

Sale Hearing Date And Time: August 2, 2013 at 10:00 a.m. (prevailing Eastern Time)
Objection Deadline Date And Time (as extended): July 29, 2013 at 4:00 p.m. (prevailing Eastern Time)

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

SOUND SHORE MEDICAL CENTER OF
WESTCHESTER, et al.,¹

Debtors.

Chapter 11

Case No. 13-22840 (RDD)

Jointly Administered

**GE HEALTHCARE'S RESERVATION OF RIGHTS REGARDING
THE DEBTORS' MOTION TO APPROVE THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTORS' REAL PROPERTY
AND DESIGNATED PERSONAL PROPERTY ACQUIRED ASSETS**

GE Healthcare ("GE"), a creditor and contract counter-party in the above-captioned bankruptcy cases, hereby submits this Reservation of Rights with respect to the Debtors' Motion To Approve Private Sale Of The Debtors' Real Estate And Designated Personal Property Acquired Assets (the "Sale Motion") [Docket No. 17]. In support of the Reservation of Rights, GE respectfully states as follows:

¹ The debtors are Sound Shore Health System, Inc., Sound Shore Medical Center of Westchester, The Mount Vernon Hospital, Inc., Howe Avenue Nursing Home d/b/a Helen and Michael Schaffer Extended Care Center, NRHMC Services Corporation, The M.V.H. Corporation and New Rochelle Sound Shore Housing, LLC (collectively, the "Debtors").

BACKGROUND

1. Prior to the Petition Date, GE entered into various leases and other agreements with the Debtors, pursuant to which GE sold medical/diagnostic equipment (the “Equipment”) to the Debtors. The agreements include the following:

- Quotation Number P5-C50459 V7 (dated 3/25/2009), for a GE Senographe Essential Mammography System;
- Quotation Number P3-C135303 V8 (dated 2/3/2012), for a GoldSeal Certified 16 slice CT scanner;
- Quotation Number P2-C105081 V10 (dated 12/14/2010), for a GoldSeal LightSpeed VCT; and
- Purchase Order No. NR167488 (dated 12/16/2011) for a Vivid E9 BT11 Leadership Cardiovascular Console w/accelerated architecture and a VSCAN hand-held device.

2. All of the agreements and the Equipment are subject to, and are governed by, those various terms and conditions set forth in the following documents which govern all transactions, and the relationship, between GE and its various customers, including the Debtors (collectively, the “GE Agreements”)²:

- GE Healthcare General Terms and Conditions;
 - GE Healthcare Product Terms and Conditions;
 - GE Healthcare Additional Terms and Conditions: Healthcare IT;
 - GE Healthcare Additional Terms and Conditions: Uptime Commitment;
- and

² The various GE Agreements all bear the legend “GE Healthcare Confidential & Proprietary”. Thus, copies will be provided only to the Debtors, to the extent that they are not readily available to them. They will be provided to Buyer upon request, subject to their agreement to keep same confidential.

- A 2-page document simply bearing the header “GE Healthcare”³

3. The terms and conditions set forth in the GE Agreements govern the use of the Equipment (collectively, the “GE Conditions”). Among other things, the GE Conditions include various provisions pertaining to “confidentiality”, the granting of a “Software License”, the use and transferability of software and related Documentation, and GE’s retention of Ownership Rights/ownership in all deliverables, including (i) any intellectual property embodied in the deliverables or related to them, (ii) any intellectual property developed, and (iii) all improvements, enhancements and derivative works of any GE intellectual property software contained in the Equipment.

4. On May 29, 2013, the Debtors filed the Sale Motion. In pertinent part, the Sale Motion seeks entry of an order approving the bidding procedures and the time schedule to be followed in connection with the proposed sale of the Debtors’ assets, free and clear of all liens, claims and encumbrances, security interests and other interests, to Montefiore SS Operations, Inc., Montefiore MV Operations, Inc., Montefiore HA Operations, Inc., Montefiore SS Holdings, LLC, Montefiore MV Holdings, LLC, and Montefiore HA Holdings, LLC, (collectively, “MMC” or the “Buyer”)⁴.

5. Attached to the Sale Motion is an Asset Purchase Agreement (“APA”) entered into between the Debtors and MMC. Pursuant to the APA, MMC [*or another successful bidder*], will purchase substantially all of the Debtors’ right, title and interest in and to certain personal property (collectively, the “Acquired Assets”), including “Sellers’ Furniture and Equipment and

³ Although not relevant here, GE’s transactions with its customers are also initially governed by various Warranty Statements and Warranty Codes. All warranties initially provided to Debtors have expired, however, as a result of the passage of time.

⁴ Pursuant to the bidding procedures Order, objections to the proposed sale were to be filed by July 25, 2013. However, on July 23, 2013, counsel for the Debtors extended the deadline for GE to file its Reservation of Rights with respect to the Sale Motion until July 29, 2013.

Inventory other than the Furniture, Equipment and Inventory identified by the Buyer on Schedule 2.1(c), no later than sixty (60) days following the Effective Date” (*See* APA at Section 2.1(c).)

6. The APA further states that the Acquired Assets include all Intellectual Property of Sellers, including, without limitation, the Intellectual Property listed on Schedule 4.9 related to the Acquired Assets or used in the Business (*see* APA, Section 2.1(e)), and all Assigned Contracts listed on Schedule 2.1(d) (*see* APA at Section 2.1(d)).

7. Although the GE Agreements and the Equipment do not currently appear to be specifically identified in the Sale Motion or in the APA as assets that MMC will, in fact, be acquiring, GE is concerned about the potential impact upon the GE Conditions resulting from the sale of the Acquired Assets to the Buyer, including Buyer’s compliance with GE’s software licenses and related intellectual property, and the various confidentiality provisions related thereto.

8. Additionally, GE is presently unable to determine whether the Acquired Assets being sold to MMC include Equipment which contains embedded information technology systems, software and other GE intellectual property subject to the confidentiality and other protection provisions contained in the GE Agreements.

9. If it is the Debtors’ intention to sell, and MMC’s intention to acquire, the Equipment containing embedded software subject to GE’s retained ownership interests pursuant to the terms of the GE Agreements, GE submits that MMC (or any other purchaser) must agree to comply with, and must abide by, the GE Conditions, particularly those pertaining to confidentiality, the Software License, and other provisions pertaining to GE’s intellectual property and related deliverables. In addition, the Debtors may not sell any equipment governed by the GE Agreements without GE’s consent; such contracts involve the licensing of patented

and/or copyrighted materials. GE will, however, consent to their assumption and assignment to MMC upon MMC's affirmative written agreement with respect to same, so long as such agreement is acceptable in form and substance to GE.

10. Finally, to the extent that the Debtors will seek assumption and assignment of any of the GE Agreements, as one might infer from the APA, the Debtors (and MMC) must confirm the Buyers' ability to perform thereunder. For these reasons, GE therefore requests that the Court deny any contemplated assumption and assignment of any GE Agreements at this time, and that GE's rights in this regard be preserved until such time as the Debtors and Buyer actually determine whether any of the Equipment will be acquired and/or any of the GE Agreements will be assumed and assigned.

ARGUMENT

A The Trustee May Not Assume And Assign the GE Agreements, Which Pertain To Licenses Of Intellectual Property, In The Absence of GE's Consent

11. Section 365(c)(1) of the Bankruptcy Code provides, in relevant part:

The trustee may not assume or assign any executory contract ... of the debtor ... if (1)(A) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor ..., whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and (B) such party does not consent to such assumption or assignment.

12. Federal law makes non-exclusive licenses non-assignable absent consent of the licensor. In re Catapult Entertainment, Inc., 165 F.3d 747 (9th Cir. 1999), cert. dismissed, 528 U.S. 924 (1999). *See also*, In re ANC Rental Corporation, Inc., 277 B.R. 226, 235 (Bankr. D. Del. 2002); In re Golden Books Family Entertainment, Inc., 269 B.R. 311, 316 (Bankr. D. Del. 2001). The GE Agreements include the non-exclusive licensing of patented software.

Therefore, until such time as MMC confirms that it is willing to comply with the GE Agreements, and particularly the GE Conditions, GE does not, and will not, presently consent to any proposed assignment. GE thus requests that any intended assumption and assignment or transfer be denied with respect to the Equipment and the GE Agreements until the Debtors and MMC comply with the requirements of Section 365 of the Bankruptcy Code and Buyer confirms its agreement to abide by the GE Conditions.

B If Contemplated, Any Assumption And Assignment Should Be Denied At This Time Respect To The GE Agreements And Equipment Because the Buyer Has Failed to Provide Adequate Assurance

13. Section 365 of the Bankruptcy Code sets forth specific prerequisites that must be met before a trustee/debtor can assume and assign an executory contract, including: (A) curing (or providing adequate assurance of a prompt cure of) any defaults under the subject contracts, and (B) providing adequate assurance of future performance under the contract. Absent the foregoing, the GE Agreements may not be assumed, or assumed and assigned. (*See* Sections 365(b) and 365(f)(2).)

14. At this time, GE is unable to determine whether: (A) MMC is capable of providing (or even willing to provide) adequate assurance of future performance; and (B) MMC is willing to enter into appropriate agreements confirming the terms, post-assignment, of the parties' relationship.

15. Therefore, until at least the above is provided, Debtors and MMCC are unable to comply with, and satisfy the protections of Bankruptcy Code Section 365(b)(1)(C) and 365(f)(2).

CONCLUSION

WHEREFORE, and for all of the reasons set forth above, GE respectfully requests that the Court deny, at this time, the Sale Motion to the extent that it now seeks to transfer title to, and sell, the Equipment to MMC and/or to assume and assign any of the related agreements and/or the GE Agreements to Buyer. The Sale Motion should further be denied as to GE to the extent that it may now adversely impact GE's rights under the Bankruptcy Code with respect to the Equipment (and related agreements), the GE Agreements and/or the GE Conditions. Finally, GE hereby reserves all rights to subsequently object to the assumption/assumption and assignment of any/all of the GE Agreements and/or the sale of any/all of the Equipment in the event that MMC subsequently determines to acquire any of the Equipment or assume any of the related agreements.

Dated: July 29, 2013
Roseland, NJ

Respectfully submitted,

/s/ Richard M. Meth
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