

AUG - 7 2007

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: ) CHAPTER 11  
)  
BUILDING TRENDS, INC., ) CASE NO. 05-85370-MHM  
)  
Debtor. )

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)  
CHEROKEE INDIAN HOSPITAL )  
AUTHORITY, an authority of the )  
Eastern Band of Cherokee Indians, )

)  
Plaintiff, )

v. )

) ADVERSARY PROCEEDING  
) NO. 06-9050

)  
BUILDING TRENDS, INC.; )  
CHEROKEE ELECTRICAL, INC.; )  
CHEROKEE ENTERPRISES, INC.; )  
K&S WELDING & STEEL )  
ERECTORS, INC.; )  
MILL END ENTERPRISES, INC. d/b/a )  
PEARLMAN'S CARPETS; )  
JOHN WELCH d/b/a )  
NATIVE STONE WORKS, )

)  
Defendants. )

**ORDER GRANTING DEBTOR'S MOTION FOR SUMMARY JUDGMENT**

This adversary proceeding is an interpleader action, commenced when Cherokee Indian Hospital Authority paid \$42,988.32 into the Registry of the Court (the "Interpleader Funds"). Defendants, including Debtor, are parties who may have claimed an interest in the Interpleader Funds. As is typical in an interpleader action, after filing the complaint

and paying the Interpleader Funds into the Registry, Plaintiff has made no further appearance in this adversary proceeding. Default judgments have been entered against Cherokee Enterprises, Inc; K&S Welding & Steel Erectors, Inc.; and Mill End Enterprises, Inc. d/b/a Pearlman's Carpets.

This adversary proceeding is currently before the court on Debtor's motion for summary judgment<sup>1</sup> against the remaining Defendants, Cherokee Electrical, Inc. ("CEI") and John Welch d/b/a Native Stone Works ("Welch"). CEI and Welch filed an untimely response that failed to comply with BLR 7056-1.<sup>2</sup> Because CEI and Welch failed to dispute any of the facts set forth in Debtor's motion for summary judgment, those facts are deemed admitted.

Debtor's motion shows that CEI's claim was listed in Debtor's Schedule F as an unsecured claim. CEI filed an unsecured proof of claim December 5, 2005. Welch's claim was listed in Debtor's Schedule F as an unsecured claim and was not shown as disputed, contingent or unliquidated. Welch filed no proof of claim. The bar date for filing proofs

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<sup>1</sup> Debtor filed its motion as a motion for judgment on the pleadings or, alternatively, as a motion for summary judgment. In support of its motion, Debtor relies upon facts of record in the main bankruptcy case. "Pleadings" are defined in Bankruptcy Rule 7007, which incorporates Fed. R. Civ. Proc. 7. Documents filed in the main bankruptcy case are not within the definition of pleadings. Therefore, pursuant to Fed. R. Civ. Proc. 7(c), which is incorporated in Bankruptcy Rule 7012, Debtor's motion will be treated as one for summary judgment.

<sup>2</sup> BLR 7056-1(a)(2) provides:

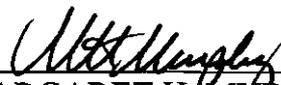
(2) The respondent to a motion for summary judgment shall attach to the response a separate and concise statement of material facts, numbered separately, as to which the respondent contends a genuine issue exists to be tried. Response should be made to each of the movant's numbered material facts. All material facts contained in the moving party's statement that are not specifically controverted in respondent's statement shall be deemed admitted. The response that a party has insufficient knowledge to admit or deny is not an acceptable response unless the party has complied with the provisions of Rule 56(f) of the Federal Rules of Civil Procedure.

of claim was March 17, 2006. Under §1111(a), a proof of claim is deemed filed if the claim appears in the debtor's schedules, unless the claim is scheduled as disputed, contingent or unliquidated. Therefore, Welch's proof of claim is deemed filed as unsecured. Debtor's Chapter 11 plan was confirmed by order entered November 24, 2006. Therefore, as a matter of law, the claims of CEI and Welch are unsecured claims. As creditors holding unsecured claims, they can assert no interest in the Interpleader Funds. Accordingly, it is hereby

**ORDERED** that Debtor's motion for summary judgment is *granted*.

**The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtor, Debtor's attorney, and the Chapter 13 Trustee.**

IT IS SO ORDERED, this the 6<sup>th</sup> day of August, 2007.

  
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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE