

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE:	§	
	§	
FOREST PARK MEDICAL CENTER AT FRISCO, LLC,	§	CASE NO. 15-41684-BTR
	§	(Complex Chapter 11)
DEBTOR.	§	

**DEBTOR’S EMERGENCY MOTION TO ENFORCE THE AUTOMATIC STAY
AND REQUEST FOR DAMAGES FOR STAY VIOLATION**

NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN TWENTY-ONE (21) DAYS FROM DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

EMERGENCY CONSIDERATION HAS BEEN REQUESTED

TO THE HONORABLE BRENDA T. RHOADES,
CHIEF UNITED STATES BANKRUPTCY JUDGE:

Forest Park Medical Center at Frisco, LLC (the “Debtor”), debtor and debtor-in-possession, hereby submits this emergency motion (the “Motion”) pursuant to Sections 105(a) and 362 of the of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et. seq.* (the “Bankruptcy Code”), for the entry of an order enforcing the automatic stay and awarding damages for willful stay violation. In support of this Motion, the Debtor respectfully represents as follows:

I.
STATUS OF THE CASE AND JURISDICTION

1. On September 22, 2015 (the “Petition Date”), the Debtor commenced this case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor has continued in the possession of its property and is operating and managing its business as debtor and debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. No request for a trustee or examiner has been made. An Official Unsecured Creditors’ Committee was appointed on September 30, 2015. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2). Venue of these proceedings and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are Sections 105(a) and 362 of the Bankruptcy Code.

II.
BACKGROUND

4. The Debtor is a doctor-owned Texas limited liability company that operates a 54-bed state-of-the-art medical facility, including 30 private rooms, 14 family suites, and 10 intensive care rooms (the “Hospital”) in Frisco, Texas. The Hospital is a luxury medical facility located at 5500 Frisco Square Boulevard in Frisco, Texas, off of the Dallas North Tollway and Main Street. The Debtor offers a range of surgical services, including, but not limited to, pediatric, bariatric, brain, orthopedic, pain management, plastics and reconstructive, spine, and neurosurgery.

5. On or about May 3, 2012, the Debtor entered into that certain Care Credit Agreement with GE Capital Retail Bank to establish a consumer credit program for its patients

(the "Agreement"). Upon information and belief, GE Capital Retail Bank changed its name to Synchrony Bank on or about June 2, 2014.

6. On or about November 24, 2015, the Debtor received correspondence from Synchrony Financial dated November 19, 2015, notifying the Debtor that Synchrony Financial would no longer offer consumer financing and card processing to the Debtor's location, effective December 4, 2015. Upon information and belief, Synchrony Financial is the parent company of Synchrony Bank. On November 25, 2015, the Debtor transmitted return correspondence to Synchrony Financial via facsimile and certified mail, return receipt requested, informing Synchrony Financial that the Debtor is in bankruptcy, attaching a copy of the filed petition, and notifying Synchrony Financial that Synchrony's purported termination of the Agreement and refusal to perform services under the Agreement constituted violations of the automatic stay under Section 362 of the Bankruptcy Code. The Debtor's correspondence advised Synchrony Financial that if services were terminated, that the Debtor would have no choice but to file a motion with the Bankruptcy Court to seek to enforce the automatic stay and seek damages for willful violation of the automatic stay. The Debtor respectfully requested that Synchrony continue to provide services and not terminate services effective December 4, 2015.

7. Both the Debtor and Debtor's counsel have made numerous attempts to resolve this issue with Synchrony Financial. As of the filing of this Motion, no agreement has been reached. The Debtor estimates that as of the filing of this Motion, it has incurred approximately \$5,000.00 in legal fees and expenses as a result of Synchrony Financial's actions.

8. According to the last statement on the Care Credit account, the Debtor stands to lose approximately \$34,000.00 in revenue each month if Synchrony Bank violates the stay and

terminates its agreement with the Debtor. Debtor's damages from this willful violation will increase each day the Care Credit charges are not processed timely.

III.
RELIEF REQUESTED AND BASIS FOR RELIEF

9. Though the Debtor is attempting to reach an agreement that will prevent the interruption of the Debtor's business operations, in the event an agreement cannot be reached, the Debtor seeks an order from this Court to enforce the automatic stay and enjoin Synchrony Financial or Synchrony Bank from ceasing to provide consumer financing and card processing services to the Debtor pursuant to the Agreement.

10. Section 362(a) of the Bankruptcy Code precludes any entity from taking any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate. Section 362 also precludes any act to collect, assess, or recover a claim against the Debtor that arose before the commencement of the bankruptcy case. 11 U.S.C. § 362. An action is related to a bankruptcy case if the outcome could conceivably affect the bankruptcy estate. *Edge Petroleum Operating Co. v. GPR Holdings, LLC (In re TXNB Internal Case)*, 483 F.3d 292, 298 (5th Cir. 2007). "Certainty is unnecessary; an action is 'related to' bankruptcy if the outcome could alter, positively or negatively, the debtor's rights, liabilities, options, or freedom of action or could influence the administration of the bankruptcy estate." *Id.*

11. Synchrony Bank currently provides consumer financing and card processing for the Debtor, specific to Care Credit financing. This allows patients to utilize Care Credit to pay for medical procedures performed at the Hospital. Should Synchrony Bank or Synchrony Financial terminate services with the Debtor, the Debtor would be unable to accept this form of payment from its patients and this would negatively impact the Debtor's business operations.

Thus any such act by Synchrony Bank or Synchrony Financial would constitute a willful violation of the automatic stay.

12. Section 105(a) provides that the Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code. 11 U.S.C. § 105(a). The Debtor requests that the Court issue an order enjoining Synchrony Bank and Synchrony Financial from taking any action with respect to the Agreement.

13. The Debtor further requests that the Court sanction Synchrony Bank and Synchrony Financial for any willful and intentional actions taken in violation of the automatic stay, including, without limitation, awarded the Debtor damages, punitive damages and attorneys' fees. The Debtor requests that the Court set a subsequent hearing to consider this request.

IV. NOTICE

14. Notice of this Motion has been given via ECF notification, e-mail, facsimile, overnight delivery, and/or courier to the Master Service List including the following parties or, in lieu thereof, to their counsel, if known: (a) Synchrony Bank; (b) Synchrony Financial; (c) the Office of the United States Trustee for the Eastern District of Texas; (d) Texas Capital Bank; (e) Sabra Texas Holdings, L.P.; and (i) the Official Unsecured Creditors' Committee. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

In conclusion, the Debtor respectfully requests the Court grant the Motion, and grant the Debtor such other and further relief as the Court may deem proper.

Dated: December 2, 2015.

Respectfully submitted,

/s/ Vickie L. Driver

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COUNSEL FOR THE DEBTOR

CERTIFICATE OF CONFERENCE

I hereby certify that I have been in telephone communication with Synchrony Financial on the substantive issues set forth in the Motion, on November 30, 2015 despite requesting to speak to someone in the legal department, obtain a name or call back number, all parties refused. As of the time of filing this Motion, the parties have been unable to reach a resolution.

/s/ Vickie L. Driver

Vickie L. Driver

CERTIFICATE OF SERVICE

I hereby caused a true and correct copy of the foregoing pleading to be served by Donlin, Recano & Company upon the parties listed on the current Master Service List and Synchrony Bank and Synchrony Financial at the addresses below via ECF notification, e-mail, facsimile, overnight delivery, and/or courier on this 2nd day of December, 2015.

/s/ Vickie L. Driver
Vickie L. Driver

The Corporation Trust Company
Corporation Trust Center
1209 Orange St.
Wilmington, DE 19801

Registered agent for Synchrony Financial

Margaret M. Keane, President & CEO
Synchrony Financial
777 Long Ridge Road
Stamford, CT 06902

CT Corporation system
1300 East Ninth Street
Cleveland, OH 44114

Registered agent for Synchrony Bank

Paul W. Werner, Vice President of Synchrony Bank
950 Fopper Boulevard
Kettering Business Park
Kettering, OH 45420-1469

Synchrony Bank
170 West Election Road, Ste. 125
Draper, UT 84020

**UNITED STATES BANKRUPTCY COURT
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FOREST PARK MEDICAL CENTER AT FRISCO, LLC,	§	CASE NO. 15-41684-BTR
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DEBTOR.	§	

**ORDER GRANTING DEBTOR’S EMERGENCY MOTION TO ENFORCE THE
AUTOMATIC STAY AND REQUEST FOR DAMAGES FOR STAY VIOLATION**

Upon consideration of the *Debtor’s Emergency Motion to Enforce the Automatic Stay and Request for Damages for Stay Violation* (the “Motion”) filed by Debtor Forest Park Medical Center at Frisco, LLC, (“Debtor”) on December 2, 2015, made pursuant to Sections 105(a) and 362 of the United States Bankruptcy Code and 11 U.S.C. §§ 101 *et. seq.* (the “Bankruptcy Code”) in the above-captioned bankruptcy case, the Court finds that it has jurisdiction to grant the relief requested in the Motion pursuant to 28 U.S.C. §§ 1334(b) and 157; that due notice of the Motion has been provided as set forth in the Motion and no other or further notice need be provided; and further that the relief requested in the Motion is in the best interest of the Debtor and its creditors.

IT IS THEREFORE ORDERED that the Motion filed by the Debtor on December 2, 2015 is hereby **GRANTED**; it is further

ORDERED that Synchrony Bank and Synchrony Financial are enjoined from terminating the Agreement or otherwise ceasing to provide consumer financing and card processing services to the Debtor;¹ it is further

¹ All capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

ORDERED that the Court has set _____, 2015, at _____ .m. for a hearing to consider Debtor's request for damages, punitive damages and attorneys' fees for Synchrony Financial and Synchrony Bank's willful violation of the automatic stay.

HONORABLE BRENDA T. RHOADES
CHIEF UNITED STATES BANKRUPTCY JUDGE

PREPARED BY:

/s/ Vickie L. Driver

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