



IT IS ORDERED as set forth below:

Date: March 05, 2010

Mary Grace Diehl

**Mary Grace Diehl
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:	:	CASE NUMBERS
	:	
TAMARA MOSS,	:	BANKRUPTCY CASE
	:	NO. 08-81177-MGD
Debtor,	:	
_____	:	
	:	
PAUL H. ANDERSON, JR.,	:	ADVERSARY CASE
AS TRUSTEE,	:	NO. 09-6043
	:	
Plaintiff,	:	
	:	
v.	:	CHAPTER 7
	:	
TRACY L. GEORGE,	:	
	:	
Defendant.	:	
_____	:	

ORDER DENYING TRUSTEE’S MOTION FOR DEFAULT JUDGMENT

This case is before the Court on the Chapter 7 Trustee’s Motion for Default Judgment (“Motion”). (Docket No. 5). The Chapter 7 Trustee (“Trustee”) commenced the underlying adversary proceeding against Defendant on January 28, 2009. The Trustee seeks to avoid a

transfer of real property by Debtor to Defendant, Debtor's sister, under 11 U.S.C. § 544(b)(1). Defendant did not file an answer to the Trustee's Complaint, and an entry of default was made. Because the complaint fails to allege facts sufficient for the Court to award a default judgment, the Trustee's Motion is denied.

The Court has discretion as to the entry of a default judgment. Federal Rule of Civil Procedure 55(b), made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7055, provides that the court *may* enter judgment by default (emphasis added). “[A] defendant's default does not in itself warrant the court in entering default judgment. There must be a sufficient basis in the pleadings for the judgment entered.” *Nishimatsu Constr. Co., Ltd. v. Houston Nat. Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975); *see also Alan Neuman Prods., Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988), *cert. denied*, 493 U.S. 858 (1989); *Wahl v. McIver*, 773 F.2d 1169, 1174 (11th Cir. 1985).

Section 544 allows the trustee to avoid any transfer of the interest of the debtor in property that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under the Bankruptcy Code or not allowable by § 502(e). 11 U.S.C. § 544(b)(1). The Trustee asserts that O.C.G.A. § 18-2-74(2) is the applicable law that provides a legal basis for the avoidance.

Trustee's complaint fails to allege one of the required elements for avoidance under § 544(b)(1). The complaint makes no mention of any creditor that holds an unsecured allowed claim or a qualifying creditor holding a claim disallowed by § 502(e). Although pleading a creditor's specific name or other identifying information is not necessarily required to satisfy the liberal pleading standards under the federal rules, judgment cannot be awarded, even on a default basis, without any pleading stating that such a requisite creditor exists. *Cohen v. Morgan Schiff &*

Co. (In re Friedman's Inc.), 385 B.R. 381, 466-67 (S.D. Ga. 2008); *Zahn v. Yucaipa Capital Fund*, 218 B.R. 656, 673-74 (D.R.I. 1998); *In re Lexington Healthcare Group, Inc.*, 339 B.R. 570, 576 (Bankr. D. Del. 2006); *In re APF*, 274 B/R/ 634, 639 (Bankr. D. Del. 2006).

Additionally, Trustee's complaint does not make out the required elements under Georgia's fraudulent transfer statute. O.C.G.A. § 18-2-74(2) states:

- (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
 - (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
 - (A) Was engaged or was about to engage in a business or transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
 - (B) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

Trustee's complaint does not specify whether he seeks to use O.C.G.A. § 18-2-74(2)(A) or § 18-2-74(2)(B) as the legal basis to avoid the transfer of real property. The complaint does not plead sufficient facts to support either basis. For these reasons, default judgment in this action is not appropriate. Accordingly, it is

ORDERED that the Trustee's Motion for Default Judgment is hereby **DENIED**.

The Clerk is directed to serve a copy of this Order upon Trustee and Defendant.

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