

HELLRING LINDEMAN GOLDSTEIN & SIEGAL LLP  
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and Charles K. Schwartz  
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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY

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In the Matter of: : Case No. 10-35561 (MS)  
ALLIED HEALTH CARE SERVICES, :  
INC. :  
: Debtor.

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In the Matter of: : Case No. 10-38816 MS  
CHARLES K. SCHWARTZ, : Chapter 7 Proceeding  
: Hon. Morris Stern  
: Debtor. : Administratively Consolidated

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ERIC R. PERKINS, Chapter 7 : Adversary Pro. No.  
Trustee for Charles K. Schwartz, :  
: Plaintiff, :  
: v. :  
: DONNER MEDICAL MARKETING :  
COMPANY, INC., BRUCE DONNER, :  
KATHI L. DONNER and :  
DONNER - HMR MEDICAL, LLC, :  
: Defendant. :  
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VERIFIED COMPLAINT TO INVALIDATE FRAUDULENT TRANSFERS

Plaintiff, Eric R. Perkins, Chapter 7 Trustee  
("Plaintiff" or "Trustee") for Allied Health Care Services, Inc.

("Allied") and Charles K. Schwartz ("Schwartz"), by way of Complaint against the Defendants, says:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff is the duly appointed, qualified and acting Trustee of the estates of the above-captioned debtors.

2. Allied is a New Jersey corporation which was engaged in the business of supplying medical equipment to the general public. It maintained offices at 89 Main Street, Orange, New Jersey and Route 59, Monsey, New York. Schwartz was the principal of Allied.

3. On August 17, 2010, an involuntary petition for relief under Chapter 7 of the Bankruptcy Code was filed against Allied.

4. On September 10, 2010, an Order for Relief was entered by the Court.

5. On September 7, 2010, plaintiff was appointed interim Chapter 7 Trustee for Allied by the United States Trustee for Region 3 and is duly qualified and acting.

6. On September 17, 2010, an involuntary petition for relief under Chapter 7 of the Bankruptcy Code was filed against Schwartz.

7. On October 12, 2010, an Order for Relief was entered by the Court as to Schwartz.

8. On October 12, 2010, plaintiff was appointed Interim Chapter 7 Trustee for Schwartz by the United States Trustee Region 3 and is duly qualified and acting.

9. By Order dated November 9, 2010, the Estates of Allied and Schwartz were consolidated for administrative purposes.

10. As of March 1, 2011, the filed claims in the Allied matter total in excess of \$70,000,000 and the filed claims in the Schwartz matter total in excess of \$63,000,000.

11. Plaintiff's accountants have determined, based on information they have reviewed concerning Allied, including the claims filed by Allied in this proceeding, that at all times relevant hereto Allied had a value of zero.

12. Defendant Donner Medical Marketing Company, Inc. ("DMM") is a New Jersey corporation, which maintained offices at 70 Sutton Drive, Berkeley Heights, New Jersey.

13. Defendant Bruce Donner ("BD") is the president and sole shareholder of DMM.

14. Bruce Donner resides at 70 Sutton Drive, Berkeley Heights, New Jersey.

15. Defendant Kathi L. Donner ("KD") is the wife of BD and resides at 70 Sutton Drive, Berkeley Heights, New Jersey.

16. Donner-HMR Medical, LLC is a New Jersey limited liability company whose principal address is 145 Beechwood Road, Ridgewood, New Jersey, of which, upon information and belief, DMM is a member.

17. The United States Bankruptcy Court for the District of New Jersey has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and 1334 because

this is an adversary proceeding arising under the Debtor's bankruptcy proceedings under Title 11.

18. This matter is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2)(A), (E), (H) and (O).

19. Venue is properly laid in this District pursuant to 28 U.S.C. §1409.

20. Plaintiff brings this adversary proceeding pursuant to 11 U.S.C. § 544(b), 11 U.S.C. § 548 and Bankruptcy Rule 7001 et seq.

#### **BACKGROUND**

21. On September 1, 2010, a criminal Complaint was filed against Schwartz by the United States of America in the United States District Court for the District of New Jersey, under Docket Number 2:10-NJ-08208 MCA. Paragraphs 3-7 of the Complaint read as follows:

"3. At all times relevant to this Complaint, Defendant CHARLES K. SCHWARTZ utilized fraudulent documents to obtain millions of dollars in loans from various financial institutions. In order to carry out this scheme, Defendant CHARLES K. SCHWARTZ requested and obtained medical equipment invoices from Company 1 through UC-1, which invoices falsely stated that Company 1 was providing valuable medical equipment to Allied. Defendant CHARLES K. SCHWARTZ solicited and then used these fraudulent invoices from Company 1 in order to seek and secure millions of dollars from financial institutions, purportedly to finance Allied's leasing of the medical equipment from Company 1. The financial institutions would, in turn, provide money directly to Company 1 to purchase the medical equipment, and Defendant CHARLES K. SCHWARTZ would agree to lease the medical equipment from the financial institutions by making periodic lease payments to the financial institutions.

4. In fact, Company 1 provided no medical equipment to Defendant CHARLES K. SCHWARTZ or Allied. Instead, UC-1 transferred money obtained from the financial institutions to at least one company, named 'C&C',

which purported to be a distributor of medical equipment; in reality, this company was created and controlled by Defendant CHARLES K. SCHWARTZ for the purpose of carrying out the scheme to defraud.

5. UC-1 was compensated for his role in the scheme, in that he sent approximately 95-97% of the money received from the financial institutions to C&C, while keeping approximately 3-5% for UC-1's own benefit.

6. In order to repay the initial fraudulent money obtained as part of the scheme, Defendant CHARLES K. SCHWARTZ obtained additional money throughout the duration of the scheme in a similar fashion, each time using fraudulent invoices obtained from Company 1 through UC-1.

7. In furtherance of the scheme to defraud, and using the fraudulent invoice documents, Defendant CHARLES K. SCHWARTZ caused to be sent or delivered by mail various mail matter, including false invoices from Company 1 to Allied, false invoices from C&C to Company 1, and checks totaling more than \$87 million in fictitious proceeds from Company 1 to C&C."

22. C&C, whose corporate name is C&C Financial, LLC (hereinafter "C&C"), had no business other than to assist Schwartz in the fraudulent scheme set forth in the above-mentioned criminal complaint.

23. Schwartz was arrested and imprisoned on or about September 2, 2010.

24. On April 13, 2011, Schwartz entered a plea of guilty to one count of mail fraud in the United States District Court and admitted in his allocution the essential allegations in the above-mentioned Criminal Complaint.

**FIRST COUNT**  
**(as to DMM)**

**(Fraudulent Conveyance Under Section 544(b)  
of the Bankruptcy Code)**

25. Upon information and belief, DMM is the "Company 1," and BD is the "UC-1" identified in the criminal complaint.

26. Upon information and belief, DMM had no business other than to assist Schwartz in the fraudulent scheme set forth in the criminal complaint.

27. Based on the records of Allied and DMM which the Trustee has been able to obtain, the fraudulent scheme of Allied and Schwartz proceeded as follows:

A. Allied would solicit loans from various banks and lending institutions based on alleged invoices from DMM to Allied for the purchase of various types of medical equipment.

B. The alleged purpose of the loans sought by Allied was to finance the equipment it was allegedly purchasing from DMM.

C. In most cases, the money loaned to Allied by the various lending institutions was paid directly to DMM.

D. After receiving the proceeds from the various loans, DMM would take a "commission" of between 2 and 3½ percent and then pay the balance of the money to Allied or C&C.

E. Allied would use the proceeds of a loan to pay off a prior loan or loans. In effect, Allied was engaged in a "Ponzi Scheme."

28. DMM has admitted in a response to a subpoena served upon it by Bucks County Bank, a creditor in these proceedings, that there are no documents evidencing: (a) "the purchase of any equipment by Donner, Inc. in respect to the BCB Transactions;" (b) "the identification of any equipment purchased by Donner, Inc. in respect to the BCB Transactions, specifically, but not limited to serial numbers;" (c) "the delivery of any equipment by Donner, Inc. in respect to the BCB Transactions with Allied to any third person;" (d) "the present location of any equipment purchased by Donner, Inc. in respect to the BCB Transactions with Allied."

29. Upon information and belief, DMM sold no equipment to Allied, and every invoice from DMM to Allied which Allied provided to the various lending institutions was false.

30. At his 341 Hearing, which was held on May 2, 2011, Schwartz testified that the actions which gave rise to the criminal complaint began in 1999 and that BD was a participant in the fraud from the very outset.

31. Based on records reviewed by the plaintiff's accountants, during the period 2003 to 2010, DMM received from Allied approximately \$135,000,000 of which amount, DMM took for itself commissions of \$4,149,517.64 and paid the balance to Allied or C&C.

32. Based on records reviewed by the plaintiff's accountants, during the period 2003 through 2010, out of the \$4,149,517.64 it received from Allied, DMM paid \$2,547,000 to KD, \$13,102.00 to BD and \$212,577.45 to Donner-HMR Medical, LLC.

33. Based on records reviewed by the plaintiff's accountants, on May 24, 2010, KD transferred \$250,000 from accounts in the joint names of BD and KD to an account in the name of KD.

34. Upon information and belief, at or about the same time as the transfer mentioned in the previous paragraph, BD transferred to KD his interest in the marital home located at 70 Sutton Drive, Berkeley Heights, New Jersey.

35. Based on records received by plaintiff's accountants, checks payable to Donner and/or BD were deposited in a bank account of Donner-HMR Medical, LLC.

36. The transfers to DMM of the monies Allied borrowed from the various lenders were made with the intent to hinder, delay or defraud creditors of Allied as set forth in N.J.S.A. 25:2-25(a) made applicable by Section 544(b) of the Bankruptcy Code.

37. The transfers of the above-described monies to DMM were made without Allied receiving a reasonably equivalent value as set forth in N.J.S.A. 25:2-25(b) made applicable by Section 544(b) of the Bankruptcy Code.

38. At the time of the said transfers, Allied was engaged in business or transactions or was about to engage in business or transactions for which the remaining assets of Allied were unreasonably small in relation to the business or transactions as set forth in N.J.S.A. 25:2-25(b)(1), made applicable by Section 544(b) of the Bankruptcy Code.



39. At the time of the said transfers, Allied intended to incur or believed that it would incur or should have reasonably believed that it would incur debts beyond its ability to pay as such debts matured as set forth in N.J.S.A. 25:2-25(b)(2) made applicable by Section 544(b) of the Bankruptcy Code.

40. At the time of the said transfers, Allied was insolvent or became insolvent as a result of the transfers as set forth in N.J.S.A. 25:2-27(a) made applicable by Section 544(b) of the Bankruptcy Code.

41. Pursuant to Section 550(a) of the Bankruptcy Code, the recovery of property for the benefit of Allied's estate is authorized to the extent avoided under Section 544(b) of the Bankruptcy Code.

42. Upon information and belief, DMM may make further fraudulent transfers of assets which will cause irreparable injury to plaintiff and the creditors of Allied and Schwartz, and concerning which, plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff demands entry of judgment against DMM as follows:

A. Determining that the transfers of the above-described monies to DMM constituted fraudulent transfers in violation of the New Jersey Statutes and Section 544(b) of the Bankruptcy Code;

B. Directing DMM to return the monies to plaintiff;

C. Temporarily and preliminarily enjoining DMM from transferring any of its assets except as allowed by this Court;

D. Preliminarily directing an accounting with regard to all assets received by DMM from loans obtained by Allied; and

E. For such further relief as the Court may deem equitable and just.

**SECOND COUNT**  
**(As to DMM)**

**(Fraudulent Conveyance Under Section 548  
of the Bankruptcy Code)**

43. Plaintiff repeats the allegations in the First Count as if the same were set forth at length herein.

44. The transfers specified in the First Count constitute fraudulent transfers as set forth in Section 548 of the Bankruptcy Code in that some of the transfers were made or incurred by Allied within two years of the commencement of its bankruptcy case, i.e., transfers made during the period August 17, 2008 to August 17, 2010.

45. With regard to each transfer made within that period, Allied:

(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which Allied was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or

(B) (i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(ii) (I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;

(III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or

WHEREFORE, Plaintiff demands entry of judgment against DMM as follows:

A. Determining that the transfers of monies to DMM during the period August 17, 2008 to August 17, 2010 constituted fraudulent transfers in violation of Section 548 of the Bankruptcy Code;

B. Directing DMM to return the monies to plaintiff;

C. Temporarily and preliminarily enjoining DMM from transferring any of its assets except as allowed by this Court;

D. Preliminarily directing an accounting with regard to all assets received by DMM from loans obtained by Allied; and

E. For such further relief as the Court may deem equitable and just.

**THIRD COUNT**  
**(As to BD)**

**(Fraudulent Conveyance Under  
Sections 544, 548 and 550 of the Bankruptcy Code)**

46. Plaintiff repeats the allegations in the First and Second Counts as if the same were set forth at length herein.

47. Upon information and belief, at all relevant times, BD was the person for whose benefit the transfers from Allied to DMM were made as set forth in 11 U.S.C. 550(a)(1).

48. Alternatively, and upon information and belief, BD was an "immediate" transferee of the money received by DMM from Allied as set forth in 11 U.S.C. 550(a)(2).

49. BD did not take the money he received from Allied and/or DMM for value and in good faith.

50. BD has made transfers to KD and, upon information and belief, to others in order to defeat the claims of his creditors.

51. Upon information and belief, BD may make further fraudulent transfers of assets which will cause irreparable injury to plaintiff and the creditors of Allied and Schwartz, and concerning which plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff demands entry of judgment against BD as follows:

A. Determining that BD is liable to plaintiff for the return of the monies received from Allied loans which were transferred to DMM and/or the monies DMM transferred to BD;

B. Directing BD to return said monies to plaintiff;

C. Temporarily and preliminarily enjoining BD from transferring any of his assets except as allowed by this Court;

D. Preliminarily directing BD to account with regard to all monies received from Allied loans by BD from Allied and/or DMM; and

E. Granting such further relief the Court may deem equitable and just.

**FOURTH COUNT**  
**(As to KD)**

**(Fraudulent Conveyance Under Sections 544, 548 and 550 of the Bankruptcy Code)**

52. Plaintiff repeats the allegations in the First, Second, and Third Counts as though set forth at length herein.

53. Upon information and belief, KD was the person for whose benefit the transfers from Allied to DMM were made as set forth in 11 U.S.C. § 550(a)(1).

54. Alternatively, and upon information and belief, KD was an "immediate" transferee or a "mediate" transferee of the money received by DMM from Allied, as set forth in 11 U.S.C. § 550(a)(2).

55. KD did not take money she received from Allied and/or DMM and/or BD for value and in good faith.

56. KD has received transfers from DMM and/or BD and, upon information and belief, from others and has made transfers, the purpose of which is to defeat the claims of creditors of DMM, BD or KD.

57. Upon information and belief, KD may make further fraudulent transfers of her assets which will cause irreparable injury to plaintiff and the creditors of Allied and Schwartz, and concerning which plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff demands entry of judgment against KD as follows:

A. Determining that KD is liable to plaintiff for the return of the monies transferred from Allied loans which were transferred to KD by Allied, DMM and/or BD;

B. Directing KD to return said monies to plaintiff;

C. Temporarily and preliminarily enjoining KD from transferring any of her assets except as allowed by this Court;

D. Preliminarily directing KD to account for all assets received by her from loans obtained by Allied, DMM or BD and all assets transferred by her; and

E. Granting such further relief the Court may deem equitable and just.

**FIFTH COUNT**  
**(As to Donner-HMR Medical, LLC)**

**(Fraudulent Conveyance Under Sections  
544, 548 and 550 of the Bankruptcy Code)**

58. Plaintiff repeats the allegations in the First, Second, Third, and Fourth Counts as though set forth at length herein.

59. Upon information and belief, Donner-HMR Medical, LLC was an "immediate" transferee or a "mediate" transferee of the money received by DMM from Allied as set forth in 11 U.S.C. § 550(a)(2).

60. Upon information and belief, Donner-HMR Medical, LLC did not take the money it received from DMM for value and in good faith.

61. Donner-HMR Medical, LLC has received transfers from DMM and/or BD or others and, upon information and belief, has made transfers the purpose of which is to defeat the claims of creditors of DMM, BD, KD or Donner-HMR Medical, LLC.

62. Upon information and belief, Donner-HMR Medical, LLC may make further fraudulent transfers of its assets which will cause irreparable injury to plaintiff and the creditors of Allied and Schwartz, concerning which plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff demands entry of judgment against Donner-HMR Medical, L.L.C. as follows:

A. Determining that said defendant is liable to plaintiff for the return of the monies it received from Allied loans which were transferred to BD;

B. Directing said defendant to return said monies to plaintiff;

C. Temporarily and preliminarily enjoining said defendant from transferring any of its assets, except as allowed by this Court;

D. Preliminarily directing said defendant to account for all assets it received from DMM and/or BD; and

E. Granting such further relief the Court may deem equitable and just.

**SIXTH COUNT**  
**(As to BD)**

**(Piercing the Corporate Veil)**

63. Plaintiff repeats the allegations in the First, Second, Third, Fourth and Fifth Counts as though set forth at length herein.

64. Upon information and belief, BD was the sole shareholder of and totally controlled the actions of DMM.

65. Upon information and belief, DMM was a mere instrumentality of BD which BD used to perpetrate a fraud upon the creditors of Allied.

WHEREFORE, plaintiff demands judgment as follows:

A. Piercing the corporate veil of DMM and holding BD personally responsible for the debts of DMM, including, but not limited to the debts of DMM to the plaintiff as set forth in this Complaint; and

B. Granting such further relief as may be just.



**SEVENTH COUNT**  
**(As to All Defendants)**

**(Constructive Trust)**

66. Plaintiff repeats the allegations in the First, Second, Third, Fourth, Fifth and Sixth Counts as if set forth at length herein.

67. The retention of the monies or assets received by DMM, BD, KD and/or Donner-HMR Medical, LLC constitutes unjust enrichment of said defendants.

68. In order to remedy this unjust enrichment, a constructive trust should be imposed on these monies or assets in favor of plaintiff.

WHEREFORE, Plaintiff demands entry of judgment against the defendants as follows:

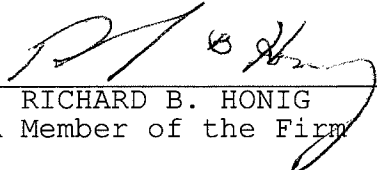
A. Determining that DMM, BD, KD and/or Donner-HMR Medical, LLC hold any monies or assets they received as constructive trustees for the benefit of plaintiff;

B. Directing DMM, BD, KD and/or Donner-HMR Medical, LLC to return all such assets to plaintiff;

C. For such further relief as the Court may deem equitable and just.

HELLRING LINDEMAN GOLDSTEIN & SIEGAL LLP  
Attorneys for Eric R. Perkins, Trustee

By: \_\_\_\_\_

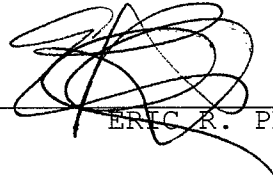
  
RICHARD B. HONIG  
A Member of the Firm

Dated: May // , 2011

VERIFICATION

I am the Plaintiff in this matter. The allegations of the within Complaint are true to the best of my knowledge, information and belief.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



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ERIC R. PERKINS

Dated: May 10, 2011