

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**



In re:
**Springfield Medical Care Systems, Inc.,
Debtor-in-Possession.**

**Chapter 11 Case
19-10285**

In re:
**Springfield Medical Care Systems, Inc.,
Plaintiff,
v.
Jovita Carranza, in her capacity as
Administrator for the U.S. Small
Business Administration,
Defendant.**

**Adversary Proceeding
20-01004**

*Appearances: D. Sam Anderson & Adam R. Prescott
Bernstein, Shur, Sawyer & Nelson, P.A.
Portland, ME
For the Plaintiff*

*Michael Tye
U.S. Department of Justice
Washington, DC
For the Defendant*

*Elizabeth A. Glynn
Ryan Smith & Carbine, Ltd.
Rutland, Vermont
For Berkshire Bank*

*Melissa A. D. Ranaldo
U.S. Attorney's Office – Vermont
Burlington, Vermont
For the Defendant*

ORDER

**GRANTING PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND
SETTING STATUS CONFERENCE ON THE PLAINTIFF'S REQUEST FOR A PRELIMINARY INJUNCTION**

Upon consideration of the Emergency Motion for Temporary Restraining Order and Request for Hearing Date and Briefing Schedule with Respect to the Debtor's Request for a Preliminary Injunction (doc. # 2, the "TRO Motion")¹ filed by the Plaintiff, the responses and memoranda of law the parties filed

¹ Capitalized terms not defined here shall have the meaning given to them in the TRO Motion and memorandum of decision.

thereafter (doc. ## 11, 15), and the arguments the parties presented at the May 6, 2020 hearing; and for the reasons set forth in the memorandum of decision of even date, the TRO Motion is granted and the Court shall convene a status conference to address the Plaintiff's request for a preliminary injunction.

With respect to the evidentiary and statutory bases for this Order:

1. The Court grants the Plaintiff's request, which the Defendant did not oppose, to treat the verified statements in the verified complaint (doc. # 1, the "Complaint") as admitted evidence in support of the TRO Motion.
2. The Court relies additionally on the text and purpose of the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"); the Paycheck Protection Program ("PPP"), enacted in § 1102 of the CARES Act; § 7(a) of the Small Business Act (15 U.S.C. § 636(a)); other sections of the CARES Act directly addressing the Bankruptcy Code and lending to bankruptcy debtors, specifically §§ 1103(3), 1113, and 4003(c)(3)(D)(i)(V) of the CARES Act; and the Administrator's interim final rules promulgated on April 15, 2020, and April 24, 2020, Docket Nos. SBA-2020-0015 and SBA-2020-0021.

Based on these sources, pertinent case law, and the record in this proceeding and the Plaintiff's chapter 11 case, as more fully articulated in the memorandum of decision, **THE COURT FINDS**

3. The Plaintiff has properly served, and given adequate notice of, the TRO Motion.
4. This Court has jurisdiction over this adversary proceeding and both statutory and constitutional authority to enter a final judgment on the Plaintiff's § 525(a) cause of action in this proceeding.
5. The Plaintiff is entitled to issuance of a temporary restraining order pursuant to Rule 65 of the Federal Rules of Civil Procedure, which is applicable to this adversary proceeding pursuant to Rule 7065 of the Federal Rules of Bankruptcy Procedure on its § 525(a) cause of action.
6. The Plaintiff received an email from one of its commercial banking institutions, Mascoma Bank, regarding the Plaintiff's application for a PPP loan, stating that Mascoma was "informed from the SBA that business customers currently in bankruptcy are ineligible." See Exhibit A to the TRO Motion (also an exhibit to the Complaint).
7. The Plaintiff has shown a substantial likelihood of success on the merits on the discrimination claim it alleges in the Complaint, and in particular, is likely to prevail on its claim that the Administrator is in violation of § 525(a) of the Bankruptcy Code by requiring lenders participating in the PPP to consider loan applications on a form that says PPP loans will not be approved if the applicant or any owner of the applicant is presently involved in any bankruptcy.
8. The Plaintiff provides medical services to communities in southeastern Vermont and southwestern New Hampshire.

9. The Plaintiff's business operations have been significantly impacted by COVID-19 as many non-essential elective procedures and office visits have been rescheduled or canceled, and a significant percentage of the Plaintiff's revenue is derived from elective procedures.
10. In the absence of funding from the PPP or another source, the Plaintiff may be forced to discontinue business operations by July and would not have sufficient funds for an orderly liquidation under those circumstances. This timeline could accelerate depending on the spread of COVID-19 in the Plaintiff's service area.
11. Due to the nature of the Plaintiff's business operations, it must continue to employ its staff in order to meet its charitable mission and provide health care services. The Plaintiff has more than 200 employees who may lose their jobs if the Plaintiff's business operations cease.
12. The Plaintiff has shown that the risk of harm it would suffer, if a temporary restraining order is not granted, is significant, in terms of its operational viability, potential reorganization, employment of local staff, and overall economic impact on the region in which it is located.
13. By contrast, the Defendant has failed to demonstrate any actual harm it would risk suffering if the temporary restraining order is granted.
14. Thus, risk of harm to Plaintiff, if a temporary restraining order is not granted, outweighs the risk of any harm to the Administrator, if a temporary restraining order is granted.
15. Given the nature of the Plaintiff's business operations and the purpose Congress had in enacting the CARES Act and establishing the PPP, the public interest is served by issuing a temporary restraining order.
16. The CARES Act constitutes a grant of economic aid in response to the pandemic.
17. This Court has authority to restrict the Plaintiff's management and disbursement of PPP funds, and the Plaintiff has consented to such oversight, such that the funds will qualify for forgiveness under the terms of the CARES Act.
18. The Plaintiff has sustained its burden of proof, having prevailed in its arguments on all four prongs of the test for determining whether a temporary restraining order is warranted.
19. The Plaintiff has not requested that this Court determine, and this Court finds no reason to determine, whether the Plaintiff qualifies for a PPP loan or whether Plaintiff's PPP application should be granted. This Order does not obligate Mascoma Bank, or any other participating lender, to approve a PPP application on behalf of the Plaintiff.
20. The Plaintiff is a debtor-in-possession and therefore no bond is required under Rule 65.

Based on these findings, **IT IS HEREBY ORDERED:**

- (A) The Motion is **GRANTED** pursuant to the terms of this Order, without need of a bond.
- (B) A temporary restraining order is hereby **ISSUED**, with notice, and directed to the Administrator and all agents, servants, employees, and any parties acting in concert with any of the foregoing parties with respect to a PPP application from the Plaintiff (collectively, the “Restrained Parties”). The Court intends that Mascoma Bank or any other lender participating in PPP, to whom the Plaintiff submits a PPP application, shall be one of the Restrained Parties upon the Plaintiff’s service of this Order on such lender.
- (C) Until the expiration of this temporary restraining order, its scope shall be as follows:
 - (i) The Restrained Parties shall not deny, or cause any commercial lender to deny, a PPP application of the Plaintiff solely on the basis that the Plaintiff is a debtor in bankruptcy, or to deny it based on the words “or presently in bankruptcy” on the Administrator’s official form of the PPP application.
 - (ii) The Restrained Parties shall not refuse to guaranty a loan sought by the Plaintiff under the PPP on the basis that the Plaintiff is a debtor in bankruptcy or because of a “yes” answer in response to question 1 on the official form of PPP application promulgated by the Administrator.
 - (iii) Effective upon entry of this Order, the Restrained Parties, other than any participating lender, shall not authorize, guaranty, or disburse funds appropriated for loans under the PPP without reserving sufficient funds or guaranty authority within the scope of the second appropriation to fund PPP to provide the Plaintiff with access to funds under PPP if the Plaintiff is eligible after implementation of the terms of this temporary restraining order and any appellate or judicial process with respect to any application filed by the Plaintiff. Nothing in this subparagraph is intended to limit the ability of a commercial lender that is one of the Restrained Parties from issuing PPP loans to borrowers. Rather, this Order requires the Administrator to ensure she has sufficient authority within the scope of amounts appropriated for PPP as of April 29, 2020, to guaranty a loan to the Plaintiff in an amount the Plaintiff may be qualified to obtain, if the Plaintiff is eligible subject to the terms of this Order and after consideration of any administrative and judicial appeals and resolution of the claims in the Plaintiff’s Complaint.

- (iv) The Plaintiff shall be authorized to submit a PPP application to a participating lender of its choosing – and a participating lender shall consider any pending application of the Plaintiff – with the words “or presently involved in any bankruptcy” stricken from the official form of application. And, if the Plaintiff satisfies all other conditions in question 1 to the official loan application form, to mark the box answering question 1 “no” or, with respect to any pending application, the participating lender shall treat question 1 as if it was answered “no.” The Restrained Parties shall consider the application submitted by the Plaintiff and shall fully implement all aspects of the PPP with respect to the Plaintiff without consideration of the involvement of the Plaintiff or any of its owners in any bankruptcy case. The application shall be considered an initial application if the submission of a subsequent application would adversely impact Plaintiff’s ability to qualify for a PPP loan.
- (v) To the extent any lender requires the Plaintiff to execute other forms, applications, or other documents for a PPP loan that include language about whether the Plaintiff or any owner of the Plaintiff is involved in a bankruptcy case, the Plaintiff is authorized to strike the language about involvement in a bankruptcy case and the Restrained Parties shall process the forms, applications, or other documents without consideration of the involvement of the Plaintiff or any owner of the Plaintiff in a bankruptcy case.
- (vi) The Restrained Parties shall not make or condition the approval of any PPP loan guaranty to the Plaintiff contingent on the Plaintiff or any owner of the Plaintiff not being “presently involved in any bankruptcy.”
- (vii) Upon receipt of any PPP funds, the Plaintiff must:
- (a) deposit those funds in a specially designated, interest bearing account, titled as a DIP account;
 - (b) immediately file a notice on the docket of this adversary proceeding and the docket of the Plaintiff’s chapter 11 case, stating its PPP application has been granted, and disclosing both the name of the lender that granted the application and the amount of the funds it has received;
 - (c) refrain from disbursing any of the PPP funds until it has Court approval to do so; and
 - (d) within two days after receipt of the PPP funds, file either a motion on shortened (seven-days’) notice to all secured creditors, or a stipulation showing the consent of the U.S. Trustee, that (i) requests authority to disburse PPP funds, (ii) sets forth the Plaintiff’s proposed distribution of the PPP funds, and (iii) affirms the proposed distribution meets all requirements for forgiveness of the PPP loan.

(viii) If the Court authorizes the Plaintiff to disburse the PPP funds, the Plaintiff must:

- (a) create a spreadsheet showing how PPP funds have been disbursed, that includes
 - (1) the date and purpose of each disbursement (e.g., payroll, interest payment),
 - (2) the section of the CARES Act which authorizes forgiveness of the PPP loan used for that purpose,
 - (3) the remaining balance of PPP funds, and
 - (4) any other information the Plaintiff would find useful for its record keeping or for purposes of demonstrating the entire PPP loan is eligible for forgiveness if / when the SBA audits the Plaintiff's use of the PPP loan; and
- (b) file on the docket of this adversary proceeding and the docket of the Plaintiff's chapter 11 case an updated version of the PPP funds spreadsheet within three business days of each disbursement of PPP funds.

IT IS FURTHER ORDERED the parties shall appear at a status hearing at **10:00 a.m. on Tuesday, May 12, 2020**,² on the Plaintiff's request for a preliminary injunction. At that status hearing,

- (A) the Defendant shall describe, in reasonable detail, the steps she has taken to comply with the terms of this TRO, and report on the amount of PPP funding currently available and when the Defendant projects those funds will be exhausted;
- (B) the Plaintiff shall report on the status of its efforts to implement the terms of this TRO and shall present, in reasonable detail, the contours of the relief it seeks in the form of a preliminary injunction, based on the current status of this proceeding and any pending PPP application;
- (C) the parties shall present to the Court any additional conditions they propose with respect to the Plaintiff's receipt, distribution, or recording of PPP funds, in order to ensure maximum protection of the Plaintiff's bankruptcy estate, its creditors, and the Defendant/lender; and
- (D) the parties shall jointly propose a timeline and litigation schedule (if needed) for a determination of whether this temporary restraining order should be converted to a preliminary injunction and final adjudication of this adversary proceeding. (If the parties cannot reach agreement on these terms, each party shall certify they have made a diligent effort to do so and present their competing proposals.)

² This hearing shall be conducted via the Court's Zoom account and the courtroom deputy will provide the meeting ID and other access information to counsel for the parties. Any other attorney or interested party who wishes to attend, or participate in, this hearing may obtain the access information by contacting the courtroom deputy one day prior to the hearing.

IT IS FURTHER ORDERED this temporary restraining order shall remain in full force and effect until it expires at the conclusion of the status hearing scheduled to begin at 10 a.m. on May 12, 2020, unless (A) terminated earlier by the Court, or (B) further extended by law, Court order, or agreement of the parties.

SO ORDERED.

May 7, 2020 at 9:45 a.m.
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge