

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 7
)	
SEASCAPE HEALTH ALLIANCE, LLC,)	Case No. 19-12496 (KBO)
)	
Debtor.)	
)	
George L. Miller, solely in his capacity as the Chapter 7 Trustee of Seascope Health Alliance, LLC,)	
)	
Plaintiff,)	
v.)	Adv. Proc. No. 21-51268 (KBO)
)	Related Docket Nos. 17, 18, 20 & 21
Richard Allen Wilson III; Karen Coverdale; The Lab at Seascope LLC; and Does 1 through 100,)	
)	
Defendants.)	
)	

**MEMORANDUM ORDER DISMISSING AMENDED
COMPLAINT AND GRANTING LEAVE TO AMEND**

Before the Court is the motion¹ of defendants Wilson, Coverdale, and The Lab at Seascope, LLC (together, the “Movants”) seeking dismissal with prejudice of the amended complaint (the “Complaint”)² filed by George L. Miller (the “Trustee”), solely in his capacity as the chapter 7 trustee of Seascope Health Alliance, LLC (the “Debtor”). The Court, having considered the briefing submitted by the parties and determined that its decision-making process will not be aided by oral argument, finds and orders as follows:

1. The Trustee’s Complaint alleges seventeen counts. The first nine seek avoidance of six groups of asset transfers made by the Debtor as alleged constructive or actual fraudulent transfers pursuant to either section 548(a)(1)(B) of the Bankruptcy Code or sections 1304 and 1305 of the Delaware Uniform Fraudulent Transfer Act (“DUFTA”)³ and section 544 of the Bankruptcy Code. The next six seek recovery of any avoided transfers pursuant to section 550 of the Bankruptcy Code and section 1307 of DUFTA. The final two counts allege breach of fiduciary duty and turnover pursuant to section 542(b) of the Bankruptcy Code. These claims rest upon some or all of the same transfers alleged to be fraudulent in the first nine counts.

¹ See Adv. D.I. 17.

² See Adv. D.I. 15 (the “Compl.”).

³ 6 DEL. C. §§ 1301-1311.

2. The crux of the Movants' dismissal request is that the allegations of the Trustee's Complaint are conclusory and are not supported by sufficient facts to render the claims plausible. Accordingly, the Movants seek an order dismissing the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (the "Federal Rules"), as incorporated to this proceeding by Rule 7012 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

3. Federal Rule 8(a)(2), made applicable to this proceeding by Bankruptcy Rule 7008, provides that to state a claim for relief, a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief[.]"⁴ This rule imposes a "notice pleading standard . . . to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."⁵ While detailed facts are not necessary, a plaintiff must set forth enough "to apprise the defendant fairly of the charges made against him so that he can prepare an adequate answer."⁶

4. When reviewing a motion to dismiss under Federal Rule 12(b)(6) challenging the sufficiency of a statement of claim, the court accepts all factual allegations as true, construes them in a light most favorable to the plaintiff, and determines whether they allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.⁷ This is a plausibility standard – it requires more than speculation or a sheer possibility that a defendant acted unlawfully but is not a probability standard.⁸ Rather, the alleged facts must nudge the claims "across the line from conceivable to plausible[.]"⁹

5. With respect to the Trustee's fraudulent transfer claims, the Trustee identifies with sufficient specificity the transfers sought to be avoided in two of his six transfer groups – the "R. Wilson 3965 Transfers" and the "R. Wilson 0848 Wilson Transfers." These transfers are listed individually with corresponding transfer dates, transferee, and amounts.¹⁰ The transfers the Trustee seeks avoided in the four remaining groups are not sufficiently stated. The "Member Withdrawals" and "Loan Payable Transactions" are categorically lumped with no details provided for the individual transfers within each group, such as transfer date, recipient, or amount.¹¹ For the "Contract Transfers", the Trustee provides the non-debtor contract party and

⁴ FED. R. CIV. P. 8(a).

⁵ *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

⁶ *Giuliano v. U.S. Nursing Corp. (In re Lexington Healthcare Grp., Inc.)*, 339 B.R. 570, 575 (Bankr. D. Del. 2006); see also *Pardo v. Gonzaba (In re APF Co.)*, 308 B.R. 183, 188 (Bankr. D. Del. 2004); *Mervyn's LLC v. Lubert-Adler Group IV, LLC (In re Mervyn's Holdings, LLC)*, 426 B.R. 488, 495 (Bankr. D. Del. 2010).

⁷ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2007); *Crystallex Int'l Corp. v. Petroleos De Venezuela, S.A.*, 879 F.3d 79, 83 n.6 (3d Cir. 2018) (quoting *F.T.C. v. Wyndham Worldwide Corp.*, 799 F.3d 236, 242 (3d Cir. 2015)).

⁸ *Iqbal*, 556 U.S. at 678.

⁹ *Twombly*, 550 U.S. at 570.

¹⁰ See Compl. ¶¶ 11, 12.

¹¹ *Id.* ¶¶ 18-19.

alleges The Lab at Seascapes, LLC as transferee.¹² He does not, however, provide the relevant transfer date(s).¹³ The “Expense Transfers” are also missing transfer dates¹⁴ and individual transfer amounts. These details must be provided to sufficiently state a claim.¹⁵ The Trustee argues that Movants possess this information and therefore the claims need not be amended. However, he cites no case law in support of such a position. Moreover, reliance on facts within a defendant’s possession is acceptable in circumstances not present here; for example, when the facts are within the defendant’s exclusive control and possession.¹⁶ Nonetheless, even in this circumstance, a plaintiff must still include factual allegations supporting the plausibility of the claim and not rely on conclusions.¹⁷

6. The Trustee’s pleading problems with respect to the alleged fraudulent transfers do not end there. The Complaint contains no facts to support the Trustee’s stated claim elements other than the aforementioned general (and sometimes individualized) identification of the challenged transfers and the allegation that Wilson and Coverdale were members and owners of the Debtor, a Delaware limited liability company.¹⁸ Mere recitation of the elements of a claim is insufficient to satisfy the pleading requirements of *Iqbal* and *Twombly*.¹⁹ In defense, the Trustee only addresses his insolvency allegations, arguing that bare-bone conclusory pleading is acceptable. Putting aside the problem that no other claim element is supported by facts,²⁰ ample

¹² *Id.* ¶ 24.

¹³ *Id.* (alleging that the transfers occurred “prior to the Petition Date”).

¹⁴ *Id.* ¶ 25 (same).

¹⁵ See, e.g., *Shandler v. DLJ Merch. Banking, Inc. (In re Insilco Techs., Inc.)*, 330 B.R. 512, 520 n. 14 (Bankr. D. Del. 2005), *aff’d*, 394 B.R. 747 (D. Del. 2008) (dismissing fraudulent transfer claims with leave to amend where complaint included a general description and approximate total amount of the transfers but not specific information on dates or approximate amount of each transfer).

¹⁶ See, e.g., *McDermott v. Clondalkin Grp., Inc.*, 649 F. App’x 263, 267-68 (3d Cir. 2016) (collecting cases and explaining that plaintiffs can plead facts “upon information and belief ‘[w]here it can be shown that the requisite factual information is peculiarly within the defendant’s knowledge or control’ – so long as there are no ‘boilerplate and conclusory allegations’ and ‘[p]laintiffs . . . accompany their legal theory with factual allegations that make their theoretically viable claim plausible.’” (quoting *In re Rockefeller Ctr. Props., Inc. Sec. Litig.*, 311 F.3d 198, 216 (3d Cir. 2002))) (italics and alterations in original).

¹⁷ *Id.*

¹⁸ See Compl. ¶¶ 2-3, 5.

¹⁹ *Iqbal*, 556 U.S. at 678 (“the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions”); *Twombly*, 550 U.S. at 545 (“A plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of a cause of action’s elements will not do[.]”);

²⁰ See Compl. ¶ 14 (“The Debtor received less than reasonably equivalent value in exchange for the Wilson Transfers.”); *id.* ¶¶ 20-21, 27, 50 (“The Debtor received less than a reasonably equivalent value in exchange for the Member Withdrawals [and Loan Payables and LAS Transfers] or the Member Withdrawals [and Loan Payables and LAS Transfers] were made with actual intent to hinder, delay or defraud any creditor of the Debtor.”); *id.* ¶¶ 22, 41 (alleging the same with respect to the Wilson Transfers and Member Withdrawals); *id.* ¶ 34 (“At the time of the Wilson Transfers, the Debtor was engaged or was about to engage in a business or a transaction for which the remaining assets of the Debtor were

case law requires that the element of insolvency be plausibly supported by factual allegations.²¹ Accordingly, the Trustee’s fraudulent transfer claims must be dismissed along with the related claims for recovery.²²

7. With respect to the Trustee’s breach of fiduciary duty claim, if it relies upon the alleged fraudulent nature of the challenged transfers, then it also must be dismissed. If it does not, and there are some other facts supporting the Trustee’s breach claim, then the Trustee must provide them to support the conclusions of the Complaint.²³

8. The Trustee’s final claim of turnover is also not sufficiently stated. Section 542(b) of the Bankruptcy Code provides that, with limited exception, “an entity that owes a debt that is property of the estate and that is matured, payable on demand or payable on order, shall pay such debt to, or on the order of, the trustee”.²⁴ In support of his claim, the Trustee alleges that the Member Withdrawals and the Loan Payables Transactions are owed by Wilson and Coverdale and have not been repaid.²⁵ Save for an aggregate amount at issue, there are no

unreasonably small in relation to the business or transaction.”); *id.* ¶¶ 42, 51 (alleging same with respect to the Member Withdrawals and LAS Transfers); *id.* ¶¶ 37, 44, 53 (“The Debtor transferred the Wilson Transfers [and the Member Withdrawals and the LAS Transfers] without receiving a reasonably equivalent value in exchange for their transfer.”); *id.* ¶ 45 (“The Debtor forgave the Loan Payable Transactions without receiving a reasonably equivalent value in exchange for their transfer.”).

These conclusions also need factual support. *See, e.g., THQ Inc. v. Starcom Worldwide, Inc. (In re THQ Inc.)*, No. 12-13398, 2016 WL 1599798, at *4 (Bankr. D. Del. Apr. 18, 2016) (dismissing fraudulent transfer claims when the plaintiff did not plead facts to support that the debtors received less than reasonably equivalent value or that the debtors were insolvent at the time of the relevant transfers).

²¹ *Buchwald Capital Advisors LLC v. Schoen (In re OPP Liquidating Co., Inc.)*, No. 19-10729, 2022 WL 774063, at *12 (Bankr. D. Del. Mar. 14, 2022) (“the plaintiff must allege, inter alia, facts showing that the debtor was insolvent at the time of the transfer”); *Burtch v. Huston (In re USDigital, Inc.)*, 443 B.R. 22, 39 (Bankr. D. Del. 2011) (“A constructive fraudulent transfer claim may be dismissed where a plaintiff does not plead facts regarding the value of what the debtor received in exchange or does not make factual allegations showing that a debtor was insolvent at the time of the exchange or rendered insolvent by it.”); *Friedman v. Wellspring Capital Mgmt., LLC (In re SportCo. Holdings, LLC)*, No. 19-11299, 2021 WL 4823513, at *14 (Bankr. D. Del. Oct. 14, 2021) (same); *Halperin v. Moreno (In re Green Field Energy Servs., Inc.)*, No. 13-12783, 2015 WL 5146161, at *7 (Bankr. D. Del. Aug. 31, 2015) (explaining that a detailed valuation is not required at the motion to dismiss stage but sufficient factual allegations supporting insolvency are).

²² *Miller v. Bradley (In re W.J. Bradley Mortg. Capital, LLC)*, 598 B.R. 150, 173 (Bankr. D. Del. 2019) (“The Court can only grant the Trustee relief under section 550 to the extent the transfers are avoidable under sections 544, 547, or 548 of the Bankruptcy Code.”); *THQ*, No. 12-13398, 2016 WL 1599798, at *4 (“Because the Court is granting the Motions to Dismiss the preference and fraudulent transfer claims, there is no basis for a claim under section 550(a)”); *USDigital*, 443 B.R. at 40 (denying a claim to recover a fraudulent transfer under Section 550 because the underlying transfers at issue were not avoidable).

²³ *See, e.g.,* Compl. ¶ 86 (concluding that “R. Wilson and K. Coverdale breached their fiduciary obligations to the Debtor by” causing the transfers).

²⁴ 11 U.S.C. § 542(b).

²⁵ Compl. ¶¶ 18-19, 89-93.

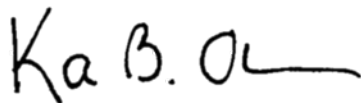
factual details regarding the Member Withdrawals, including the nature of any repayment obligations.²⁶ With respect to the Loan Payable Transactions, the Trustee does not even provide the amount allegedly owed to the Debtor by Coverdale and Wilson. He merely states that “prior to the Petition Date, there were approximately \$269,000 in loan payables owed to the Debtor by *insiders, including K. Coverdale and R. Wilson . . .*”²⁷ The portion attributable to Coverdale and Wilson is unknown let alone other factual details. Furthermore, the Trustee’s allegation that Wilson and Coverdale owe the Loan Payable Transactions to the Debtor is contradicted by another allegation that such debt was forgiven by the Debtor prior to the Petition Date.²⁸

9. The Movants request that the Court dismiss the Complaint with prejudice because the Trustee is an experienced chapter 7 trustee with knowledge of the pleading standards, has had two years to investigate and gather information needed to support the claims, and has already tried and failed to fix his pleading problems through a voluntary amendment. The Court appreciates the time and resources the Trustee’s lackluster efforts have caused Movants to expend. Nonetheless, the Court will permit the Trustee another attempt to amend given the liberal pleading policy of Federal Rule 15²⁹ and the potential harm that could befall the Debtor’s estate if the Court were to prevent the Trustee from pursuing the claims.³⁰

10. For the foregoing reasons, it is hereby **ORDERED** that:

- a. The Complaint is dismissed with leave to amend.
- b. The Trustee is directed to file an amended complaint within 14 days.

August 9, 2022
Wilmington, Delaware



Karen B. Owens
United States Bankruptcy Judge

²⁶ Trustee argues in his briefing that the Member Withdrawals were loans, but no such allegation is made in the Complaint and the Court is unable to infer it from the minimal facts alleged.

²⁷ *Id.* ¶ 19 (emphasis added).

²⁸ Compare *id.* (describing the forgiveness), with *id.* ¶ 89 (alleging that Wilson and Coverdale owe the Loan Payable Transactions to the Debtor).

²⁹ FED. R. CIV. P. 15(a) (“The court should freely give leave [to amend] when justice so requires.”).

³⁰ Movants request that the Court order that all new allegations and other factual contentions of the Trustee have evidentiary support. This is unnecessary given the requirements of Bankruptcy Rule 9011(b).