

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

GLOBAL WOUND CARE MEDICAL GROUP, a
Professional Corporation,¹

Debtor.

Chapter 11

Case No. 24-34908 (CML)

GLOBAL WOUND CARE MEDICAL GROUP, a
Professional Corporation,

Plaintiff,

vs.

WELLS FARGO BANK, N.A.

Defendant.

Chapter 11

Case No. 25- ____ (____)

COMPLAINT

Global Wound Care Medical Group, a Professional Corporation
(the “Debtor” or “Plaintiff”), the debtor and debtor in possession in the above-captioned
chapter 11 case (the “Chapter 11 Case”) by and through its attorneys, as and for its
complaint against the defendant, Wells Fargo Bank, N.A. (“Wells Fargo” or
the “Defendant”), allege the following upon knowledge as to its own acts, and upon
information and belief as to all other matters:

¹ The last four digits of the Debtor’s tax identification number in the jurisdiction in which it operates is
3572.



JURISDICTION AND VENUE

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157(a) and 1334. This is a core proceeding under 28 U.S.C. § 157(a). Venue is proper in this district pursuant to 28 U.S.C. § 1409.

PARTIES

2. Plaintiff is a Debtor in the above-captioned Chapter 11 Case.

3. Defendant Wells Fargo is the Debtor's bank and maintains the Debtor's only deposit account—checking account numbered XXXXXX9783 (the "Bank Account").

FACTUAL BACKGROUND

A. The Chapter 11 Case

4. On October 21, 2024 (the "Petition Date"), the Debtor filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtor continues to operate its business and manage its property as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. No trustee, examiner, or official committee has been appointed in the Chapter 11 Case.

6. Since 2019, the Debtor (or its predecessor) has provided critical wound care services to elderly patients in their homes, hospices, and skilled nursing facilities. Wound care is a critical service for these patients, because, if left untreated, severe wounds can result in amputation or other serious complications. A description of the Debtor, its business, and the facts and circumstances of the Chapter 11 Case are set forth in greater detail in the *Declaration of Ralph Cetrulo in Support of Chapter 11 Petition and First Day Motions* [Docket No. 8] (the "First Day Declaration"), filed on the Petition Date and incorporated herein by reference.

B. The Bank Account

7. As set forth in the *Debtor's Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtor to (A) Continue Using its Cash Management System, and (B) Maintain Existing Bank Account and Business Forms and Records, and (II) Granting Related Relief* [Docket No. 6] filed on the Petition Date (the "Cash Management Motion"), the Debtor uses a simple cash management system (the "Cash Management System") to collect, transfer, and disburse funds generated by its operations in the ordinary course of business. All of that activity flows through the Bank Account. In fact, the Debtor conducts all of its business out of the Bank Account. As of April 3, 2025, the cash balance of the Bank Account was \$20,322,463.62.

8. On November 11, 2024, this Court entered the *Final Order (I) Authorizing the Debtor to (A) Continue Using its Cash Management System, and (B) Maintain Existing Bank Account and Business Forms and Books and Records, and (II) Granting Related Relief* [Docket No. 58] (the "Final Cash Management Order").

9. The Final Cash Management Order authorizes Wells Fargo to:

[C]ontinue to service and administer the Bank Account as an account of the Debtor as a debtor in possession, without interruption and in the ordinary course of business, consistent with prepetition practices, including prefunding arrangements, and to receive, process, honor and pay any and all checks, drafts, wire transfers, and ACH and other transfers issued, whether before or after the Petition Date, and drawn on the Bank Account after the Petition Date by the holders or makers thereof, as the case may be; provided that the Debtor will instruct the Bank as to which checks, drafts, wire transfers (excluding any wire transfers or ACH transfers that the Bank is obligated to settle), or other items presented, issued, or drawn, shall not be honored.

Final Cash Management Order ¶ 3.

10. On December 19, 2024, the Debtor entered into a stipulation [Docket No. 87] (the "Medicare Stipulation") with the United States providing for the modification of a previously imposed Medicare payment suspension, to allow for 75%

of the claims submitted to be paid to the Debtor. The term of the Medicare Stipulation was most recently extended through April 7, 2025, to allow for additional time for the Debtor and the United States to reach a global resolution of all disputes with the government. *See* Docket No. 154. The United States has the sole discretion whether to provide further extensions. Consequently, any disruption in the banking relationship between the Debtor and Wells Fargo that affects the United States' willingness to provide further extensions, or to continue permitting the Medicare payments under the Medicare Stipulation, would leave the Debtor helpless.

11. On January 3, 2025, Wells Fargo sent a letter to the Debtor (the "January 3 Letter"), a copy of which is annexed hereto as **Exhibit A**. The January 3 Letter informed the Debtor that Wells Fargo "performs ongoing reviews of its account relationships in connection with the Bank's responsibilities to manage risks in its banking operations." January 3 Letter at 1. The January 3 Letter further provided that Wells Fargo "recently reviewed [the Debtor's] account relationship and, as a result of this review" Wells Fargo would be closing the Bank Account. *Id.* The January 3 Letter also informed the Debtor that the Bank Account would be closed by February 20, 2025. *See id.*

12. In response to the January 3 Letter, on January 14, 2025, the Debtor sent a letter to Wells Fargo (the "January 14 Letter"), a copy of which is attached hereto as **Exhibit B**. The January 14 Letter informed Wells Fargo of, among other things, the requirements of the Final Cash Management Order, that Wells Fargo is subject to the automatic stay imposed under section 362(a) of the Bankruptcy Code, and that immediate and severe disruptions to the Debtor's business would occur if Wells Fargo terminated its banking relationship with the Debtor, among other things.

13. Counsel to the Debtor also asked Wells Fargo to respond to the January 14 Letter by January 17, 2025. See Exhibit C (Jan. 14, 2025 Email from A. Glaubach to bnkrptrp@wellsfargo.com at 10:00 p.m. (ET)).

14. On February 14, 2025, Wells Fargo sent another letter to the Debtor (the “February 14 Letter”), a copy of which is attached hereto as Exhibit D. The February 14 Letter provided an update on the “pending account closure” and extended the date of closure from February 20, 2025 to March 31, 2025 “because you have requested to delay the closure of your account.” *Id.* at 1.

15. On February 21, 2025, after some informal discussions with Wells Fargo, Winstead PC (“Winstead”), outside counsel to Wells Fargo reached out to Dentons, Debtor’s bankruptcy counsel, stating that “Wells Fargo still desires to exit the relationship,” and requested a call “to discuss how the parties can work to hopefully amicably achieve that goal while minimizing any disruption to the Debtor’s operations.” Exhibit E (Feb. 21, 2025 Email from S. Davis to C. Doherty at 4:24 p.m.).

16. Subsequently, Winstead and the Togut Firm, conflicts counsel to the Debtor, engaged in informal discussions to resolve the matter. On March 13, 2025, Wells Fargo’s counsel agreed that it would “not close the Debtors’ bank account...on or before March 31, 2025” but also stated that “Wells Fargo continues to reserve all applicable rights with respect to the closure of the debtor’s account at some point after March 31, 2025.” Exhibit F (Mar. 12, 2025 Email from S. Davis to K. Ortiz at 12:09 p.m.).

17. On March 28, 2025, Winstead contacted the Togut Firm, notifying them that they would be seeking court approval to close the bank account on April 30, 2025. See Exhibit G (Mar. 28, 2025 Email from S. Davis to K. Ortiz at 6:19 p.m. (ET)).

18. Between March 28, 2025 and April 4, 2025, Winstead and the Togut Firm continued to try and resolve the matter. For example, on April 3, 2025, Winstead asked the Togut Firm how often the Debtor provides weekly reporting the Department

of Justice and whether the Debtor was offering October 1, 2025 or October 31, 2025 as a proposed Bank Account closure date. See Exhibit H (Apr. 3, 2025 Email from S. Davis to A. Glaubach at 10:11 a.m.). Shortly thereafter, the Togut Firm responded to Winstead's questions stating that: (1) the Department of Justice receives reports on a weekly basis; and (2) October 31, 2025 was the proposed Bank Account closure date. See Exhibit I (Apr. 3, 2025 Email from A. Glaubach to S. Davis at 1:15 p.m.).

19. Despite these efforts to resolve the matter without Court involvement, on April 4, 2025, Winstead informed the Togut Firm that while the information the Togut Firm provided was "helpful," Wells Fargo would be filing a motion for stay relief to close that Bank Account to "maintain our current progress and give everyone a goal for which to aim." See Exhibit J (Apr. 4, 2025 Email from S. Davis to K. Ortiz at 11:05 a.m.).

20. Approximately thirty minutes after Winstead contacted the Togut Firm, Wells Fargo filed its *Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d) to Close the Debtor's Bank Account* [Docket No. 157].

21. As set forth in the Cash Management Motion, while the majority of the Debtor's receipts are received in the form of ACH transactions from Medicare and various commercial insurance carriers, the Debtor also receives checks from secondary payors (the "Payors").

22. Any termination of the Bank Account would materially interrupt the Debtor's receipt of government receivables for a significant period of time, which would negatively impact the Debtor's ability to provide critical healthcare services to its elderly patients. This is especially true in light of the complex process for the submission and payment of claims from Medicare and the other Payors. Specifically, if Wells Fargo closes the Bank Account and Debtor is forced to open new accounts, the deposit of payments from Medicare and other Payors would be severely disrupted

while the governmental agencies and other Payors change their internal processes and procedures to transition to new bank accounts, which can be a very complex and time-consuming process. The Debtor's accounting staff, which will also be working on supplying all of the information to meet the Debtor's chapter 11 reporting requirements, as well as performing their regular business tasks, would be further distracted by opening new bank accounts, advising and explaining the same to interested parties, addressing the logistical issues of getting the Payors to utilize the new accounts, and getting checks printed for the new disbursement account.

23. Additionally, the Debtor lacks any meaningful cash reserves and requires immediate access to its cash receipts. This need has been exacerbated by the partial suspension of payments by Medicare to the Debtor, further depleting available cash to the detriment of the Debtor and its creditors. Any delay of those receipts that are available pending resolution of disputes with Medicare will jeopardize the Debtor's ability to conduct its business, which, in turn, would harm the many patients who rely on prompt, accurate, and complete shipment of wound care supplies from the Debtor. Such delays would threaten the Debtor's reorganization and immediately impair its ability to continue its operations.

24. The Debtor also relies upon the Bank Account and Cash Management System for other important business functions, including payroll disbursements, the payment of applicable state and federal payroll taxes, and making payments to acquire the biologics needed for the Debtor's business. Any disruption in the Debtor's ability to make these types of disbursements when, and as required in the ordinary course, would impair employee and customer confidence in the Debtor's ability to function as a going concern.

25. Accordingly, any termination of the Debtor's banking relationship with Wells Fargo would cause substantial disruption to the Debtor's business, to the detriment of all parties in interest in the Chapter 11 Case.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment)

26. The Debtor repeats and incorporates the allegations in each of the foregoing paragraphs of this complaint as if fully set forth herein.

27. Section 362(a)(3) of the Bankruptcy Code prohibits "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate."

28. Property of the estate is defined in section 541(a)(1) of the Bankruptcy Code as "all legal and equitable interests of the debtor in property as of the commencement of the case."

29. Plaintiff's rights and interests in the Bank Account, as well as its banking relationship with Wells Fargo, constitute property of the Debtor's estate.

30. The funds and payments that come into the Bank Account from Medicare and other Payors are also property of the estate. And terminating the Bank Account and not honoring any of those incoming payments would be exercising control over property of the Debtor's estate.

31. Defendant is now attempting to terminate the Debtor's banking relationship with Wells Fargo and close the Bank Account, in violation of the automatic stay imposed by section 362(a) of the Bankruptcy Code.

32. The Debtor is threatened with irreparable injury absent declaratory relief for which there is no adequate remedy at law.

33. Accordingly, the Court should issue a declaratory judgment determining that any termination of the Debtor's banking relationship with Wells

Fargo, any closure of the Bank Account, or any attempt to otherwise exercise possession or control over the Debtor's interest and rights in the Bank Account is prohibited.

SECOND CLAIM FOR RELIEF
(Injunction)

34. The Debtor repeats and incorporates the allegations in each of the foregoing paragraphs of this complaint as if fully set forth herein.

35. Section 362(a)(3) of the Bankruptcy Code prohibits "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate."

36. Property of the estate is defined in section 541(a)(1) of the Bankruptcy Code as "all legal and equitable interests of the debtor in property as of the commencement of the case."

37. Plaintiff's rights and interests in the Bank Account, as well as its banking relationship with Wells Fargo, constitute property of the Debtor's estate.

38. The funds and payments that come into the Bank Account from Medicare and other Payors are also property of the estate. And terminating the Bank Account and not honoring any of those incoming payments would be exercising control over property of the Debtor's estate.

39. Defendant is now attempting to terminate the Debtor's banking relationship with Wells Fargo and close the Bank Account, in violation of the automatic stay imposed by section 362(a) of the Bankruptcy Code.

40. The Debtor is threatened with irreparable injury absent injunctive relief for which there is no adequate remedy at law.

41. Accordingly, the Court should enjoin any termination of the Debtor's banking relationship with Wells Fargo, any closure of the Bank Account, or

any attempt to otherwise exercise possession or control over the Debtor's interest and rights in the Bank Account.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment as follows:

- a. A temporary restraining order and preliminary and permanent injunctions pursuant to 11 U.S.C. §§ 105, 362, 541 and 542 and Bankruptcy Rules 7001, 7003 and 7065 restraining and enjoining Defendant from freezing, withdrawing from, modifying, conditioning, suspending, terminating or interfering with, the Bank Account or the Debtor's banking relationship with Wells Fargo;
- b. An order declaring that freezing, exercising possession or control, modifying, suspending, or terminating the Bank Account or the Debtor's banking relationship with Wells Fargo constitutes an impermissible violation of the automatic stay provided in 11 U.S.C. § 362;
- c. An order awarding the Debtor actual, compensatory and punitive damages and/or sanctions in an amount to be determined at trial for Defendant's violation of the automatic stay;
- d. An order awarding Debtor's legal fees and other costs; and
- e. All other relief as this Court may deem just, equitable or appropriate under the circumstances.

Dated: April 4, 2025
New York, New York

TOGUT, SEGAL & SEGAL LLP
By:

/s/ Kyle J. Ortiz
Kyle J. Ortiz (admitted *pro hac vice*)
One Penn Plaza, Suite 3335
New York, New York 10119
Telephone: (212) 594-5000

Conflicts Counsel to the Debtor