

ORDER

This adversary proceeding is before the Court on Grant K. Gibson's *pro se* motion for more definite statement (Docket #18). The plaintiff Chapter 7 Trustee named Mr. Gibson as a defendant individually, as one of the trustees of defendant Hamblen Family Irrevocable Trust ("HFIT"), and as trustee of four other trusts, NPPH HC, 230 Woodward Trust, 625 Atwood Trust, and 12230 Cumming Highway Trust. The plaintiff also named each of the trusts as defendants. Mr. Gibson argues that the complaint contains only conclusory allegations and fails to provide facts that would enable him or the trusts to frame a responsive pleading. After carefully considering the motion and plaintiff's response, the Court concludes that Mr. Gibson's motion should be denied.¹

The Chapter 7 Trustee filed an amended complaint titled "First Amended And Restated Complaint For Declaratory Judgment, For Turnover, And For Avoidance And Recovery Of Avoidable Transfer" on September 26, 2006, seeking turnover of property and avoidance of transfers pursuant to 11 U.S.C. §§ 362(a)(3), (a)(4), 542, 544(b) 549, 550 and Georgia law, O.C.G.A. § 18-2-22 (2001). The Trustee named other defendants, including Lonna Harris, individually and as trustee for HFIT, and Sara Ann Jones Smith, individually and as trustee of HFIT, both of whom have filed answers to the Trustee's complaint.

The Trustee's amended complaint is pled in ten counts. The factual context for the theories of recovery are pled in the background section which contains 43 numbered paragraphs. The amended complaint alleges that Charles and Janet Hamblen formed defendant Halstin Company, LLC

¹ Plaintiff alleges that this adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (H), and (O). Defendant Gibson argues that the contested ownership interest in three real properties is a non-core matter and states that, at this time, he has not consented to the entry of a final order.

("Halstin, LLC") in 1997 and each owned 100 shares, 50% of the company. Among other things, Halstin, LLC appears to own or have owned three pieces of real property: 12230 Cumming Highway in Canton, Georgia; 625 Atwood Street in Atlanta, Georgia; and 230 Woodward Avenue in Atlanta, Georgia. Plaintiff alleges that debtors Charles and Janet Hamblen created defendant HFIT as an irrevocable trust for the benefit of their children in 1999. Count I alleges HFIT is a sham trust and requests a turnover of property claimed to be owned by HFIT, as debtors Charles and Janet Hamblen were the grantors of HFIT. The remaining counts focus on property and the affairs of defendant Halstin, LLC. Five counts contain allegations concerning the transfer of the debtors' interests in Halstin, LLC. Counts II and VII allege that, to the extent such transfers occurred post-petition, they violate either §362(a)(3) or § 549 and are recoverable by the estate under §§ 542 or 550, respectively. Counts V, VI, and X assert claims if the transfer of debtors' interests in Halstin, LLC occurred pre-petition. Count V alleges that 50% of the ownership interest of Halstin, LLC remains with debtors Charles and Janet Hamblen, because they each continue to own 100 of the 400 shares outstanding and that certain share certificates have never been cancelled or transferred. Count VI alleges that any transfer was ineffective as the articles of organization of Halstin, LLC do not provide that membership interests are evidenced by a certificate and/or because Charles and Janet Hamblen continued to hold themselves out as agents or members of Halstin, LLC. Count X alleges any such transfers were fraudulent conveyances pursuant to Georgia law and are voidable by the Trustee pursuant to § 544(b) of the Bankruptcy Code.

The four remaining counts involve allegations concerning the three pieces of real property owned by Halstin, LLC. Count III alleges that Mr. Gibson's post-petition conveyances of these properties violated the automatic stay provisions of § 362(a)(3) and are subject to turnover under § 542. Count VII alleges, alternatively, that the post-petition conveyances violated § 549 of the Bankruptcy

Code and are recoverable under § 550. Finally, Counts IV and IX allege that Mr. Gibson's creation or perfectings of liens against the Atwood and Woodward properties as a "consulting member" of Halstin, LLC violate §§ 362(a)(4) or 549, respectively, and are void or avoidable.

A complaint need only contain a short and plain statement of the claim showing the pleader is entitled to relief. Fed. R. Civ. P. 8(a) made applicable to adversary proceedings by Fed. R. Bankr. P. 7008. Rule 12(e) allows a party to seek a more definite statement when "a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading." Fed. R. Civ. P. 12(e) made applicable to adversary proceeding by Fed. R. Bankr. P. 7012. *See Pardo v. Nylcare Health Plans, Inc. (In re APF Co.)*, 274 B.R. 408, 425 (Bankr. D. Del. 2001) (citations omitted). The basis for granting a more definite statement should be the unintelligibility of the complaint. *APF Co.*, 274 B.R. at 425; *Friedman's Express, Inc. v. Reynolds Fasteners, Inc. (In re Friedman's Express, Inc.)*, 184 B.R. 229, 230 (Bankr. E.D. Pa. 1995); *Schwartz v. Kursman (In re Harry Levin, Inc.)*, 175 B.R. 560, 566 (Bankr. E.D. Pa. 1994) (Rule 12(e) designed to strike at unintelligibility rather than want of detail). In particular, a motion for a more definite statement "should not be granted to require evidentiary detail that is properly sought through discovery." *Harry Levin*, 175 B.R. at 566 (quoting 2A James Wm. Moore et al, *Moore's Federal Practice*, ¶ 12.18[1] (2d ed. 1994) (other citations omitted); *APF Co.* 274 B.R. at 425.

The Chapter 7 Trustee's amended complaint meets this standard. It lays out the claims made and the relief sought. It is neither so ambiguous or so unintelligible that Mr. Gibson cannot frame an answer. He, like the other defendants who have answered the complaint, can admit, deny, or state he has insufficient information or knowledge upon which to respond to the allegations. To the extent that Mr. Gibson lacks information or knowledge, he will have a full and fair opportunity to acquire such

through the discovery process.

In the Trustee's response to defendant Gibson's motion for a more definite statement, the Trustee moved to strike Mr. Gibson's motion as it pertains to the defendant trusts (Docket #20). The Chapter 7 Trustee argues that while Mr. Gibson may represent himself individually, as a non-lawyer, he may not represent the defendant trusts. The law is clear that only a licensed member of the bar may represent an artificial entity in federal court. See *Knoefler v. United Bank of Bismarck*, 20 F. 3d 347 (8th Cir. 1994); *C.E. Pope Equity Trust v. U.S.*, 818 F. 2d 696 (9th Cir. 1987). Mr. Gibson recently filed a response to the Trustee's motion to strike, agreeing that business trusts must be represented by counsel, but arguing that these defendant trusts may be represented by him in federal court without an attorney. Whether Mr. Gibson may file a motion for more definite statement on behalf of the defendant trusts is moot, since the Court has denied the motion for a more definite statement on the merits. However, the Court will address whether the defendant trusts may appear in court without a licensed attorney in a separate order.

In accordance with the above reasoning, defendant Gibson's motion for a more definite statement is denied, and he and the defendant trusts HFIT, NPPH HC, 230 Woodward Trust, 625 Atwood Trust, and 12230 Cumming Highway Trust are required to file answers to the Chapter 7 Trustee's amended complaint within 30 days from the date of the entry of this Order.

IT IS SO ORDERED, this 13th day of December, 2006.


JOYCE BIARY
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I hereby certify that the foregoing Order was mailed to the following:

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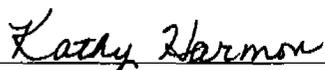
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Kathy Harmon
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Chief Judge Joyce Bihary

Mailed: December 13, 2006