

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

CENTRAL MAINE HEALTHCARE))	
CORPORATION,))	
)	
Appellant,))	
)	
v.))	2:15-cv-00527-JDL
)	
PARKVIEW ADVENTIST))	
MEDICAL CENTER, et al.))	
)	
Appellees.))	

ORDER ON MID COAST HOSPITAL’S MOTION TO DISMISS APPEAL

Mid Coast Hospital (“Mid Coast”) seeks to dismiss Central Maine Healthcare Corporation’s (“CMHC”) appeal taken from the Bankruptcy Court’s denial of CMHC’s motion to amend a Sale Order approving the sale of certain assets of a debtor, Parkview Adventist Medical Center, to Mid Coast.

I. BACKGROUND

Parkview Adventist Medical Center (“Parkview”), a hospital located in Brunswick, Maine, filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C.A. § 101, *et seq.* (2015), in June 2015. ECF No. 5 at 3.¹ In August, the Bankruptcy Court authorized the sale of certain of Parkview’s assets to Mid Coast. *Id.* at 2. This followed a public auction supervised by the Bankruptcy Court in which Mid Coast and CMHC both submitted bids. *Id.* at 3-4.

¹ The ECF references, unless otherwise indicated, correspond to the appeal docket before the District Court in case number 2:15-cv-00527-JDL. References to filings in the Bankruptcy Court specify that case number along with the ECF number.

In its Sale Order approving the sale to Mid Coast, the Bankruptcy Court found that Mid Coast was a “good faith” purchaser under section 363(m) of the Bankruptcy Code. *Id.* at 7. The sale to Mid Coast was completed on August 20, 2015. *Id.*

On September 3, 2015, CMHC, without having sought a stay of the Sale Order, moved to amend certain findings and conclusions in the Sale Order pursuant to Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52. Case No. 15-20442 (Bankr. D. Me.), ECF No. 336. The motion did not challenge the Bankruptcy Court’s determination that Mid Coast Hospital was a good faith purchaser. *Id.* On December 14, 2015, the Bankruptcy Court denied the motion to amend in a written decision, Case No. 15-20442 (Bankr. D. Me.), ECF No. 525; ECF No. 526, and CMHC now appeals from that denial. ECF No. 1. Again, at no time has CMHC sought to stay the Bankruptcy Court’s Sale Order.

Mid Coast seeks the dismissal of CMHC’s appeal. It contends that because CMHC failed to seek a stay of the sale, ECF No. 5 at 10-11, the only issue subject to appeal is Mid Coast’s status as a “good faith” purchaser, a determination which CMHC does not challenge. Thus, Mid Coast asserts that CMHC’s appeal must be dismissed as statutorily moot under § 363(m). *Id.* at 3, 11.

CMHC disagrees. It contends that its appeal does not seek to unwind the sale transaction and that it only seeks to challenge certain findings and conclusions contained in the Sale Order which, CMHC argues, “may have unintended and prejudicial impacts on CMHC’s claims against third parties (including Mid Coast) based on their pre-bankruptcy conduct.” ECF No. 7 at 2. Thus, CMHC asserts that

this court can grant appellate relief without unwinding or otherwise adversely affecting the Sale Order.

II. LEGAL ANALYSIS

The Bankruptcy Court's Sale Order authorized the sale of Parkview's assets to Mid Coast pursuant to 11 U.S.C.A. § 363(b)(1) and (f) (2015). Case No. 15-20442 (Bankr. D. Me.), ECF No. 309 at 6-7. Section 363(m) provides that in the absence of an order staying the sale or lease of property authorized by the Bankruptcy Court pursuant to subsection (b), the sale or lease remains valid and is not subject to being reversed or modified on appeal:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C.A. § 363(m) (2015).

In *In re Stadium Mgmt. Corp.*, 895 F.2d 845 (1st Cir. 1990), the court described § 363(m)'s effect as follows:

The effect of § 363(m) is that when an order confirming a sale to a good faith purchaser is entered and a stay of that sale is not obtained, the sale becomes final and cannot be reversed on appeal. Absent a stay, the court must dismiss a pending appeal as moot because the court has no remedy that it can fashion even if it would have determined the issues differently.

895 F.2d at 847 (internal citations and quotation omitted). Subsection 363(m) thus creates a rule of statutory mootness that bars appellate review of sales or leases authorized by § 363(b) and made to a good faith purchaser where there was no stay

ordered. *See In re WestPoint Stevens, Inc.*, 600 F.3d 231, 247 (2d Cir. 2010) (“This section creates a rule of ‘statutory mootness,’ which bars appellate review of any sale authorized by 11 U.S.C. § 363(b) or (c) so long as the sale was made to a good-faith purchaser and was not stayed pending appeal[.]”) (citations omitted).

CMHC does not question the Bankruptcy Court’s determination that Mid Coast was a good faith purchaser, or that a stay was neither sought nor ordered, or that § 363(m) applies. *See* ECF No. 7. Rather, CMHC seeks appellate review of certain findings and conclusions contained in the Sale Order. *Id.* at 2, 3-4. The findings and conclusions that it challenges establish that (1) the consideration paid for the assets was fair and reasonable; (2) Parkview and Mid Coast did not collude with other parties; (3) there is no basis for the avoidance of the sale pursuant to § 363(n); and (4) the sale will further Parkview’s faith-based mission.² *Id.* at 3-4. As

² CMHC challenges the following five factual findings in the Sale Order as being unsupported by evidence admitted at the sale hearing:

- “The consideration to be paid by the Purchaser for the Assets pursuant to the APA, together with the other relief provided for in this Sale Order (a) is fair and reasonable, and (b) constitutes reasonably equivalent value and fair consideration under applicable federal and state law.” [Case No. 15-20442 (Bankr. D. Me.), ECF No. 309 at ¶ 10.]
- A sale by the Debtor to Mid Coast “will further the faith-based mission of the Debtor, serve the interests of the Greater Brunswick, Maine community for an integrated community health care system, and maximize the overall value and benefits to the estate for the benefit of all stakeholders.” *Id.* ¶ 12.
- “There has not been any collusion between the Purchaser and any other third party relating to this transaction. Neither the Debtor nor the Purchaser has engaged in any conduct that would cause or permit the APA to be avoided under 11 U.S.C. § 363(n), or give rise to any other relief for any party under 11 U.S.C. § 363(n) or otherwise. [T]he Purchaser is not affiliated with the Debtor nor with any owners or creditors of the Debtor and the Debtor is not affiliated with the Purchaser nor with any owners or creditors of the Purchaser.” *Id.* ¶ 13.
- “The consideration provided by Purchaser for the Assets under the APA is fair and reasonable and may not be avoided under 11 U.S.C. § 363(n). The consideration

developed at the oral argument on the motion to dismiss the appeal held on April 7, 2016, ECF No. 18, CHMC fears the potential collateral estoppel effect that the sale order may have in other proceedings related to the Parkview bankruptcy. *See* ECF No. 7 at 2.

CMHC's argument that this court's appellate review of certain findings and conclusions in the Sale Order is an exception to the rule of statutory mootness is unpersuasive for the following reasons.

First, the findings and conclusions that CMHC seeks to challenge were integral to the relief granted by the Sale Order. If this court were to vacate the challenged findings and conclusions, it would necessarily call into question the Bankruptcy Court's ultimate conclusion that Mid Coast Hospital was a "good faith" purchaser, a conclusion that CMHC concedes was not in error. Moreover, because there was no stay order entered in this case, § 363(m) operates to limit appellate review of the Sale Order to the specific question of whether Mid Coast Hospital was a good faith

provided by Purchaser for the Assets under the APA shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession thereof, or the District of Columbia. The APA was not entered into, and the sale is not being consummated, for the purpose of hindering, delaying, or defrauding creditors of the Debtor under the Bankruptcy Code or under laws of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. Neither the Debtor nor Purchaser has entered into the APA or any agreement contemplated thereby or are consummating the sale with any fraudulent or otherwise improper purpose. The court's approval of the Sale to Purchaser under the APA is in the best interests of the Debtor, the bankruptcy estate of the Debtor, its creditors and all other parties in interest, and is in the public interest." *Id.* ¶ 26.

- The sale to Mid Coast is being undertaken "without collusion . . ." *Id.* ¶ 27.

ECF No. 7, at 3-4.

purchaser. In accordance with *In re Stadium Mgmt. Corp.*, 895 F.2d at 847, the appeal is statutorily moot.

Second, and contrary to CMHC's additional argument, its appeal does attack, albeit indirectly, the validity of Mid Coast's purchase by challenging essential elements of the transaction. *See* ECF No. 7 at 5, 7. Although CMHC does not explicitly request that the deal struck by Parkview and Mid Coast be voided or modified, *see id.* at 7, that result would become possible if, for example, this court vacated the Bankruptcy Court's finding that the consideration paid by Mid Coast Hospital was "fair and reasonable . . . and . . . constitutes reasonably equivalent value and fair consideration under applicable federal and state law." Case No. 15-20442 (Bankr. D. Me.), ECF No. 309 at 5, ¶ 10. CMHC has not identified the specific claims that it wishes to assert against Mid Coast and others, but if it were to successfully mount a challenge to the sufficiency of the consideration paid by Mid Coast, the remedy might include Mid Coast having to pay additional consideration for the assets that it purchased.

The same is true with respect to CMHC's challenge to the Bankruptcy Court's findings regarding collusion and fraud. *Id.* at 5-6, ¶ 13. Because questions of collusion and fraud are integral to a finding of good faith, an appellate order vacating the Bankruptcy Court's collusion and fraud-related findings would undermine the determination that Mid Coast was a good faith purchaser entitled to the protections of § 363(m). *See In re Mark Bell Furniture Warehouse, Inc.*, 992 F.2d 7, 8 (1st Cir. 1993) ("'Good faith' purchaser status is precluded by . . . fraud, collusion with the

trustee, and taking ‘grossly unfair advantage’ of other bidders.”); *see also In re Gucci*, 126 F.3d 380, 390 (2d Cir. 1997) (“A purchaser’s good faith is lost by fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.”) (citations and internal quotation marks omitted). The vacation of those findings would fundamentally alter the Sale Order and would thus deprive Mid Coast of a portion of the benefit of the bargain that it struck by entering into a purchase agreement subject to the approval of the Bankruptcy Court.³

Under the relevant provisions of the Bankruptcy Code, CMHC may not achieve indirectly that which it may not obtain directly. If this appeal was to proceed and CMHC was successful in having the court strike key portions of the Sale Order, that relief may not on its own unravel the Parkview/Mid Coast sale, but it would certainly be an initial step toward making that outcome a reality. Because CMHC failed to seek a stay of the Sale Order and does not challenge the Bankruptcy Court’s determination that Mid Coast Hospital was a good faith purchaser entitled to the protections of § 363(m), its appeal challenging several of the Bankruptcy Court’s findings and conclusion that were integral to the Sale Order must be dismissed as moot. *See In re Stadium Mgmt. Corp.*, 895 F.2d at 847 (“Absent a stay, the court must dismiss a pending appeal as moot because the court has no remedy that it can fashion even if it would have determined the issues differently.”).

³ The Amended and Restated Asset Purchase Agreement provided that it was subject to an order of the Bankruptcy Court approving the sale which would include, among other things, a finding that “Purchaser is a good faith purchaser for value” and “such other items as may be reasonably required by Purchaser and its counsel.” ECF No. 9 at 20-21 (Amended and Restated Asset Purchase Agreement § 7(a)(ii), (iv)).

For the foregoing reasons, Mid Coast's Motion to Dismiss Appeal (ECF No. 5) is **GRANTED**.

SO ORDERED.

Dated this 11th day of April, 2016.

/s/ Jon D. Levy
U.S. DISTRICT JUDGE