

REED SMITH LLP

A Limited Liability Partnership formed in the State of Delaware

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:

NATHAN AND MIRIAM BARNERT
MEMORIAL HOSPITAL ASSOCIATION ,
d/b/a BARNERT HOSPITAL,

Debtor.

Chapter 11

Case No. 07-21631 (DHS)

LIMITED OBJECTION OF THE BANK OF NEW YORK, AS BOND TRUSTEE, IN CONNECTION WITH THE DEBTOR'S MOTION FOR AN ORDER PURSUANT TO SECTION 363(C)(2) OF THE BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE (1) AUTHORIZING THE DEBTOR TO USE CASH COLLATERAL AND (2) PROVIDING ADEQUATE PROTECTION FOR USE OF CASH COLLATERAL

The Bank of New York, as Bond Trustee ("Trustee or "BNY"), by and through its counsel, Reed Smith LLP, hereby submits this limited objection in connection with the Debtor's motion (the "Cash Collateral Motion") for an order pursuant to section 363(c)(2) of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure (1) Authorizing The Debtor To Use Cash Collateral and (2) Providing Adequate Protection For Use of Cash Collateral; and in support thereof, respectfully states as follows:

Background

1. On August 15, 2007 (the “Petition Date”), Nathan and Miriam Memorial Hospital Association d/b/a Barnert Hospital, the within debtor and debtor-in-possession (“Barnert” or the “Debtor”) filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

2. Since the Petition Date, the Debtor has remained in possession of its assets and continued management of its business as a debtor-in-possession pursuant to Section 1107 and 1108 of the Bankruptcy Code.

3. BNY is the Trustee under that certain Bond Resolution (the “1999 Resolution”), adopted on or about January 1, 1999, pursuant to which the New Jersey Health Care Facilities Financing Authority (the “Authority”) authorized the issuance of the New Jersey Health Care Facilities Financing Authority Refunding Bonds, Barnert Hospital (FHA Insured Mortgage) Series 1999 (the “Series 1999 Bonds”).

4. The Series 1999 Bonds are issued under and pursuant to that certain trust agreement (the “Trust Agreement”) between the Authority and the Trustee, dated January 1, 1999.

5. The Authority entered into a loan agreement (the “Loan Agreement”) with the Debtor pursuant to which the Authority agreed to loan the proceeds of the Series 1999 Bonds to Barnert (the “Loan”).

6. In connection with the Loan Agreement, the Debtor executed and delivered to the Authority a Mortgage Note (the “Note”) dated January 28, 1999, in the principal amount of

\$34,876,000.

7. The Debtor also executed and delivered to the Authority a mortgage (the “Mortgage”) and a security agreement (the “Security Agreement”), both dated January 28, 1999.

8. In its Cash Collateral Motion, the Debtor states: “Under the Pre-Petition Loan Documents, the Authority has liens and security interests upon ‘all buildings, materials, equipment, furniture, furnishings, accounts receivable or other property installed or to be installed or used in and about the building or buildings now erected or hereafter to be erected upon the lands secured by the [Property] (collectively, the “Collateral”).”¹

9. As security for the Bonds, the Authority assigned to the Trustee all of its right, title, and interest in and to the Loan Agreement, “including its rights to receive payments on the Note.” See Trust Agreement, p. 3.

10. As additional security for the Bonds, the Authority pledged and granted to the Trustee a security interest in the Mortgage, the Note, the Security Agreement, and the FHA Regulatory Agreement, and assigned to the Trustee a security interest in the Revenues (defined as all Note Payments, the FHA Mortgage Insurance Benefits, and certain other revenues) and all moneys in certain funds held by the Trustee. See Trust Agreement, p. 3.

11. In accordance with the Trust Agreement, the Trustee also holds certain funds for the benefit of the Trustee and its bondholders.

¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed such terms in the Cash Collateral Motion.

The Cash Collateral Motion And Interim Order

12. By its Cash Collateral Motion, the Debtor sought the use of Cash Collateral to enable it to continue its operations.

13. In order to provide the Authority with adequate protection, the Debtor proposed, among other things, to grant the Authority a “valid and perfected replacement security interest and lien, superior to all other claims of creditors of the estate.”

14. On August 17, 2007, the Court entered an interim order (the “Interim Order”) (i) authorizing the Debtor’s use of Cash Collateral, (ii) granting, among other things, a replacement lien in favor of the Authority; and (iii) scheduling a hearing date on continued use of Cash Collateral for September 25, 2007 at 10:00 a.m. (See Doc. No. 27).²

The Trustee’s Limited Objection and Demand for Adequate Protection

15. By virtue of the pledge and assignment by the Authority, the Trustee is a secured creditor in this case and therefore is entitled to adequate protection under the Bankruptcy Code. See 11 U.S.C. § 363.

16. While the parties have discussed entering a stipulation providing the Trustee with the same adequate protection granted the Authority under the Interim Order, including, without limitation, replacement liens granted on an equal and ratable basis, such stipulation has not been

² The Interim Order provides that objections to the Debtor’s continued use of cash collateral are to be filed no less than five business days prior to the final hearing scheduled for September 25, 2007 at 10 a.m. Due to discussions between Debtor’s counsel and Trustee’s counsel regarding the Trustee’s request for adequate protection, Debtor’s counsel extended the deadline for the Trustee to submit papers to September 24, 2007 at 12 noon.

finalized as of the date of this statement. The Trustee objects to the Debtor's continued use of cash collateral to the extent the Trustee is not adequately protected.

Reservation of Rights

The Trustee reserves all of its rights to amend, supplement, and/or modify this statement at any time up to and at any and all hearings held in connection with the Cash Collateral Motion.

Conclusion

The Trustee respectfully requests that the Court deny the relief sought in the Debtor's Cash Collateral Motion as the Debtor has failed to demonstrate adequate protection of the interests of the Trustee or, in the alternative, enter an Order that is consistent with the requests set forth herein.

Dated: September 24, 2007

REED SMITH LLP

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