



IT IS ORDERED as set forth below:

Date: January 26, 2009

Mary Grace Diehl

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

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

In re:

CITRICO INTERNATIONAL, LIMITED, :
Acting by and through Kenneth Krys and :
Christopher Stride, as its Joint Official :
Liquidators, :

Debtor in a Foreign Proceeding. :

CITRICO INTERNATIONAL, LIMITED, :
Acting by and through Kenneth Krys and :
Christopher Stride, as its Joint Official :
Liquidators, :

Plaintiff, :

v. :

CITRICO, INC., :

Defendant. :

**BANKRUPTCY CASE NUMBER
04-73442-MGD**

**ADVERSARY CASE NUMBER
05-06589-MGD**

**CASE ANCILLARY TO A
FOREIGN PROCEEDING**

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

The above-styled adversary proceeding is before the Court on Citrico International, Limited's ("Plaintiff") Motion for Summary Judgment. (Docket No. 47). No response has been filed by or on behalf of Citrico, Inc. ("Defendant"). The issues before the Court on summary judgment are whether Defendant owes Plaintiff money for intercompany debts, for payments received by Defendant that were properly payable to Plaintiff, and as contribution for Defendant's portion of debts paid by Plaintiff for which Plaintiff and Defendant were jointly and severally liable. For the reasons set forth herein, Plaintiff's Motion for Summary Judgment is **GRANTED** in part and **DENIED** in part. There is an unresolved issue of material fact regarding whether Defendant owes Plaintiff for intercompany debts, and if so, in what amount. The undisputed facts, however, establish that Defendant owes Plaintiff for third-party payments received by Defendant and for contribution of Defendant's portion of two debts that were paid in full by Plaintiff.

I. FACTS

The material facts are undisputed with regard to Plaintiff's second, third, and fourth claims. There are remaining issues of material fact with regard to Plaintiff's first claim, which is for inter-company indebtedness. The facts are set forth in Plaintiff's Statement of Undisputed Material Facts ("Statement") (Docket No. 50), in the Affidavit of Kenneth M. Krys ("Affidavit") (Docket No. 48), and in the exhibits attached to the Affidavit. With regard to Plaintiff's second, third, and fourth claims, there is no contrary evidence in the record. Defendant has submitted no evidence to the Court.

The undisputed material facts in the record are as follows: Prior to June 15, 1999,

Defendant was the sole shareholder of Plaintiff. (Affidavit, ¶ 5). On that date, Defendant transferred all of Plaintiff's shares to The Coca-Cola Company, which is now Plaintiff's registered shareholder. (Affidavit, ¶ 5). The Coca-Cola Company initiated the liquidation of Plaintiff in 2004 and the Grand Court of the Cayman Islands named Kenneth Krys and Christopher Stride as joint provisional liquidators on August 17, 2004. (Statement, ¶ 1). In December of 2004, Krys and Stride were appointed as joint official liquidators ("JOLs") of Plaintiff. (Affidavit, ¶ 3).

The JOLs, while still in their provisional capacity, authorized Plaintiff to initiate a case ancillary to a foreign proceeding in August of 2004 ("Ancillary Case") (Case No. 04-73442-MGD). (Affidavit, ¶ 6). Through the Ancillary Case, the JOLs have retained substantially all of Plaintiff's business records, including the accounting records of both Plaintiff and Defendant because the records were maintained jointly. (Affidavit, ¶ 8).

The JOLs' review of Plaintiff's records identified debts owed to Plaintiff by Cliffstar Corporation ("Cliffstar") in the amount of \$98,976.96. (Affidavit, ¶ 13). Plaintiff produced, sold, and delivered goods to Cliffstar. (Affidavit, ¶ 13). Between September 2, 2004, and December 10, 2004, Cliffstar sent seven checks, totaling \$98,976.96 and intended to satisfy its debt to Plaintiff, to Defendant. (Affidavit, ¶ 13–14). Plaintiff sent Defendant a letter on March 3, 2005, requesting a refund of the misdirected payments, but Defendant has made no payment to Plaintiff. (Affidavit, ¶ 15).

Finally, in the process of its liquidation, Plaintiff paid off debts to two secured creditors, Fortis Bank (Nederland) N.V. ("Fortis") and Suntrust Bank. (Affidavit, ¶ 18, 22). While the creditors claimed security interests in Plaintiff's assets, both Plaintiff and Defendant were jointly

and severally liable on the contracts with each creditor. (Affidavit, ¶ 16, 21). Plaintiff's books and records indicate that the money loaned by Fortis was extended to Plaintiff and Defendant separately, such that Plaintiff has determined that \$1,300,000.00 of the debt to Fortis, which Plaintiff has fully paid off, was attributable to credit extended to Defendant. (Affidavit, ¶ 17). Similarly, Plaintiff has determined that \$3,695,426.75 of the debt to Suntrust Bank, which Plaintiff has fully paid off, was debt owed by Defendant. (Affidavit, ¶ 23). Plaintiff sent a letter requesting reimbursement for Defendant's Fortis debt on March 5, 2005. (Affidavit, ¶ 20). Defendant has not reimbursed Plaintiff for payments made to either Fortis or Suntrust Bank. (Affidavit, ¶ 20, 23).

The unresolved factual issue is related to Plaintiff's claim of intercompany indebtedness. In his Affidavit, Krys stated that the attached Exhibit A "reflects the inter-company receivable and payable positions between CIL and Citrico, Inc. . . ." (Affidavit, ¶ 10). Krys further stated that Exhibit A "reflects the net debt owed by Citrico, Inc. to CIL in the amount of \$7,130,432.45. . ." (Affidavit, ¶ 11). Krys does not testify as to independent knowledge of the debt but merely refers the Court to Exhibit A. Upon review of the attached Exhibit A, the Court cannot conclude that a debt in the amount of \$7,130,432.45 is due between Citrico, Inc. and CIL. Exhibit A is titled "Citrico International, Ltd., Activity Report" and is dated April, 11, 2005. (Affidavit, Exh. A). Beneath the title information is a chart including, e.g., fields for "GL Account Number," "Trans Date," "Description," "Reference," "Debit Amt," and "Credit Amt." In the first line of the chart, three fields have been filled in: GL Account Number, Description, Reference, and Credit Amt. Under Description the chart reads "Inter-Co Payables-Citrico Inc." (Affidavit, Exh. A). Under Reference, the chart reads "Beginning Balance" and under Credit it reads ".00."

(Affidavit, Exh. A). While this information leads the Court to find that the chart is intended to document the amounts payable between Plaintiff and Defendant, the final balances on the chart do not appear to reflect any debt of \$7,130,432.45. The final ending balance on the chart is \$321,805.74 as a Credit, which is confirmed by the “GL Activity Balance” amounts of \$2,256,966.64 in Debits and \$2,578,772.38 in Credits. (Affidavit, Exh. A). The difference between the final two amounts is \$321,805.74. This amount cannot be reconciled with Krys’ claims that Plaintiff has documented a debt owed by Defendant in the amount of \$7,130,432.45.

II. STANDARD APPLICABLE TO MOTIONS FOR SUMMARY JUDGMENT

Rule 56(c) of the Federal Rules of Civil Procedure, applicable herein by Rule 7056 of the Federal Rules of Bankruptcy Procedure, provides that summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *See also, Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Maniccia v. Brown*, 171 F.3d 1364, 1367 (11th Cir. 1999). In reviewing a motion for summary judgment, the court must view the record and all inferences therefrom in a light most favorable to the non-moving party. *See WSB-TV v. Lee*, 842 F.2d 1266, 1270 (11th Cir. 1988). “The party seeking summary judgment bears the initial burden to demonstrate to the [trial] court the basis for its motion for summary judgment and identify those portions of the pleadings, depositions, answers to interrogatories, and admissions which it believes show an absence of any genuine issue of material fact If the movant successfully discharges its burden, the burden then shifts to the non-movant to establish, by going beyond the pleadings, that there exist genuine issues of material facts.” *Hairston v. Gainesville Sun Publ’g Co.*, 9 F.3d 913,

918 (11th Cir. 1993), *reh'g denied*, 16 F.3d 1233 (11th Cir. 1994). The non-movant may not simply rest on his pleadings, but must show, by reference to affidavits or other evidence, that a material issue of fact remains. Fed. R. Civ. P. 56.

III. APPLICATION OF LAW

Plaintiff requests relief on three separate issues: the inter-company debt owed to Plaintiff by Defendant, money had and received by Defendant in the form of Cliffstar's payments that were intended to pay off Cliffstar's debt to Plaintiff, and Defendant's share, under joint and several liability, of the debts Plaintiff already paid off to Fortis and Suntrust. None of the claims implicate statutory law. "[T]he Eleventh Circuit and its district courts repeatedly have approved the Georgia rule limiting the application of non-forum substantive law to statutes and case law interpreting those statutes." *Shorewood Packaging Corp. v. Commercial Unions Ins. Co.*, 865 F. Supp. 1577, 1581 (1994). "When no statute is involved, as here, Georgia courts apply the common law as developed in Georgia rather than foreign case law." *Singletary v. Southeastern Freight Lines*, 832 F. Supp. 1552, 1556 (1993). Thus, the Court will apply the common law of Georgia and will address each claim in turn.

A. Inter-Company Debt

As shown by the facts above, there remain issues of material facts regarding the inter-company payable and receivable positions between Plaintiff and Defendant.

B. Money Had and Received

Georgia common law recognizes a claim of money had and received whenever one party receives money belonging to a second party, regardless of how the first party came to have the

money. *Fain v. Neal*, 97 Ga. App. 497 (1958); *J.C. Penney Co. v. West*, 140 Ga. App. 110, 111–112 (1976) (stating that “[a]lthough legal in form, being an action in implied assumpsit, [money had and received] is founded on the equitable principle that no one ought to unjustly enrich himself at the expense of another, and it is a substitute for suit in equity” and that “[money had and received] is the appropriate remedy where one wrongfully receives and retains the money of another”). When a party has received money that rightfully belongs to a second party, the receiving party must pay the money upon the rightful owner’s demand. *Fain v. Neal*, 97 Ga. App. at 497. In the present case, Plaintiff has proven its rightful ownership of \$98,976.96 which was due to it by Cliffstar in exchange for goods and services provided by Plaintiff to Cliffstar. Cliffstar paid \$98,976.96 to Defendant for the purpose of paying off Cliffstar’s debt to Plaintiff. Therefore, Plaintiff has proven its claim that Defendant owes Plaintiff \$98,976.96 as money had and received.

C. Joint and Several Liability of Co-Obligors

“In cases of joint, joint and several, or several liabilities of two or more persons, where all are equally bound to bear the common burden and one has paid more than his share, he shall be entitled to contribution from others; and whenever the circumstances are such that an action at law will not give a complete remedy, equity may entertain jurisdiction.” O.C.G.A. § 23-2-71. *Carter v. Parish*, 274 Ga. App. 97, 100 (2005). As a matter of equity, when co-obligors are not benefitted equally by the underlying obligation, then each is responsible for his own portion of the obligation. *Steele v. Grot*, 232 Ga. App. 847, 848 (1998). In the present case, Plaintiff has demonstrated that both Plaintiff and Defendant were co-obligors on the debts to two creditors: Fortis and Suntrust. Plaintiff has paid the entirety of the debt to each creditor and has determined

what portion of each debt was attributable to Defendant. Thus, Plaintiff is entitled to contribution by Defendant for the amount Plaintiff paid on Defendant's behalf to each creditor. Of the money paid by Plaintiff to Fortis, Plaintiff determined that \$1,300,000.00 was attributable to credit extended by Fortis to Defendant. As a matter of equity, Plaintiff is entitled to contribution from Defendant for \$1,300,000.00 of the Fortis payment. Of the money paid by Plaintiff to Suntrust, Plaintiff determined that \$3,695,426.75 was attributable to credit extended by Suntrust to Defendant. Plaintiff is entitled to contribution from Defendant for \$3,695,426.75 of the Suntrust payment. Accordingly, it is

ORDERED that Plaintiff's Motion for Summary Judgment is hereby **DENIED** as to Plaintiff's claim for inter-company indebtedness in the amount of \$7,130,432.45.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgement is **GRANTED** as to Plaintiff's claims for money had and received and for joint and several liability in the total amount of \$5,094,403.71.

The Clerk shall serve a copy of this Order upon the Defendant, counsel for Defendant, Plaintiff, and counsel for Plaintiff.

END OF DOCUMENT