

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division
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In re:

MIAMI INTERNATIONAL MEDICAL CENTER, LLC¹
d/b/a THE MIAMI MEDICAL CENTER,

Case No. 18-12741-LMI
Chapter 11

Debtor.

**DEBTOR'S MOTION TO MAINTAIN PREPETITION BANK ACCOUNT
AND AUTHORITY TO PAY SECURED LENDER ITS CASH COLLATERAL**
(Expedited Hearing Requested on April 12, 2018 at 1:30 p.m.)

Miami International Medical Center, LLC d/b/a The Miami Medical Center (the “*Debtor*”), by and through undersigned counsel, pursuant to 11 U.S.C. §§ 105(a), files this motion (the “*Motion*”) seeking the entry of an Order authorizing the Debtor to maintain a prepetition bank sweep account and authority to pay secured lender, NMFLP, LLC (“NMFLP”) as assignee of MidFirst Bank (“*MidFirst*”), its cash collateral. In support of this Motion, the Debtor states as follows:

I. Jurisdiction

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 1334 and 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II. Procedural Background

3. The Debtor is operating its business and managing its affairs as a debtor in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108 of the Bankruptcy Code.

¹The Debtor’s current mailing address is 5959 NW 7 St, Miami, FL 33126 and its EIN ends 4362.

4. The Debtor is a regional acute care hospital that provided a limited suite of medical services from its opening in February 2016 until it voluntarily requested conversion of its operating license to inactive status from the State of Florida Agency for Health Care Administration (AHCA) in October 2017. Since its shutdown in October 2017, the Debtor has not had any patients under its care.

5. No trustee, examiner, or statutory committee has been appointed.

6. On March 9, 2018, the Debtor filed its Motion for Entry of Interim and Final Orders (a) Authorizing Debtor in Possession to Obtain Post-Petition Financing Pursuant to 11 U.S.C. 364(c) and (d) and Fed.R.Bankr.P. 4001(c); and (b) Scheduling Final Hearing [ECF No. 9], which requests Court approval of a DIP Loan as set forth therein (the “*DIP Loan*”).

7. Prepetition the Debtor was indebted to MidFirst (the “*MidFirst Debt*”). The MidFirst Debt is collateralized as set forth in paragraph 10 herein.

8. On March 22, 2018, MidFirst sold its interest in the MidFirst Debt to NMFLP. As part of the sale, NMFLP is indebted to MidFirst (the “*NMFLP Debt*”).

III. Relief Requested and Basis Therefor

A. Pre-Petition Bank Account Held at MidFirst

9. Prior to the commencement of this Chapter 11 case, in the ordinary course of its business, the Debtor utilized a bank account at MidFirst (account number ending 1485) (“*MidFirst Account*”), which had a balance on the petition date of approximately \$500. As of March 22, 2018, and as a result of the sale of the MidFirst Debt to NMFLP, NMFLP is the beneficial owner of the amount on deposit in the MidFirst Account, subject to MidFirst’s security interests and liens therein.

10. NMFLP has a properly perfected first-priority security interest in and lien on the Debtor's accounts receivables and proceeds therefrom, which has been pledged to MidFirst as collateral to secure repayment of the NMFLP Debt.

11. The MidFirst Account is controlled by MidFirst and is the account into which certain of the Debtor's collected accounts receivables are deposited via ACH transfer and/or Lockbox. Prepetition, MidFirst swept the MidFirst Account pursuant to its loan agreement with the Debtor.

12. The Debtor seeks authority to maintain the MidFirst Account post-petition, authorizing and directing MidFirst, on behalf of NMFLP, to sweep such account twice weekly on each Tuesday and Friday. Notwithstanding the sale of the MidFirst Debt to NMFLP, MidFirst will retain the funds swept pursuant to this paragraph (the "Sweep Funds"). The Sweep Funds shall be applied as follows: (i) as to the MidFirst Debt absent further order of the Court they shall reduce the principal of the MidFirst Debt; and (ii) as between NMFLP and MidFirst, they shall be applied to the NMFLP Debt consistent with the terms of the agreements between NMFLP and MidFirst.

13. The collections companies and NMFLP shall provide reports to the Debtor of all receipts and disbursements and NMFLP's application of such funds by the 15th of each month, and such transactions shall be included in the Debtor's Monthly Operating Reports. MidFirst, shall only be required to provide reports consistent with the terms of the agreement between NMFLP and MidFirst.

B. Pre-Petition Bank Account Held at TD Bank

14. Prior to the commencement of this Chapter 11 case, and in the ordinary course of its business, the Debtor utilized a bank account at TD Bank ("**TD**") (account number ending 7199) ("**TD Account**"), which had a balance on the petition date of \$81,724.47.

15. All of the cash in the TD Account is the Debtor's accounts receivables received by check and deposited into the TD Account. Such funds are NMFLP's cash collateral.

16. The Debtor and NMFLP seek Court approval authorizing and directing the Debtor to pay such TD Account funds into the MidFirst Account, after which funds will be applied as follows: (i) as to the MidFirst Debt, they shall reduce the principal of the MidFirst Debt, and (ii) as between NMFLP and MidFirst, they shall be applied to the NMFLP Debt consistent with the terms of the agreements between NMFLP and MidFirst.

17. These deposits and single disbursement shall be included in the Debtor's Monthly Operating Report.

18. Since the prepetition TD Account will be closed, the Debtor seeks Court approval, with the consent of the Office of the United States Trustee, to open a DIP Cash Collateral Account at Wells Fargo Bank ("***DIP CC Account***"), an authorized depository. Going forward, the DIP CC Account shall be used to deposit accounts receivable checks received by the Debtor which are NMFLP's cash collateral.

19. The Debtor is holding accounts receivable checks totaling \$20,643.88. The Debtor requests authority to deposit such funds into the DIP CC Account in order to avoid commingling accounts receivable proceeds (which are NMFLP's cash collateral) with the DIP Loan proceeds held in the Debtor's DIP operating account.

20. The Debtor and NMFLP also seek Court approval authorizing and directing the Debtor to pay all available funds in the DIP CC Account to NMFLP on the 5th and 20th of each month. Notwithstanding the sale of the MidFirst Debt to NMFLP, MidFirst will retain the funds swept pursuant to this paragraph (the "***DIP CC Funds***"). The DIP CC Funds shall be applied as follows: (i) as to the MidFirst Debt absent further order of the court they shall reduce the

principal of the MidFirst Debt; and (ii)) as between NMFLP and MidFirst, they shall be applied to the NMFLP Debt consistent with the terms of the agreements between NMFLP and MidFirst.

21. Such transactions shall be included in the Debtor's Monthly Operating Reports.

22. To the extent that relief from 11 U.S.C. 362(a) is required to effect the transfers and application of proceeds of collateral securing the MidFirst Debt, the Debtor hereby consents to such relief and any order granting this Motion will provide that the automatic stay is modified accordingly. Adequate protection is designed to assure that a secured creditor does not suffer a decline in value of its interest in the estate's property while the automatic stay is in effect." *In re Wrecclesham Grange, Inc.*, 221 B.R. 978, 981 (M.D. Fla. 1997) (citations omitted).

IV. Authority for Relief Requested

23. Section 105(a) of the Bankruptcy Code provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Extensive authority supports the relief the Debtors seek in the Motion. In other Chapter 11 cases, courts have recognized that strict adherence to the United States Trustee requirements does not in each and every circumstance promote the purposes of a Chapter 11 case. Accordingly, courts, including courts in this district, have often granted relief from these requirements and replaced them with alternative procedures. *See, e.g., In re Protective Products of America, Inc., et al.*, Case No. 10-10711-BKC-JKO (Bankr. S.D. Fla. Feb. 11, 2010) (Olson, J.); *In re DM Industries, Ltd.*, Case No. 09-15533-BKC-LMI (Bankr. S.D. Fla. May 15, 2009) (Isicoff, J.); *In re Levitt and Sons, LLC*, Case No. 07-19845-RBR (Bankr. S.D. Fla. January 27, 2009); *In re Gemini Cargo Logistics, Inc., et al.*, Chapter 11 Case No. 08-18173-BKC-AJC (Bankr. S.D. Fla. July 16, 2008) (Cristol, J); *In re Gemini Cargo Logistics, Inc., et al.*, Chapter 11 Case No. 06-10870-BKC-AJC (Bankr S.D. Fla. March 17, 2006) (Cristol,

J.); *In re Atlas Worldwide Aviation Logistics, Inc. et al.*; Chapter 11 Case No. 04-10792-BKC-RAM (Bankr. S.D. Fla. Feb. 5, 2004) (Mark, J.).

WHEREFORE, the Debtor respectfully requests that the Court enter an order (i) granting the relief requested in this Motion; (ii) authorizing the Debtor to maintain the MidFirst Account so that accounts receivable can continue to be wired into the MidFirst Account and MidFirst can sweep twice weekly, absent further Court order; (iii) authorizing and directing the Debtor to pay all sums on deposit in the TD Account into the MidFirst Account and then close the TD Account; (iv) authorizing the Debtor to open the DIP CC Account; (v) authorizing and directing the Debtor to deposit checks into the DIP CC and authorizing and directing the Debtor to pay the funds in the DIP CC to the MidFirst Account and permitting MidFirst to sweep such funds; and (vi) granting such other relief as the Court deems just and proper.

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