

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:

LAVIE CARE CENTERS, LLC, et. al.,

Case No.: 24-55507 (PMB)

(Jointly Administered)

Debtor.

LAVIE CARE CENTERS, LLC, et. al.,

Adv. Proc. No. 24-05127 (PMB)

Plaintiffs,

vs.

HEALTHCARE NEGLIGENCE SETTLEMENT
RECOVERY CORP.,

Defendant.

RECOVERY CORP.’S ANSWER TO ADVERSARY COMPLAINT

Pursuant to Federal Rules of Bankruptcy Procedure 7007 and 7008, as well as other applicable law, Healthcare Negligence Settlement Recovery Corp. (the “Recovery Corp.”), by and through its undersigned counsel, responds as follows to the “Complaint” (the “Adversary Complaint”) [Adv. Doc. 1], initiating the above-captioned adversary proceeding (this “Adversary Proceeding”), on June 30, 2024, by LaVie Care Centers, LLC, along with certain of its affiliates and subsidiaries (collectively, the “Debtors”)¹:

¹ La Vie Care Centers, LLC, 1010 Carpenters Way Operations LLC, 1120 West Donegan Avenue Operations LLC, 11565 Harts Road Operations LLC, 12170 Cortez Boulevard Operations LLC, 1465 Oakfield Drive Operations LLC, 15204 West Colonial Drive Operations LLC, 1550 Jess Parrish Court Operations LLC, 1615 Miami Road Operations LLC, 1851 Elkcarn Boulevard Operations LLC, 216 Santa Barbara Boulevard Operations LLC, 2333 North Brentwood Circle Operations LLC, 2826 Cleveland Avenue Operations LLC, 3001 Palm Coast Parkway Operations LLC, 3101 Ginger Drive Operations LLC, 3735 Evans Avenue Operations LLC, 4200 Washington



I. ANSWER

Recovery Corp. hereby responds to the numbered paragraphs of the Adversary Complaint:

1. With respect to paragraph 1, Recovery Corp. admits that the Debtors initiated the Reorganizations, but is without knowledge as to the balance of the allegations in the paragraph.

2. With respect to paragraph 2, Recovery Corp. admits that the Debtors initiated this Adversary Proceeding but denies the balance of the allegations in the paragraph.

3. Recovery Corp. denies paragraphs 3, 4, 63, 79, 80, 82, 83, 86, 87, 88, 89, 91, 92, 93, 94, 95, 96, and 97.

4. Recovery Corp. admits paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, and 55 for jurisdictional purposes.

5. Recovery Corp. admits paragraphs 56, 57, 59, 60, and 62.

6. With respect to paragraph 58, Recovery Corp. admits that the Debtors own and operate a series of skilled nursing facilities (the “SNFs”), but Recovery Corp. denies

Street Operations LLC, 4641 Old Canoe Creek Road Operations LLC, 518 West Fletcher Avenue Operations LLC, 5405 Babcock Street Operations LLC, 6305 Cortez Road West Operations LLC, 6414 13th Road South Operations LLC, 6700 NW 10th Place Operations LLC, 702 South Kings Avenue Operations LLC, 710 North Sun Drive Operations LLC, 741 South Beneva Road Operations LLC, 777 Ninth Street North Operations LLC, 7950 Lake Underhill Road Operations LLC, 9311 South Orange Blossom Trail Operations LLC, 9355 San Jose Boulevard Operations LLC, Baya Nursing and Rehabilitation, LLC, Brandon Facility Operations, LLC, Consulate Facility Leasing, LLC, Epsilon Health Care Properties, LLC, Floridian Facility Operations, LLC, Josea, LLC, Kissimmee Facility Operations, LLC, Lidenskab, LLC, LV CHC Holdings I, LLC, Melbourne Facility Operations, LLC, Miami Facility Operations, LLC, New Port Richey Facility Operations, LLC, North Fort Myers Facility Operations, LLC, Orange Park Facility Operations, LLC, Port Charlotte Facility Operations, LLC, Tallahassee Facility Operations, LLC, Tosturi, LLC, and West Altamonte Facility Operations, LLC

the balance of the allegations in these paragraphs.

7. With respect to paragraph 61, Recovery Corp. admits that it named CMC II, LLC, Concourse Partners, LLC, Concurrent Partners, LLP, Synergy Healthcare Services, Inc., and NSPIRE Healthcare Inc. as parties to the Miami Action, but is generally without knowledge as to the balance of this paragraph, and therefore denies all allegations set forth therein.

8. With respect to paragraphs 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, and 78, Recovery Corp. is generally without knowledge as to the nature of the business relations between the Debtors and the non-Debtor defendants, and therefore denies all allegations set forth therein. However, Recovery Corp. expressly denies that an identity of interest exists between the Debtors and the non-Debtor defendants.

9. With respect to paragraph 81, Recovery Corp. denies the ipsi dixit proposition that the non-Debtor defendants are critical to the Debtors reorganization efforts.

10. With respect to paragraph 84, Recovery Corp. reincorporates their preceding responses to paragraphs 1 through 83 above.

11. With respect to paragraph 90, Recovery Corp. reincorporates their preceding responses to paragraphs 1 through 89 above.

II. AFFIRMATIVE DEFENSES

A. BACKGROUND RELATING TO RECOVERY CORP.

12. Recovery Corp. was formed as a Florida corporation by a series of one

hundred one (101) claimants (collectively, the “Claimants”²) asserting claims arising from nursing home negligence at a series of skilled nursing facilities (collectively, the “SNFs”) owned and/or operated by some of the debtors who have initiated the above-styled jointly administered bankruptcy cases (collectively, these “Reorganizations”).

13. Each of the Claimants has been represented by one of seventeen (17) law firms (collectively, the “Claimant Firms”) specializing in the representation of nursing home negligence victims with claims arising based upon breach of a duty of care under Florida Statutes §§400.022, 400.023, and other applicable law.

14. In pursuing claims for their respective Claimants, the Claimant Firms brought a series of separate lawsuits and related controversies (collectively, the “Negligence Actions”) that resulted in a series of settlement agreements (collectively, the “Settlements”) with the respective Debtors. The aggregate amount of the Settlements for all Claimants was \$9,248,876.96.

15. In all instances, the Settlements provided for payments over time to the Claimants on account of undisputed liabilities of the Debtors. Most if not all the Settlements were reached at a point in time during which the Debtors had already retained bankruptcy counsel, presumably with an eye towards commencement of these Reorganizations.

16. During late 2023 and early 2024, the Claimant Firms witnessed a series of defaults with respect to the Settlements and made further inquiries. They came to learn that many of the operators named as defendants in the Negligence Actions, often

² At present, the number of Claimants has increased, and may increase further.

associated under the broad name “Consulate,” had been involved in a labyrinth of transfers involving numerous nursing home operations.

17. By March of 2024, the Claimant Firms coalesced to determine why the defaults under the Settlements were occurring, and what steps could be taken to collect. At this point, the total amount of the Settlements that remained outstanding and in a state of default was \$9,248,876.96. Because of the way the Settlements were documented, the relevant Debtors argued that a separate motion or other filing was required to obtain relief for each missed payment, rather than simply accelerating the debt due to the obvious insolvency of the going concern.

18. On March 28, 2024, the Claimant Firms worked on behalf of the Claimants to form the Recovery Corp., to ultimately bring a single action (the “Miami Action”) in the complex business division of the Circuit Court in and for Miami-Dade County, Florida (the “Miami Court”) to recover what are alleged to be avoidable transfers, and for other relief. The Miami Action is styled Healthcare Negligence Settlement Recovery Corp. v. 5405 Babcock Street Operations, LLC, et al., Case No. 2024-007342-CA-01, and was initiated on April 22, 2024.

19. In the Miami Action, forty-nine (49) of the Debtors are named as defendants. Causes of action alleged in Recovery Corp.’s complaint initiating the Miami Action (the “Miami Complaint”) include (a) intentionally fraudulent transfers under Florida’s codification of the Uniform Fraudulent Transfer Act (the “UFTA”³), (b) constructively fraudulent transfers under UFTA, (c) declaratory relief under Florida’s

³ Florida Statutes §726.011, et seq.

“mere continuation” doctrine, (d) declaratory relief under “de facto merger” doctrine, (e) declaratory relief under Florida’s “corporate veil piercing” doctrine, (f) damages under Florida’s codification of the Uniform Unfair and Deceptive Fair Practices Act,⁴ (g) damages for civil conspiracy, (h) damages for breach of fiduciary duty, and (i) unjust enrichment. All defendants were served with initial process, and all Debtors named as defendants appeared through counsel pre-petition.

20. The Miami Complaint was commenced based upon information available as of the date of filing, and additional information and documentation came into the possession of the Claimants, the Claimant Firms, and Recovery Corp. thereafter. Additionally, extensive discovery was served upon all defendants, including relevant Debtors. The universe of claims asserted and assertible in the Miami Action is hereinafter referred to as the “Asserted Claims.”

21. On June 2 and 3, 2024, the Debtors commenced these Reorganizations, and filed a series of requests for relief that remain pending before this Court.

22. On June 13, 2024, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors in these Reorganizations (the “Creditors’ Committee”), that is now actively involved and represented by counsel.

23. From inception of these Reorganizations, the Debtors have been consistent and continuous in contending that all the Asserted Claims pled pre-petition in the Miami Complaint are property of the estates of the Debtors under Bankruptcy Code §541(a), 544(b), or other applicable law. The Debtors also contend that any undertaking to

⁴ Florida Statutes §501.201, et seq.

advance the Miami Action against any defendants is violative of the automatic stay under Bankruptcy Code §362(a). The Debtors have indicated that they will seek an injunction with respect to the Miami Action under Bankruptcy Code §105(a). Because Recovery Corp. has been consistent that it will not attempt to prosecute the Miami Action absent good faith conference and related follow up to build consensus or obtain an order of this Court, the Debtors' attention to the Miami Action leads to the inference that the Asserted Claims genuinely have value.

24. On June 3, 2024, the Debtors filed their "Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief" [Doc. 15] (the "DIP Financing Motion").

25. On June 10, 2024, the Debtors filed their "Debtors' Motion for Entry of an Order (I) Approving Bidding Procedures and Bid Protections, (II) Scheduling Certain Dates and Deadlines with Respect Thereto, (III) Approving the Form and Manner of Notice Thereof, (IV) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (V) Authorizing the Assumption and Assignment of Assumed Contracts, and (VI) Authorizing the Sale of Assets" [Doc. 104] (the "Bidding Procedures Motion").

26. On June 30, 2024, the Debtors filed the Adversary Complaint (and commenced this Adversary Proceeding. In the Complaint, the Debtors seek to extend the automatic stay pursuant to Bankruptcy Code §362 and/or enjoin the Recovery Corp from

pursuing the Miami Action pursuant to Bankruptcy Code §105(a).

27. On June 30, 2024, the Debtors also filed the Injunction Motion requesting injunctive relief with regards to the following non-Debtor defendants in the Miami Action: 9400 SW 137th Avenue Operations, LLC (“9400 SW 137th Avenue Operations”), Daniel E. Dias, Esquire (“Dias”), NSPRMC, LLC, d/b/a NSPIRE Healthcare (“NSPIRE”), Aspire Healthcare, LLC (“Aspire”) and Pourlessoins, LLCs, d/b/a Synergy Healthcare Services (“Synergy”), all of whom are collectively referred to herein as the “Non-Debtor Defendants.”

28. On even date herewith, the Recovery Corp. file “Recovery Corp.’ Response in Opposition to Injunction Motion” (the “Injunction Opposition”).

B. AFFIRMATIVE DEFENSES

29. **First Affirmative Defense:** As reflected in the Injunction Opposition, the Debtors face insurmountable obstacles to achieve confirmation. In this Adversary Proceeding, the Debtors bear the burden of proving likelihood of a successful reorganization under Bankruptcy Code §105, and they cannot discharge this obligation by invoking buzzwords tracking the elements of an injunction claim as if they were talismanic incantations.

30. **Second Affirmative Defense:** In the Adversary Complaint, the Debtors have failed to identify any causal nexus between litigation pending against the Non-Debtor Defendants and their own ability to reorganize. Not only does the prosecution of the Miami Action create no irreparable harm for the estate, but it rebounds to the benefit of the estate. A large recovery against the Non-Debtor Defendants can greatly reduce the

debt in these Reorganizations.

31. **Third Affirmative Defense:** The Debtors insinuate that the Non-Debtor Defendants will contribute to the success of these Reorganization, but does not disclose whether they will commit an amount that is greater or lesser than their own individual liability to creditors such as Recovery Corp. A vague and precatory allusion to some altruistic intent on the part of the Non-Debtor Defendants is insufficient to discharge this element of injunctive relief, especially because Recovery Corp. will be required to litigate in two fora regardless. Moreover, Recovery Corp. views askance even the most solemn promises of the Debtors and the Non-Debtor Defendants after both repudiated their promises to repay the Claimants.

32. **Fourth Affirmative Defense:** If the Non-Debtor Defendants want the benefits of a stay, they can seek bankruptcy relief and submit fully to the jurisdiction of this Court. Failing that, there is no identifiable public interest militating in favor of a non-debtor stay. For the Non-Debtor Defendants to receive the benefits of a stay without submitting to the jurisdiction of this Court, is inconsistent with the public policy principles that the Adversary Complaint invokes.

33. **Fifth Affirmative Defense:** As reflected in the Injunction Opposition, the Debtors do not intend to pursue the causes of action asserted in the Miami Complaint. Pursuant to the terms of the Bidding Procedures Motion and the DIP Financing Motion, the Debtors intend to release non-Debtor, third party, insiders from liability associated with the litigation claims, which includes the outstanding amounts due and owing to the Claimants pursuant to the terms of the Settlements. Accordingly, the Recovery Corp.

should be entitled to pursue these causes of action, and all injunctive relief requested pursuant to Bankruptcy Code §§362 and 105(a) should be denied.

Dated this 22nd day of July, 2024.

/s/ John A. Anthony
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished on July 22, 2024, by either the Court's electronic noticing system or by U.S. mail to all parties receiving electronic noticing, all creditors, and the Local Rule 1007-2

Parties in Interest List.:

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/s/ John A. Anthony
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