UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION

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| IN RE: | ) | CASE Nos. 16-21365 - 16-21639 (JJT) |
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| SPECTRUM HEALTHCARE LLC, ET AL[1] | ) | CHAPTER 11 |
| DEBTORS. | ) | |
| | ) | ECF Nos. 417, 418, 435, 439 |
| | ) | |

**SUMMARY RULING ON THE DEBTORS' MOTIONS TO WIND DOWN AND CEASE TO OPERATE THE HARTFORD AND TORRINGTON NURSING HOME FACILITIES**

I. PREFACE

Before the Court are the Debtors' Motion for Order Authorizing the Debtors to Wind Down and Cease to Operate the Torrington Nursing Home Facility (ECF No. 418) and the Debtors' Motion for Order Authorizing the Debtors to Wind Down and Cease to Operate the Hartford Nursing Home Facility (ECF No. 417) (collectively, the "Motions"), as well as the responses thereto. The Motions present the difficult decision of whether the Court should approve the Debtors' business judgment to wind down and cease to operate two nursing home facilities, Spectrum Health Care Hartford, LLC ("Spectrum Hartford") and Spectrum Health Care Torrington, LLC ("Spectrum Torrington") (collectively, the "Facilities"), which have employed dozens of dedicated healthcare professionals and have provided support for many residents, who have come to adopt the Facilities as their home.

While the Court has struggled with the toll that closing the Facilities might inflict upon the residents, who are among our most vulnerable citizens, and the employees, who have devoted

[1] Spectrum Healthcare, LLC (Case No. 16-21635); Spectrum Healthcare Torrington, LLC (Case No. 16-21639); Spectrum Healthcare Derby, LLC (Case No. 16-21636), Spectrum Healthcare Manchester, LLC (Case No. 16-21638); and Spectrum Healthcare Hartford, LLC (Case No. 16-21637).

skill, time and humanity to their service, the economic and legal realities cannot be ignored. In addition to prolonged and substantial financial losses, the Debtors must reckon with the loss of their lease to properties housing the Facilities and an unsuccessful, yet thorough, sale process, which has, in large measure, confirmed the Debtors' judgment regarding the Facilities' long-term financial viability.

As a Court of equity, this Court is not unmindful of the social and public policies that undergird any decision implicating people's homes, their healthcare and, in some cases, their livelihoods. It is not, however, the province of this Court to legislate social and public policy, which, during a different era in the financial history of our State, might have heralded herculean efforts by government and union representatives alike to preserve community facilities like Spectrum Torrington and Spectrum Hartford, which appear to provide uncommon support for historically under-served populations.

Nonetheless, the course of these proceedings has amply demonstrated that the Facilities are not financially viable. Upon review of the record of the June 26, 2017 hearing, it cannot be denied, at this late juncture, that these Debtors lack the capacity to reorganize and have lost the opportunity to sell an intact business. Having heard uncontroverted business reasons to close the Facilities, the Court hereby approves the Debtors' Motions and overrules related objections.

## II. JURISDICTION

This Court has jurisdiction over these proceedings under 28 U.S.C. §§ 1334 and 157. These are core proceedings within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This Decision constitutes the Court's findings of fact and conclusions of law to the extent required by Federal Rule of Bankruptcy Procedure 7052.

## III. FINDINGS AND CONCLUSIONS

Bankruptcy Code Section 363(b)(1) provides, in pertinent part, that the "trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). In determining a Section 363(b) application, the Court must "expressly find from the evidence presented before him at the hearing a good business reason to grant such an application." *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). The Debtors carry the burden of demonstrating, by a preponderance of the evidence, that a transaction outside the ordinary course is justified, and the objecting parties, here, the Union and the United States Trustee, are required to produce evidence with respect to their objections. *In re Flour City Bagels, LLC*, 557 B.R. 53, 77 (Bankr. W.D.N.Y. 2016) (citing *Lionel*, 722 F.2d at 1071).

In its seminal decision, *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, the Second Circuit identified a non-exclusive list of factors that bankruptcy courts should consider when deciding whether a movant has shown a sound business reason for transactions involving estate assets outside the ordinary course:

- the proportionate value of the asset to the estate as a whole;
- the amount of elapsed time since the filing;
- the likelihood that a plan of reorganization will be proposed and confirmed in the near future;
- the effect of the proposed disposition on future plans of reorganization;
- the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property;
- which of the alternatives of use, sale or lease the proposal envisions; and
- whether the asset is increasing or decreasing in value.

*Lionel*, 722 F.2d at 1071. During the hearing, Debtors' counsel pointedly addressed each of these factors and delineated why each relevant factor weighed heavily in favor of closure. Based upon

the record of the hearing and judicial notice of the docket entries, particularly those related to benchmarks set forth in the cash collateral orders, the Court finds that the Debtors have proven the allegations in the Motions contained in ¶¶ 1-24 and 28-40, which are hereby incorporated by reference. Specifically, the Debtors have articulated sound business reasons sufficient to justify the closure of the Facilities, including: i) the termination of the Facilities' Master Lease by CCP Park Place 7541, LLC and CCP Torrington 7542, LLC, as assignees of Nationwide Health Properties, LLC[2]; ii) the inability of Spectrum Torrington and Spectrum Hartford to yield acceptable bids and engage in another sale process[3]; iii) the large economic losses and financial inability to continue operations[4]; iv) the unfavorable market for nursing home facilities in the State[5]; and, v) the necessity of maintaining balanced relations with the Debtors' primary lender, MidCap, and other constituents, in negotiation efforts to reorganize the remaining facilities.[6]

Notably, the Debtors' recitation, in closing argument, of the uncontested facts supporting the Motions has gone on record without significant retort. While there is disagreement among the Debtors, the Union and the United States Trustee as to the appropriate judicial remedy to the present state of affairs, there is not a meaningful dispute regarding the material facts adduced during the hearings on the Motions. In fact, only the Debtor presented evidence, and while there was cross-examination and dispute about the import of that evidence, no facts to the contrary were advanced by any party. The testimony in the record fully and soberly substantiated the Debtors' continuing financial losses, the inability to leverage an exhaustive sale process, aided by experts, into acceptable sale terms, and the termination of the Facilities' Master Lease. In

[2] Motion at ¶¶ 6, 22.
[3] Motion at ¶ 21, 29, 37.
[4] Motion at ¶ 32-36.
[5] Motion at ¶ 38.
[6] Motion at ¶ 20.

reviewing the Debtors' business justification as to the exigencies supporting closure, this Court is satisfied that the standards articulated in *Lionel* have been met. There is unquestionably a good business reason, if not a sheer necessity, for proceeding with the wind down and closure of the Facilities. Indeed, no party in interest has even posited that the Debtors possess the financial wherewithal to formulate, much less confirm, a plan of reorganization.

In lieu of closure, the Union has argued that this Court should relegate the Facilities to a state court receivership proceeding, which, at great cost and redundancy of efforts, will compel the State to fund an additional closure analysis and, potentially, another sale effort. While additional time may inspire hope of the remote possibility of an alternate outcome, there has been no evidence to support that such an exercise would do more than delay the inevitable, at great cost and angst to all parties, and to the potential detriment to the Debtors' other faltering facilities. No evidence was adduced that a new lease, a sale of the real estate, union concessions, or State financial relief were likely, imminent or even contemplated by key constituents, all of whom have, to varying degrees, participated in the Chapter 11 disposition process to no ostensible avail. After approximately nine months and multiple marketing efforts, only a handful of bidders emerged and no workable proposals materialized. Under the circumstances, this Court is loathe to interfere with the reasoned business judgment of the Debtors, particularly where the State, which has the prerogative of sustaining a state court receivership, has not sought that outcome. Accordingly, there is no cause for this Court to exercise deference or discretion in favor of a duplicative, and potentially damaging, state court receivership process.

Citing the lack of a proper bankruptcy purpose to be served in what will become essentially assetless Chapter 11 estates, the United States Trustee also urges that the cases either be converted or dismissed forthwith. However, the Court finds no restriction in the Bankruptcy

Code against liquidating Chapter 11 cases, particularly where nine months of efforts, resources and administration have preceded the unsuccessful sale, and the Debtor and its management are best suited to administer the wind down without duplication of cost, efforts and judicial reserves. As such, any decision regarding dismissal or conversion is more appropriately reserved for another day and, likely, further proceedings.

## IV. CONCLUSION

While the Court shares the concerns of the residents, patients and staff regarding the stress of closure, the Debtors have presented a thoughtful and palliative process, designed in concert with the supervision and assistance of the State and its agencies, to mitigate the impact occasioned by the relocation of vulnerable residents. The continuing care and ultimate relocation of residents weighs heavily on this Court, even if such concerns must ultimately remain, on some level, within the regulatory province of the State. The Debtors have appropriately sought to avoid and mitigate these potential harms. The business judgment articulated in the Motions, while sad and sobering, is nonetheless reasonable and appropriate.

Accordingly, Orders of this Court shall issue authorizing the Debtors to wind down and cease to operate the Facilities.

Dated at Hartford, Connecticut this 12th day of July 2017.

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut