

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

IN RE:

CASE NO. 16-50740

PROGRESSIVE ACUTE CARE, LLC, *et al.*

CHAPTER 11

DEBTORS

JOINTLY ADMINISTERED

PROGRESSIVE ACUTE CARE AVOYELLES, LLC,

Plaintiff,

Adversary No.

VS.

FUTURA MOBILITY, LLC

Defendant

**COMPLAINT
TO AVOID AND RECOVER TRANSFERS OF PROPERTY**

Progressive Acute Care Avoyelles, LLC (“Plaintiff”), as debtor-in-possession, alleges as follows:

1.

Made defendant herein is **Futura Mobility, LLC** (“Defendant”), a limited liability company organized under the laws of the state of Pennsylvania with its principal office in Fort Washington, Pennsylvania.

JURISDICTIONAL ALLEGATIONS

2.

The bankruptcy case was commenced by the filing of a petition under Title 11 of the United States Code by the Plaintiff on May 31, 2016 (“Petition Date”) in the Chapter 11

bankruptcy proceeding styled *In re: Progressive Acute Care Avoyelles, LLC*, Case No. 16-80584, (“Bankruptcy Case”) before the U.S. Bankruptcy Court for the Western District of Louisiana (“Bankruptcy Court”). The Bankruptcy Case is jointly administered with the bankruptcy case entitled *In re: Progressive Acute Care, LLC*, Case No. 16-50740, the lead case before the Bankruptcy Court.

3.

This adversary proceeding arises out of, arose in, and/or is related to the Bankruptcy Case. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 157 and 1334. The causes of action set forth herein involves the determination, allowance and amount of claims pursuant to 11 U.S.C. §§ 547, 548, 550 and 551 and, as such, constitute “core” proceedings pursuant to 28 U.S.C. § 157(b)(2).

4.

Venue is proper in this District pursuant to 28 U.S.C. § 1409(a), as this adversary proceeding arises in and relates to the Bankruptcy Case.

5.

The instant complaint (the “Complaint”) is initiated as an adversary proceeding in which Plaintiff seeks to recover and avoid transfers of property of the estate pursuant to the provisions of 11 U.S.C. §§ 544-551.

**FIRST CLAIM FOR RELIEF
(TO AVOID PREFERENTIAL TRANSFERS
PURSUANT TO 11 U.S.C. § 547(b))**

6.

Plaintiff incorporates each and every allegation contained in paragraphs 1 through 5, inclusive, as if fully set forth herein.

7.

On or within 90 days before the Petition Date, which is between March 2, 2016 and May 31, 2016, on April 3, 2015, the Defendant reduced to judgment debts then owed by the Plaintiff to the Defendant, obtaining a judgment against Plaintiff in the Court of Common Pleas of Montgomery County, Pennsylvania, Docket No. MJ-38110-CV-0000046-2015, Futura Mobility, LLC v. Progressive Acute Care Avoyelles, LLC.

8.

Defendant recorded the judgment against Plaintiff in Avoyelles Parish, Louisiana on June 8, 2016.

9.

The recordation of the judgment as referenced above was a *transfer* under 11 U.S.C. §§ 547 and 548. The recordation of the judgment and any payments received by the Defendant are included in the reference to “Transfers” as used herein.

10.

On information and belief, Defendant was a creditor of the Plaintiff at the time of each of the Transfers within the meaning of 11 U.S.C. § 101(10)(A). At the time of each Transfer, Defendant had a right to payment on account of an obligation owed to Defendant by Plaintiff.

11.

The Transfers were to or for the benefit of a creditor within the meaning of 11 U.S.C. § 547(b)(1).

12.

The Transfers were made on account of an antecedent debt because the Transfers were on account of debts owed by the Plaintiff before the Transfers were made.

13.

The Plaintiff was insolvent throughout the Preference Period (as that term is defined and used in 11 U.S.C. §§ 101(32) and 547 of the Bankruptcy Code). The Preference Period includes the time within 90 days before the Petition Date.

14.

The Transfer enables Defendant to receive more on account of its debts than if the Plaintiff's case was under Chapter 7 of the Bankruptcy Code, the Transfers had not been made, and Defendant received payments of its debts to the extent provided by the provisions of the Bankruptcy Code because, under such scenario, Defendant would not have received full payment with respect to such debts, nor even as much remuneration as the amount of the Transfers.

15.

In accordance with the foregoing, the Transfers are avoidable pursuant to 11 U.S.C. § 547(b).

16.

The above referenced judgment in favor of Defendant should be released, cancelled, erased, and removed from the mortgage records of every parish where the judgment has been recorded; and an order of this Court should be issued directing the Clerk of Court for Avoyelles Parish to release, cancel and erase the aforementioned judgment.

**ALTERNATIVE SECOND CLAIM FOR RELIEF
(TO AVOID FRAUDULENT CONVEYANCES
PURSUANT TO 11 U.S.C. § 548(a)(1)(B))**

17.

Plaintiff incorporates each and every allegation contained in paragraphs 1 through 16, inclusive, as if fully set forth herein.

18.

To the extent that one or more of the Transfers were not on account of an antecedent debt or that payment was made for a thing not due, the Plaintiff did not receive reasonably equivalent value in exchange for such Transfer (the “Potentially Fraudulent Transfers”); and

- A. the Plaintiff was insolvent on the dates that the Transfers were made or became insolvent as a result of the Transfers; or
- B. the Debtor was engaged in business or transactions, or were about to engage in business or transactions, for which any property remaining with the Plaintiff was an unreasonably small capital; or
- C. the Plaintiff intended to incur, or believed that the Plaintiff would incur, debts that would be beyond the Plaintiff’s ability to pay as such debts matured.

19.

The Potentially Fraudulent Transfers or payments of a thing(s) not due are avoidable pursuant to 11 U.S.C. § 548(a)(1)(B).

**ALTERNATIVE THIRD CLAIM FOR RELIEF
(TO RECOVER AVOIDED TRANSFERS AGAINST DEFENDANT
FOR THE BENEFIT OF THE ESTATE UNDER 11 U.S.C. § 550 AND
TO PRESERVE AVOIDED TRANSFERS FOR THE BENEFIT OF THE ESTATE
UNDER 11 U.S.C. § 551)**

20.

Plaintiff incorporates each and every allegation contained in paragraphs 1 through 19, inclusive, as if fully set forth herein.

21.

The Transfers, to the extent that they are avoided pursuant to 11 U.S.C. § 547, may be

recovered by Plaintiff pursuant to 11 U.S.C. § 550(a) and preserved for the benefit of the estate pursuant to 11 U.S.C. § 551.

22.

The Potentially Fraudulent Transfers, to the extent that they are avoided pursuant to 11 U.S.C. § 548, may be recovered by Plaintiff pursuant to 11 U.S.C. § 550(a) and preserved for the benefit of the estate pursuant to 11 U.S.C. § 551.

24.

Unless and until the Transfers and the Potentially Fraudulent Transfers (collectively, “All Avoided Transfers”) are avoided and the Defendant has paid or turned over to Plaintiff the amount of said All Avoidable Transfers, any claims of Defendant in the respective Bankruptcy Case must be disallowed pursuant to 11 U.S.C. § 502(d).

RELIEF REQUESTED

WHEREFORE, Plaintiff prays that, in accordance with the respective claims of Plaintiff against Defendant, this Court enter judgment as follows:

1. That All Avoided Transfers avoidable under 11 U.S.C. §§ 544-548 be avoided and set aside;
2. That All Avoided Transfers, to the extent that they are avoided pursuant to 11 U.S.C. §§ 547 and/or 548, be recovered by Plaintiff pursuant to 11 U.S.C. § 550(a) and be preserved for the benefit of the estate pursuant to 11 U.S.C. § 551;
3. Plaintiff shall recover from Defendant All Avoided Transfers, together with prejudgment interest thereon, at the legal rate allowed under 28 U.S.C. § 1961 from the date of each Transfer;
4. That any claims of Defendant in the respective Bankruptcy Case be disallowed

until the Defendant has paid or turned over to Plaintiff the amount of said All
Avoided Transfers;

5. Directing the respective Clerk of Court and ex-officio Recorder of Mortgages in and for Avoyelles Parish to release, cancel and erase from the records of said office the inscription of the above referenced judgment;
6. An award of costs incurred in this suit; and,
7. Such other and further relief as this Court may deem necessary and proper.

Dated: July 18, 2016.

By: /s/ Michael H. Piper
William E. Steffes (La. Bar Roll No. 12426)
Michael H. Piper (La. Bar No.10550)
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PLEASE SERVE:

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through
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Metairie, LA 70005

AND

Futura Mobility, LLC
through
David Gulian, CEO
515 Pennsylvania Avenue
Fort Washington, PA 19034

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS Progressive Acute Care Avoyelles, LLC	DEFENDANTS Futura Mobility, LLC	
ATTORNEYS (Firm Name, Address, and Telephone No.) <small>Steffes, Vingiello & McKenzie, LLC 13702 Coursey Blvd., Bldg. 3 Baton Rouge, LA 70817 (225) 751-1751</small>	ATTORNEYS (If Known)	
PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other _____ <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other _____ <input type="checkbox"/> Trustee	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) 11 USC 547(b), 11 USC 548(a)(1)(B) and 11 USC 551		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input checked="" type="checkbox"/> 12-Recovery of money/property - §547 preference <input checked="" type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)	FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$	
Other Relief Sought		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR Progressive Acute Care, LLC, et al - Jointly Administered		BANKRUPTCY CASE NO. 16-50740	
DISTRICT IN WHICH CASE IS PENDING Western District	DIVISIONAL OFFICE Lafayette	NAME OF JUDGE Robert Summerhays	
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.	
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE	
SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/Michael H. Piper			
DATE 07/18/2016	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Michael H. Piper		

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, if it is required by the court. In some courts, the cover sheet is not required when the adversary proceeding is filed electronically through the court's Case Management/Electronic Case Files (CM/ECF) system. (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and the defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and in the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

ADVERSARY PROCEEDING COVER SHEET (Reverse Side)

This cover sheet must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney) and submitted to the clerk of the court upon the filing of a complaint initiating an adversary proceeding.

The cover sheet and the information contained on it *do not* replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. This form is required for the use of the clerk of the court to initiate the docket sheet and to prepare necessary indices and statistical records. A separate cover sheet must be submitted to the clerk of the court for each complaint filed. The form is largely self explanatory.

Parties. Give the names of the parties to the adversary proceeding *exactly* as they appear on the complaint. Give the names and addresses of the attorneys if known. Following the heading "Party," check the appropriate box indicating whether the United States is a party named in the complaint.

Cause of Action. Give a brief description of the cause of action including all federal statutes involved. For example, "Complaint by trustee to avoid a transfer of property by the debtor, 11 U.S.C. § 544."

Nature of Suit. Place an "X" in the appropriate box. Only one box should be checked. If the cause of action fits more than one category of suit, select the most definitive.

Origin of Proceedings. Check the appropriate box to indicate the origin of the case:

- 1 Original Proceeding.
- 2 Removed from a State or District Court.

- 1 Reinstated or Reopened.
- 2 Transferred from Another Bankruptcy Court.

Class Action. Place an "X" in this box if you are filing a class action under Rule 23, Fed. R. Civ. P., as made applicable by Rule 7023, Fed. R. Bankr. P.

Demand. In this space enter the dollar amount being demanded in the complaint. If no monetary demand is made, enter "XXXX." If the plaintiff is seeking non-monetary relief, state the relief sought, such as injunction or foreclosure of a mortgage.

Jury Demand. Check the box only if a jury trial is demanded in the complaint.

Bankruptcy Case in Which This Adversary Proceeding Arises. Enter the name of the debtor and the docket number of the bankruptcy case from which the proceeding now being filed arose. Beneath, enter the district and divisional office where the case was filed, and the name of the presiding judge.

Related Adversary Proceedings. State the names of the parties and the six digit adversary proceeding number from any adversary proceeding concerning the same two parties or the same property currently pending in any bankruptcy court. On the next line, enter the district where the related case is pending, and the name of the presiding judge.

Filing Fee. Check one box. The fee must be paid upon filing unless the plaintiff meets one of the following exceptions. The fee is not required if the plaintiff is the United States government or the debtor. If the plaintiff is the trustee or a debtor in possession, and there are no liquid funds in the estate, the filing fee may be deferred until there are funds in the estate. (In the event no funds are ever recovered for the estate, there will be no fee.) There is no fee for adding a party after the adversary proceeding has been commenced.

Signature. This cover sheet must be signed by the attorney of record in the box on the right of the last line of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is *pro se*, that is, not presented by an attorney, the plaintiff must sign.

The name of the signatory must be printed in the box to the left of the signature. The date of the signing must be indicated in the box on the far left of the last line.