee, and obtaining the ability to select the New Operator and to negotiate the new lease with Omega. Any inherent value in these assets will be forfeited to the New Manager, the New Operator, the Omega Entities and the Equity Sponsors.

23. Moreover, the Omega Landlords will also derive a significant benefit if the MOTA Motion is approved. Not only will the Omega Landlords be deemed to have an allowed rejection damages claim in the amount of $35,904,343, to which the Noteholder Claimants object as not being supported by any evidence, but the Omega Landlords will also have the opportunity to negotiate new leases with the New Operators. Alternatively, the Omega Landlords will have the opportunity to sell the real estate of the Omega Facilities to the New Manager, New Operator, or whomever, but without the purchase price being burdened by the Debtors' track-record of rent defaults. Either way, the Debtors' proposed Plan, which effectuates the MOTAs and the RSA, provides the Omega Entities (including the Omega Landlords) with the tremendous benefit of a broad release that includes all possible disputes about the strong-armed RSA transaction, the MOTAs, and even the Omega Master Lease. *See* D.I. 124, p. 43, Art. X.D.1.[3]

[3] The Debtors insiders and New Ark are also proposed to enjoy the benefits of the substantial releases extended under the Plan, which includes their participation in the RSA transaction.

B. The MOTA Framework, like the Entire RSA Structure, Suffers from a Lack of Meaningful Marketing or Value Testing.

24. The benefits of the proposed RSA transaction and the MOTAs are readily apparent and extend in all directions other than the Debtors' estates. The Debtors have not articulated a rationale for seeking to transfer only the Omega Facilities or why they made no effort to market all 28 of their Facilities to a potential purchaser. Nor have they demonstrated why the New Manager selected by the Omega Entities should select the New Operators and obtain all benefits from that subsequent transaction (that the MOTA Motion proposes to happen beyond the Court's view without further benefit to the estates). The Debtors have not shown that they made any efforts to market the Omega Facilities (or their other facilities) to any potential new managers or operators to determine how the market would value the transactions proposed in the MOTA Motion.

25. The MOTA Motion also fails to articulate a reason why the debtors have chosen to reject the Omega Master Lease rather than market a potentially valuable asset for assumption and assignment. The Debtors should be required to demonstrate they market checked the Facilities *and* the Omega Master Lease. Once the Omega Master Lease is rejected, the Omega Entities will have essentially been handed a veto of any competing transaction. That is problematic—given that the Omega Entities have already presumably cut a deal in principle with the New Operator to be selected by the Omega Entities (or the New Manager selected by the Omega Entities), *see* D.I. 16-1 at p. 6 (RSA defining "New Operator"), and therefore has a vested interest in the ultimate approval of the MOTAs. The rejection of the Omega Master Lease is a blatant surrender of a potentially valuable asset to the Omega Entities.

C. The Debtors' Pre-Packaging of the DIP Financing with the MOTA Framework is Not a Sufficient Reason to Justify Entry into the MOTAs.

26. The MOTA Motion contends that "[w]ithout the MOTA, the Debtors will lose access to their DIP Financing (which is funding the vast majority of the Debtors' operational losses until the Management Transfer Date) and will be unable to provide the enhanced recoveries to general unsecured creditors provided for under the RSA." D.I. 166 at ¶ 5. In arguing that their DIP Financing may be in jeopardy, the Debtors are essentially assuming the finality of the proposed DIP financing order. Various parties have raised pending objections to the proposed DIP Financing, however, and the MOTA Motion underscores why those objections are well taken. The Debtors, Omega, and New Ark are using the DIP Financing as a sword to cut away any competing and potentially value-maximizing proposals. That use of the DIP Financing should not be countenanced.

27. The Debtors do not appear to have meaningfully evaluated whether a competing bidder for the Facilities' operations might be willing to extend DIP financing, or whether the Debtors might also be able to obtain a new short term facility if they default under the presently proposed DIP Financing. Instead, through the RSA, the Debtors have sought to enter into a DIP Financing structure that weds themselves to New Ark (the Debtors' insiders) and the Omega Entities, provides New Ark and the Omega Entities with wide-ranging releases, and deprives the Debtors of the opportunity to shop the market for any value enhancing alternatives.

28. Through the interrelated RSA, DIP Financing, and the MOTA, the Debtors and the Omega Entities are essentially "burning the boats" by committing the estate to do the chosen deal with the New Manager (selected by the Omega Entities) at risk of losing the DIP Financing (provided in part by the Omega Entities). That result should not be approved without a robust market check, and without the additional procedural safeguards of a confirmation hearing.

V. RESERVATION OF RIGHTS

29. Nothing in this Objection is intended to be, or should be construed as, a waiver by Noteholder Claimants (including all such affiliates of Noteholder Claimants) of any of their rights under the Omega Notes and other agreements related to the Florida Transactions, the Bankruptcy Code, or any other applicable law. The Noteholder Claimants reserve the right to further amend, modify, or supplement this Objection at any time and to request the postponement and/or adjournment of any hearing to consider the assumption, assignment, or rejection of the RSA, the MOTA, or the transfer and assignment of the Omega Facilities to any other third party mangers or operators. Finally, the Noteholder Claimants also reserve all their rights as creditors in these bankruptcy cases, including in connection with any proof of claim the Noteholder Claimants file in these cases.

VI. CONCLUSION

WHEREFORE, the Noteholder Claimants respectfully request that this Court enter an order (i) sustaining this Objection; (ii) denying the relief requested in the MOTA Motion as part of the RSA Motion; and (iii) granting Noteholder Claimants such other and further relief as this Court deems just and appropriate under the circumstances.

Dated: November 17, 2021
Wilmington, Delaware

/s/ Amanda R. Steele

Paul N. Heath (No. 3704)
Amanda R. Steele (No. 5530)
Robert C. Maddox (No. 5356)
Christopher M. De Lillo (No. 6355)
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801
Tel: (302) 651-7700
Fax: (302) 651-7701
Email: heath@rlf.com
steele@rlf.com
maddox@rlf.com
delillo@rlf.com

- and -

David L. Swanson
LOCKE LORD, LLP
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201
Telephone: (214) 740-8514
Facsimile: (214) 740-8800
Email: dswanson@lockelord.com

- and -

Jonathan W. Young
LOCKE LORD, LLP
111 Huntington Avenue, 9th Floor
Boston, Massachusetts 02199-7613
Telephone: (617) 239-0367
Facsimile: (855) 595-1190
Email: jonathan.young@lockelord.com

- and -

Stephen J. Humeniuk
LOCKE LORD, LLP
600 Congress Avenue, Suite 2200
Austin, Texas 78701
Telephone: (512) 305-4838
Facsimile: (512) 391-4708
Email: stephen.humeniuk@lockelord.com

Counsel to REIT Solutions II, LLC (f/k/a REIT Solutions, Inc.), SJB No. 2, LLC, JJT No. 1, LLC, Wet One, LLC and DLF No. 3, LLC