

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
FOR HILLSBOROUGH COUNTY, FLORIDA  
CIRCUIT CIVIL DIVISION**

Laser Spine Institute, LLC ; CLM AVIATION LLC  
**Plaintiff**

**Case No:** 19-CA-002762

vs

**Division:** L

Soneet Kapila  
**Defendant**

**Order Denying Motion As Premature:**

**MOTION FOR ENTRY OF AN ORDER PURSUANT TO FLA. STAT. 727.109(15): (I)  
AUTHORIZING THE USE OF CASH COLLATERAL; (II) PROVIDING ADEQUATE  
PROTECTION TO LENDERS; (III) ESTABLISHING A LIEN CHALLENGE DEADLINE  
(Doc. 142)**

The assignee filed the captioned motion May 24, 2019. It seeks (1) authority from the court for the assignee to use the funds that secured creditor Texas Capital Bank (TCB) has released to it for administrative purposes, (2) adequate protection of TCB's lien on those funds, and (3) an order setting a date after which TCB's lien cannot be challenged. This order grants the first request for relief and denies the remainder without prejudice.

TCB's existing lien attaches to the estate's assets at the time of the Assignment. It would not attach to, for example, the proceeds of any claims by the estate against directors or officers of the corporations. The order the motion seeks would grant TCB a lien on all future non-receivables collected from lawsuits or insurance policies.

According to the motion, TCB is "administrative agent to the lender group" (Doc. 142.2), and asserts perfected liens on all of the property of LSI, including its accounts receivable. The liens emanate from a credit agreement dated July 2, 2015, which provided for \$15m in revolving credit and \$131.25m payable on a term basis. By the time this action was filed, the borrowers were in default and numerous ancillary costs were added into the balance under the terms of the agreement, bringing the total to more than \$154m.

As part of its security measures, the receivables of the borrowers were required to be deposited in accounts they held at TCB. When the assignee commenced this action and took control of LSI's assets, he opened an operating account in a different bank. TCB has been providing funds from the LSI accounts to the assignee to pay expenses related to the liquidation of LSI's assets. TCB desires to preserve its

lien on these funds.

Under the statutory priority scheme, however, the court is not yet convinced that TCB's lien applies to the assignee's expenses. On the record so far, they appear to be secured-creditor-specific administrative expenses ("expenses of preserving or disposing of such collateral") under § 727.114(1)(a) which are excluded from the lien. Of course, general administrative expenses that benefit all creditors would be in second position under § 727.114(1)(b), but the motion has made no effort to show that any of the assignee's expenses fall into that category.

The accounts receivable balance reflected in the Assignment (Doc. 4) is \$33,405,888; the other listed assets are comparatively insignificant. At the time of the assignment, TCB was the only significant secured creditor, and the largest unsecured creditors were the plaintiffs in the case of *Bailey v. St Louis*, Fla. 13<sup>th</sup> Circuit Case No. 06-CA-8498, which matured into a judgment in excess of \$240m. There are also numerous other lawsuits, and claims from allegedly unpaid vendors and employees.

Looking only at the assets and liabilities existing at the time of the Assignment, the TCB parties' secured claim appears to be at least four times larger than the assets in their best-case scenario. That would mean the secured creditors would be the only beneficiaries of the actions of the assignee. And as noted above, under § 727.114(1)(a), Fla. Stat., a secured creditor's claim is in first priority "less the reasonable, necessary expenses of preserving or disposing of such collateral to the extent of any benefit to such creditors."

Accordingly, under this scenario, the bank is asking for adequate assurance to protect its lien on funds that, by statute, are at least in part exempt from its first-position secured interest. Since that amount would need to be litigated in the process of any "execution" by TCB on its liens, its threat to do so would seem to be subgame-imperfect (i.e., unlikely when actually faced, because of its cost relative to benefit). The court would not be inclined to extend TCB's lien without some showing that the funds would be expended for the benefit of any of the other classes of creditors, and that has not been established on this record.

The court is aware of the estate's contingent assets, taking judicial notice that the assignee filed some twenty lawsuits against shareholders and managers of the LSI entities in late June of 2019. A small sampling of the suits (Cases 19-CA-006817, 19-CA-006818, and 19-CA-006821) contain nearly identical allegations that LSI management took out a loan when its financial reports made it look successful, with gross revenues of \$268m and EBITDA of \$77m in 2014. The suits allege that LSI then

borrowed the above-mentioned \$150m from TCB in July of 2015, at a time when LSI had liquidity problems, and distributed much of that money to the shareholders. The suits claim the dividend payouts were fraudulent transfers, and that the defendants breached their fiduciary duties to the corporations, engaged in self-dealing, and thereby caused damages to the corporation. A jury trial has been demanded in each instance.

At this point, of course, the court has no opinion on the validity of the suits (they are all pending in this division) or the collectability of any judgment that may result. The assignee clearly has taken the position that they are valid claims, but the present motion has given the court nothing to work with in terms of valuing the potential assets—not even an enumeration of potentially responsive insurance policies.

Thus, while the suits could have the potential to change the above analysis, they have not done so yet.

Without a showing that the assignee's expenses are general expenses under § 727.114(1)(b), rather than TCB-lien-specific expenses under § 727.114(1)(a), the court concludes that TCB's security interest is adequately protected without extension of its lien to contingent assets. The assignee is authorized to use the cash collateral if TCB consents to provide it, and if TCB declines, the court will need to determine the extent to which the assignee's expenses are exempt from the lien under § 727.114(1)(a).

Finally, the court does not rule out the prospect of a lien challenge deadline, but the assignee would first have to examine the validity and priority of the TCB lien and that has not been stated in the motion. §727.108(10). Given that the motion as a whole would have effectively precluded any challenge by the assignee to TCB's lien, and that the assignee has filed numerous lawsuits in which the secured loan plays a prominent role, the assignee has not convinced the court that its scrutiny of the lender's role in the transaction is complete. The request for a lien challenge deadline is denied without prejudice.

**The above-styled motion is hereby DENIED.**

Done and Ordered in Hillsborough County, Florida this 23rd day of September, 2019.

ELECTRONICALLY CONFORMED 9/23/2019

Copies Furnished To:

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