

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

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

**VIBRANT HEALTHCARE FRISCO, LLC’S AND FPMC SERVICES, LLC’S LIMITED
OBJECTION TO DEBTOR’S PROPOSED SALE OF ASSETS**

Vibrant Healthcare Frisco, LLC (“Vibrant”) and FPMC Services, LLC (“FPMC Services”) file this Limited Objection to Debtor’s Proposed Sale of Assets, as follows:

1. Pursuant to the Second Amended and Restated Hospital Development and Management Services Agreement among debtor Forest Park Medical Center at Frisco, LLC (“Debtor”), Vibrant, and FPMC Services dated January 1, 2013 (the “Management Agreement”), Vibrant has managed and operated Debtor’s hospital (the “Hospital”) on a day-to-day basis prior to and since the petition date of September 22, 2015.

2. In addition, the principal managers of Vibrant – Todd Furniss and Mary Hatcher – manage FPMC Services, which employs all the employees that operate the Hospital, including the employees located at the Hospital and the human resources management and other “back office” employees dedicated to servicing the Hospital’s operations.

3. The proposed Asset Purchase Agreement for the sale of Debtor’s assets [Docket No. 441] provides that Debtor must satisfy certain conditions precedent to closing that purchase. Among those conditions precedent is section 8.6, which is entitled “Transition Services Agreement” and provides that “Buyer, Seller and Management Company shall have entered into a transition services agreement that is, in all respects, acceptable to Buyer in its sole discretion.”

Pursuant to section 7.9 of the proposed Asset Purchase Agreement, FPMC Services is identified as the “Management Company” within the meaning of section 8.6.

4. The proposed Sale Order approving the proposed Asset Purchase Agreement [Docket No. 448] appears to include a provision pertaining to such a transition services agreement. That provision states:

Transition Services Agreement. In connection with the Sale Transaction and Asset Purchase Agreement, the Buyer and Debtor anticipate entering into a Transition Services Agreement (the “**TSA**”). The Court hereby authorizes the Debtor to execute such TSA upon the Debtor and Buyer’s satisfaction with such Agreement; provided that such Agreement shall not require the Debtor or its estate to incur any expense, thereunder, beyond any expense the Debtor is incurring operating the Hospital post-petition. The Court further directs the Manager and all officers, directors and agents of the Debtor or Manager to fully comply with all terms of the TSA.

Section J of the Sale Order identifies Vibrant as the “Manager” within the meaning of the foregoing transition services agreement provision.

5. The proposed Sale Order is broader than the proposed Asset Purchase Agreement in that Vibrant, rather than FPMC Services, is identified as the party subject to the transition services agreement. Again, pursuant to the Management Agreement, Vibrant is the day-to-day manager and operator of Debtor’s hospital and FPMC Services is merely the supplier of employees at and for the hospital.

6. In any event, the proposed Sale Order and the proposed Asset Purchase Agreement purport to enable Debtor and the Buyer to negotiate the terms of that transition services agreement without any input by Vibrant or FPMC Services and without regard to whether those terms are acceptable to Vibrant and FPMC Services. Indeed, the proposed Sale Order expressly provides that it is binding on Vibrant and FPMC Services, and precludes any “Claims” by Vibrant or FPMC Services against the Buyer.

7. Thus, for example, the proposed Sale Order and the proposed Asset Purchase Agreement would seemingly enable Debtor and the Buyer to force Vibrant and/or FPMC Services to continue to provide management services and/or supply personnel to the hospital for an indefinite period of time without any prospect of being paid (whatsoever or at least a market rate) for those services and/or employees and without any recourse for harm resulting to Vibrant and/or FPMC Services from the continued provision of those management services and/or employees.

8. It would be inequitable to allow Debtor to impose such burdens on Vibrant and/or FPMC Services. Indeed, the Management Agreement clearly provides that Vibrant and FPMC Services are independent contractors and not agents, partners, or joint venturers of Debtor. Those corporate governance provisions in the Management Agreement arise under state law and are to be respected – even post-petition.¹

9. Accordingly, Vibrant and FPMC Services object to the proposed Sale Order and the proposed Asset Purchase Agreement to the extent that they would be bound to a transition services agreement that is not acceptable to them in the exercise of their reasonable discretion.

¹ See, e.g., *In re SS Body Armor I, Inc.*, 527 B.R. 597, 606-07 (Bankr. D.Del. 2015) (“The right of a shareholder to compel a shareholder’s meeting for the purpose of election of a new board of directors continues during bankruptcy and the automatic stay is inapplicable to the exercise of that right . . .”).

Date: February 16, 2016

Respectfully submitted,

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**ATTORNEYS FOR VIBRANT
HEALTHCARE FRISCO, LLC, AND
FPMC SERVICES, LLC**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this the 8th day of February, 2016, a true and correct copy of this document was electronically served by the Court's ECF system on parties entitled to notice thereof, including counsel for the debtor.

By: /s/ Michael J. Collins
Michael J. Collins