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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	Chapter 11
	§	
BUCKINGHAM SENIOR LIVING COMMUNITY, INC.,	§	Case No. 25-80595 (MVL)
	§	
	§	
Debtor.	§	

**LEE ADCOCK HUNNELL, THOMAS A. WILLETT, MANUEL ARIEL PAYAN,
STEVEN DYER FOR THEMSELVES AND OTHER SIMILARLY SITUATED
CURRENT AND FORMER RESIDENTS OF THE BUCKINGHAM SENIOR LIVING
COMMUNITY, INC. MOTION TO DETERMINE STANDING OR, ALTERNATIVELY,
FOR ORDER GRANTING STANDING TO PURSUE CLAIMS, AND MOTION FOR
ADDITIONAL TIME**

Lee Adcock Hunnell (“Hunnell”), Thomas A. Willett (“Willett”) as trustee of the Prillman Living Trust for Eleanor W. Prillman (deceased), Manuel Ariel Payan (“Payan”) as co-executor for the estate of Margaret Payan, Steven Dyer (“Dyer”) for the estate of Robert Dyer, and Thomas C. Ryan (“Ryan”) for themselves and other similarly situated former and current residents of Buckingham Senior Living Community, Inc. (“Buckingham”)(Hunnell, Willett, Payan, Dyer, Ryan and other similarly situated former and current residents collectively, the “Plaintiffs”) in the above-captioned chapter 11 case of Buckingham Senior Living Community, Inc. (“Buckingham”

or the “Debtor”) file this *Motion to Determine Standing or, Alternatively, for Order Granting Standing to Pursue Claims and Motion for Additional Time* (the “Motion”).

I. SUMMARY

1. Section 246.111 of the Texas Health and Safety Code grants the residents of a CCRC a lien on all real and personal property of the provider to secure the provider’s obligations to the resident. In connection with obtaining entrance to the Buckingham, the Plaintiffs (also defined as the “Residents”) entered into certain agreements with the Debtor. The Plaintiffs that enter into either a Life Care Agreement or a Fee for Service Agreement (together, “Entrance Fee Agreements”) were required to pay an entrance fee (the “Entrance Fee”) in order to obtain occupancy at the Facility, and a monthly service fee (the “Monthly Service Fee”) for the Facility to provide life care services to Residents. *Id.* at ¶ 16(a), (b). According to the Debtor, recent Entrance Fees ranged from \$220,000 – \$1,200,000 under Life Care Agreements, and from \$160,000 – \$1,100,000 under Fee for Service Agreements, exclusive of all other fees required in the Residency Agreements. *Id.*

2. The Entrance Fee Agreements, in turn, typically contain material refund obligations with respect to the Entrance Fees, including 90%, 50% (available only to residents executing Life Care Agreements), and 0% refundable Entrance Fee plans. The Plaintiffs are entitled to their Entrance Fee Refunds upon certain conditions, including when (a) a Plaintiff terminates the Residence Agreement, (b) a Plaintiff passes away (or in the case of two Entrance Fee Residents living in the same unit, both pass away), or (c) the Debtor terminates the Residency Agreement pursuant to the terms of the agreement.

3. Currently, the Debtor owes:

(a) Approximately \$38 million in refunds owed to former Residents or their heirs/estates that became payable prior to the Debtor's 2021 Bankruptcy Case;

(b) Approximately \$34 million in refunds owed to former Residents or their heirs/estates that arose after the effective date of the Plan in the Debtor's 2021 Bankruptcy Case; and

(c) Approximately \$75 million in refundable Entrance Fee obligations owed to current Residents.

4. The rights to obtain the refunds are "claims" held by the Plaintiffs and other Residents as creditors of the Debtor. The Plaintiffs have attached a copy of their proposed *Complaint to Determine Extent, Priority and Validity of Liens of UMB Bank, N.A.* (the "Complaint"). As discussed below, the Plaintiffs have standing to pursue the claims in the Adversary, and requests entry of an order confirming the standing to pursue these claims.¹

II. JURISDICTION AND VENUE

5. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"), has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (K) and (O).

6. Venue is proper in this district under 28 U.S.C. § 1409(a).

III. BACKGROUND

7. As set forth above, the Plaintiffs represent the interests of themselves and other similarly situated individuals, as creditors of the Debtor, in connection with recovery of any Entrance Fees.

8. The Texas Health and Safety Code provides:

Sec. 246.111. LIEN.

¹ The Plaintiffs are not aware of any cases in Texas where the residents have not received a return of the amounts similar to the "Entrance Fees." As such this appears to be a case of first impression.

(a) To secure the obligations of the provider under any continuing care contract, a lien attaches on the date a resident first occupies a facility or receives services under a continuing care contract. The lien covers the real and personal property of the provider located at the facility.

...

(c) A lien under this section is subordinate to any liens on the property of the facility if the proceeds of the loan secured by the liens were used in whole or in part to:

- (1) construct, acquire, replace, or improve the facility; or
- (2) refinance an earlier loan used to construct, acquire, replace, or improve the facility.

Tex. Health & Safety Code §246.111.

9. As discussed more fully in the Plaintiffs' Complaint attached hereto, UMB Bank, N.A. ("UMB") as Trustee, asserts that it holds a prepetition secured claim in the amount of \$168,840,000 plus accrued interest, fees, and expenses, for the benefit of the beneficial holders of the Retirement Facility Revenue Bonds (Buckingham Senior Living Facility, Inc. Project) Series 2021A-1 and Series 2021A-2 (Federally Taxable) (together, the "Series 2021A Bonds") in the original aggregate principal amount of \$28.5 million and Series 2021B in the original aggregate principal amount of \$140,340,000 (collectively, the "Series 2021 Bonds"). The Series 2021 Bonds were issued as part of the plan confirmed in the Debtor's prior bankruptcy case (the "2021 Case").²

10. With one exception (as discussed below), the proceeds of the Series 2021A Bonds were not used for the purposes designated in §241.111(c) of the Texas Health and Safety Code. Instead, as described in the plan confirmed in the 2021 Case (the "2021 Plan"), "[t]he Series 2021A Bonds shall be issued as current paying bonds in the principal amount of \$28,500,000." 2021 Plan,

² *In re Buckingham Senior Living Community, Inc.*, No. 21-32155 (MI), in the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

p. 128. Of that amount, \$3.450 million was designated for “lobby refurbishment and capital expenditures[.]” *Id.* The remaining amount received by the Reorganized Debtor from the issuance of the Series 2021A bonds was designated for working capital, a debt service reserve, a distribution to the Pre-Effective Date Refund Queue, and costs of issuance. *Id.* The issuance of the Series 2021B Bonds resulted in no additional proceeds provided to the Reorganized Debtor. Instead, “[o]n the Effective Date, the holders of the Existing Bonds shall exchange the then outstanding Existing Bonds for Series 2021B Bonds . . . The principal amount of the Series 2021B Bonds is equal to 100% of the principal amount of the Existing Bonds.” *Id.*

11. The claims and lien of the Plaintiffs are senior to the lien asserted by UMB.³

IV. NATURE OF CLAIMS AND STANDING

Extent, Validity and Priority of Liens

12. By way of the Complaint, the Plaintiffs seek a declaratory judgment as to the extent, validity and priority of the liens in favor of the Plaintiffs under the Texas Health and Safety Code in relation to the lien asserted by UMB. UMB asserts a first priority lien and, accordingly, an actual controversy exists entitling the Plaintiffs to seek a declaration regarding the “rights and other legal relations of any interested party” under 28 U.S.C. §§ 2201, 2202. A party has standing under § 2201 where it establishes “actual present harm or significant possibility of future harm.” *Roark & Hardee, LP v. City of Austin*, 522 F.3d 533, 542 (5th Cir. 2008). Here, without a declaration of the Plaintiffs’ lien, the funds which would otherwise be paid to the Plaintiffs will be paid to UMB.

13. The Plaintiffs also seek equitable subordination. Equitable subordination is

³ The 2021 Plan of the Buckingham does not appear to address the lien issues. The lender had the opportunity to clarify this issue but took no action to do so. As a result, the liens of the Residents for the Entrance Fees “flowed through” with such lien rights being unaffected.

allowed where (1) the defendant engaged in inequitable conduct; (2) the conduct resulted in harm to the creditors or conferred an unfair advantage to the defendant; and (3) subordination is not inconsistent with the Bankruptcy Code. *Wooley v. Faulkner (In re SI Restructuring, Inc.)*, 532 F.3d 355, 360 (5th Cir. 2008). Control by a third party to the detriment of other creditors can give rise to equitable subordination. *In re Cajun Elec. Coop., Inc.*, 119 F.3d 349, 357. This can include actions by a lender that amount to improper control of a debtor's finances or other actions that harm a debtor. *See In re Lois/USA, Inc.*, 264 B.R. 68, 136 (Bankr. S.D.N.Y. 2001)(lender's exercise of control over a debtor's operations can form the basis for equitable subordination). Fraud is not required to support equitable subordination, and instead only requires inequitable conduct that results in harm to the debtor or other creditors. *Capitol Bank & Trust Co. v. 604 Columbus Avenue Realty Trust (In re 604 Columbus Avenue Realty Trust)*, 968 F.2d 1332, (1st Cir. 1992)(relying upon the Fifth Circuit's test articulated in *In re Mobile Steel Co.*, 563 F.2d 692 (5th Cir. 1977); *Faulkner v. AimBank (In re Reagor-Dykes Motors, LP)*, No. 20-05039, 2021 WL 1219537 at *10-11 (Bankr. N.D. Tex. March 30, 2021).

14. The debt owed to the Bond Holders should be recharacterized as equity. The loan was in reality a "risky investment." The Buckingham could not operate without continuous new residents making very large "deposits" as Entrance Fees. The Buckingham appears to have been undercapitalized.

15. The possible actions of UMB may have resulted in UMB exercising operational control of the Debtor, especially in the amount of rent, types of contracts and other issues which were told to at least one of the Plaintiffs. Any actions of UMC in dictating budgets, setting amounts for new charges, restricting the ability of the Debtor to set its own terms for operations may have resulted in UMC participating in management's breach of duty to the Buckingham.

16. The use of cash collateral by UMB during the bankruptcy was done without approval or consent from the Residents. The cash collateral was subject to the lien claims of the residents.

17. To the extent that the Debtor cannot or will not assert this claim, the Plaintiffs seek to assert this claim.

18. As the Court is aware, the sale of the Debtor's property is set to close in the near future. As a result, funds will be available to pay certain lien claims, and UMB seeks recovery of its debt from the proceeds of the sale. Any payment to UMB should occur only after the lien in favor of the Plaintiffs is paid from the sale proceeds.

19. Accordingly, the Plaintiffs are seeking a determination of the lien rights and right to payment for themselves (and similarly situated individuals or estates). To the extent there is any dispute as to standing, the Plaintiffs seek entry of an order determining that they have standing to bring the claims set forth in the Plaintiffs' Complaint.

20. Based on information and belief the Plaintiffs also assert the following causes of action may be asserted or added to the complaint after the Plaintiffs have had time to conduct discovery. Due to the deadline, the lack of notice to the residents and the lack of the ability to conduct discovery, the Plaintiffs may seek to also assert the following:

- a. The liens and claims of UMB may be set aside under 11 U.S.C. section 548 since the entrance fees were not used to pay down the previous Entrance Fees and other factors.
- b. The liens of UMB may have defects and the Plaintiffs need time to investigate such possible defects. The Plaintiffs were not notified of the deadline.
- c. The liens of UMB may be subject to avoidance under 11 U.S.C. Section 554. The

Plaintiffs need time to investigate such possible defects. The Plaintiffs were not notified of the deadline.

Standing under the Texas Health and Safety Code

21. Based upon the plain language of the statute, the lien recognition under § 246.111(a) of the Texas Health and Safety Code is (1) automatic and (2) not dependent upon any action being taken by the State of Texas. The Plaintiffs acknowledge that § 246.111(e) states that “A lien under this section may be foreclosed on application of the board⁴ if the facility is liquidated or the provider is insolvent or bankrupt.” That provision does not prevent the Plaintiffs from pursuing the relief requested in the Complaint.

22. The Plaintiffs do not seek lien foreclosure. Instead, as noted above, the Plaintiffs seek a determination of the extent, validity and priority of competing lien claims, which will govern the payment waterfall from proceeds of the sale of the Debtor’s property.

23. Additionally, even if the action is somehow determined to seek a “foreclosure,” the statute does not purport to provide exclusive rights to the State.⁵ Even if the statute is interpreted as a right to be exercised by the State, this Court should grant standing to the Plaintiff to pursue a foreclosure, if it is necessary.⁶ This Court has broad powers under 11 U.S.C. §105(a) to issue “any order, process or judgment that is necessary and appropriate to carry out the provisions of this title.” *See* 11 U.S.C. §105(a). This section provides “broad equitable power” which “exceeds the equitable authority available under traditional equity jurisprudence.” *In re City of Detroit, Mich.*, 519 B.R. 673, 679-80 (Bankr. E.D. Mich. 2014). While a bankruptcy court may not use this

⁴ “Board” means the Texas State Board of Insurance. Tex. Health & Safety Code, §246.002(1).

⁵ The Plaintiffs have been informed that the State of Texas has refused to pursue these claims for the Plaintiffs and other Residents.

⁶ As stated, the State has refused to pursue these claims.

provision to create new substantive rights or contravene specific provisions of the Bankruptcy Code, § 105(a) permits a court to fashion remedies to enforce a right. *In re Cano*, 410 B.R. 506, 539-40 (Bankr. S.D. Tex. 2009); *see also Jove Engineering, Inc. v. IRS (In re Jove Engineering, Inc.)*, 92 F.3d 1539, 1554 (11th Cir. 1996)(“Therefore, the plain meaning of §105(a) encompasses any type of order, whether injunctive, compensative or punitive, so long as it is necessary and appropriate to carry out the provisions of the Bankruptcy Code.”). In addition to protecting the Plaintiffs rights under Bankruptcy Rule 7001, utilizing § 105 is appropriate to protect the Plaintiffs’ rights to the appropriate claim priority under 11 U.S.C. § 502, 506 and the rights to distribution of sales proceeds from a sale free and clear of liens under 11 U.S.C. § 363.

Derivative Standing

24. The Plaintiffs do not believe that the claims in the Complaint are estate-owned claims, as the lien is in favor of the Plaintiffs.

25. In this case, the Debtor has already stipulated to the extent, validity and priority of UMB’s lien, and agreed not to challenge UMB’s lien. Accordingly, the Debtor cannot pursue the action.

26. There is no question that, at a minimum, the claims asserted by the Plaintiffs are valid claims of the Plaintiffs. The claim arises directly from the Texas Health and Safety Code. The claim is based upon Entrance Fee deposits which, the Plaintiffs believe, are uncontested. UMB is asserting that its lien is senior to all liens. The claims of the Plaintiffs are real and valid.

27. With few exceptions, the Plaintiffs did not get notice of the deadline to object. The certificate of service for the DIP Order was not served on the individual current or former residents. The list of the current and former residents was very recently provided to the Unsecured Creditors Committee but provided only on a confidential basis. As such, the vast majority of the residents

who may have claims were not made aware of the deadlines.

28. The Committee was recently provided a list of the former and current residents but such list was provided on a confidential basis. Unless a complete list is provided without any confidentiality, the Plaintiffs have no way to provide notices to all affected persons.

29. Members of the Unsecured Creditors Committee (“Committee”) were recently informed that the Committee may not have the ability to pursue secured claims. Only recently have residents who are members of the Committee been informed that the secured claims may not be an area where the Committee has the ability to pursue.

30. The Plaintiffs seek an extension of the deadline to at least April 20, 2026, to allow the Plaintiffs and others to conduct discovery.

31. The Plaintiffs also request that a complete list of all former and current residents be provided for use by the Plaintiffs and with no restrictions on use. The list should also include the amount of the Entrance Fees paid by each person, the date of such payment, and the amount of any refund paid to such person or estate. The Plaintiffs are unable to contact the former and current residents without such list.

WHEREFORE, based on the forgoing, the Plaintiffs on behalf of themselves and other similarly situated former and current residents of Buckingham Senior Living Community, Inc. request that the Court grant the rights of the Plaintiffs to pursue claims against UMB, for additional time to pursue additional claims beyond the deadline of February 17, 2026, to at least April 20, 2026, for UMB to provide to the Plaintiffs a complete list of names, addresses and Entrance Fees paid for all current and prior residents, for time to conduct discovery, for an order to require UMC to provide notice to all current and future residents of these matters and orders entered, and that the Plaintiffs have such other and further relief to which they may be entitled.

Dated: February 17, 2026

Respectfully submitted,

By: /s/ Reese W. Baker
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Ryan

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was served on all parties receiving ECF notifications, and the other parties listed below by e-mail, on February 17, 2026.

/s/ Reese W. Baker
Reese W. Baker