UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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| IN RE: | Chapter 11 |
| | Case No. 24-11217(BLS) |
| VYAIRE MEDICAL, INC., et al, | |
| | 824 Market Street |
| | Wilmington, Delaware 19801 |
| Debtors. | |
| | Monday, August 26, 2024 |

TRANSCRIPT OF HEARING RE:
MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I) APPROVING BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (II) AUTHORIZING THE DEBTORS TO ENTER INTO A STALKING HORSE AGREEMENT AND PROVIDE BID PROTECTIONS, (III) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (IV) SCHEDULING AN AUCTION AND SALE HEARING, (V) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS, (VI) APPROVING THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR, AND (VII) GRANTING RELATED RELIEF
BEFORE THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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(Appearances Continued)

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(Proceedings commence at 10:19 a.m.)

(Call to order of the Court)

THE COURT: Please be seated.

Good morning.

MR. REILLEY: Good morning, Your Honor. Patrick Reilley from Cole Schotz on behalf of the debtors. Your Honor, I'm joined at counsel's table by my co-counsel from Kirkland & Ellis. With me is Spencer Winters and Chris Ceresa.

THE COURT: Very good.

MR. REILLEY: Your Honor, turning to the agenda, the only item scheduled is the debtors' sale motion. If I may, I'd like to cede the podium to Mr. Winters to provide the Court really a status update today.

THE COURT: Sure. That sounds great.

MR. REILLEY: Thank you, Your Honor.

THE COURT: Mr. Winters, good morning. Welcome.

MR. WINTERS: Good morning, Your Honor. Spencer Winters of Kirkland & Ellis, LLP on behalf of the debtors.

THE COURT: Are congratulations in order?

MR. WINTERS: That's right, Your Honor. I had our first baby right before the first-day hearing.

THE COURT: Atta boy. Mazel Tov.

MR. WINTERS: And she's now about as old as these Chapter 11 cases.

THE COURT: Congratulations.

MR. WINTERS: And it has been a while since we were here, Your Honor; that was early June. So, while it's been relatively quiet on the docket, there's been a ton of work going on outside the courtroom, primarily on the marketing process front.

And to that end, I have sort of a mix of good news and bad news. I think the good news greatly outweighs the bad news and the bad news is probably resolvable with a little bit extra time, so we can get to that.

THE COURT: Sure.

MR. WINTERS: But the good news is that we have achieved our goal of signing up a going concern sale for each of the debtors' two divisions to third-party bidders in each case. That took longer than we wanted. We wanted to get stalking horse bids and we didn't.

The prices are, frankly, lower than what we wanted, but it provides a path to preserve the business. It provides the path to repay all of the new money DIP loans and a portion of the roll-up loan. And it provides a path to confirm a liquidating Chapter 11 plan after we get that done.

The bad news is that, as of the start of this hearing, the debtors, the lenders, and the UCC are not signed off on the application of the proceeds of those sales.

In particular, the lenders would like to receive a pay-down on their DIP loans from the proceeds of the sale. From the outset of these cases, we've agreed to propose that pay-down to the Court, subject to agreeing to a holdback reserve that we can use to get a Chapter 11 plan confirmed and implemented. And as of right now, the debtors and the lenders don't have agreement on that holdback reserve amount. The UCC is also not in agreement.

So I think today is going to end up being a status conference. We're going to request a short adjournment to see if we can reach resolution with both parties.

THE COURT: Okay.

MR. WINTERS: We can talk about how long that adjournment should be. From my perspective, the shorter the better, but --

THE COURT: It does focus the mind, doesn't it?

MR. WINTERS: Yes, exactly.

But before we do that, I figured I'd give the Court just a little more context --

THE COURT: Sure.

MR. WINTERS: -- on where we are, since it's been a while and it's probably worth making sure you've got the full picture.

So, when we were first here at the first-day hearing, we were in the midst of the marketing process for both divisions. We didn't have a stalking horse signed up for either, but we were hoping to get going concern sales done and a liquidating plan done. We've fought every day for that outcome, which has been, by no means, assured any step of the way. So it's, you know, great news, as I mentioned at the outset, that we managed to get these two bidders signed up. It was very, very difficult.

No one, as I said, is pleased with the price. The debtors, as you'll recall, have an expected 40 million of new money DIP loans that will be outstanding at the close of the sale, plus 135 million of roll-up DIP loans. And in the bid procedures, there was a one-hundred-and-forty-million-dollar aggregate minimum bid, and we viewed that at the time as sort of a bare minimum.

But as the marketing process progressed, it turned out that that was more like an aspirational number. And indeed, going into the auction the week before last, it was going to be difficult to even repay the new money portion of the DIP with what we had in hand. After a very successful auction on the vent side that went for three days, we are now out of the woods on that front.

THE COURT: Mr. Winters, a three-day auction is part of the reason I took a pay cut, typically only associated with --

MR. WINTERS: Exactly.

THE COURT: -- prolonged incarceration.

MR. WINTERS: Exactly, Your Honor.

(Laughter)

MR. WINTERS: And I think everyone felt like it was prolonged incarceration on all sides.

The aggregate price, Your Honor, coming out of that auction at which both divisions is being sold together is 90.5 million in cash, which, again, is far short of our aspirations.

Otherwise, though, these transactions are a resounding success. Both businesses are being sold as a going concern to separate strategic buyers, hundreds of jobs will be saved, contracts will be assumed, vendors and customer relationship will continue. Multiple crucial lines of medical devices, including ventilators and associated consumables used in neonatal units across the country, will be preserved.

In connection with the closing of the two sales, we were and continue to plan to propose a pay-down of the new money portion of the DIP and a modest, modest distribution on the roll-up loans. We also agreed to reduce the commitment on the DIP loans from 45 million to 40 million because we think we can get it done in forty.

A key part of that whole bargain, though, is a holdback reserve that will be used to fund a wind-down budget, administrative and priority claims, and claims at nondebtor international subsidiaries that are necessary to actually effectuate the sale. This holdback reserve is critical for several reasons:

For one, both buyers need the left-behind estates to provide them a transition services agreement for a period of months. There's no deal without a TSA that the estates provide to both buyers. And we need a plan and plan administrator to provide that TSA. So the buyers require a liquidating plan. Of course, even if they didn't, it was our desire and goal to achieve a liquidating plan, and that continues to be our desire and goal. But you really can't get the sales done without it.

The international subsidiaries, as I mentioned, have also been a significant challenge here. Many of the critical assets here sit at international subsidiaries that are not on the DIP, they're not on the funded debt, and they have their own non-debt liabilities, and we're selling assets out of those entities. And we can't do that without covering the liabilities of those entities and certain other international liabilities required to be paid by applicable law. So all of that is in the holdback: Wind-down budget, admin and priority claims, and international claims.

Just a brief word about the successful bids. On the vent side, the winning bidder is ZOLL Medical, another medical device maker. The purchase price is 37 million plus cash and assumption of a variety of liabilities. That transaction is expected to close in about five to six weeks.

On the RDX side, the winning bid is Trudell Medical, a Canadian company focused on respiratory health. That purchase price is 53.5 million in total, plus assumption of various liabilities. That transaction has an eight-million-dollar purchase price holdback that's held back from the fifty-three and a half for 20 business days and is subject to adjustments based on the amount of certain assumed liabilities. That transaction is expected to close after the vent sale in approximately 8 to 10 weeks.

So, as I mentioned, Judge, the sticking point is the application of proceeds and, in particular, this holdback amount. I think we are close. We have whittled that holdback down -- holdback amount down to at or near our breaking point, in terms of what's going to work --

THE COURT: Uh-huh.

MR. WINTERS: -- but I think we're close.

The committee has not had the benefit of time to go through it with us in detail because we haven't managed to agree to it with the secured lenders.

Personally, I think, if you have any time this afternoon, that trying to keep people here, go through the wind-down budget with the committee and try to agree to it with the secured lenders, keep the time pressure on, that would be my suggestion, if the Court is available; if not, your soonest availability, I suppose.

THE COURT: I would be able to find time probably at 3:30 this afternoon. And again, I know I haven't heard from anyone else, and so I'm not locked into any particular path or timing. But I don't disagree with you that at least knowing whether I'm available is pretty key to this, and I would prefer to keep that focus on.

If it were tomorrow, it would be tricky, but I could accommodate. If it goes further than that -- and I am traveling on Wednesday and Thursday -- I'd be available on Friday. So, if we can do this this afternoon, then you have a willing party in that --

MR. WINTERS: Thank you, Your Honor.

THE COURT: -- but at least in terms of timing.

MR. WINTERS: I think that the committee and the lenders will be amenable to that, but I will -- and I think that that's the right call under the circumstances, but I will let them speak for themselves.

THE COURT: Let me hear from the committee, please. Ms. Kandestin, good to see you.

MR. KANDESTIN: Good to see you, Your Honor. For the record, Maris Kandestin of McDermott, Will & Emory on behalf of the committee.

Your Honor, we agree that the committee needs some time to, you know, be involved in the discussion; thus far, we have not been. We received the proposed wind-down budget yesterday --

THE COURT: Okay.

MR. KANDESTIN: -- and we have not discussed it with the debtors, I believe.

And you know, we're in support of even adjourning the hearing. I'm not sure we'll get there in this amount of time, but we have until 3:30, but we'll certainly do our best.

THE COURT: Okay. Very good.

Can I hear from the lender?

MR. GOLDSTEIN: Good morning, Your Honor. Jason Goldstein from Gibson Dunn on behalf of the ad hoc group and DIP lenders.

THE COURT: Good to see you.

MR. GOLDSTEIN: Good to see you, as well, Your Honor. Thank you for the time this morning.

I thought Mr. Winters' presentation was very fair, it's an accurate description of where we are. It's also an accurate description of the result here. Unfortunately, our minimum bid construct, which was carefully negotiated, proved to be aspirational. It is not the best result, particularly for my clients. We understand the desire to consummate, using the sale proceeds in a way that balances a pay-down with what the estate needs on the back end.

Something that Mr. Winters didn't get into is, in order to go forward on the auction -- and the auction did bring some incremental value -- the secured lenders and the debtors reached an agreement which was consummated in writing about the way the value would be split. And the important part of that agreement was the secured lenders recognized that the debtors would need some amounts for a holdback to help wind down the estate and set up a TSA, and we were absolutely willing to accommodate that.

So, without getting into the numbers -- and I understand that no one has this in front of them, but just to give you some context, there was an agreement on those numbers, and that's all that the DIP lenders are asking, that the debtors hold to that agreement. And to Mr. Winters' point, I think we are very close, it's a small delta. I understand the committee needs time to review that, we are not trying to jam anyone. We're just looking to accomplish the agreement that we reached in order to go forward with that auction, given the sort of disappointing bids that came in.

THE COURT: I understand.

MR. GOLDSTEIN: Appreciate it, Your Honor.

THE COURT: Thank you, Mr. Goldstein.

MR. GOLDSTEIN: Thank you.

THE COURT: Does anyone else wish to be heard with respect to the request for an adjournment to this afternoon?

(No verbal response)

THE COURT: Okay. Here's what we'll do. I -- so I guess -- Mr. Winters, I guess I want to horse-trade with you a little bit. I can give you until -- well, I can reconvene at 3:30. I could also reconvene briefly at 1:30, if you thought that you'd be in that kind of a range. If that doesn't make any sense, I'm not like asking people to shlep back over here to tell me you're still talking. So I'm really at your pleasure. I do have a commitment that would require me to leave at 5.

But I don't think you're talking, in any event, about a very long hearing. You're either going to report that we have a deal or there's going to be some -- it's not an evidentiary dispute or anything like that. I think that's sort of where we are on the bid and ask. Is that fair?

MR. WINTERS: Yeah, I agree with all of that, Your Honor. I would say let's try for 1:30.

THE COURT: I'm sorry. Hang on. I actually misspoke.

MR. WINTERS: If not, 3:30 works, as well.

THE COURT: Yeah, let's do 3:30. I have commitments at 1:30 and 2:30. I was going to give you 1, but I think that that's probably -- you guys are all headed back to --

MR. WINTERS: Yeah.

THE COURT: -- offices. Why don't we -- let's just do 3:30.

MR. WINTERS: Sounds good.

THE COURT: And I'll look for guidance from the parties and if you can keep chambers advised.

There are, obviously, a number of folks here for cure objections and other issues and, again, I appreciate the debtor communicating with those folks. And it sounds like those issues are either resolved or they'll be carried. So we boiled it down to just sort of what's happening to the money.

The sale itself, again, I carefully read the lenders' submission, as well as the committee's most recent submission. There's nobody that's actually challenging the sale. I understand the disappointment with the results, but the market is what it is. And the discussion sounds like it should proceed and, hopefully, this will be enough time for the parties to close that loop.

So, with that, why don't we adjourn? I will see the parties back here at 3:30. My chambers is -- or my courtroom is being used for the Chapter 13 calendar today, so that's why we're down here. But with that, go forth and negotiate.

MR. WINTERS: Thank you, Your Honor. Appreciate it.

THE COURT: All right. We stand in recess. Thank you.

(Proceedings adjourned to 8/26/24 at 3:30 p.m.)

(Concluded at 10:33 a.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

________________________________ September 3, 2024

Coleen Rand, AAERT Cert. No. 341

Certified Court Transcriptionist

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