

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

In re: § **Chapter 11**
§
FOREST PARK MEDICAL CENTER § **Case No. 15-41684**
AT FRISCO, LLC, §
Debtor. §

OBJECTION OF CITY OF FRISCO TO INTERIM ORDER (I) AUTHORIZING DEBTOR TO OBTAIN POST-PETITION FINANCING ON A SENIOR SECURED SUPERPRIORITY BASIS PURSUANT 11 U.S.C. §§ 105, 361, 363 AND 364; (II) SETTING A FINAL HEARING; AND (III) GRANTING RELATED RELIEF

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Comes now the City of Frisco, creditor and party-in-interest, and files this, its objection to Interim Order (I) Authorizing Debtor to Obtain Post-petition Financing on a Senior Secured Superpriority Basis Pursuant to 11 U.S.C. §§105, 361, 363 and 364;(II) Setting a Final Hearing; and (III) Granting Related Relief (the “Interim Order”) and would respectfully show the Court as follows:

1. The City of Frisco (“Frisco”), a duly organized governmental unit of the State of Texas, is the holder of a claim for pre-petition ad valorem business personal property taxes for tax year 2015 assessed against the property of the Debtor located within its jurisdiction in the amount of \$121,831.51. On January 1, 2016, Frisco will be the holder of an administrative expense claim for year 2016 ad valorem business personal property taxes.

2. Frisco’s claim is secured by unavoidable, perfected, first priority liens on all of the Debtor’s business personal property pursuant to Texas Tax Code Sections 32.01 and 32.05. Texas Tax Code Section 32.01 provides:

- (a) On January 1 of each year, a tax lien attaches to property to secure the payment of all taxes, penalties, and interest ultimately imposed for the year on the property, whether or not the taxes are imposed in the year the

lien attaches. The lien exists in favor of each taxing unit having power to tax the property.

- (b) A tax lien on inventory, furniture, equipment, or other personal property is a lien *in solido* and attaches to all inventory, furniture, equipment, and other personal property that the property owner owns on January 1 of the year the lien attaches or that the property owner subsequently acquires.
- ...
- (d) The lien under this section is perfected on attachment and ... perfection requires no further action by the taxing unit.

Texas Tax Code Section 32.05 provides in relevant part:

- (b) ... a tax lien provided by this chapter takes priority over the claim of any creditor of a person whose property is encumbered by the lien and over the claim of any holder of a lien on property encumbered by the tax lien, whether or not the debt or lien existed before attachment of the tax lien.

Frisco's administrative expense claim will also be secured by unavoidable, perfected, first priority liens. 11 U.S.C. Section 362(b)(18) permits the post-petition attachment of ad valorem property tax liens. 11 U.S.C. Section 362 (b)(18).

3. Frisco objects to the Interim Order because its liens are not adequately protected as required by 11 U.S.C. Sections 363 and 364(d)(1)(B). The Debtor has the burden of proof on the issue of adequate protection. 11 U.S.C. §§ 363(p) and 364(d)(2).

4. Frisco objects to paragraph 3(i) of the Interim Order, which provides that the DIP Obligations¹ shall constitute allowed senior administrative-expense claims with priority over any and all administrative expenses whether or not such expenses or claims become secured by a non-consensual lien. (See Interim Order ¶ 3(i) at 14-15.) Frisco objects to the priming of its administrative expense claim and lien which will arise January 1, 2016 by operation of law and will be senior to all liens against the Debtor's business personal property including preexisting liens pursuant to Texas Law.

¹ All capitalized terms and/or phrases that are not defined herein shall bear the meanings ascribed to them in the DIP Documents.

5. Frisco objects to paragraph 5 of the Interim Order, which provides that the DIP Lender's liens shall constitute first priority liens senior to all other liens and security interests except liens securing ad valorem taxes that are first priority under Texas Law and attach to property that the Debtor owned prior to the Petition Date. The DIP Lender is granted a first priority lien in all property acquired by the Debtor on the Petition Date and any time thereafter. (*See* Interim Order ¶ 5 at 19-20.) Pursuant to Texas Law, Frisco holds senior liens against all personal property that the Debtor owed on January 1, 2015 and on all after acquired property. Frisco objects to the priming of its liens that attached with senior priority to all personal property that the Debtor owned or acquired on the Petition Date and thereafter.

6. Frisco objects to paragraph 7(a) of the Interim Order, which provides that except as explicitly set forth in the order and the DIP Documents, none of the DIP Collateral shall be subject to liens senior in priority to those of the DIP Lender. (*See* Interim Order ¶ 7(a) at 22.) Because the order does not preserve the senior priority of Frisco's liens against all of the Debtor's personal property that secure its prepetition claim and the liens that will secure year 2016 ad valorem business personal property taxes, this paragraph also primes the liens that secure Frisco's prepetition claim and those that will secure Frisco's administrative expense claim for tax year 2016. Frisco objects to the priming of its prepetition and postpetition liens.

7. Frisco objects to paragraph 13 of the Interim Order, which provides that no claim or lien having a priority superior to or *pari passu* with those granted to the DIP Lender in the Interim Order shall be granted or allowed while any amounts remain outstanding and the DIP Liens shall not be subordinated to or made *pari passu* with any other lien. (*See* Interim Order ¶13(a) at 30.) Frisco objects to the priming of its prepetition and postpetition liens.

8. Frisco objects to paragraph 16(d) of the Interim Order, which omits it from the mandatory five (5) days written notice from the Lender prior to its exercise of any and all actions and remedies against the DIP Collateral. (*See* Interim Order ¶16(d) at 36.) Frisco should also be included in the notice provision of paragraph 16 since such notice is necessary in order to provide Frisco with an opportunity to protect its interest in its collateral. The lack of notice in this provision impedes Frisco's ability to protect its liens against its collateral.

WHEREFORE, premises considered, Frisco respectfully requests that the Court modify the Interim Order and any final order to: (1) provide that Frisco retains the senior statutory priority of its prepetition and postpetition liens nunc pro tunc to the petition date; (2) include Frisco in the mandatory five (5) days written notice from the Lender of its intention to exercise its rights and remedies; and (3) grant Frisco such other and further relief to which it may be justly entitled.

Dated: October 15, 2015.

Respectfully submitted,

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ATTORNEYS FOR THE CITY OF
FRISCO

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served electronically upon Vickie L. Driver, email: vickie.driver@lewisbrisbois.com, John M. Vardeman, email: John.M.Vardeman@usdoj.gov, the parties listed in paragraph 26 of the Interim Order and electronically through the Court's electronic case filing system upon all parties requesting notice on this 15th day of October 2015.

/s/Laurie Spindler Huffman

Laurie Spindler Huffman