

FILED
 04-02-2019
 John Barrett
 Clerk of Circuit Court
 2019CV002670
 Honorable William S.
 Pocan-26
 Branch 26

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

GPH ABBOTSFORD LLC,
 GPH BEAVER DAM LLC,
 GPH FORT ATKINSON LLC,
 GPH GLENDALE LLC,
 GPH GREENFIELD LLC,
 GPH MUSCODA LLC,
 GPH WATERTOWN LLC, AND
 SILVER SPRING ACQUISITION LLC,

Plaintiffs,

vs.

DYCOR TRANSITIONAL HEALTH –
 ABBOTSFORD LLC,
 DYCORA TRANSITIONAL HEALTH –
 BEAVER DAM LLC,
 DYCORA TRANSITIONAL HEALTH –
 FORT ATKINSON LLC,
 DYCORA TRANSITIONAL HEALTH –
 GLENDALE LLC,
 DYCORA TRANSITIONAL HEALTH –
 GREENDALE LLC,
 DYCORA TRANSITIONAL HEALTH –
 MILWAUKEE LLC,
 DYCORA TRANSITIONAL HEALTH –
 RIVERDALE LLC, AND
 DYCORA TRANSITIONAL HEALTH –
 WATERTOWN LLC,

Defendants.

Case No. _____

Case Code: Other-Debtor Action – 30304

COMPLAINT

Plaintiffs GPH Abbotsford LLC, GPH Beaver Dam LLC, GPH Fort Atkinson LLC, GPH Glendale LLC, GPH Greenfield LLC, GPH Muscoda LLC, GPH Watertown LLC, and Silver Spring Acquisition LLC (collectively, "Plaintiffs") hereby file this *Complaint for Breach of Master*

Lease and Petition for Immediate Appointment of a Wis. Stat. Ch. 128 Receiver and Injunctive Relief (the “Complaint”) against defendant lessees Dycora Transitional Health – Abbotsford LLC, Dycora Transitional Health – Beaver Dam LLC, Dycora Transitional Health – Fort Atkinson LLC, Dycora Transitional Health – Glendale LLC, Dycora Transitional Health – Greendale LLC, Dycora Transitional Health – Milwaukee LLC, Dycora Transitional Health – Riverdale LLC, and Dycora Transitional Health – Watertown LLC, (each, a “Defendant” and, collectively, “Defendants”) and respectfully show the Court as follows:

PARTIES, JURISDICTION, AND VENUE

1. Dycora Transitional Health – Abbotsford LLC is a Wisconsin limited liability company with its principal office located at 600 East Elm Street, Abbotsford, Wisconsin 54405.
2. Dycora Transitional Health – Beaver Dam LLC is a Wisconsin limited liability company with its principal office located at 410 Roedl Court, Beaver Dam, Wisconsin 53916.
3. Dycora Transitional Health – Fort Atkinson LLC is a Wisconsin limited liability company with its principal office located at 430 Wilcox Street, Fort Atkinson, Wisconsin 53538.
4. Dycora Transitional Health – Glendale LLC is a Wisconsin limited liability company with its principal office located at 1300 W. Silver Spring Drive, Glendale, Wisconsin 53209.
5. Dycora Transitional Health – Greendale LLC is a Wisconsin limited liability company with its principal office located at 5404 West Loomis Road, Greendale, Wisconsin 53129.

6. Dycora Transitional Health – Milwaukee LLC is a Wisconsin limited liability company with its principal office located at 1616 West Bender Road, Glendale, Wisconsin 53209.

7. Dycora Transitional Health – Riverdale LLC is a Wisconsin limited liability company with its principal office located at 1000 North Wisconsin Avenue, Muscoda, Wisconsin 53573.

8. Dycora Transitional Health – Watertown LLC is a Wisconsin limited liability company with its principal office located at 121 Hospital Drive, Watertown, Wisconsin 53098.

9. Each of the Defendants operates a skilled nursing facility (each, an “SNF”, collectively the “SNFs”) in the State of Wisconsin. The SNFs in the State of Wisconsin are leased from Plaintiffs and operated by each Defendant (and are referred to herein as the “Wisconsin Facilities”). The Wisconsin Facilities are:

Lessee	Landlord	Facility Name	Address
Dycora Transitional Health - Abbotsford LLC	GPH Abbotsford LLC	Dycora Transition Health & Living – Abbotsford	600 East Elm Street Abbotsford, WI
Dycora Transitional Health - Beaver Dam LLC	GPH Beaver Dam LLC	Dycora Transition Health & Living – Beaver Dam	410 Roedl Court Beaver Dam, WI
Dycora Transitional Health - Watertown LLC	GPH Watertown LLC	Dycora Transition Health & Living – Watertown	121 Hospital Drive Watertown, WI
Dycora Transitional Health - Fort Atkinson LLC	GPH Fort Atkinson LLC	Dycora Transition Health & Living – Fort Atkinson	430 Wilcox Street Fort Atkinson, WI
Dycora Transitional Health - Milwaukee LLC	GPH Glendale LLC	Dycora Transition Health & Living – Milwaukee	1616 West Bender Road Glendale, WI
Dycora Transitional Health - Glendale LLC	Silver Spring Acquisition LLC	Dycora Transition Health & Living – Bayshore	1300 W Silver Spring Dr. Glendale, WI

Lessee	Landlord	Facility Name	Address
Dycora Transitional Health - Riverdale LLC	GPH Muscoda LLC	Dycora Transition Health & Living – Riverdale	1000 N. Wisconsin Ave. Muscoda, WI
Dycora Transitional Health - Greendale LLC	GPH Greenfield LLC	Dycora Transition Health & Living – Greendale	5404 West Loomis Road Greendale, WI

10. This Court has jurisdiction over each of the Defendants pursuant to Wis. Stat. § 801.05(1)(c) and (d) because they are engaged in substantial and not isolated activities within the State of Wisconsin and are domiciled in the state.

11. Venue is appropriate in this Court pursuant to Wis. Stat. § 801.50(2)(b)-(c), because Defendants do substantial business in Milwaukee, and the tangible personal property that is part of the claim is, on information and belief, in Milwaukee County.

BACKGROUND REGARDING THE MASTER LEASE

12. Plaintiffs, collectively, own the real estate leased to each of the SNFs that comprise the Wisconsin Facilities.

13. Plaintiffs lease the Wisconsin Facilities, among others, to Defendants pursuant to that certain Master Lease dated as of December 15, 2016, between GPH Fresno LP, GPH Shafter LP, GPH Stockton LP, GPH Abbotsford LLC, GPH Beaver Dam LLC, GPH Fort Atkinson LLC, GPH Glendale LLC, GPH Greenfield LLC, GPH Muscoda LLC, GPH Watertown LLC, and Silver Spring Acquisition LLC as landlord, and Dycora Transitional Health – Abbotsford LLC, Dycora Transitional Health – Beaver Dam LLC, Dycora Transitional Health – Fort Atkinson LLC, Dycora Transitional Health – Glendale LLC, Dycora Transitional Health – Greendale LLC, Dycora Transitional Health – Milwaukee LLC, Dycora Transitional Health – Riverdale LLC, and Dycora Transitional Health – Watertown LLC, Dycora Transitional Health –

Community Care LLC, Dycora Transitional Health – Shafter LLC, and Dycora Transitional Health – Stockton LLC as tenant (“Master Lease”).

14. Defendants operate the Wisconsin Facilities as SNFs by providing nursing care and related healthcare services to residents who are unable to care for themselves.

15. Defendants are required under the Master Lease to pay monthly rent and satisfy other obligations to Plaintiffs, who own the real and personal property associated with the Wisconsin Facilities.

DEFENDANTS’ DEFAULTS UNDER THE MASTER LEASE

16. Defendants are in default under the Master Lease.

17. Defendants are in default under Sections 2.1.1 and 2.4 of the Master Lease for failing to pay the Base Rent due (as defined in the Master Lease).

IMMINENT RISK OF IRREPARABLE INJURY, LOSS, AND DAMAGE

18. The Wisconsin Facilities operated by Defendants fail to generate sufficient operating income to service the Defendants’ outstanding obligations and maintain the business as a going concern. If Defendants are unable to pay vendors who provide material medical goods and services necessary to care for the patients at the Wisconsin Facilities, the health, safety, and welfare of such patients is likely to be negatively affected.

19. Defendants have on multiple occasions since March 18, 2019 informed Plaintiffs that Defendants would be unable to meet their obligations to employees and creditors given their current financial situation and have requested that Plaintiffs finance their obligations.

20. In addition, Defendants may not be able to maintain property, casualty, and general liability insurance to cover losses on the Wisconsin Facilities as required under the Master Lease.

COUNT I
IMMEDIATE APPOINTMENT OF WIS. STAT. CH. 128
RECEIVER AND INJUNCTIVE RELIEF

21. Plaintiffs incorporate by reference the allegations of Paragraphs 1 through 20 of its Complaint as though fully set forth herein.

22. Financial information provided by Defendants to Plaintiffs indicate that Defendants' liabilities exceed the fair value of Defendants' assets. As a result, Defendants are insolvent or in imminent danger of insolvency as defined by Wis. Stats. §§ 128.001(1) and 128.08(1)(b).

23. Defendants are no longer receiving funding advances on their working capital financing and are unable to meet obligations to creditors.

24. Upon information and belief, unless a Receiver is immediately appointed over the Defendants' assets and Wisconsin Facilities, the value of those assets may significantly decline.

25. Defendants have demonstrated an inability (a) to currently pay the obligations due under the Master Lease, and/or (b) to cure the defaults described above.

26. By this action, Plaintiffs seek the immediate appointment of Michael S. Polsky, Esq., Two Plaza East, 330 East Kilbourn Avenue, Suite 1085, Milwaukee, Wisconsin 53202 as receiver pursuant to Chapter 128 of the Wisconsin Statutes (the "Receiver"). As further support of the Plaintiffs' request for the immediate appointment of a Receiver, the Affidavit of Michael S.

Polsky, Esq. has been filed contemporaneously herewith in support of the Plaintiffs' *Motion for Immediate Appointment of Receiver and Injunctive Relief* (the "Receiver Motion").

27. Plaintiffs have no adequate remedy at law with respect to Count I of this Complaint regarding the appointment of a receiver and injunctive relief.

28. Plaintiffs file contemporaneously herewith the Receiver Motion.

COUNT II

BREACH OF CONTRACT

29. Plaintiffs incorporate by reference the allegations of Paragraphs 1 through 28 of its Complaint as though fully set forth herein.

30. Defendants were obligated to perform under the terms and conditions of the Master Lease.

31. Defendants have breached the Master Lease.

32. Defendants are in default and have failed to cure the Current Defaults under the Master Lease.

33. Defendants breached the Master Lease as a result of the Rent Default.

34. Plaintiffs have been damaged as a result of Defendants' breaches of the Master Lease in an amount to be proven at trial.

35. Monthly rent and late charges continue to accrue and go unpaid under the Master Lease, and Plaintiffs' damages increase daily.

RESERVATION OF RIGHTS

36. This Complaint is filed without waiving and without prejudice to Plaintiffs' right to exercise any other right or remedy, whether arising under the Master Lease or otherwise, at law or in equity, all of such rights and remedies being expressly reserved.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request:

- (a) an order and judgment be entered in favor of Plaintiffs and against Defendants providing for the immediate appointment of Michael S. Polsky, Esq., as Receiver
- (b) an order and judgment be entered in favor of Plaintiffs and against Defendants for all sums due under the Master Lease; and
- (c) Plaintiffs be awarded such other and further relief as is justified by the facts and the law and as this Court deems just and proper.

Dated this 2nd day of April, 2019.

GODFREY & KAHN, S.C.

Electronically signed by Carla O. Andres

Carla O. Andres
State Bar No. 1020997
Nicholas Hahn
State Bar No. 1085675

Attorneys for Plaintiffs

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MILWAUKEE LLC,
DYCOR TRANSITIONAL HEALTH –
RIVERDALE LLC, AND
DYCOR TRANSITIONAL HEALTH –
WATERTOWN LLC,

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SUMMONS

THE STATE OF WISCONSIN

To each entity named above as a defendant:

You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Milwaukee County Courthouse, 901 North Ninth Street, Room 104, Milwaukee, Wisconsin 53233, and to Plaintiffs' attorneys, Carla O. Andres and Nicholas Hahn, whose address is Godfrey & Kahn, S.C., 200 S. Washington Street, Suite 100, Green Bay, Wisconsin 54301. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 2nd day of April, 2019.

GODFREY & KAHN, S.C.

Electronically signed by Carla O. Andres

Carla O. Andres
State Bar No. 1020997
Nicholas Hahn
State Bar No. 1085675

Attorneys for Plaintiffs

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