UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

IN RE:

PRIORIA ROBOTICS, INC., CASE NO.: 18-10018-KKS
CHAPTER: 7

Debtor.
_____/

THERESA M. BENDER, ADV. NO.: 20-01001-KKS
CHAPTER 7 TRUSTEE,

Plaintiff,
v.

ADVANTAGE CAPITAL ENTITIES,
ADVANTAGE CAPTIAL COMMUNITY
DEVELOPMENT FUND
MISSISSIPPI II, LLC, AND
SOUTHEAST COMMUNITY
DEVELOPMENT FUND I, LLC

Defendants.
_____/

ORDER DENYING *DEFENDANTS' MOTION TO DISMISS OR FOR MORE DEFINITE STATEMENT* (Doc. 22)

THIS MATTER is before the Court on *Defendants' Motion to Dismiss or for More Definite Statement* ("Motion," Doc. 22) and the *Trustee's [Sic] Response in Opposition to Motion to Dismiss* ("Response," Doc. 25). Having

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reviewed the pleadings and relevant case law, the Court finds the Motion is due to be denied.

BACKGROUND

Plaintiff commenced this Adversary Proceeding on January 28, 2020, naming Advantage Capital Entities ("Entities") and Advantage Capital Community Development Fund Mississippi II, LLC ("ACCDFM") as Defendants.[1] On July, 10, 2020, Plaintiff added Southeast Community Development Fund I, LLC ("SECDF") as a Defendant.[2]

On August 24, 2020, ACCDFM and SECDF filed this Motion seeking dismissal of this Adversary Proceeding pursuant to Fed. R. Civ. P. 12(b)(6) or alternatively, a more definite statement pursuant to Fed. R. Civ. P. 12(e).[3] Defendants assert the Amended Complaint (1) inappropriately names Entities because it is "non-existing," and "not a legal entity;"[4] (2) refers to "all three of the defendants" throughout the pleading and fails to specify which Defendant received which transfer;[5] (3) incorrectly classifies

[1] *Adversary Complaint*, Doc. 1.
[2] *Amended and Restated Adversary Complaint* ("Amended Complaint"), Doc. 15. Plaintiff filed *Trustee's Motion to Amend Adversary Complaint* (Doc. 9), which the Court granted (Doc. 13).
[3] Fed. R. Civ. P. 12(b)–(i) is made applicable by Fed. R. Bankr. P. 7012(b). Unless otherwise specified, the Court will refer to ACCDFM and SECDF collectively as "Defendants."
[4] Doc. 22, ¶¶ 1, 7 & 9. Plaintiff names Entities as a defendant because it could be the "Advantage Capital" lender listed on Prioria Robotics, Inc.'s ("Debtor") bank statements (Doc. 15, ¶ 11).
[5] *Id.* at ¶ 2.

Defendants and Entities as "insiders" of Debtor;[6] and (4) fails to allege that ACCDFM or Entities received any transfers.[7]

Plaintiff urges the Court to deny the Motion, contending that the Amended Complaint sufficiently pleads a cause of action against Entities and ACCDFM by (1) alleging that one or both are the "payment agent" for SECDF, the "real transferee;"[8] (2) adequately describing multiple preferential payments "from Debtor to or for the benefit" of each Defendant;[9] and (3) asserting that Defendants are insiders that received voidable transfers (specifically SECDF), or served as transferees for the benefit of insiders (specifically ACCDFM and Entities).[10]

DISCUSSION

The Motion to Dismiss

In addressing a motion to dismiss, the Court must accept all factual allegations in a complaint as true and take them in the light most favorable to the plaintiff.[11] A complaint must contain "a short and plain statement of

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[6] *Id.* at ¶ 3.
[7] *Id.* at ¶¶ 4, 6, 7, & 9.
[8] Doc. 25, ¶ 2.
[9] *Id.* at ¶ 3.
[10] *Id.* at ¶ 5 ("[SECDF] is plainly an insider . . . ACCDFM – or a similarly named, but undisclosed related entity – was the transferee of transfers apparently for the benefit of [SECDF] . . . [Entities] is identified as an insider and transferee of the transfers . . . .").
[11] *Erickson v. Pardus*, 551 U.S. 89 (2007).

the claim showing that the pleader is entitled to relief."[12] To survive dismissal, the factual allegations must be "plausible" and "must be enough to raise a right to relief above the speculative level."[13] A claim is factually plausible when "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."[14] This standard "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do."[15]

Under the applicable standard, the Amended Complaint states a cause of action against Defendants sufficient to survive a motion to dismiss. The factual allegations, read in the light most favorable to Plaintiff, give rise to reasonable speculation that at least one Defendant, if not both, may have received preferential or fraudulent transfers. Specifically, in the Amended Complaint Plaintiff alleges: "The Debtor's records reflect that 'Advantage Capital' received payments from the Debtor in the form of ACH Debits within the year immediately preceding the Petition Date in the aggregate amount of $75,863.67 . . . which Transfers were interests of the

[12] Fed. R. Civ. P. 8(a)(2), made applicable by Fed. R. Bankr. P. 7008.
[13] *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted).
[14] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).
[15] *Twombly*, 550 U.S. at 555 (citation omitted).

Debtor in property."[16] Plaintiff's Response further clarifies that a cause of action exists because the payment agent, denominated in Debtor's records as "Advantage Capital," could be either or both ACCDFM or Entities.[17]

Defendants also argue that the Amended Complaint should be dismissed because Plaintiff does not clearly set forth that Defendants and Entities are insiders.[18] This is not true. Plaintiff alleges that the Debtor, Prioria Robotics, Inc., identified Entities as an owner of its parent company, Prioria Robotics Holdings, Inc., in the Corporate Ownership Statement filed in Bankruptcy Case 18-10019-KKS.[19] Plaintiff alleges that she "has been advised" that SECDF is also an owner of Debtor's parent, Prioria Robotics Holdings, Inc., and shares the same principal address as ACCDFM.[20] Plaintiff alleges that ACCDFM "was purportedly acting as a

[16] Doc. 15, ¶ 11. Although Defendants now claim that Entities never existed, Plaintiff, as Chapter 7 Trustee, is pleading from documents provided by the Debtor and others that list the original payee as "Advantage Capital." To the extent that "Advantage Capital" in Debtor's records may have been shorthand for ACCDFM or some other entity, such as Entities, the true identity of this party can be determined via discovery.
[17] Doc. 25, ¶ 2.
[18] Doc. 22, ¶ 3.
[19] Doc. 15, ¶ 5. Although Plaintiff acknowledges the Florida Division of Corporation website does not disclose an entity named "Advantage Capital Entities," the existence of such entity can be determined via discovery.
[20] *Id.* at ¶ 6.

payment agent to [SECDF] . . . [and] a transferee."[21] To the extent Defendants believe Plaintiff incorrectly or implausibly alleges they are "insiders" of the Debtor, or that Entities cannot be a defendant because it does not exist, those are questions of fact for discovery. For purposes of a motion to dismiss a Plaintiff must clearly allege facts but is under no obligation to prove those facts at this stage of the litigation.

Defendants' remaining arguments in the Motion raise questions of fact that do not bear on whether the case should be dismissed.

The Motion for More Definite Statement

Under Federal Rule of Civil Procedure 12(e), a party may move for a more definite statement in response to a pleading that is "so vague or ambiguous that the party cannot reasonably prepare a response."[22] Motions for more definite statement are "intended to provide a remedy for an unintelligible pleading," rather than serve as a vehicle for obtaining greater detail.[23] "Federal Courts disfavor motions for a more definite statement, in

[21] Doc. 25, ¶ 6. Plaintiff clarifies that ACCDFM and Entities may have served as transferees for the benefit of SECDF. *Id.* at ¶ 5.
[22] Fed. R. Civ. P. 12(e).
[23] *Ramirez v. F.B.I.*, No. 8:10-cv-1819, 2010 WL 5162024, at *2 (M.D. Fla. Dec. 14, 2010) (quoting *Aventura Cable Corp. v. Rifkin/Narragansett S. Fla. CATV Ltd. P'ship*, 941 F. Supp. 1189, 1195 (S.D. Fla. 1996)).

view of the liberal pleading and discovery requirements set forth in the Federal Rules of Civil Procedure."[24]

Plaintiff's grouping of "all Defendants" in Counts I and V does not warrant a more definite statement. While a more definite statement may be warranted when a complaint lumps or groups defendants together, especially if there are multiple claims,[25] when a complaint names multiple defendants, "the allegations can be and usually are to be read in such a way that each defendant is having the allegation made about him individually."[26]

The allegations in Counts I and V of the Amended Complaint can be read in such a way that each Defendant can answer Plaintiff's allegations that it is or was an insider and did or did not receive the alleged transfers. The Amended Complaint does not comprise the sort of unintelligible pleading meriting a more definite statement. Although the Amended Complaint does not state the exact amount each Defendant allegedly received, whether directly or as payment agent for SECDF, Defendants can still

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[24] *BB In Tech. Co., Ltd. v. JAF, LLC*, 242 F.R.D. 632, 640 (S.D. Fla. 2007).
[25] *Hewlett-Packard Co. v. CP Transp. LLC*, No. 12-21258-Civ, 2012 WL 4795766, at *2 (S.D. Fla. Oct. 9, 2012) (citing *Veltmann v. Walpole Pharmacy, Inc.*, 928 F. Supp. 1161, 1164 (M.D. Fla. 1996) (noting the complaint failed to comply with FRCP 10(b) making it "virtually impossible to ascertain from the [c]omplaint which defendant committed which alleged act.")).
[26] *Id.* (quoting *Crowe v. Coleman*, 113 F.3d 1536, 1539 (11th Cir. 1997)).

properly respond to these factual allegations. Because the discovery process is still ongoing, Defendants should not use a more definite statement as a means to force Plaintiff to reveal in more detail the factual basis for her claims.[27]

For the reasons stated, it is

ORDERED:

1. *Defendants' Motion to Dismiss or for More Definite Statement* (Doc. 22) is DENIED.
2. The hearing on the Motion, currently scheduled for October 27, 2020 is CANCELED.

DONE and ORDERED on October 26, 2020.

KAREN K. SPECIE
Chief U.S. Bankruptcy Judge

Defendants' Counsel is directed to serve a copy of this Order on interested parties and file a proof of service within three (3) days of entry of this Order.

[27] *See Clearwater Consulting Concepts, LLP v. Imperial Premium Fin., LLC*, No. 09-81042-CIV, 2010 WL 916392, at *2 (S.D. Fla. Mar. 11, 2010) (finding that the a more definite statement was not warranted because the "discovery process will afford defendant the opportunity to explore the factual basis of plaintiff's claims . . . ."); *Euro RSCG Response, LLC v. Green Bullion Fin. Servs.*, 872 F. Supp. 2d 1353, 1359 (S.D. Fla. 2012) (noting that a more definite statement was not warranted because the "[p]laintiff [had] met the pleading requirements of Federal Rule of Civil Procedure 8(a) . . . .").