



IT IS ORDERED as set forth below:

Date: October 29, 2024

Paul Baisier

**Paul Baisier
U.S. Bankruptcy Court Judge**

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

)	
In re:)	Chapter 11
LAVIE CARE CENTERS, LLC, <i>et al.</i> ¹)	Case No. 24-55507 (PMB)
)	
Debtors.)	(Jointly Administered)
)	
)	Related to Docket No. 541, 569, 577 and 586
)	

ORDER DENYING REQUEST TO RECONSIDER STRIKE ORDER

This matter is before the Court on *Recovery Corp.*'s *Motion for Reconsideration and Rehearing of Strike Order* (the "Motion"), filed by Healthcare Negligence Settlement Recovery Corp. ("Recovery Corp.") on October 18, 2024 (Docket No. 569), seeking reconsideration of this

¹ The last four digits of LaVie Care Centers, LLC's federal tax identification number are 5592. There are 282 Debtors in these chapter 11 cases, which are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://www.veritaglobal.net/lavie>. The location of LaVie Care Centers, LLC's corporate headquarters and the Debtors' service address is 1040 Crown Pointe Parkway, Suite 600, Atlanta, GA 30338.



Court's *Order Granting In Part Debtors' (I) Motion to Strike and Denying (II) Cross-Motion to Compel Discovery Responses* (Docket No. 541)(the "Strike Order"). In the Motion, Recovery Corp. asks this Court to reconsider the portion of the Strike Order in which the Court struck all of the pleadings filed by Recovery Corp. in this case because Recovery Corp. is not a creditor or party in interest *vis a vis* the captioned debtors and debtors-in-possession (the "Debtors") and thus lacks standing. On October 23, 2024, Recovery Corp. filed *Recovery Corp.'s Supplement to Motion for Reconsideration and Rehearing of Strike Order* (Docket No. 577)(the "Supplement"). On October 25, 2024, the Debtors filed *Debtors' (I) Omnibus Objection to (A) Motion for Reconsideration and Rehearing; (B) Motion to Allow Remote Testimony; and (C) Motion for Stay Relief; and (II) Limited Objection to Motion to Substitute Party* (Docket No. 586)(the "Objection").² The Motion, Supplement and Objection were heard by the Court at a hybrid hearing held on October 28, 2024, beginning at 2 p.m. (the "Hearing").

The Motion

Recovery Corp. makes its request in the Motion under Federal Rule of Civil Procedure ("FRCP") 60, made applicable to this bankruptcy case and this contested matter by Federal Rule of Bankruptcy Procedure ("FRBP") 9024. More specifically, Recovery Corp. asserts that this Court should have considered and admitted into evidence seventeen (17) nearly identical affidavits that it asserts it tried to file just before the October 8, 2024, hearing that resulted in the Strike Order (the "Prior Hearing") because they purportedly "would have better enabled the Court to understand

² Recovery Corp.'s *Motion to Allow Remote Testimony* (Docket No. 518) was denied by this Court's *Order Denying Motion to Allow Remote Testimony at Confirmation Hearing* (Docket No. 585), entered on October 25, 2024. The *Florida Claimants and Recovery Corp.'s Motion for Relief from Stay* (Docket No. 574) and the *Florida Claimants' Motion to Substitute Party* (Docket No. 566) were both heard at the Hearing. The *Florida Claimants and Recovery Corp.'s Motion for Relief from Stay* will be withdrawn and the *Florida Claimants' Motion to Substitute Party* will be granted by separate Order.

the weaknesses inherent in the nebulous arguments advanced by the Debtors against Recovery Corp. for obvious strategic reasons.” Motion, ¶22.

Recovery Corp. intimates in the Motion that it was unable to file the Affidavits before the Prior Hearing due to technical issues which it suggests, but does not expressly say, were related to Hurricanes Helene and Milton, which struck the Tampa, Florida area (where the offices of counsel for Recovery Corp. are located) just before and just after the Prior Hearing.³ A week after the Prior Hearing, on October 15, 2024, counsel for Recovery Corp. filed seventeen (17) affidavits on the docket in this case (Docket Nos. 545-561)(the “Affidavits”).⁴

The suggestion in the Motion is that the Court declined to consider the Affidavits because they were not filed on the docket.⁵ That is simply not correct. The Court declined to consider the Affidavits (i) because they apparently were only provided to counsel for the Debtors hours before the Prior Hearing, potentially creating significant prejudice, (ii) because the Debtors objected to their introduction as evidence, and (iii) because, as noted at the Prior Hearing,³ the question before the Court did not require the consideration of any disputed facts. *See* Specially Set Hybrid Hr’g Tr. 27:17–19, October 8, 2024. More specifically, the parties did not dispute (i) that the settlements that Recovery Corp. purported to own (the “Settlements”) were otherwise subject to the Florida Structured Settlement Act, Florida Statutes § 626.99296, *et. seq.* (the “SSA”), (ii) that those Settlements had been assigned to Recovery Corp. pursuant to the assignment documents attached to Recovery Corp.’s own pleading (*see* Docket No. 503), and (iii) that no Florida court of

³ Hurricane Helene struck the area before the Hearing in late September, 2024. Hurricane Milton had not yet made landfall at the time of the Hearing. Specially Set Hybrid Hr’g Tr. 25:11–15, October 8, 2024.

⁴ Prior to the Hearing, the Court assumed that these Affidavits were the same affidavits that Recovery Corp. sought to use at the Prior Hearing, since they are all dated, and based on their dates of notarization, appear to have all been signed, prior to the Prior Hearing. This fact was confirmed by counsel for Recovery Corp. at the Hearing.

⁵ Since the act of filing of the Affidavits is not relevant to this Motion, the issues purportedly faced by counsel for Recovery Corp. in filing them are similarly not relevant.

competent jurisdiction had approved the assignment of any of the Settlements to Recovery Corp. What Recovery Corp. disputed, and still disputes (*see* Motion, ¶16), is whether the assignment to Recovery Corp. of the Settlements constitutes a “transfer” of them under the SSA such that court approval is required. The Court found, as a matter of law, that they do, and thus that the transfers to Recovery Corp. pursuant to those assignments were invalid under the SSA.

There are two (2) other things to note as it relates to the Affidavits. First, Recovery Corp. did not suggest at the Prior Hearing, nor does it suggest in its Motion, any basis under which the Affidavits would constitute admissible evidence. Setting aside other objections to their content or relevance, as out of court statements presented with the intent to prove the truth of the matters asserted therein, they constitute inadmissible hearsay (*see* Federal Rules of Evidence (“FRE”) 801, 802), and Recovery Corp. has not suggested, and the Court has not identified, any hearsay exception that would apply (FRE 803, 804, and 807, *passim*).

Second, the Court has now had an opportunity to review the Affidavits, as they have been filed. The Affidavits are from the seventeen (17) lawyers involved in the Settlements. Not surprisingly since they appear to have been filed primarily in support of the objection to confirmation filed by Recovery Corp. (Docket No. 470) rather than in relation to the Motion (Affidavits, ¶4), the Affidavits hardly say anything about the legal issue being considered here. To the extent they do, in ¶30(a), they all say the same things in precisely the same words – all of which is legal argument about why the SSA should not apply to these transfers. These statements are not evidence; instead, they are legal argument and are precisely the same legal argument made by counsel for Recovery Corp. at the Prior Hearing. *See* Specially Set Hybrid Hr’g Tr. 30:2–5, 20–23, October 8, 2024. The balance of the Affidavits also consists of predominately argument about the Debtors’ cases and alleged strategy more broadly and does not contain any facts relevant to

this narrow inquiry. So even had the inadmissible Affidavits been considered and admitted, the Court's ruling would have been the same. Consequently, reconsideration is neither necessary nor appropriate.

The Supplement

In the Supplement, Recovery Corp. suggests that, in connection with granting the Motion, the Court estimate the claims of the parties whose claims were purportedly assigned to Recovery Corp. (defined therein as the "Florida Claimants") pursuant to 11 U.S.C. § 502. Recovery Corp. claims that this "produces the same result [as the Strike Order] for the purposes of confirmation issues without presenting unfair impediments to the prosecution of the Miami Action." Supplement, ¶5.

First, of course, the Court is not granting the Motion, so the requested supplemental relief is not necessary. Second, it is not at all clear that the claims of the "Florida Claimants" are, or would if the Motion were granted be, subject to "estimation." At present, the Court understands that they are all the subject of timely filed proof of claims that are themselves not the subject of any filed objection.⁶ In such circumstances, the claims are deemed allowed in the filed amounts, 11 U.S.C. § 502(a), and thus are not "contingent or unliquidated" as contemplated by 11 U.S.C. § 502(c).

The Court, having jurisdiction over these matters pursuant to 28 U.S.C. §§ 157 and 1334; and these matters being core proceedings within the meaning of 28 U.S.C. § 157(b)(2); and venue of these proceedings, including the Motion and the Supplement, in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court being able to issue a final order consistent with Article III of the United States Constitution; and the Court having held the Hearing on the

⁶ See Docket, *passim*.

Motion, the Supplement and the Objection on October 28, 2024; and it appearing that the relief requested in the Motion and the Supplement should be denied for the reasons set forth above; and after due deliberation thereon; pursuant to FRCP 60 made applicable herein pursuant to FRBP 9024, and 11 U.S.C. § 502, it is hereby

ORDERED, ADJUDGED, AND DECREED that the Motion, as supplemented by the Supplement, is **DENIED**.

END OF ORDER

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