

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:)	
)	
CLAYTON GENERAL, INC., f/k/a Southern Regional Health System, Inc., d/b/a Southern Regional Medical Center, et al.,)	CHAPTER 11
)	CASE NO. 15-64266-wlh
Debtor.)	
_____)	
)	
FIRST FINANCIAL INVESTMENT FUND V, LLC,)	
)	
Movant,)	
)	
v.)	CONTESTED MATTER
)	
PRIME HEALTHCARE FOUNDATION, INC., and PRIME HEALTHCARE FOUNDATION- SOUTHERN REGIONAL, LLC,)	
)	
Respondents.)	
_____)	

NOTICE OF HEARING

PLEASE TAKE NOTICE that First Financial Investment Fund V, LLC, by and through undersigned counsel, has filed a Motion to Enforce Sale Order and for Contempt against Prime Healthcare Foundation, Inc. and Prime Healthcare Foundation-Southern Regional, LLC.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the Motion on **September 26, 2019, at 1:30 P.M.**, in **Courtroom 1403** in the Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Drive, S.W., Atlanta, Georgia 30303.

Your rights may be affected by the court’s ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the court to grant the relief sought in these pleadings or if you want the court to consider your review, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file



a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's Office is: Clerk, U. S. Bankruptcy Court, Richard B. Russell Federal Building and U.S. Courthouse, 75 Ted Turner Drive, S.W., Atlanta, Georgia 30303. You must also mail a copy of your response to the undersigned at the address stated below.

Dated: September 5, 2019.

ROUNTREE LEITMAN & KLEIN, LLC

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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CLAYTON GENERAL, INC., f/k/a Southern)	CHAPTER 11
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Regional Medical Center, et al.,)	CASE NO. 15-64266-wlh
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and PRIME HEALTHCARE FOUNDATION-)	
SOUTHERN REGIONAL, LLC,)	
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Respondents.)	
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**FIRST FINANCIAL INVESTMENT FUND V, LLC’S
MOTION TO ENFORCE SALE ORDER AND FOR CONTEMPT**

First Financial Investment Fund V, LLC (“**First Financial**”) files this Motion to Enforce Sale Order and for Contempt against Prime Healthcare Foundation, Inc. and Prime Healthcare Foundation-Southern Regional, LLC (collectively, “**Prime**”), showing the Court as follows:

INTRODUCTION

1. The Court may recall that a major issue related to the sale of the Debtor’s assets to Prime was Prime’s duty to provide access to the Debtor’s books and records to First Financial and

to remit to First Financial all proceeds of the accounts that First Financial purchased. That issue was resolved by the Sale Order (defined below) and ancillary agreements related thereto.

2. Prime has repeatedly failed to fulfill its duties to provide information (and upon information and belief, remit proceeds), and despite repeated requests and given ample opportunity to honor its duties, Prime has failed—and in some cases flat-out refused—to comply.

3. Prime's contempt and breaches have damaged First Financial by impeding First Financial's ability to collect on its accounts, resulting in lost revenue to First Financial, in addition to any amounts that Prime has collected and simply kept rather than turn over as required.

4. Accordingly, Prime has left First Financial with no choice other than to file this motion seeking the Court's help in getting Prime to honor its obligations to First Financial, which has additionally damaged First Financial by forcing it to incur attorneys' fees and costs.

BACKGROUND

5. First Financial and Southern Regional Health System, Inc. (the "**Debtor**") are parties to two Purchase and Sale Agreements (the "**Agreements**"), pursuant to which the Debtor sold in excess of 200,000 patient healthcare accounts to First Financial (the "**Accounts**").¹

6. Under the express terms of the Agreements, First Financial's purchase of the Accounts was a non-recourse sale in which the Debtor conveyed all right, title, and interest in the Accounts to First Financial, and the Debtor retained no right, title, or interest in the Accounts.

7. Under the express terms of the Agreements, any and all payments, collections, and proceeds of the Accounts paid, received, collected, or otherwise remitted to Debtor after the Cut-Off Date, and in perpetuity thereafter, are deemed "Direct Payments," and all Direct Payments are

¹ All capitalized terms not defined herein shall have the meanings ascribed to them in the Agreements.

property of First Financial that Debtor was required to segregate and hold in trust for the sole benefit of First Financial, and then remit to First Financial as the owner of those funds.

8. Sections 12.3.2 and 12.3.3 of the Agreements require the Debtor to remit on a weekly basis all “Direct Payments” received for the Accounts since the last remittance and to provide to First Financial detailed information reporting with respect to the related Accounts, including the patient’s name, account number, date and amount of payments, and the identity of the payor or payment source.

9. The Debtor failed to remit a significant amount of Direct Payments to First Financial, in violation of the Agreements.

10. First Financial filed a motion on September 10, 2015 seeking an order requiring the Debtor to remit the amounts of the Direct Payments to First Financial [Doc. 241].

11. The Court entered an order on September 25, 2015, in which the Court ordered, *inter alia*, “that the Debtor shall timely pay to Movant any future insurance, Medicaid, or Medicare reimbursement proceeds on the accounts receivable purchased by Movant from Debtor to the extent the original insurance, Medicaid, or Medicare payments were not turned over to Movant.” [Doc. 276].

12. Meanwhile, the Debtor had filed a motion to sell substantially all of its assets to Prime [Doc. 75]. First Financial filed an objection to the proposed sale, in which First Financial argued, *inter alia*, that the asset sale should not include proceeds of the Accounts and that Prime should be required to (i) remit all proceeds from the Accounts to First Financial and (ii) provide First Financial ongoing access to books and records related to the Accounts [Doc. 273].

13. On October 24, 2016, the Court held a hearing on the proposed sale on First Financial's objection thereto. As reflected in the transcript from that hearing [Doc. 723], it was announced on the record that Prime had agreed to terms that resolved First Financial's objection to the proposed sale:

[First Financial and Prime] agreed that, that Prime post-sale will continue the weekly reporting and remittances with respect to First Financial's accounts consistent with the Debtors' current practice. Prime will provide remote access to the Debtors' STAR . . . Legacy system and, and Prime will produce itemized bills and associated documents from both the STAR and the Meditech Legacy systems . . . within 48 hours of the request from First Financial.

14. A few days later, the Court entered an order approving the sale of the Debtor's assets to Prime [Doc. 373] (the "**Sale Order**"). The Sale Order specifically provided that the Accounts were not included in the assets sold to Prime and that Prime would not be released from any future liability related to the Accounts:

Notwithstanding anything to the contrary in the Agreement or this Order [Prime] shall not obtain any right, title or interest in the accounts receivable (the "Purchased Receivables") sold by Debtors to First Financial . . . prior to the Petition Date or the proceeds thereof. [Prime] and First Financial shall work together to resolve issues regarding First Financial's access to the Debtors' books, records and legacy computer systems and the delivery of any funds [Prime] may receive on the Purchased Receivables. [Prime] and First Financial shall file a report with the Court by November 15, 2015 as to whether any issues remain between them. As provided in Paragraph 49 above, neither the Debtors nor any third party . . . shall be released from any past, current or future liability that such party may have to First Financial related to the Purchased Receivables.

(Sale Order at ¶56). Accordingly, Prime remains liable under the Sale Order for all liabilities related to any failure to remit any proceeds of the Accounts to First Financial.

15. Subsequently, Prime agreed that it would comply with its duties to First Financial under the Sale Order according to the following terms:

1. Prime will report and remit account collections to First Financial on a weekly basis, consistent with the Debtor's current practice;
2. Prime will grant First Financial remote access to the Debtor's legacy STAR system, consistent with current practice; and
3. Prime will produce itemized bills and associated documents from Debtor's legacy STAR and MEDITECH systems to First Financial within 48 hours of request.

Prime has since breached this agreement and is in contempt of the Sale Order.

16. Over the course of the last several months, Prime has failed to fulfill its duties by failing to provide First Financial with information related to the Accounts in a timely manner, and in some cases, at all.

17. Prime has asserted that it is no longer required to fulfill its duties to First Financial set forth above, but has provided no basis or authority to support that position.

18. Upon information and belief, Prime has received payments related to the Accounts but has failed to remit those payments to First Financial, as it is required to do.

RELIEF REQUESTED AND BASIS FOR RELIEF

19. First Financial seeks an order (i) compelling Prime to provide First Financial with an accounting of all amounts that Prime has received related to the Accounts and immediately remit all such amounts to First Financial; (ii) affirming that Prime is required to provide First Financial with information related to the Accounts within 48 hours of request; and (iii) awarding First Financial damages for Prime's contempt of the Sale Order and for its attorneys' fees and costs related to this bringing and prosecuting this motion.

20. It is beyond dispute that Prime has no right to any amounts related to collections on the Accounts and that all such amounts should rightfully be accounted for and turned over to First Financial pursuant to the Sale Order and Prime's agreements and obligations related thereto.

21. In addition, Prime is required to provide First Financial with information related to the Accounts upon request. This information is crucial to First Financial's ability to collect on the Accounts. First Financial must be able to accurately verify any debts that it is working to collect, and must have access to the books and records that substantiate those debts, which are now in the possession of Prime following the sale of the Debtor's assets.

22. Without access to that information, First Financial cannot faithfully comply with its legal duties as a debt collector and cannot make good-faith collection efforts. In essence, Prime's failure to provide First Financial with information brings First Financial's collection efforts on certain Accounts to a screeching halt and effectively renders those Accounts worthless.

23. The Court should enforce the Sale Order and require Prime to comply with its duties. It is undisputed that a bankruptcy court has "jurisdiction to interpret and enforce its own prior orders." *Alderwoods Grp., Inc. v. Garcia*, 682 F.3d 958, 967 (11th Cir. 2012) (quoting *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 146, 129 S. Ct. 2195, 2202 (2009)). In addition, the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a). Accordingly, the Court has the jurisdiction and authority to grant the relief requested herein.

24. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper pursuant to 28 U.S.C. § 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

CONCLUSION

WHEREFORE, First Financial prays that this Court enforce the Sale Order and enter a further appropriate order requiring Prime to (i) provide an accounting of all amounts owed to First Financial and remit all such amounts instanter, (ii) provide First Financial with all requested books and records related to the Accounts within 48 hours of each such request, (iii) compensate First Financial for its damages from Prime's contempt and award attorneys' fees and costs, and (iv) grant such other relief as is just and proper.

Dated: September 5, 2019.

ROUNTREE LEITMAN & KLEIN, LLC

/s/ Benjamin R. Keck

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CERTIFICATE OF SERVICE

I certify that on September 5, 2019, I filed the foregoing pleading using the Court's CM/ECF system, which will automatically serve notice of the filing and a link to the document to all parties registered to receive notices in this case, and I caused copies to be served on the following by United States Mail, first-class postage prepaid:

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Dated: September 5, 2019.

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