

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:) Chapter 11
)
LAVIE CARE CENTERS, LLC, *et al.*,) Case No. 24-55507 (PMB)
)
)
Debtors.) (Jointly Administered)
_____)

**JOINDER OF MIDCAP FUNDING IV
TRUST TO THE DEBTORS’ AND OMEGA PARTIES’
OBJECTIONS AND RESPONSES TO RECOVERY CORP.’S MOTION
TO ESTABLISH STANDING TO CHALLENGE FINAL DIP FINANCING ORDER**

MidCap Funding IV Trust, in its capacity as prepetition ABL lender to the above-captioned debtors and debtors in possession (the “Debtors”) and as agent for such prepetition ABL lender (in both capacities, “MidCap”), agrees with, joins in, adopts, and incorporates by reference each of the points, authorities, and arguments raised and asserted in: (i) the *Debtors’ Objection to Recovery Corp.’s Motion to Establish Standing to Challenge Final DIP Financing Order* [Docket No. 486], and (ii) the *Response of the Omega Parties in Opposition to Recovery Corp.’s Motion to Establish Standing to Challenge Final DIP Financing Order* [Docket No. 471] (which was joined by OHI DIP Lender, LLC [Docket No. 485]) objecting to and otherwise opposing *Recovery Corp.’s Motion to Establish Standing to Challenge Final DIP Financing Order* [Docket No. 433] (the “Motion”),¹ stating as follows:

¹ Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.



Joinder

1. MidCap is both the Debtors' prepetition ABL lender and the agent for such prepetition lender, and has worked constructively with the Debtors and all parties in interest in these chapter 11 cases on a largely consensual plan of reorganization that is beneficial to all stakeholders and contemplates that MidCap will continue to serve as the Debtors' ABL lender upon the Debtors' emergence from chapter 11.

2. The Motion seeks standing to challenge the Final DIP Financing Order and attaches the Proposed Complaint where it names certain DivestCo Debtors and DIP Lenders as defendants. MidCap is not named as defendant in the Proposed Complaint. However, as detailed herein, the Proposed Complaint seeks to challenge stipulations in favor of MidCap thereby creating a dispute with MidCap where none otherwise exists. MidCap joins and agrees with the Debtors and Omega Parties that Recovery Corp. does not have standing. In the event that the Court allows Recovery Corp. to pursue its challenge, this Court should find that Recovery Corp. is estopped from pursuing any challenge against MidCap, a party that Recovery Corp. fails to name in its Proposed Complaint and to which the challenge deadline has long passed.

3. In the Proposed Complaint, among other things, "Recovery Corp. disputes that the *Prepetition Secured Obligations* owing to the *Prepetition Secured Parties* constitute legal, valid, and binding obligations . . .". Proposed Complaint at ¶ 103 (emphasis added). Additionally, "Recovery Corp. disputes that the *Prepetition Liens* granted to the *Prepetition Secured Parties* respectively constitute legal, valid, binding, enforceable non-avoidable, and properly perfected liens on and security interests in the *Prepetition Collateral* and were granted to, or for the benefit of, the applicable *Prepetition Secured Parties* for fair consideration and reasonably equivalent value, and are not subject to defense, counterclaim, recharacterization, subordination (equitable or

otherwise), avoidance, or recovery pursuant to the Bankruptcy Code or applicable non-bankruptcy law or equity or regulation by any person or entity and demand strict proof thereof.” Proposed Complaint at ¶ 107 (emphasis added).

4. The definitions of Prepetition Secured Obligations, Prepetition Secured Parties, and Prepetition Collateral all include MidCap, and the obligations and rights of MidCap under the Prepetition ABL Documents (as defined in the Final DIP Financing Order). Yet, Recovery Corp. makes no specific factual allegations to support its dispute of the Debtors’ stipulations in favor of MidCap. *See* Final DIP Financing Order at ¶¶ E(iii) (a), (c), and (d).

5. The Proposed Complaint further makes wholly unsubstantiated and non-specific claims of lender liability against MidCap without any factual support which is particularly egregious since MidCap is not a named target of Recovery Corp.’s challenge. *See* Proposed Complaint at ¶ 112 (“Recovery Corp. also disputes that the Florida DivestCo Debtors and their estates have no valid Claims (as such term is defined in § 101(5) of the Bankruptcy Code), objections, challenges, causes of action, and/or choses in action, including “lender liability” causes of action, derivative claims, or basis for any equitable relief against any of [] the ***Prepetition Secured Parties*** or any of their respective predecessors, affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees with respect to the ***Prepetition ABL Documents***, the Prepetition Omega Term Loan Documents, the Omega Master Lease Documents, the ***Prepetition Secured Obligations***, or the Prepetition Liens, or otherwise . . .”).

6. The Challenge Deadline (as defined in the Final DIP Financing Order) expired on September 15, 2024. As of September 30, 2024, Recovery Corp. had not named MidCap as a defendant in their Proposed Complaint. Accordingly, any challenge asserted by Recovery Corp.

must be construed to exclude MidCap and all liens, claims, and other property interests of in its favor.

Conclusion

7. For the reasons stated in the Debtors' and the Omega Parties' objections, MidCap requests that the Motion be denied. If the Motion is approved in any respect, for the foregoing reasons, the Court should find that any challenge to the claims, liens and other rights in favor of MidCap are barred. MidCap reserves all rights to raise additional arguments with respect to the Motion, including at any hearing on the Motion.

This 2nd day of October, 2024.

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CERTIFICATE OF SERVICE

This is to certify that I have on this day electronically filed the foregoing JOINDER OF MIDCAP FUNDING IV TRUST TO THE DEBTORS' AND OMEGA PARTIES' OBJECTIONS AND RESPONSES TO RECOVERY CORP.'S MOTION TO ESTABLISH STANDING TO CHALLENGE FINAL DIP FINANCING ORDER using the Bankruptcy Court's Electronic Case Filing program, which sends a notice of this document and an accompanying link to this document to all parties who have appeared in this case under the Bankruptcy Court's Electronic Case Filing program, and I also served a copy of same by U.S. mail (first class) to:

John A. Anthony
ANTHONY & PARTNERS, LLC
100 S. Ashley Drive, Suite 1600
Tampa, Florida 33602

This 2nd day of October, 2024.

PARKER, HUDSON, RAINER & DOBBS LLP

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