



Dated: November 21, 2024
The following is SO ORDERED:


Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

In re:

EXPERTUS HEALTH, LLC,

Debtor.

Case No. 23-11673

Chapter 11

MEMORANDUM OPINION RE: (1) MOTION PURSUANT TO 11 U.S.C. § 506(A)(1) AND RULE 3012 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE TO DETERMINE THE SECURED STATUS OF THE JUDGMENT LIEN OF BLUECROSS BLUESHIELD OF TENNESSEE, INC. (ECF NO. 87) ; (2) OBJECTION OF BLUECROSS BLUESHIELD OF TENNESSEE, INC. THERETO (ECF NO. 92); AND (3) DEBTOR'S REPLY TO THE OBJECTION OF BLUECROSS BLUESHIELD OF TENNESSEE, INC. (ECF NO. 97)

At issue in this case is the value of real property in Linden, Tennessee, purchased by the debtor, Expertus Health, LLC ("Debtor"), in 2020. Debtor has filed a motion pursuant to 11 U.S.C. § 506(a)(1) ("§ 506 Motion") to determine the status of a judgment lien held by BlueCross BlueShield of Tennessee, Inc. ("BCBST") for the purpose of negotiating a sale of the property to Braden Health, LLC ("Braden Health"). Debtor asserts that liens with priority over BCBST's judgment lien exceed \$900,000.00 and the maximum current fair market value of the property is \$700,000.00. As such, Debtor argues that BCBST's claim is wholly unsecured. Debtor asks the Court to enter an order determining that BCBST's

judgment lien is void and that BCBST does not hold a claim against the bankruptcy estate within the meaning of 11 U.S.C. § 101(5).

BCBST filed an objection to the § 506 Motion on October 22, 2024. Debtor filed a reply to BCBST's objection on October 24, 2024. The Court conducted a hearing on Debtor's motion, BCBST's objection thereto, and Debtor's response to that objection on October 31, 2024. For the reasons that follow, the Court will grant Debtor's § 506 Motion in part and deny it in part.

JURISDICTION

This proceeding arises in a case referred to this Court by the Standing Order of Reference, Misc. Order No. 84-30 in the United States District Court for the Western District of Tennessee, Western and Eastern Divisions, and is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K) and (O). This Court has jurisdiction over core proceedings pursuant to 28 U.S.C. §§ 157(b)(1) and 1334 and, thus, may hear and enter a final order in this matter. This memorandum opinion and order shall serve as the Court's findings of facts and conclusions of law. Fed. R. Bankr. P. 7052.

FACTS

Debtor filed a chapter 11 petition for bankruptcy relief on December 20, 2023. Debtor is a single member Tennessee limited liability company. Jason Weil ("Weil") is Debtor's single member.

At the time of filing bankruptcy, the majority of Debtor's assets consisted of four tracts of real property and a commercial building in Linden, Tennessee: (1) a 38,722 square-foot commercial building and 6.8 acres of real property at 2718 Squirrel Hollow Drive; (2) 1.19 acres on Highway 13 South; (3) 3.3 acres on Airport Road; and (4) 9.6 acres on Highway 13 South (collectively, "Linden Property").¹ Debtor entered into an Asset Purchase Agreement with Nelandes Cole, NelMed Holdings, LLC, and Perry Community Hospital, LLC (collectively, "NelMed Entities") in 2020 to purchase the Linden Property for \$500,000.00. Prior to the sale, the NelMed Entities operated Perry Community Hospital on the first three parcels of the Linden Property (the Squirrel Hollow tract, the Airport Road tract, and the 3.3. acre tract). Debtor operated the hospital after its purchase of the property in 2020 until its closure in 2021.

Prior to finalization of the sale to Debtor, BCBST instituted arbitration proceedings against the NelMed Entities for breach of contract, unjust enrichment, negligent misrepresentation, and constructive

¹ Debtor's other assets consist of \$1,000.00 in office equipment and \$139,210.00 in medical equipment. (Schedule A/B, ECF No. 10-11.)

fraud. The arbitration panel issued a final award in favor of BCBST on May 12, 2022, and the Circuit Court of Hamilton County, Tennessee, confirmed the award and issued a final judgment on August 23, 2022, in the principal amount of \$5,009,386.37. BCBST recorded a copy of its judgment in the Register's Office of Perry County, Tennessee, on October 4, 2022.

On March 22, 2024, Debtor filed an adversary proceeding against several entities seeking, in part, a declaratory judgment that various liens against the Linden Property, including those held by BCBST, never attached to the property and are void. (Adv. Proc. No. 24-5010).² That adversary proceeding is in the pre-trial stage and is still pending at this time.

Debtor filed its § 506 Motion on September 27, 2024. As stated *supra*, Debtor asked the Court to determine the value of the Linden Property in order to negotiate a sale thereof to Braden Health. Based on an appraisal obtained by Braden Health in March 2024, Debtor argued that there is no equity in the property to support BCBST's judgment lien. Debtor also asserted that BCBST does not have a claim against Debtor, but potentially only an *in rem* lien on the Linden property.

Debtor attached two exhibits to its § 506 Motion: (1) a portion of a March 2024 appraisal report prepared for Braden Health and (2) a July 2024 mold remediation estimate for the hospital building on the Linden Property. The appraisal states that the property located at 2718 Squirrel Hollow Drive in Linden consists of the hospital building and "three parcels [of real property] that total 11.32 acres."³ (Appraisal, ECF No. 87-1 at 3.) It also states that the three parcels of land and the hospital building have a fair market value of between \$580,000.00 and \$700,000.00 in their "as is" condition. (*Id.* at 4.) The remediation estimate states that remediating the mold from the hospital building will cost \$1,084,216.00. (Remediation Estimate, ECF No. 87-2 at 1.)

BCBST filed an objection to the § 506 Motion on October 22, 2024. BCBST argued first that Debtor and/or Weil have an obligation to pay BCBST based on an asset purchase agreement executed in 2020. Second, BCBST argued that Debtor's motion was premature because a valuation hearing under § 506(a)(1) must take place "in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest." (BCBST Obj. to § 506 Motion, ECF No. 92 at 5 (quoting 11 U.S.C. § 506(a)(1)).) BCBST asserted that, at the time of filing its objection, no motion to sell the property was

² Debtor's argument in the adversary proceeding is based on the allegation that the deed transferring the Linden Property from the NelMed Entities to Debtor was effective as of December 2, 2021. Because the liens at issue in the adversary were recorded after that date, Debtor asserts that they did not attach to the Linden Property.

³ The appraisal summary does not specify what tracts of the Linden Property make up the 11.32 acres included in the valuation; however, in the motion to sell filed on October 23, 2024, Debtor states that the 9.6 acre tract was not included in the valuation. (*See* Mot. To Sell, ECF No. 95.)

pending and, thus, the issue of value under § 506(a)(1) was not ripe for decision. Third, BCBST argued that the sale to Braden Health will principally benefit Weil and that various issues during the sale of the Linden Property to Debtor make the transactions at issue in this case suspect. In making this argument, BCBST noted that a proposed sale of the Linden Property to Braden Health did not include the 9.6 acre tract on Highway 13 South. Thus, BCBST argued that allowing Debtor to strip the lien on that parcel would unfairly benefit Debtor.

On October 23, 2024, Debtor filed a motion to sell part of the Linden Property to Braden Health for \$500,000.00 pursuant to 11 U.S.C. § 363(b)(1) and (f) (“Sale Motion”). Debtor seeks to sell three tracts of the property to Braden Health: (1) the hospital building and 6.8 acres at 2718 Squirrel Hollow Drive; (2) the 1.19 acre tract on Highway 13 South; and (3) the 3.3 acre tract on Airport Road (collectively, “PCH Property”). (Sale Motion, ECF No. 95 at 1.) As noted by BCBST in its objection to the § 506 Motion, the 9.6 acre tract on Highway 13 South is not included in the proposed sale.

Pursuant to the Sale Motion,

Braden Health, LLC has agreed to negotiate with the holders and satisfy all liens against the Hospital Real Property and the Excluded Property, including consensual liens, judgment liens and real and personal property ad valorem taxes. Provided, however, that should Braden Health be unable to negotiate a reasonable agreement with any holder of an interest in the property in its sole and absolute discretion, it reserves the right to withdraw its offer to purchase the described assets.

(Sale Motion, ECF No. 95 at 4.) Debtor states in the motion that it will use the proceeds from the sale to fund implementation of a plan of reorganization that it was filing simultaneously with the Sale Motion. To date, Debtor has not filed a plan.

Debtor filed a reply to BCBST’s objection on October 24, 2024, in which it asserted that (1) the Sale Motion had been filed and was set for a hearing on December 5, 2024.⁴ Thus, the issue of value under § 506(a)(1) was properly before the Court; (2) BCBST’s argument that Debtor and/or Weil have any obligation to it are without merit; and (3) the Sale Motion “clearly states that proceeds from the sale will be used to satisfy the claims of the debtor and return any excess funds to equity holders of the Debtor. Contrary to BCBST’s assertion, . . . the proceeds from the sale will be escrowed pending confirmation of a plan of reorganization and further orders of the court.” (Reply to BCBST’s Obj. to § 506 Motion, ECF No. 97 at 4.)

⁴ Due to the availability of counsel, the Court reset the hearing on the Sale Motion to December 4, 2024.

On October 30, 2024, Debtor, Braden Health, LLC (“Braden Health”), McKesson Medical-Surgical, Inc. (“McKesson”), and BCBST filed a joint stipulation of undisputed facts, whereby they agreed to the following:

In order of priority and amounts of the ad valorem property taxes, consensual liens and judgment liens against the subject property are:

1. Ad valorem city and county real property taxes for 2023.
2. Ad valorem city and county real property taxes for 2024 that are unassessed but accruing.⁵
3. Consensual lien in favor of Stephen L. Averett recorded March 1, 2021, and of record in Trust Deed Book 136, pages 558-566 in the Register’s Office of Perry County Tennessee. [Claim No. 5]. This claim and associated promissory note and trust deed has been assigned to NCE Enterprises LTD. Liability Company [Docket No 82]. The claim amount is \$89,070.17 plus accruing interest.
4. Judgment lien in favor of McKesson Medical-Surgical, Inc. recorded February 10, 2022, and of record in Book M19, Page 437 in the Register’s Office of Perry County, Tennessee. The judgment lien amount was \$75,829.93 as of January 19, 2021, plus accruing statutory interest.
5. Judgment lien in favor of Lawrenceburg Glass, Inc. recorded February 15, 2022, and of record in Book M19, pages 458-459 in the Register’s Office of Perry County, Tennessee. The judgment lien amount was \$69,892.56 as of June 25, 2021, plus accruing statutory interest. This judgment lien was assigned to Braden Health [Claim No. 4].
6. Judgment lien in favor of Delphi Investment Group, LLC recorded March 7, 2022, and of record in Book M19, Page 495 in the Register’s Office of Perry County, Tennessee. The judgment lien amount was \$526,730.00 as of January 31, 2022, plus attorney fees, pre-judgment and post-judgment interest. This judgment lien has been assigned to Braden Health [Claim No. 4].
7. Judgment lien in favor of Delphi Investment Group, LLC recorded May 10, 2022, and of record in Book M19, page 570 in the Register’s Office of Perry County, Tennessee. The judgment lien amount was in the total amount of \$136,014.31 which included attorney fees of \$25,308.45, expenses in the amount of \$469.11, pre-judgment interest in the amount of \$110,236.75 and post-judgment interest to accrue at 5.25% per annum. This judgment lien was assigned to Braden Health [Claim No. 4].
8. Judgment lien in favor of BlueCross BlueShield of Tennessee, Inc. recorded October 4, 2022, and of record in Book M19, pages 750-753 in the Register’s Office of Perry

⁵ The parties stated at the hearing in this matter that the taxes for 2023 and 2024 totaled approximately \$40,000.00.

County, Tennessee. The judgment lien amount was \$6,937,076.34 as of August 23, 2022, and accruing post-judgment interest.

(Joint Stipulation of Undisputed Facts, ECF No. 101.) Braden Health filed a proof of claim in Debtor's case on March 1, 2024, in the secured amount of \$804,759.69 plus interest and fees based on the assignment of the Lawrenceburg Glass and Delphi Investment liens.⁶ BCBST has not filed a proof of claim against Debtor in this case and Debtor did not list BCBST on their schedule of creditors. The bar date for non-governmental claims expired on April 22, 2024.

At the hearing on the § 506 Motion ("§ 506 Hearing"), the Court heard testimony from two witnesses: (1) Wesley Robert Jordan ("Jordan") of Jordan Home Solutions and (2) Larry Snyder ("Snyder") of VMG Health.

Jordan is a restoration and remediation contractor and owns Jordan Home Solutions. He has been certified by the Institute of Inspection Cleaning and Restoration Certification in water damage restoration. (Trial Ex. 2.) He also has taken training in (1) Mold Awareness from BetterCertify Certification and Compliance Solutions and (2) Cleaning and Disinfecting mold from OSHAcademy. (*Id.*) He has done mold remediation at Haywood County Hospital in Brownsville, Tennessee and a hospital in Parsons, Tennessee. He has also done mold remediation in residential housing.

Jordan inspected the PCH Property in mid-July 2024. At the § 506 Hearing, Jordan detailed his process for inspecting property for mold. He stated that he first does a visual inspection of the property and takes photographs. He also does air quality testing. In doing this, he first takes a sample of the air outside the structure as a control sample. He then takes air quality samples from inside the affected structure at different locations. Once all the samples are collected, Jordan sends them to a lab for testing.

In testing the air quality at the PCH Property, Jordan took samples in five separate locations: (1) outside the hospital, as the control, (2) the kitchen; (3) the ER Hall; (4) the CT Machine Area; and (5) the nurses station. Jordan sent the samples to Assured Bio Labs, LLC, in Oak Ridge, Tennessee, for analysis. All four of the areas Jordan sampled tested positive for *Penicillium/Aspergillus*. The raw count for that mold was 56,000 in each location whereas the raw

⁶ Debtor filed an objection to Braden Health's proof of claim in which it asserted that the liens assigned by Delphi Investment Group are not valid against Debtor. As such, Debtor objects to that portion of Braden Health's claim that seeks payment for those liens. Debtor's objection to Braden Health's proof of claim is set for a hearing on December 4, 2024. Statements made by counsel for both Debtor and Braden Health at the § 506 Hearing intimated that Debtor's objection has been resolved.

count for the control sample was 204. The spore count per cubic meter inside the hospital was 746,667. The spore count for the control sample was 2,720. Debtor introduced the air quality lab results along with the chain of custody for the air samples as Trial Exhibit 3. Jordan took over 500 photographs of the mold damage inside the PCH Property. These photos were introduced as Trial Exhibit 4 and clearly show a significant amount of mold throughout the hospital building.

Jordan then detailed the cleaning and demo process he uses when remediating mold. After assessing the air quality and doing his visual inspection, Jordan sprays an antimicrobial solution throughout the structure to make it a safe environment for himself and workers as they demolish the interiors. Jordan stated that anyone who works inside the building being remediated must wear personal protective equipment when inside the structure.

Jordan testified that 100% of the PCH Property's interior will need to be demolished back to the studs because of the extent of the mold. Jordan stated that all of the flooring, including the underlying glue, the ceiling, and the ductwork will need to be completely removed. He testified that all interior furniture and fixtures will also need to be removed and destroyed. Once all demolition is complete, Jordan stated that the studs and other remaining structural supports will need to be treated to remove any mold thereon. Jordan estimated that the total cost of the mold remediation for the hospital will be \$1,084,216.00. Jordan stated that he used a \$28 per square foot rate when calculating the estimate in this case. Debtor introduced Jordan's remediation estimate as Trial Exhibit 5.

On cross examination, Jordan admitted that he had never testified in a court proceeding before nor had he ever been admitted as an expert witness. When questioned by BCBST's attorney, Jordan estimated that he was paid \$150,000.00 for the testing and assessment of mold at Haywood County Hospital. He stated that he was on site to make sure the demolition work was done correctly, but that he did not do any of the demolition work himself on that project. For the hospital in Parsons, Tennessee, Jordan testified that he was in the first phase of that project and he had only done the assessment and sprayed the antimicrobial solution throughout the building. He estimated he has been paid \$40,000.00 for the work so far. Jordan admitted that the mold remediation at the PCH Property is the first commercial job for which he will do all of the remediation work himself. However, he stated that he has done many complete remediation jobs for residential customers. No party had hired Jordan to do the remediation work at the PCH

Property as of the date of the trial. Jordan did not know if any other companies have been asked to provide an estimate for the job.

Jordan testified that there is no way to know when the mold problem began at the PCH Property or how it started. He stated that mold can start colonizing within 12 to 24 hours, but the extent of the mold damage inside the hospital would take at least a month or more to grow. Although Jordan witnessed moisture issues and water leaks inside the hospital, he stated that it was impossible to determine the precise cause of the mold problem.

At the conclusion of Jordan's testimony, BCBST argued that Jordan was not qualified to testify as an expert in this matter. Although Jordan established that there was a significant mold issue at the PCH Property, BCBST asserted that his estimate was merely a competitive bid and not evidence of the actual cost of the remediation. BCBST also asserted that the Court should consider this is Jordan's first time bidding a complete mold remediation job for a commercial building. Over these objections, the Court admitted Jordan as an expert witness in the field of water damage restoration/mold remediation.

The next witness Debtor called was Snyder of VMG Health. Snyder testified that he has been a licensed certified general appraiser for 38 years. He is licensed in 14 states including Tennessee. In his current position with VMG Health, Snyder exclusively appraises healthcare-related properties. He estimates he appraises 5-10 hospitals per year. He stated that he has been qualified as an expert on one previous occasion and has testified in other trials. Snyder's Curriculum Vitae showing his educational background, licensure and experience was introduced as Trial Exhibit 6. The Court admitted Snyder as an expert in appraising healthcare-related properties without objection.

Snyder appraised the PCH Property on March 15, 2024. In appraising the property, Snyder spent several hours touring the hospital facilities and land. After his site visit, Snyder prepared an appraisal report and provided that to Braden Health on April 8, 2024. Debtor introduced this 89-page report as Trial Exhibit 7 ("Appraisal"). Pursuant to the Appraisal, Snyder considered the property's overall quality as "fair." (Tr. Ex. 7 at 3.) Snyder testified at the § 506 Hearing that "fair" is considered "below average." Snyder also testified that the PCH Property was Class C construction which is dictated by the types of materials used in the building.

The Appraisal included the following definition for "Fair Market Value":

The price, expressed in terms of cash equivalents, at which a property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length in an open and unrestricted market, when neither is under compulsion to buy nor to sell, when both have reasonable knowledge of the relevant facts.

(*Id.* at 6.) Using this definition, Snyder arrived at a fair market value for the PCH Property of between \$580,000.00 and \$700,000.00 for the property in its “as is” condition. (*Id.* at 84.) Although the county tax assessor's records reflect a value of \$1,788,800.00, Snyder testified that it was his understanding that county tax assessors use a straight dollar-per-square-foot rate provided by the state in arriving at stated values because oftentimes they do not have comparable properties to use when setting value. By contrast, Snyder personally inspected the PCH Property and used uniform appraisal-industry standards, including sales of comparable properties, in arriving at his opinion of value.

Snyder used various approaches to arrive at the valuation for the PCH Property. The first method was the Cost Approach which is based on the cost to build the facility as a new structure. This approach includes a land valuation. Snyder valued the hospital at \$650,000.00 under this approach which included a land value of \$120,000.00. (*Id.* at 57-63.)

In valuing property under the Cost Approach, Snyder noted that the age of the real estate was relevant for purposes of depreciation. (*Id.* at 59.) Perry Community Hospital was built in 1982. Thus, Snyder used an effective age of between 35 and 40 years for the building. (*Id.*) Snyder noted in the Appraisal that he observed mold and water damage in the building and that he considered the water damage in setting the effective age of the hospital. (*Id.*) Snyder also noted that “[t]he client representatives noted that the improvement will need considerable upgrades/renovations prior to opening,” but that “[w]ithout a property condition report and not knowing the complete details of the work that will be needed [to upgrade/renovate the property], we have not made an adjustment for the cost to cure the improvement.” (*Id.*) Snyder testified that the facility did not have power when he toured; thus, it was difficult for him to estimate what the costs of renovation would be. Without power, Snyder stated that it was impossible to ascertain whether certain systems were operational or would need to be replaced. At the § 506 Hearing, Snyder testified that if he been aware of the extent of the mold damage, he would have made a downward adjustment to the value he assigned to the PCH Property.

The second method Snyder used was the Sales Comparison Approach. This approach is based on what it would cost to acquire an existing property with the same or similar

facilities/characteristics. This approach requires Snyder to find similarly situated properties in the same condition and of the same relative age as the property he is appraising. Thus, in appraising the PCH Property, Snyder had to consider the hospital's condition and age along with the fact that it had been closed for a number of years. The current state of rural health care also had to be taken into account according to Snyder. For various reasons detailed in the Appraisal, many similarly-situated hospitals have already closed or are near closure. (*Id.* at 64.) In Tennessee alone, 22 hospitals are currently at risk of closing. (*Id.* at 68.)

Snyder listed 10 comparable sales of distressed or shuttered hospitals that had sold in the last three years. (*Id.* at 71-73.) These properties sold for between \$4.05 to \$97.39 per square foot. Snyder concluded that two of these comparable sales were most similar to the PCH Property in terms of size, age and condition. The first comparable was a 71,458 square-foot hospital in Paintsville, Kentucky that sold in November 2021 for \$1,130,700.00 (\$15.82 per square foot). As with the PCH Property, the hospital in Paintsville was a class C facility of average quality. The second property was a 54,970 square-foot hospital in Sayre, Oklahoma that sold at auction in 2021 for \$1,000,000.00 (\$18.19 per square foot). This hospital had been closed for 5 years at the time of the sale. Snyder did not indicate in his Appraisal or testimony that either of these comparable properties were in the same state of disrepair as the PCH Property. However, it is conceivable that both properties needed some renovation.

After analyzing the comparable sales, especially those of the Paintsville, Kentucky and the Sayre, Oklahoma properties, Snyder concluded that the PCH Property had a value of \$15.00 to \$19.00 per square foot, for an overall value of between \$580,000.00 and \$740,000.00 under the Sales Comparison Approach. (*Id.* at 73.)

The third approach Snyder used in evaluating the PCH Property is called the Income Approach. This method converts the anticipated dollar income or amenities to be derived from the ownership of property into a value estimate. Snyder analyzed a great deal of data in arriving at a value of between \$560,000.00 and \$630,000.00 under this approach. (*Id.* at 84.)

On cross-examination, counsel for BCBST asked Snyder whether the existence of an actual willing buyer and actual willing seller that were not under duress would be indicative of the fair market value of the property. Snyder replied that "it would be a consideration," but not the only one. Counsel for BCBST then asked Snyder whether knowing if a property had been marketed for sale would inform his opinion as to a property's value. Snyder replied that he would consider

that, but no marketing information had been provided to him for the PCH Property. At no point during the hearing in this matter did BCBST assert that Snyder's valuation of the PCH Property was inaccurate or incomplete. BCBST did not offer any evidence of a higher valuation than that reached by Snyder nor did BCBST argue that the value should be set at a certain amount.

In closing, BCBST ardently reiterated that the plain language of § 506(a)(1) prohibited the Court from entering final judgment on the § 506 Motion prior to hearing the Sale Motion. Although it conceded that the Court could determine the value of the PCH Property based on the evidence presented at the § 506 Hearing, BCBST asserted that the Court could not make a final decision on the avoidance issue without knowing the precise terms of the sale. As an example, BCBST noted that the Lawrenceburg Glass and Delphi Investment Group liens had been assigned to Braden Health. Because it was unlikely, in BCBST's estimation, that Braden Health would pay itself back the \$732,636.87 owed on those liens, BCBST argued that there may be equity to support BCBST's lien. BCBST also argued that until the Sale Motion is before the Court, a determination as to the amount a willing buyer will pay a willing seller for the PCH Property cannot be made. If the property were to sell for \$2,000,000.00 for example, BCBST argued that there would be equity to support their lien on the cash proceeds in this case. Accordingly, any lien stripping the Court did prior to that sale would be improper. BCBST also asserted that liens are rarely stripped in chapter 11 cases.

In response, Debtor reiterated that BCBST potentially only has an *in rem* lien against Debtor's property and does not hold a claim against the estate. Thus, Debtor argued that BCBST will not share in a distribution under Debtor's chapter 11 plan.

The terms of the Sale Motion and statements by the attorneys for Debtor and Braden Health at the § 506 Hearing indicate that if the BCBST lien is not stripped, the sale to Braden Health might not proceed.

At no point in its objection or at the § 506 Hearing did BCBST challenge the validity of the superior liens. In fact, in the Joint Stipulation of Undisputed Facts filed on October 30, 2024 (ECF No. 101), BCBST stipulated to the amount of the liens at issue in this case and the order of priority thereof under Tennessee law. Its sole argument with respect to the liens now held by Braden Health is that Braden Health will not collect those liens and/or that the liens have now been satisfied. Thus, BCBST argues that there may be proceeds from the sale to which its lien could attach.

At the conclusion of the § 506 Hearing, the Court took the matters under advisement. Neither party to this matter presented any legal argument or citations to case law in support of their positions other than BCBST's reference to the language of 11 U.S.C. § 506(a)(1).

ANALYSIS

Section 506(a)(1) of the Bankruptcy Code provides:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a)(1). This section mandates the division of a secured creditor's claim "into secured and unsecured portions, with the secured portion of the claim limited to the value of the collateral." *Assocs. Com. Corp. v. Rash*, 520 U.S. 953, 961, 117 S. Ct. 1879 (1997). Section 506(a)(1) applies in chapter 11 cases and debtors often use it to strip off liens in the chapter 11 setting. 11 U.S.C. § 103(a); *Matter of Houston Reg'l Sports Network, L.P.*, 886 F.3d 523 (5th Cir. 2018); *In re Sunnyslope Hous. Ltd. P'ship*, 859 F.3d 637, 640 (9th Cir. 2017), *as amended* (June 23, 2017); *In re Heritage Highgate*, 679 F.3d 132 (3d Cir. 2012); *In re Cahill*, 503 B.R. 535 (Bankr. D.N.H. 2013). Even if a creditor holds only an *in rem* interest against property of the debtor, such interest may be avoided under § 506(a)(1). *In re Short*, 619 B.R. 655, 661 (Bankr. S.D. Ohio 2020) (citing *Johnson v. Home State Bank*, 501 U.S. 78, 84, 111 S. Ct. 2150 (1991) (analyzing the ability to strip *in rem* rights from property in the context of chapter 13)). As the movant, a debtor bears the burden of proving by a preponderance of the evidence that the property's value will not support the lien at issue. *In re Maplethorpe*, 569 B.R. 157, 159 (Bankr. E.D. Mich. 2017) (citing *Lane v. W. Interstate Bancorp*, 280 F.3d 663 (6th Cir. 2002)).

Valuing property under § 506(a)(1) is a two-step process. First, in separating a creditor's claim into secured and unsecured portions, a court must "compare the creditor's claim to the value of such property." *Rash*, 520 U.S. at 961 (internal quotation marks omitted)). "This determination necessarily requires the court to ascertain the 'creditor's interest in the estate's interest in' the property." *In re Creekside Sr. Apartments, L.P.*, 477 B.R. 40, 54 (B.A.P. 6th Cir. 2012) (quoting 11 U.S.C. § 506(a)(1)). "If all of the value in that collateral is secured by higher priority liens, then the claim which would

otherwise be secured by that collateral is deemed to be unsecured.” *In re Short*, 619 B.R. at 659–60 (citing *Bank of Am., N.A. v. Caulkett*, 575 U.S. 790, 793, 135 S. Ct. 1995 (2015)); *see also, Rash*, 520 U.S. at 961.

The second step under § 506(a)(1) requires a court to determine the value of the property at issue “in light of the purpose of the valuation and of the proposed disposition or use of the property[.]” 11 U.S.C. § 506(a)(1). This requirement “reflects the reality that valuations have a variety of potential purposes, even within Chapter 11.” *Deutsche Bank Nat’l Tr. Co. v. Jackson*, No. 9:15-CV-81506-RLR, 2016 WL 5390594, at *2 (S.D. Fla. Sept. 27, 2016).

A valuation may, for example, be used to assess adequate protection, *see* 11 U.S.C. § 361, or to determine the value of a claim to be treated under a proposed Chapter 11 plan of reorganization, *see* 11 U.S.C. § 1129(b). These needs arise at different points during the life of a bankruptcy. Thus, the statute’s text invites the conclusion that “the purpose of the valuation dictates its timing.” *See In re Stanley*, 185 B.R. 417, 423 (Bankr. D. Conn. 1995); *accord 3 Collier on Bankruptcy*, ¶ 506.4 (15th ed. 1992) (explaining that the value of the property should be determined as of the date to which the valuation relates).

Deutsche Bank Nat’l Trust Co., 2016 WL 5390594, at *2. Accordingly, when tasked with making a § 506(a)(1) determination, a “[c]ourt must . . . inquire into the valuation’s purpose.” *Id.* And, it is the debtor’s “actual use” of the property that is of “prime significance.” *Rash*, 520 U.S. at 963; *see also Matter of Houston Reg’l Sports Network, L.P.*, 886 F.3d at 529 (concluding that although *Rash* was decided in the context of chapter 13, its holding is applicable to chapter 11). Thus, the debtor’s “proposed disposition or use of such property” directs “the court’s choice of valuation method.” *In re Heritage Highgate, Inc.*, 449 B.R. at 456 (citing *Rash*, 520 U.S. at 962).

Although § 506(a)(1) mandates that value must be determined in light of the proposed disposition or use of the property, nowhere in the Bankruptcy Code does it specify how that value is to be calculated. According to the legislative history for § 506(a),

“value” does not necessarily contemplate forced sale or liquidation value of the collateral; nor does [] it always imply a full going concern value. Courts will have to determine value on a case-by-case basis, taking into account the facts of each case and the competing interests in the case.

H.R. REP. 95-595, 356, 1978 U.S.C.C.A.N. 5963, 6312 (1977); *see also In re Penick*, 170 B.R. 914 (Bankr.W.D. Mich.1994). Thus, “Congress envisioned a flexible approach to valuation whereby bankruptcy courts would choose the standard that best fits the circumstances of a particular case.” *In re*

Heritage Highgate, 679 F.3d at 141 (citing H.R. Rep. 95-595, 356). “If [the] language [of § 506(a)(1)] is to be afforded any significance, then, the appropriate standard for valuing collateral must depend upon what is to be done with the property—whether it is to be liquidated, surrendered, or retained by the debtor.” *Id.* at 141.

In *Rash*, the chapter 13 debtors proposed retention of the collateral and cramdown of the creditor’s claim under 11 U.S.C. § 1325(a)(5)(B). The Supreme Court held that in such a situation, a replacement-value standard should be used in valuing property. *Rash*, 520 U.S. at 960. Under this standard, “the value of the property (and thus the amount of the secured claim under § 506(a)) is the price a willing buyer in the debtor’s trade, business, or situation would pay to obtain like property from a willing seller.” *Id.* The same standard applies in chapter 11 cases.

Where a Chapter 11 plan of reorganization provides for a debtor to retain and use collateral to generate income with which to make payments to creditors, a § 506(a) valuation based upon a hypothetical foreclosure sale would not be appropriate, as it would be inconsistent with the provision’s dictates. In ordinary circumstances the present value of the income stream would [instead] be equal to the collateral’s fair market value.

In re Heritage Highgate, 679 F.3d at 141-42 (citing *In re Winthrop Old Farm Nurseries*, 50 F.3d 72, 75 (1st Cir. 1995) (internal quotation marks omitted)). “When valuing property under this standard, a court must consider the “fair market value . . . on the valuation date in an ‘as is’ condition.” *In re Kinser Grp. LLC*, No. 2:20-BK-09355-DPC, 2020 WL 7633854, at *3 (Bankr. D. Ariz. Dec. 18, 2020).

There are at least two other methods of valuing property under § 506(a)(1). *In re Clarendon Holdings, LLC*, No. 7:11-CV-247-H, 2013 WL 8635348, at *1 (E.D.N.C. Mar. 18, 2013) (discussing valuation of property in cases of surrender or liquidation wherein a foreclosure or liquidation value may be appropriate); *In re Aerogroup Int’l, Inc.*, 601 B.R. 571, 592 (Bankr. D. Del. 2019), *aff’d*, 620 B.R. 517 (D. Del. 2020) (discussing valuation of property as a “going concern” where debtors propose selling a business that is fully operational). However, neither of those approaches is relevant in the case at bar. Debtor cannot sell the PCH Property as a going concern because the hospital has been closed for approximately three years and the property itself needs extensive remediation and remodeling before it will be operational. Additionally, Debtor has not proposed valuing the PCH Property at the liquidation or foreclosure value. Instead, it asserts that the proper method of valuing the property is the fair market value. BCBST does not dispute that the fair market value standard is the proper method of valuing the PCH Property; however, it asserts that there may be a buyer who is willing to pay more for the property

than Braden Health is proposing and, thus, the fair market value may be higher than the value set forth in Snyder's Appraisal.

At the hearing in this matter, BCBST ardently asserted that the § 506 valuation hearing must be conducted at the same time as the hearing on Debtor's Sale Motion. While it is true that the language of § 506(a)(1) provides that a valuation hearing must be conducted "in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest;" courts have interpreted this language to mean that the valuation hearing must take place "on or near" the hearing for which valuation is sought—not at the same time. *Deutsche Ban Nat'l Trust Co.*, 2016 WL 5390594, at *3 ("The conclusion that valuation for purposes of confirmation ought to be conducted on or near the confirmation date is amply supported by statutory structure.") (citation omitted)); *In re Stanley*, 185 B.R. 417, 424 (Bankr. D. Conn. 1994). Because a determination under § 506(a) might affect the underlying matter for which valuation is sought, the valuation hearing typically needs to be conducted prior to the hearing on the underlying matter, i.e., the confirmation hearing, the sale hearing, etc. *In re Cahill*, 503 B.R. 535, 542 (Bankr. D.N.H. 2013) ("[T]he Court holds that the Property will be valued at a date *close to* the confirmation hearing of the case. Because the Court is sensitive to the fact that the Plan may need to be reformulated if Old Republic's claim turns out to be secured, the valuation hearing will not take place at the same time as the confirmation hearing.").

The Court concludes that the issue of whether there is value in the PCH Property to support BCBST's lien is ripe for decision at this point in the case at bar. According to the Sale Motion and statements of counsel at the § 506 Hearing, Braden Health's offer to purchase the property may be impacted by a decision on the § 506 Motion. Thus, if the Court does not rule on the § 506 Motion prior to the hearing on the Sale Motion, Braden Health is unable to adequately assess the viability of its offer and the sale.

The Appraisal was the only evidence of the PCH Property's value introduced at the § 506 Hearing. Snyder testified, and the Appraisal makes clear, that the fair market value of the PCH Property in its "as is" condition is between \$580,000.00 to \$700,000.00. Under any of the three specific valuation approaches Snyder used, the property was not worth less than \$560,000.00 or more than \$740,000.00. The Court finds that the Appraisal and Snyder's testimony demonstrated that Snyder conducted a sound and thorough examination of the PCH Property. He used prevailing methodologies to arrive at his opinion of value and he supported that opinion with a great deal of expertise and relevant data.

At the § 506 Hearing, Snyder testified that he did not make an adjustment to the property's value for the cost to cure/replace the hospital's electrical systems or to make any of the necessary renovations. He also testified that he would have made a downward adjustment to the property's value to account for the mold damage if he had known the extent of that problem. Jordan's estimate for mold remediation was \$1,084,216.00. It is clear there is a very serious mold problem at the PCH Property that will prohibit its use as any type of facility unless and until the issue is remedied.

BCBST did not dispute any of the methodologies Snyder used to arrive at his opinion of fair market value. Nor did it offer any contradictory evidence of the value of the PCH Property. It simply argued that the possible existence of a mythical buyer willing to pay \$1,000,000.00 to \$2,000,000.00 for the property somehow demonstrates the property is worth more than the fair market value at which Snyder arrived. The Court finds this argument wholly without merit. Mere allegations without proof and with hypothetical proposals do not refute the evidence Debtor introduced of the property's value at the § 506 Hearing.

As for BCBST's argument that Braden Health will not collect the liens it has now been assigned, the Court also finds that to be wholly speculative and unsupported by any evidence. Braden Health filed a proof of claim for \$804,759.69 plus interest and fees in March 2024. Although Debtor has objected to that proof of claim, the filing of the proof of claim indicates to the Court that Braden Health intends to collect on those liens.⁷

Even if the Court uses the Appraisal's high value of \$740,000.00, the Court concludes that there is no value in the PCH Property to support BCBST's lien. BCBST stipulated to the following **amounts** and priority of the liens, **without any qualifications or exceptions**, against the PCH Property:

1. Ad valorem city and county real property taxes for 2023.
2. Ad valorem city and county real property taxes for 2024 that are unassessed but accruing.⁸
3. Consensual lien in favor of Stephen L. Averett in the amount of \$89,070.17 plus accruing interest.
4. Judgment lien in favor of McKesson Medical-Surgical, Inc. in the amount of \$75,829.93 plus accruing statutory interest.
5. Judgment lien in favor of Lawrenceburg Glass, Inc. in the amount of \$69,892.56 plus accruing statutory interest.

⁷ The Court is concerned about the impact Debtor's objection to Braden Health's claim could have on the § 506 decision. As such, the Court will condition its ruling accordingly.

⁸ See note 4 *supra*.

6. Judgment lien in favor of Delphi Investment Group, LLC in the amount of \$526,730.00 plus attorney fees, pre-judgment and post-judgment interest.
7. Judgment lien in favor of Delphi Investment Group, LLC in the amount of \$136,014.31 and post-judgment interest to accrue at 5.25% per annum.
8. Judgment lien in favor of BlueCross BlueShield of Tennessee, Inc. in the amount \$6,937,076.34 and accruing post-judgment interest.

(Joint Stipulation of Undisputed Facts, ECF No. 101.) BCBST agreed to both the amount of each lien and the priority position. If BCBST truly believes that Braden Health will not collect the Lawrenceburg Glass lien or the Delphi Investment Group liens, it should not have agreed to the amounts listed in the Stipulation of Undisputed Facts. Without including the property tax liens, the liens superior to BCBST total \$897,536.97. This amount does not include attorney's fees or interest. Clearly there is no value in the PCH Property to support BCBST's 8th position lien.

CONCLUSION

For the reasons stated herein, the Court will enter an order as follows.

1. Based on the evidence presented at the hearing, the Court concludes that the current fair market value of the three parcels of real property that Debtor is seeking to sell to Braden Health, (1) the 38,722 square-foot commercial building and 6.8 acres of real property at 2718 Squirrel Hollow Drive, (2) the 1.19 acre tract on Highway 13 South, and (3) the 3.3 acre tract on Airport Road, in their "as is" condition is \$580,000.00 for purposes of the § 506 Motion.⁹ The Court therefore concludes that there is no equity or value to which BCBST's lien can attach and its lien is avoided under 11 U.S.C. § 506(a)(1). The Court's decision on valuation and lien avoidance contained herein is contingent upon:
 - (a) entry of an order approving Debtor's Sale Motion, ECF No. 95, for a purchase price of up to the total amount of the stipulated liens superior to BCBST's lien. This § 506 order will only become a final order if Debtor's Sale Motion is granted and the sale to Braden Health is consummated. The Court's findings and conclusions with respect to the avoidance of BCBST's lien are not binding in any other scenario; and
 - (b) Debtor's withdrawal of its objection to Braden Health's Proof of Claim (Claim 4-1) or, in the alternative, the Court overruling Debtor's objection.

⁹ Snyder testified that he did not discount the fair market value of the PCH Property for the extensive mold damage. As such, the Court's determination is that \$580,000.00 is the fair market value without a reduction for the remediation.

2. The Court will enter an order denying Debtor's request to void BCBST's judgment lien as to the 9.6 acre tract at Hwy 13 South in Linden, Tennessee. Debtor explicitly stated in the Sale Motion that the proposed sale to Braden Health excludes the 9.6 acre tract and that Debtor "is retaining this excluded parcel of real property." (Sale Motion, ECF No. 95 at 2-3.) Snyder did not examine that tract of real property in appraising the property. (Tr. Ex. 7 at 42.) Although Debtor valued this tract of real property at \$30,700.00 on Schedule A/B of its chapter 11 petition, no evidence of its value was presented to the Court at the § 506 Hearing. As such, the Court cannot determine the value of this piece of real property and/or whether there is value to support BCBST's judgment lien.
3. The Court will also enter an order denying Debtor's request to declare that BCBST does not have a claim against the bankruptcy estate without prejudice. Neither party presented evidence to the Court as to the validity of BCBST's claim at the § 506 Hearing. As such, that issue was not properly before the Court.
4. Lastly, the Court will enter an order overruling BCBST's objection to the § 506 Motion.

An order will be entered in accordance herewith.

Mailing list

Debtor

C. Jerome Teel, attorney for debtor

David E. Lemke, attorney for BlueCross BlueShield of Tennessee, Inc.

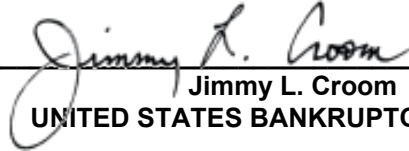
Stephen L. Hughes, attorney for Braden Health, LLC

Wendy Geurin Smith, attorney for McKesson Medical-Surgical, Inc.

United States Trustee



Dated: November 21, 2024
The following is SO ORDERED:


Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

In re:

EXPERTUS HEALTH, LLC,

Debtor.

Case No. 23-11673

Chapter 11

ORDER RE: (1) MOTION PURSUANT TO 11 U.S.C. § 506(A)(1) AND RULE 3012 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE TO DETERMINE THE SECURED STATUS OF THE JUDGMENT LIEN OF BLUECROSS BLUESHIELD OF TENNESSEE, INC. (ECF NO. 87) ; (2) OBJECTION OF BLUECROSS BLUESHIELD OF TENNESSEE, INC. THERETO (ECF NO. 92); AND (3) DEBTOR'S REPLY TO THE OBJECTION OF BLUECROSS BLUESHIELD OF TENNESSEE, INC. (ECF NO. 97)

For the reasons set forth in the Memorandum Opinion entered in accordance herewith, the Court hereby **GRANTS IN PART AND DENIES IN PART** the Debtor's Motion Pursuant to 11 U.S.C. § 506(A)(1) and Rule 3012 of the Federal Rules of Bankruptcy Procedure to Determine the Secured Status of the Judgment Lien of BlueCross BlueShield of Tennessee, Inc. (ECF No. 87), as follows:

1. Based on the evidence presented at the hearing, the Court concludes that the current fair market value of the three parcels of real property that Debtor is seeking to sell to Braden Health, LLC, (1) the 38,722 square-foot commercial building and 6.8 acres of real property at 2718 Squirrel

Hollow Drive, (2) the 1.19 acre tract on Highway 13 South, and (3) the 3.3 acre tract on Airport Road, in their “as is” condition is \$580,000.00 for purposes of the sale to Braden Health. The Court concludes that there is no equity or value to which BlueCross BlueShield Tennessee, Inc.’s lien can attach. **The lien held by BlueCross BlueShield Tennessee, Inc., against (1) the 38,722 square-foot commercial building and 6.8 acres of real property at 2718 Squirrel Hollow Drive, Linden, Tennessee, (2) the 1.19 acre tract on Highway 13 South, Linden, Tennessee, and (3) the 3.3 acre tract on Airport Road, Linden, Tennessee, IS AVOIDED pursuant to 11 U.S.C. § 506(a)(1) contingent upon:**

- (a) entry of an order approving Debtor's Sale Motion, ECF No. 95, for a purchase price of up to the total amount of the stipulated liens superior to BCBST’s lien. The current order will only become a final order if Debtor's Sale Motion is granted and the sale to Braden Health is consummated. The Court's findings and conclusions with respect to the avoidance of BCBST's lien are not binding in any other scenario without further order of the Court; and
 - (b) Debtor’s withdrawal of its objection to Braden Health’s Proof of Claim (Claim 4-1) or, in the alternative, entry of an order overruling Debtor’s objection.
2. **The Debtor’s Motion to Avoid BlueCross BlueShield Tennessee, Inc.’s Judgment Lien as to the 9.6 acre tract at Hwy 13 South in Linden, Tennessee, is DENIED.**
 3. The Debtor’s request to declare that BlueCross BlueShield Tennessee, Inc., does not have a claim against the bankruptcy estate is **DENIED WITHOUT PREJUDICE.**
 4. BlueCross BlueShield Tennessee, Inc.’s Objection to Debtor’s Motion Pursuant to 11 U.S.C. § 506(A)(1) and Rule 3012 of the Federal Rules of Bankruptcy Procedure to Determine the Secured Status of the Judgment Lien of BlueCross BlueShield of Tennessee, Inc., is **OVERRULED.**

Mailing list

Debtor

C. Jerome Teel, attorney for debtor

David E. Lemke, attorney for BlueCross BlueShield of Tennessee, Inc.

Stephen L. Hughes, attorney for Braden Health, LLC

Wendy Geurin Smith, attorney for McKesson Medical-Surgical, Inc.

United States Trustee