



IT IS ORDERED as set forth below:

Date: February 1, 2016

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

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

In re:	:	Case Number:
	:	
TRADE AM INTERNATIONAL, INC.,	:	13-62588-MGD
	:	
Debtor.	:	Chapter 7
_____	:	
	:	
S. GREGORY HAYS, Chapter 7	:	
Trustee for the Estate of TRADE AM	:	
INTERNATIONAL, INC.,	:	
	:	
Movant,	:	
v.	:	Contested Matter
	:	
AGRAWAL INVESTMENTS, L.P.,	:	
	:	
Respondent.	:	
_____	:	

ORDER SUSTAINING TRUSTEE'S OBJECTION TO CLAIM

Before the Court is the Objection to Claim (Motion to Disallow Claim) of Creditor

Agrawal Investments, L.P. (Doc. 163), filed by S. Gregory Hays—the Chapter 7 Trustee (“Trustee”); the Response (Doc. 188), and Supplemental Reply to Response (Doc. 210), filed by Agrawal Investments, L.P. (“Agrawal”); and the Reply to Supplemental response, filed by the Trustee. (Doc. 211). The Trustee’s motion states that Agrawal filed claims 2-1, 2-2, and 25, and that the claims filed are duplicative or that they amend one another. But only claim 2-3—an unsecured claim for “conversion and fraud” in the amount of \$2,094,020.05, originally filed as claim 25, and now listed as a second amendment to claim 2—remains on the claims register. The Court will therefore consider whether the remaining claim—claim 2-3—should be disallowed.

I. Background

Ashutosh Ladha (“Ladha”) is Debtor’s owner and former officer. (Doc. 163 at 4, ¶ 5). An involuntary petition was filed against Debtor on June 6, 2013. (Doc. 1). Ladha’s motion to abstain was denied and the order for relief was entered on August 7, 2013. (Docs. 35, 36). Agrawal filed claim 2-3 in the amount of \$2,094,020.05 on June 4, 2015. Attached to claim 2-3 are two exhibits. Exhibit A is labelled “[A]mounts plus interest owed on Notes meant to repay Claimant for funds converted,” and totals \$1,199,020.05. Exhibit B is labelled “Amounts converted for which there are no notes,” and totals \$895,000.00. No further documentation was attached to the claim.

The Trustee objected to Agrawal’s claim on August 18, 2015, arguing that it should be disallowed in its entirety because it lacked documentation; Agrawal did not appear to be a creditor of the debtor; and the Trustee was unable to locate any records indicating that any funds entering

Debtor's account originated from Ladha.¹ (Doc. 163). Agrawal filed its response on September 17, 2015. (Doc. 188). In its response, Agrawal alleges that Debtor received \$150,000.00 of \$500,00.00 in funds misappropriated by Ladha on August 17, 2007, and that it can uncover more examples where Debtor received misappropriated funds.² (*Id.*). A hearing was held on the objection and response on September 24, 2015, after which the Court entered a scheduling order instructing Agrawal and the Trustee to file briefs containing additional factual or legal support for their respective positions within 30 days. (Doc. 206). The order also allowed the Trustee 10 days to respond to any supplemental response filed by Agrawal. (*Id.*). Agrawal filed its supplemental response on October 26, 2015, and the Trustee filed his response on November 3, 2015. (Docs. 210, 211).

II. Discussion

Section 502(b)(1) provides that the Court shall liquidate and allow a claim, unless “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured.” 11 U.S.C. § 502(b)(1). Agrawal is not a direct creditor of the Debtor, but it asserts that it is entitled to a constructive trust on the \$150,000.00 transfer to Debtor it alleges came from funds Ladha misappropriated from Agrawal, as well as any other similar transfers it is able to uncover. A constructive trust is “implied whenever the circumstances are such that the person holding legal title to property, either from fraud or otherwise, cannot enjoy the beneficial interest in the property

¹ The Trustee also correctly asserted that Georgia law does not recognize a claim for reverse veil piercing, which the Trustee claims is the only colorable claim Agrawal could have presented. *See Acree v. McMahon*, 276 Ga. 880 (Ga. 2003). But Agrawal never asserted a claim for reverse veil piercing in its responsive pleadings to the Trustee's objection. Thus the Court need not consider a reverse veil piercing claim in this Order.

² Agrawal did not provide any further examples in its subsequent supplemental response. (Doc. 210).

without violating some established principle of equity.” Ga. Code Ann. § 53-12-132(a). It is a vehicle “by which a court can prevent unjust enrichment from occurring.” *In re Francois*, 525 B.R. 531, 534 (Bankr. N.D. Ga. 2015). Importantly, a constructive trust can only be applied to funds or other property “in which the original funds could be traced.” *Watts v. Peachtree Tech. Partners, LLC (In re Palisades at West Paces Imaging Ctr., LLC)*, No. 09-87600-WLH, 2011 Bankr. LEXIS 3576, at *16 (Bankr. N.D. Ga. Sept. 13, 2011) (citing *Total Supply, Inc. v. Pridgen*, 267 Ga. App. 125, 126, 598 S.E.2d 805 (2004)).

Agrawal contends that Debtor was unjustly enriched by the \$150,000.00 transfer, and other transfers it has yet to uncover. But Agrawal’s constructive trust claim must fail because it cannot trace any of the funds allegedly misappropriated by Ladha to Debtor. *E.g. Watts*, 2011 Bank. LEXIS 3576, at *16. The transfer occurred in August of 2007, nearly 6 years prior to the filing of the involuntary petition. And Debtor’s Schedules indicate that Debtor had entirely ceased operations prior to the petition date and was not even maintaining a checking account. Finally, the Trustee states that the only funds currently in the bankruptcy estate are those that resulted from Debtor’s judgment against The Cincinnati Insurance Company in the amount of \$9.12 million.³

III. Conclusion

Agrawal has not established that it has a legally enforceable claim against the Debtor. At best, it has shown that—in 2007—Debtor may have received \$150,000.00 in funds allegedly misappropriated by Ladha. But Agrawal cannot now trace those funds to Debtor. Agrawal’s claim should therefore be disallowed in its entirety pursuant to § 502(b)(1). Accordingly, it is

³ Debtor’s schedules reflect no interest in or ownership of any real property and no interest in or ownership of any existing bank accounts. (Doc. 124, Sch. A, B).

ORDERED that the Trustee's Objection to Claim (Doc. 163) is **SUSTAINED**.

IT IS FURTHER ORDERED that Agrawal's Claim (Claim 2-3) is **DISALLOWED IN ITS ENTIRETY**.

The Clerk is directed to serve a copy of this Order on Debtor, Debtor's Counsel, Respondents, Respondents' Counsel, the Chapter 7 Trustee, and the U.S. Trustee.

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