

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)	Chapter 11
)	
SUN HEALTHCARE GROUP, INC.,)	Case Nos. 99-3657 (MFW)
et al.,)	through 99-3841 (MFW)
)	
Debtors.)	(Jointly Administered Under
)	Case No. 99-3657 (MFW))
<hr/>		
SILVER COURT NURSING CENTER,)	
INC., t/a SILVER CARE CENTER,)	
)	
Plaintiffs,)	
)	
v.)	Adversary No. 01-6001 (MFW)
)	
SUNBRIDGE CARE AND)	
REHABILITATION CENTER FOR)	
SOUTHERN NEW JERSEY, MEDIPLEX)	
REHAB-CAMDEN, INC. AND)	
MEDIPLEX OF NEW JERSEY, INC.,)	
)	
Defendants.)	

MEMORANDUM OPINION¹

Before the Court is the Debtors' Motion to Dismiss the complaint filed by Silver Court Nursing Center, Inc., t/a Silver Care Center ("Silver Care"). For the reasons set forth below, we grant the Motion to Dismiss with prejudice.

I. BACKGROUND

On October 14, 1999, Sun Healthcare Group, Inc. ("Sun") and certain of its direct and indirect subsidiaries (collectively, "the Debtors"), filed a voluntary petition for relief under

¹ This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052.

Chapter 11 of the Bankruptcy Code. On August 3, 2001, Silver Care commenced an adversary proceeding against the Debtors seeking specific performance of an agreement by which Silver Care was to purchase from the Debtors a Certificate of Need ("the Certificate") issued by the New Jersey State Department of Health and Senior Services for the operation of seven ventilator beds, as well as a License ("the License") to operate four additional ventilator beds in Camden County, New Jersey. Silver Care also seeks a declaratory judgment that it is entitled to purchase the License and the Certificate from the Debtors.

On October 1, 2001, the Debtors filed their Motion to Dismiss the Complaint asserting that Silver Care has failed to state any claim upon which relief can be granted. The parties have submitted briefs on the issues.

II. JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (E), (N) and (O).

III. DISCUSSION

A. Standards for a Motion to Dismiss

A motion to dismiss for failure to state a claim upon which relief may be granted should be denied unless it appears certain that the plaintiff is entitled to no relief under any set of facts that could be proven in support of the claim. See, e.g., Haines v. Kerner, 404 U.S. 519, 521 (1972). The burden of establishing this is on the movants. See, e.g., Johnsrud v. Carter, 620 F.2d 29, 33 (3d Cir. 1980).

B. Count I of The Complaint Fails to State a Claim

In Count I of the Complaint, Silver Care asserts that, in or about April 2001, it entered into negotiations with counsel for the Debtors to extend and purchase the Certificate and the License. Silver Care asserts that an agreement was reached, with the significant terms included in a Letter of Intent and a draft Agreement of Purchase and Sale. Silver Care seeks specific performance of the agreement between Silver Care and the Debtors for the purchase and sale of the Certificate and the License to operate ventilator beds in New Jersey.

1. There is No Contract Between the Parties

"A cause of action for breach of contract presupposes that a legally enforceable contract is in existence and has been

violated." 17B C.J.S. Contracts §600 (1999). Silver Care's Complaint fails to allege any fact that establishes the existence of a contract. Accepting the allegations of the Complaint as true, no contractual right exists. "[T]he complaint fails to state the basis of the breach of contract claim since no contract has been alleged, nor can one be inferred." Am. Ins. Co. v. Material Transit, Inc., 446 A.2d 1101, 1104 (Del. Super. Ct. 1982).

While Silver Care asserts that an agreement was reached with Debtors' counsel, this is belied by the allegations of the Complaint itself. The documents which Silver Care attached to its Complaint, and which Silver Care specifically alleges "memorialize" the parties' agreement, demonstrate that there was no agreement reached with the Debtors.

The Letter of Intent conclusively refutes the assertion that there was an agreement between the parties. The Letter of Intent states:

It is intended that this Letter be and constitute a letter of intent only. Except as to the non-solicitation provisions under Section 10, this Letter is not, and shall not be deemed to be, an offer, solicitation of an offer, agreement, contract, or any other legally binding obligation. It is the intent of the parties that a binding contract, agreement or obligation between them shall arise only upon the execution, acknowledgment, and delivery by each of the Seller and the Purchaser of the Agreement.

(Complaint at Exh. A, p. 3). Additionally, the draft Purchase Agreement demonstrates that there was no agreement between the parties. That document states:

This Agreement shall not be considered an offer or an acceptance of an offer by the Seller, and shall not be binding upon the Seller until executed and delivered by both the Seller and the Purchaser. Upon execution and delivery, this Agreement shall be binding upon and inure to the benefit of the Parties and each of their respective successors and permitted assigns.

(Complaint at Exh. B, ¶ 22). The draft Purchase Agreement was never executed or delivered by either party.

Silver Care's assertion that there was a binding agreement between the parties concerning the sale of the Certificate and the License must be rejected. See, e.g., Sunquest Information Systems, Inc. v. Dean Witter Reynolds, Inc., 40 F. Supp.2d 644, 649 (W.D. Pa. 1999) ("in the event of a factual discrepancy between the pleading and the attached exhibit, the exhibit controls"); ESI, Inc. v. Coastal Power Prod. Co., 13 F. Supp.2d 495, 497 (S.D.N.Y. 1998) ("if the allegations of a complaint are contradicted by documents made a part thereof, the document controls and the Court need not accept as true the allegations of the complaint"); Davis v. Cole, 999 F. Supp. 809, 812 (E.D. Va. 1998) ("Where there is a conflict between the bare allegations of a complaint and any exhibit attached . . . the exhibit prevails").

Silver Care seeks to avoid the dispositive effect of its own documents by asserting that the Debtors made an offer to it by forwarding the draft Purchase Agreement to it and that Silver Care's "acceptance was conveyed to the Debtors by the Letter of Intent and through counsel." (Complaint at ¶¶ 9 and 10). We disagree.

First, the purported offer made by the Debtors to Silver Care expressly stated that it was not an offer unless executed and delivered. (Complaint at Exh. B, ¶ 22.) The draft Purchase Agreement was never executed by the Debtors; therefore, it was not an offer. Absent an offer, there was nothing for Silver Care to accept, and thus no contract could have been formed. See, e.g., 17 C.J.S. Contracts §39, 472 (1999) ("Every agreement, whether written or oral, is the result of, and springs from, an offer and the acceptance thereof").

Second, Silver Care's assertion that its "acceptance" was conveyed through the Letter of Intent is without merit. The Letter of Intent itself states that "this Letter is not, and shall not be deemed to be an offer, solicitation of an offer, agreement, contract, or any other legally binding obligation." (Complaint at Exh. A, p. 3.) Further, the Letter of Intent was never executed by Silver Care, or the Debtors. Silver Care admittedly drafted the Letter of Intent which specifically states that it is not a binding obligation on any party. That Silver

Care secretly may have intended otherwise is immaterial. As stated by the Court in Cohn v. Fisher:

Under the objective theory of mutual assent followed in all jurisdictions, a contracting party is bound by the apparent intention he outwardly manifests to the other contracting party. To the extent that his real, secret intention differs therefrom, it is entirely immaterial.

287 A.2d 222, 225 (N.J. Super. Ct. 1972).

The Complaint is simply devoid of any pleaded fact from which it reasonably can be inferred that Silver Care "accepted" any offer. The documents that Silver Care attached to its Complaint demonstrate that there was no contract between the parties. Accordingly, Silver Care's claim for specific performance must be dismissed with prejudice for failure to state a cause of action on which relief can be granted.

2. Contract Required Bankruptcy Court Approval

Even if the parties had executed the Agreement of Purchase, Silver Care has no right to enforce it. The purported sale of the Certificate and the License required Court approval pursuant to section 363 of the Bankruptcy Code. See, e.g., Northview Motors, Inc., v. Chrysler Motors Corp., 186 F.3d 346, 351 (3d Cir. 1999). As the Third Circuit held in Northview:

Section 363(b)(1) restricts a trustee's ability to use, sell, or lease estate property out of the ordinary course of business. Pursuant to Section 363(b)(1), the

trustee may do so only after notice and a hearing. We have interpreted Section 363 to require both a hearing and court approval.

186 F.3d at 350.

The Certificate and the License were valuable assets of the Debtors' estate and the sale of such assets is outside the ordinary course of the Debtors' business (which is to operate acute care facilities), thus requiring Court approval. This was acknowledged by the parties in the Agreement of Purchase. (Complaint at Exh. B, ¶ 15(a)).

It is undisputed that Court approval was neither sought nor obtained by any party to the purported agreement. Accordingly, the purported agreement is not enforceable by Silver Care. Northview, 186 F.3d at 351 ("Relying on Section 363, we have held that a contract providing for use or sale of estate property outside the regular course of business is unenforceable absent court approval").

C. Count II of The Complaint Fails to State a Claim

In Count II, Plaintiff seeks a declaratory judgment that it is entitled to purchase the License and Certificate. (Complaint at ¶ 7). Count II, however, sets forth no legal theory upon which such relief can be granted. Moreover, since Count II is based on the allegation that a contract between the parties

exists, Count II fails for the same reason that Count I does.
Thus, Count II is hereby dismissed with prejudice.

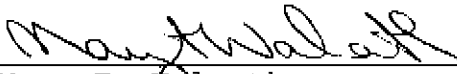
IV. CONCLUSION

For the reasons set forth above, we grant the Debtors'
Motion to Dismiss with prejudice.

An appropriate Order is attached.

BY THE COURT:

Dated: May 2 2002,



Mary F. Walrath
United States Bankruptcy Judge

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FOR THE DISTRICT OF DELAWARE

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REHAB-CAMDEN, INC. AND)
MEDIplex OF NEW JERSEY, INC.,)
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Defendants.)

O R D E R

AND NOW, this 2^d day of MAY, 2002, upon consideration of Sun
Healthcare Group, Inc.'s Motion to Dismiss the Complaint for
Declaratory Judgment and to Compel Specific Performance of a
Contract and Silver Court Nursing Center's Answering Brief in
Opposition thereto, and for the reasons set forth in the
accompanying Memorandum Opinion, it is hereby

ORDERED that the Motion to Dismiss is GRANTED WITH
PREJUDICE.

BY THE COURT:



Mary F. Walrath
United States Bankruptcy Judge

cc: See attached

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