



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

STEWARD HEALTH CARE SYSTEM)
LLC, *et al.*,)

Plaintiffs and Counter-)
Defendants,)

v.)

TENET BUSINESS SERVICES)
CORPORATION, *et al.*,)

Defendants and Counter-)
Claimants.)

C.A. No. 2022-0289-SG

PUBLIC VERSION
FILED SEPT. 8, 2023

**DEFENDANTS/COUNTER-CLAIMANTS’ MOTION FOR FINAL
JUDGMENT ON ALL COUNTS RESPECTING THE DPP
DISTRIBUTIONS**

Defendants/Counter-Claimants (collectively, “Sellers”), by and through their undersigned counsel, hereby move pursuant to Court of Chancery Rule 54(b) for entry of partial final judgment on Counts I, II, and VII of their Amended and Supplemental Verified Counterclaims (“Amended Counterclaims”) respecting the DPP Distributions¹ and on all Counts of Plaintiffs/Counter-Defendants’ (collectively, “Buyers” or “Steward”) Verified Complaint (“Complaint”) respecting the DPP Distributions (collectively, the “DPP Claims”):

¹ Capitalized terms not defined have the meanings provided in the Court’s Order.

1. On August 18, 2023, the Court ruled in Sellers' favor on the DPP Claims (the "Order"). To ensure Sellers actually (and finally) collect the DPP Distributions they are entitled to under the Order, Sellers move under Rule 54(b) for entry of final judgment on the DPP Claims. This relief is both appropriate and necessary based on Steward's transparent use of this Court's litigation process to delay payment and the substantial risk that any further delay in entry of judgment will materially impair Sellers' ability to collect on their judgment.

2. As the Court's Order confirms, Steward's "post-Closing conduct ... clearly demonstrates that, immediately following the Closing, *Buyers adopted and acted in accordance with Sellers' interpretation*" that *Sellers* were entitled to over \$27 million in pro-rated DPP Distributions. Order at 29 (emphasis added).

3. Steward changed its position in February 2022 when [REDACTED] [REDACTED] Dkt. 165, Defs.' Suppl. Cross-Mot. For Summ. J. at 25-29. When Sellers began requesting their pro-rata share of the DPP payments, Steward went silent while it hatched its legal strategy to collect and keep all DPP payments. *Id.* at 27-31. This effort involved Steward's highest-ranking officers. Steward's CEO, Ralph de la Torre texted Steward's then-President, Sanjay Shetty, insisting that Dr. Shetty personally collect all the DPP payments— [REDACTED]

[REDACTED] *Id.* at 27. To induce the payors to deliver the DPP payments to Steward

(instead of Sellers), Dr. Shetty signed releases and promised that Steward would “work directly with Tenet on any reconciliation of the payments.” *Id.* at 27-28.

4. Steward never worked with Sellers. Instead, Steward kept all the DPP payments and used them to [REDACTED]

[REDACTED] Ex. 1, de la Torre Tr. at 165:18-25. As Steward’s then-CFO Chris Dunleavy remarked, [REDACTED]

[REDACTED] Dkt. 165, Defs.’ Suppl. Cross-Mot. For

Summ. J. at 28.

5. The following month, in March 2022, Steward implemented its made-for-litigation interpretation of Section 8.22 and sued Sellers, claiming it was entitled to all the DPP Distributions that Steward had spent at least six months admitting it owed to Sellers. In its Complaint, Steward disingenuously asserted that “Sellers have contrived and advanced” a “bad faith interpretation of the DPP Distribution provision” in “an attempt to secure a windfall.” Dkt. 1, Pls.’ Verified Compl. ¶¶ 83-84; *see also* Dkt. 33, Pls.’ Br. in Supp. of Mot. For Summ. J. at 24 (accusing Sellers of a “bad faith interpretation[]” of Section 8.22).

6. This was not a new strategy for Steward. One news outlet recently reported on Steward’s widely known “reputation of blowing off its bills” and attempting “to intimidate those to whom it owed money by preemptively suing

them.” Ex. 2, *Quackonomics*, THE AMERICAN PROSPECT (May 23, 2023) at 9. The article reported that Steward has deployed this bad faith litigation tactic, not only in this case, but also against the commonwealth of Massachusetts, a nurse staffing agency, a kidney dialysis firm, and power companies. *Id.* at 9-10.

7. While the Order resolves the DPP Claims and puts an end to this charade in this Court, Steward’s “litigation-for-delay” strategy has allowed it to delay payment of over \$27 million for over a year-and-a-half. As if this delay were not injustice enough, Steward now seeks to extend it by indefinitely avoiding a final judgment on the DPP Claims.

8. Steward’s tactics in this case, and in similar cases throughout the country, shine a spotlight on the credit risk Sellers face and demand the entry of a partial final judgment to avoid the Court’s Order from being rendered illusory by the passage of time. Indeed, the urgency of securing a final judgment and security (or immediately beginning collection proceedings) grows more acute as news of Steward’s failures to pay its debts, including to breast milk banks and medical residents, continues to be reported publicly, as described in more detail below.

BACKGROUND

9. The background on the parties’ DPP dispute is summarized in the Court’s August 1, 2022 and the August 18, 2023 memorandum opinions.

10. Since it filed its complaint on March 25, 2022, Steward has consistently represented that DPP is the “heart” of this case and the “only real dispute” that is “leading the issues.”²

11. During oral argument on the parties’ Cross-Motions for Summary Judgment on July 12, 2022, the Court observed that “the merits argument[s]” on the Cross-Motions “is going to turn on the DPP issue.” Ex. 4, July 12, 2022 Hr’g Tr. at 6:9-18.

12. On August 1, 2022, the Court reserved decision on the Cross-Motions for Summary Judgment, but again recognized the primacy of the DPP Dispute: “Although several payment provisions are at issue, the bulk of the parties’ dispute concerns the allocation of distributions under the DPP.” *Steward Health Care Sys. LLC v. Tenet Bus. Servs. Corp.*, 2022 WL 3025587, at *3 (Del. Ch. Aug. 1, 2022);

² Dkt. 58, Ex. 1, Apr. 17, 2022 Hr’g Tr. at 6:14-21 (“The specific problem that seems to be leading the issues in which the parties dispute is the Florida Direct Payment Program.”); Ex. 3, May 13, 2022 Hr’g Tr. at 38:20-24, *Steward Health Care Sys., LLC v. Conifer Revenue Cycle Sols., LLC*, No. DC-22-03472 (Dallas Cnty. Dist. Ct., 134th Jud. Dist.) (“The determination of [this case] will likely create significant clarity as to the obligations between all of these parties on the DPP obligations that is a bedrock of their claims for underpayment.”); Ex. 4, July 12, 2022 Hr’g Tr., at 10:11-15 (“[T]he DPP provision Section 8.22 is the heart of this dispute. It has the largest impact by far and determines whether it is the Buyers or the Sellers that are the net debtor”); Ex. 5, Dec. 20, 2022 Hr’g Tr. at 14:24-15:1, *Tenet Bus. Servs. Corp. v. Steward Health Care Sys. LLC*, C.A. No. 2022-0774 (Del. Ch.), Dkt. 60 (“DPP ... is the only real dispute in this case.”).

see also Ex. 6, Nov. 29, 2022 Status Hr’g Tr. at 13:20-14:8 (“[A]s I see [the DPP] matter, and particularly as it was represented by both sides in connection with the summary judgment cross-motions, I think [DPP] needs to be resolved ... and then much of this case—not all of it, but much of it—may be resolved in that regard.”).

13. For this reason, the Court ordered targeted, expedited discovery on the DPP issue, and set a supplemental briefing schedule. That discovery revealed three key facts: (i) Steward “adopted and acted in accordance with Sellers’ interpretation” of Section 8.22 for six months after signing the APA; (ii) Steward was [REDACTED] and (iii) to address that [REDACTED] Steward manufactured a made-for-litigation interpretation of Section 8.22 that Steward used to withhold the DPP Distributions from Sellers. Order at 29; *see also* Dkt. 165, Defs.’ Suppl. Cross-Mot. For Summ. J. at 11-29 (collecting myriad examples).

14. In a memorandum opinion dated August 18, 2023, the Court agreed with Sellers’ DPP interpretation and granted Sellers’ Motion for Summary Judgment “[w]ith respect to the allocation of DPP Distributions.” Order at 31. That “results in about 80%”—or 10/12ths—“of payments relating to the CPY belonging to Sellers.” *Id.* at 20.

15. In total, Steward owes Sellers \$27,702,819.13 in DPP Distributions. Dkt. 43, Defs.’ Ans. Br. In Opp’n To Pls.’ Mot. For Summ. J. at 36. Steward has

never disputed Sellers' calculation of the total amount of DPP Distributions owed to Sellers, including after this Court reported the amount in its August 1, 2022 Memorandum Opinion. *Steward*, 2022 WL 3025587, at *11.

16. On August 23, 2023, Sellers' counsel sent Steward's counsel a proposed order for final judgment as the Court requested. On August 28, Steward's counsel opposed the proposed order by phone call.

17. Despite Steward's prior representations that resolution of the DPP Claims would resolve the parties' other disputes, Steward now opposes final judgment and further refuses to pay the undisputed and unpaid TSA fees and the Net Working Capital Award (or the funds securing those debts in escrow) that it withheld on the basis of alleged payment offsets that do not exist now that Steward lost on the DPP Claims. Steward's position is the latest page in its "litigation-to-delay-payment" playbook.

18. Sellers thus move under Court of Chancery Rule 54(b) for partial final judgment on the Court's DPP ruling.

ARGUMENT

19. To enter partial final judgment under Rule 54(b), "the court must find that (1) the action involves multiple claims or parties, (2) at least one claim or the rights and liabilities of at least one party has been finally decided, and (3) that there is no just reason for delaying an appeal." *Opportunity Partners L.P. v Hill Int'l, Inc.*,

2015 WL 3765353, at *2 (Del. Ch. June 16, 2015), *aff'd*, 119 A.3d 30 (Del. 2015).

Where, as here, an order “effectively resolve[s] the parties’ central dispute[,]” the criteria for Rule 54(b) certification are met. *Hill Int’l, Inc. v. Opportunity Partners L.P.*, 119 A.3d 30, 37 (Del. 2015).

20. The first two elements are met because both parties cross-moved for summary judgment on the DPP Claims and the Court finally resolved those claims in the Order.

21. The third element is satisfied because there is “no just reason for delay.” To the contrary, there is significant urgency to this Motion given the substantial risk that the passage of time will prevent Sellers from collecting the over \$27 million in DPP Distributions they are owed because of Steward’s credit profile and insolvency risk.

22. As an initial matter, there is no overlap between the DPP Claims and the remainder of the parties’ disputes: AAPP, TSA (separate agreement), Huntington Lease, Excluded Patient Accounts Receivable, Sellers’ fees and expenses based on the contractual prevailing party provision. As this Court has recognized, its Order “entail[s] resolution of a dispute over *discrete* contractual language.” Order at 1 (emphasis added). As a result, there is no “possibility of making an appellate Court review the facts and issues” related to the DPP Claims “more than once.” *Republic Env’t Sys., Inc. v. RESI Acquisition (Del.) Corp.*, 1999

WL 464521, at *6 (Del. Super. Ct. May 28, 1999). Indeed, the parties themselves have long treated the DPP Claims as a standalone issue. *See supra* ¶¶ 10-13.

23. Moreover, the near-term risk that Steward will become insolvent necessitates an immediate judgment and collection (or, at a minimum, security) so as to not render the Court’s judgment illusory. *Republic Env’t Sys.*, 1999 WL 464521, at *7 (evidence that judgment debtor “appears to be experiencing financial difficulties, and potential insolvency *may* be a concern” “weigh[s] in favor of granting final judgment”) (emphasis original); *Curtiss-Wright Corp v. Gen. Elec. Co.*, 446 U.S. 1, 12 (1980) (“[I]f [defendant’s] financial position were such that a delay in the entry of judgment on [plaintiff’s] claims would impair [plaintiff’s] ability to collect on the judgment, that would weigh in favor of certification.”); *Pereira v. Cogan*, 275 B.R. 472, 474 (S.D.N.Y. 2002) (“Courts have frequently found no just reason for delay, and entered a Rule 54(b) judgment, when the judgment debtor is insolvent or may become insolvent before the conclusion of judicial proceedings.”).

24. Steward’s insolvency risk is supported by at least the following six points.

25. **First**, this Court has already recognized Steward’s credit risk in requiring security to support an injunction. *Steward*, 2022 WL 3025587, at *7.

26. *Second*, subsequent to that ruling, Sellers discovered evidence that Steward (i) [REDACTED] (ii) [REDACTED] (iii) recognized that [REDACTED] [REDACTED] (iv) admitted that paying Sellers the DPP Distributions represented an [REDACTED] (v) admitted that Steward [REDACTED] [REDACTED] and (vi) filed an extreme “financial hardship” application with CMS to delay repaying approximately [REDACTED] in federal loans. Dkt. 165, Defs.’ Suppl. Cross-Mot. For Summ. J. at 25-29, 38-39.

27. *Third*, Steward [REDACTED] [REDACTED] Ex. 7, Dunleavy Tr. 105:11-106:12 (emphasis added). Those financial statements were “required by Steward’s private lenders as part of an agreement to extend the maturity of [Steward’s] ABL/credit facility by one year from 9/30/22 to 9/30/23.” Ex. 8, *Medical Properties Trust Inc.: Steward Lender Update and FY21 Financials*, BARCLAYS (Dec. 16, 2022) at 1. While the delay itself is concerning, what is more concerning is that Steward recorded the \$27.7 million in DPP Distributions it withheld from Sellers [REDACTED] [REDACTED]

Ex. 1, de la Torre Tr. at 114:9-13; Ex. 9, 2021 Financial Statements (reporting [REDACTED] [REDACTED] (excerpt).

28. **Fourth**, Steward ended 2022 with just [REDACTED] of cash on its cash flow statement, [REDACTED] in 2020 and nearly [REDACTED] in 2021. Ex. 10, 2022 Financial Statements (excerpt). Had Steward not wrongfully withheld the \$27.7 million in DPP Distributions and the \$20.3 million in Net Working Capital, Steward's cash position at the end of 2022 would have been even more precarious.

29. **Fifth**, Steward's credit profile has not improved since the parties completed discovery. Indeed, news of Steward's failures to pay its debts continues to be reported publicly.³ As a result, vendors throughout the country have filed lawsuits against Steward to collect for services provided to Steward hospitals. Ex. 13, *The Great American Hospital Shell Game*, THE AMERICAN PROSPECT (Aug. 10, 2023).

30. In one extreme example, Steward entered into a forbearance agreement with a security service provider in May 2023. Two months later, in July 2023,

³ See e.g., Ex. 11, *Less about people and more about profits: Investors' role in next week's closure of San Antonio hospital under scrutiny*, CBS NEWS (Apr. 25, 2023); see also Ex. 12, *Hospital owner accused of stiffing medical residents at former Southwest General in San Antonio*, SAN ANTONIO EXPRESS-NEWS ONLINE (Apr. 27, 2023).

Steward defaulted on the forbearance agreement. Ex. 14, *Steward Health Care sued by security firm that says it's owed \$8M*, BOSTON BUS. J. (July 27, 2023).

31. **Sixth**, it has been reported that Steward may be siphoning off assets to its landlord/lead creditor, and substantial equity holder, MPT.⁴ Ex. 16, *Hospital Tenants of Medical Properties Trust Hire Advisers for Refinancings*, WALL STREET J. (May 12, 2023) (“MPT has supported Steward and Prospect through loans to the hospital systems, and both have recently sold some of their hospitals to raise funds to repay debt.”). At the same time that Steward was “paying back” MPT, it also took on additional debt from MPT. According to analysts, the fact that MPT, a substantial equity holder and landlord to Steward, needed to take on a large share of Steward’s credit facility raises “additional questions ... concerning Steward’s liquidity profile[.]” Ex. 17, *First Look: 2Q FFO Above Street, Color on Implied 2H Outlook in New '23 FFO Guidance*, BARCLAYS (Aug. 8, 2023) at 1.

32. Even beyond its solvency risk, Steward’s litigation behavior warrants immediate final judgment. Steward used its DPP claims to justify withholding payment on other undisputed amounts Steward owes Sellers, including services fees

⁴ The Department of Justice recently instituted a fraudulent transfer lawsuit against another MPT hospital, alleging that MPT used the hospitals as a piggy-bank, siphoning cash even as the hospitals tumbled into bankruptcy. Ex. 15, *Compl., United States v. Olympia Health Care LLC*, Case No. 2:23-CV-01783 (C.D. Cal. Mar. 9, 2023), Dkt. 1.

on the TSA and MSA and the Net Working Capital Award this Court confirmed. By doing so, Steward magnified the financial harm to Sellers from the DPP litigation, withholding over \$27 million in DPP *and* [REDACTED] more on the basis of alleged offsets that depended on Steward's position that Sellers owed Steward and not the other way around. Yet, now that the Court has ruled against Steward on DPP, Steward still refuses to pay Sellers for undisputed TSA fees or the already-confirmed Net Working Capital Award (for which Steward continues to pursue its appeal). Delaying final judgment would only reward Steward's bad faith litigation conduct.

33. Finally, without partial final judgment, Sellers have no prospect of timely payment or security. Steward has taken the position that so long as it has *any* unliquidated, disputed claims against Sellers, it need not pay any amounts due, including final, confirmed arbitration awards. Ex. 18, Appellees' Ans. Br., *Steward Health Care Sys. LLC v. Tenet Healthcare Corp.*, Case No. 181, 2023 (Del. Aug. 10, 2023) at 1-3, 24. Based on this position, Steward conceivably could delay payment of the DPP Distributions indefinitely by filing new claims against Sellers. This is not an empty risk given that Steward's tactics to date show that it will employ additional proceedings to delay judgment day and further harm Sellers' chances of rightful recovery. The Court should not reward Steward's bad faith litigation tactics.

CONCLUSION

For the foregoing reasons, Sellers respectfully request the Court enter final judgment on the DPP Claims and award Sellers \$27,702,819.13 along with pre- and post-judgment interest. In the alternative, this Court should require Buyers to fully secure these amounts.

MORRIS JAMES LLP

OF COUNSEL:

Timothy W. Knapp, P.C.
Brendan E. Ryan
Kent J. Hayden
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
(312) 862-2000

/s/ Lewis H. Lazarus
Lewis H. Lazarus (#2374)
K. Tyler O'Connell (#4514)
Albert J. Carroll (#5316)
Barnaby Grzaslewicz (#6037)
500 Delaware Avenue, Suite 1500
Wilmington, Delaware 19801
(302) 888-6800

Attorneys for Defendants and Counter-Claimants

Dated: August 31, 2023

Words: 3,000