

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA**

In re: VASCULAR ACCESS CENTERS, L.P., Debtor.	Chapter 11 Case No. 19-17117 (AMC)
STEPHEN V. FALANGA, AS CHAPTER 11 TRUSTEE FOR THE DEBTOR’S ESTATE, Plaintiff, v. PHILADELPHIA VASCULAR INSTITUTE, LLC, Defendant.	Adv. Proc. No. 21-_____(AMC)

**COMPLAINT (I) TO DETERMINE THE EXTENT, VALIDITY AND/OR
PRIORITY OF LIENS, CLAIMS, AND INTERESTS IN PROPERTY OF THE DEBTOR
AND; (II) TO AVOID AND RECOVER TRANSFERS
PURSUANT TO 11 U.S.C. §§ 544, 547, 548 AND 550**

Stephen V. Falanga, in his capacity as chapter 11 trustee (“**Plaintiff**”) for the bankruptcy estate of the above-captioned debtor, Vascular Access Centers, L.P. (the “**Debtor**”), by and through his undersigned counsel, files this complaint (the “**Complaint**”) against Philadelphia Vascular Institute, LLC (“**PVI**”) to (i) determine the extent, validity and/or priority of liens, claims and interests in property of the Debtor and (ii) to avoid and recover transfers pursuant to sections 544, 547, 548, and 550 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the “**Bankruptcy Code**”). In support of the Complaint, Plaintiff represents and alleges, upon information and belief, as follows:

NATURE OF ACTION

1. Plaintiff seeks a determination of the extent, validity, and/or priority of liens and security interests in property of the Debtor asserted by PVI and in connection therewith. Plaintiff seeks to avoid and recover from PVI, or from any other person or entity for whose benefit the transfers were made, all preferential transfers of property that occurred during the one-year period prior to the Petition Date on account of such asserted liens and security interests.

JURISDICTION AND VENUE

2. This court has subject matter jurisdiction over this adversary proceeding (the “**Adversary Proceeding**”) pursuant to 28 U.S.C. §§ 157 and 1334(b). The Adversary Proceeding arises under title 11 of the United States Code and arises in and relates to the Chapter 11 Case.

3. This Adversary Proceeding is a “core” proceeding which may be heard and determined by the Court pursuant to 28 U.S.C. § 157(b)(2).

4. Venue is proper in this district pursuant to 28 U.S.C. § 1409.

5. The statutory and legal predicates for the relief sought herein are sections 502, 544, 547, 548, and 550 of the Bankruptcy Code and Rules 3007 and 7001 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

PROCEDURAL BACKGROUND

6. On November 12, 2019 (the “**Petition Date**”), an involuntary chapter 11 petition (the “**Involuntary Petition**”) was filed against the Debtor. The Debtor consented to the relief [D.I. 3] and an order for relief was entered on November 25, 2019 [D.I. 46].

7. On November 22, 2019, William Whitfield Gardner, the Debtor’s majority limited partner, filed the *Motion of Majority Limited Partner for Entry of an Order Dismissing*

the Debtor's Involuntary Chapter 11 Case Pursuant to Section 1112(b) of the Bankruptcy Code, With Prejudice, or, in the Alternative, Appointing a Chapter 11 Trustee Pursuant to Section 1104(a) of the Bankruptcy Code [D.I. 52] (the "**Dismissal/Trustee Motion**"),.

8. On February 7, 2020, following a hearing on Gardner's Dismissal/Trustee, the Court issued an opinion (the "**Trustee Opinion**") and entered an order for the appointment of a chapter 11 trustee (the "**Trustee Order**") [D.I. 235].

9. On February 12, 2020, an order was entered approving Plaintiff's appointment as chapter 11 trustee [D.I. 245].

PARTIES

10. Plaintiff is the chapter 11 trustee appointed in the Chapter 11 Case. As the chapter 11 trustee for the Debtor's estate, Plaintiff has the authority to investigate the acts, conduct, assets, liabilities, and financial condition of the Debtor and litigate affirmative claims of and object to claims asserted against the Debtor pursuant to 11 U.S.C. §§ 1106 and 704.

11. Upon information and belief, Philadelphia Vascular Institute, LLC ("**PVI**") is a Pennsylvania limited liability company wholly owned and controlled by James McGuckin, M.D. ("**McGuckin**"). Upon further information and belief, at all relevant times, PVI's principal place of business was located at 585 County Line Road, Radnor, PA 19087. PVI is an "Insider" as that term is defined in § 101(31) of the Bankruptcy Code.

FACTUAL BACKGROUND

12. The Debtor operated its business through limited liability company subsidiaries.

13. The Debtor's subsidiaries operated and managed various outpatient vascular access centers (the "**Centers**"), whereby physician interventionalists perform dialysis access

procedures and certain other vascular access procedures on patients with end-stage renal disease and other vascular conditions or diseases. Ultimately, the Debtor's continuing challenges culminated in the filing of an involuntary petition for relief under chapter 11 against the Debtor on November 12, 2019. PVI employed certain physicians and other medical personnel who worked at the Debtor's Centers.

14. As of Petition Date, in the Involuntary Petition, PVI asserted a secured claim against the Debtor in the amount of \$1,202,120.00.

15. McGuckin, on behalf of PVI, signed the Involuntary Petition under penalty of perjury and attested that the information contained therein was true and correct.

16. On November 19, 2019, the Debtor filed a motion (the "**PVI Cash Collateral Motion**") seeking approval for the Debtor to use cash collateral and grant PVI adequate protection on account of its asserted secured claim in "substantially all of the assets of the Debtor, including all of the Debtor's accounts receivable." [D.I. 17].

17. In the PVI Cash Collateral Motion, the Debtor asserted that PVI had loaned funds to the Debtor pursuant "to certain promissory notes issued on various dates beginning in 2007 and continuing through October 2019."

18. In the PVI Cash Collateral Motion, the Debtor asserted that "[as] of the Petition Date the aggregate outstanding indebtedness under the various promissory notes is \$4,257,626, secured by a properly perfected, first priority security interest in and lien on substantially all of the assets of the Debtor, including all of the Debtor's accounts receivable."

19. On November 20, 2019, the Debtor filed a "List Pursuant to Local Bankruptcy Rule 1007(a)(1) of Creditors that the Alleged Debtor Believes Claim a Security Interest in Cash

Collateral,” which List identified PVI as the only party with a security interest in cash collateral of the Debtor. [D.I. 23]. The List was signed by McGuckin under penalty of perjury.

20. On November 21, 2019, the debtor filed an Exhibit A “PVI Promissory Notes” in support of the PVI Cash Collateral Motion which did not attach copies of any promissory notes supporting the alleged loans. [D.I. 41].

21. On November 20, 2019, the U.S. Trustee requested copies of the promissory notes, UCC filings and payment history regarding PVI’s alleged loans and lien.

22. The Debtor and PVI failed to provide any of the requested information to the U.S. Trustee.

23. On or about November 21, 2019, the U.S. Trustee informed Debtor’s counsel that a UCC-1 filing by PVI against the Debtor on November 4, 2019 (the “**November 2019 UCC-1**”) had been located and inquired about a possible preference action against PVI.

24. The November 2019 UCC-1 asserts PVI has a security interest in “[a]ny and all receivables, equipment, personal property and licenses that are owned by Debtor or are hereafter acquired and all proceeds thereof.”

25. After inquiry from the U.S. Trustee regarding the timing of PVI’s November 2019 UCC-1 filing and lack of documentary evidence to support a security interest, the Debtor withdrew the PVI Cash Collateral Motion. [D.I. 41].

26. Thereafter, on or about November 25, 2019, the Debtor through counsel represented to the Court that it was the Debtor’s position PVI’s debt was not secured, but rather was an unsecured obligation given the timing of the November 2019 UCC-1 and that the “loan documentation was not perfect.”

27. On or about January 10, 2020, the Debtor filed its Schedules indicating PVI was a secured creditor in the amount of \$1,202,120.00 with a security interest in all of the Debtor's assets. [D.I. 159].

28. On February 6, 2020, the Court held a hearing on the Dismissal/Trustee Motion and heard testimony from McGuckin.

29. During McGuckin's testimony, the Debtor's counsel showed McGuckin a copy of a "Secured Promissory Note" in the amount of \$500,000.00 (the "**\$500,000 Note**") signed by McGuckin on behalf of the Debtor in favor of PVI and bearing the date of December 19, 2018. PVI also acknowledged the \$500,000 Note.

30. The \$500,000 Note is the only promissory note produced by PVI to support its alleged secured claim against all the Debtor's assets in the amounts of \$4,257,626, and then later \$1,202,120.00.

31. Contrary to any contention that PVI has a security interest in "all assets" of the Debtor or securing the amounts of \$4,257,626 or \$1,202,120.00, the \$500,000 Note contains a section called "Security" which provides that the Debtor was only granting PVI a security interest "upon all of the accounts receivable" and any cash proceeds and only to secure the \$500,000 "Principal Balance" of the Note.

32. After hearing additional testimony and reviewing evidence submitted during the hearing on the Dismissal/Trustee Motion, the Court learned that PVI had actually not advanced any funds to the Debtor and instead the amounts alleged to be loaned to the Debtor and supporting the alleged security interest in all the Debtor's assets came from other McGuckin entities, Peripheral Vascular Institute of Philadelphia, LLC ("**PVIP**"), PA Vascular Instituted, LLC ("**PAVI**") as well as from McGuckin and his wife Allison McGuckin.

33. Based on the testimony and evidence submitted during the hearing on the Dismissal/Trustee Motion, the Court concluded that PVI was not a creditor of the Debtor let alone a secured creditor.

34. On February 20, 2020, McGuckin and the Debtor's general partner, Vascular Access Centers, LLC filed a notice of appeal from the Trustee Order and in connection with the appeal, relying solely on the \$500,000 Note have contended the Court erred in concluding that PVI was not a creditor of the Debtor.

35. On June 19, 2020, PVI filed a Proof of Claim (the "**PVI Proof of Claim**") in the Debtor's Case asserting a secured claim in the amount of \$1,407,955.20, which is comprised of the \$1,202,120.00 in claimed "loans" and other amounts owed for "inventory purchases" and "unreimbursed and unpaid physician services."

36. To support its secured claim, PVI relies upon the \$500,000 Note and a UCC-1 filing by PVI against the Debtor on January 14, 2019 (the "**January 2019 UCC-1**") that had not been previously disclosed to the Court or the parties in connection with the Dismissal/Trustee Motion.

37. The January 2019 UCC-1 asserts PVI has a security interest in "[a]ny and all receivables and equipment, personal property and licenses."

38. On June 19, 2020, PVIP filed a Proof of Claim (the "**PVIP Proof of Claim**") in the Debtor's Case asserting a secured claim in the amount of \$653,254.38, which is comprised of \$620,000.00 in advances PVIP asserts it made to the Debtor pursuant to the \$500,000 Promissory Note issued by the Debtor to PVI, as well as claims for interest relying upon the \$500,000 Note to PVI.

39. To support its secured claim, PVIP relies upon the \$500,000 Note and the January 2019 UCC-1 filed by PVI.

40. On June 19, 2020, PAVI filed a Proof of Claim (the “**PAVI Proof of Claim**”) in the Debtor’s Case asserting a secured claim in the amount of \$216,864.02, which is comprised of a \$200,000.00 advance PAVI asserts it made to the Debtor pursuant to the \$500,000 Promissory Note issued by the Debtor to PVI, as well as claims for interest relying upon the \$500,000 Note to PVI.

41. To support its secured claim, PAVI relies upon the \$500,000 Note and the January 2019 UCC-1 filed by PVI.

42. On June 19, 2020, McGuckin and his wife Allison McGuckin filed a Proof of Claim (the “**McGuckin Proof of Claim**”)¹ in the Debtor’s Case asserting a secured claim in the amount of \$129,178.14, which is comprised of a \$127,120.00 advance McGuckin and his wife Allison McGuckin assert they made to the Debtor pursuant to the \$500,000 Promissory Note issued by the Debtor to PVI, as well as claims for interest relying upon the \$500,000 Note to PVI.

43. To support its secured claim, McGuckin and his wife Allison McGuckin rely upon the \$500,000 Note and the January 2019 UCC-1 filed by PVI.

44. PVIP, PAVI and McGuckin and his wife Allison McGuckin contend they filed their respective Proofs of Claim because the decision of the Court regarding PVI as a creditor is on appeal and if the Court’s findings “are not reversed on appeal, the implication of the Bankruptcy Court’s finding is that the lender on account of the loans is the party’s [sic] from

¹ Exhibit I to the McGuckin Proof of Claim discloses an alleged advance to the Debtor of \$100,000 on October 31, 2019 but the amount is not included in the amount of the Claim.

whose account the funds were advanced,” which includes PVIP, PAVI and McGuckin. Plaintiff reserves all rights against PVIP, PAVI and McGuckin to object to their respective Proofs of Claim.

45. During the course of this proceeding, Plaintiff may learn (through discovery or otherwise) of transfers made to PVI during the Preference Period on account of the alleged security interest. It is Plaintiff’s intention to avoid and recover all transfers made by the Debtor of an interest of the Debtor’s property made to or for the benefit of PVI or any other transferee on account of the alleged security interest. Plaintiff reserves the right to amend this Complaint to include: (i) further information regarding the transfers, (ii) additional transfers, (iii) modifications of details describing PVI, including but not limited to PVI’s name, (iv) additional defendants, and/or (v) additional causes of action authorized by the Bankruptcy Code (collectively, the “**Amendments**”). Such Amendments shall be deemed to relate back to this original Complaint.

CLAIMS FOR RELIEF

COUNT I

**(Objection to Extent, Validity, and Priority of Alleged Liens, Claims,
and Security Interests)**

46. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

47. Other than the \$500,000 Note and the January and November 2019 UCC-1 Financing Statements, PVI has failed to provide Plaintiff with any evidence of a valid and perfected security interest against the Debtor including any properly executed and authenticated security agreement and filed UCC-1 Financing Statement that support PVI's assertion of a lien or security interest in the Debtor’s assets.

48. Regardless, PVI did not provide value to the Debtor to support its alleged security interest in the Debtor's assets. As such, PVI cannot be a secured creditor.

49. Further, assuming, arguendo, the validity of the \$500,000 Note and that PVI provided value to the Debtor, contrary to any contention that PVI has a security interest in "all assets" of the Debtor or securing the amounts of \$4,257,626 or \$1,202,120.00, the \$500,000 Note contains a section called "Security" which provides that the Debtor was only granting PVI a security interest "upon all of the accounts receivable" and any cash proceeds and only to secure the \$500,000 "Principal Balance" of the Note.

50. As such, there is a defect in PVI's alleged security interest in that the both the January 2019 and November 2019 UCC-1s assert a security interest in collateral that is not set forth in the \$500,000 Note.

51. As a result of the foregoing PVI does not have a valid perfected security interest in and claim against any of the Debtor's assets.

52. If PVI's security interest is determined to be valid, pursuant to 11 U.S.C. § 506(a), Defendant has a secured claim only up to the amount of the value of the collateral identified in the \$500,000 Note and not to exceed the Principal Amount of the Note

COUNT II
(Avoidance of Preferential Transfers – 11 U.S.C. § 547)

53. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

54. Section 547(b) of the Bankruptcy Code allows a debtor-in-possession to avoid any transfer of a debtor's property made to or for the benefit of an insider who was a creditor within one (1) year of the petition date ("**Insider Preference Period**"), made while the debtor is insolvent, that allowed an insider to receive more than it would have received under a chapter 7 bankruptcy case had the transfer not been made.

55. Within the Insider Preference Period, there was a transfer to or for the benefit of PVI in the form of creating a lien over the Debtor's assets by way of the filing of the January and November 2019 UCC-1 Financing Statements ("**Transfers**").

56. These Transfers constituted transfers of an interest in property of the Debtor.

57. PVI was a creditor by virtue of the \$500,000 Note allegedly issued in December 2018.

58. The Transfers were made for, or on account of, an antecedent debt owed by the Debtor to PVI before such Transfers took place.

59. Both types of Transfers were made while the Debtor was insolvent.

60. The Transfers have enabled PVI to receive more than it would have received if the Debtor's case was under Chapter 7 of the Bankruptcy Code and the Transfers had not been made.

61. Accordingly, the Debtor may avoid the Transfers pursuant to § 547 of the Bankruptcy Code.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court grant the following relief against PVI:

- A. As to Count I:
 - a. For a determination of the extent, validity, and priority of PVI's security interest and the amount of PVI's claim.
 - b. Avoiding PVI's lien or interest to the extent not secured by the collateral pursuant to 11 U.S.C. § 506(d).
 - c. For such other and further relief as the Court deems just and proper.

- B. As to Count II:
 - a. Judgment in favor of Plaintiff and against PVI, avoiding the lien

placed on the Debtor's assets;

b. For such other and further relief as the Court deems just and proper.

Dated: November 24, 2021

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