

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)	
)	
KERRY L. AGEE,)	CASE NO. 19-04539-JMC-7
)	
DEBTOR.)	
_____)	
)	
JOANNE B. FRIEDMEYER, as Trustee)	
of the Bankruptcy Estate of Kerri L. Agee,)	ADVERSARY PROCEEDING
)	NO.
PLAINTIFF)	
v.)	
)	
BENNY R. CRAWFORD, JR., a/k/a BEN R.)	
CRAWFORD, JR.; ETI, Inc.; and)	
LUCKY 7 RANCH, LLP,)	
)	
DEFENDANTS)	

COMPLAINT

Joanne B. Friedmeyer, Trustee (“Trustee”) for the Bankruptcy Estate of Kerri L. Agee (the “Debtor”), by counsel, for her Complaint against Benny R. Crawford, Jr., a/k/a Ben R. Crawford, Jr. (“Crawford”), ETI, Inc. (“ETI”), and Lucky 7 Ranch, LLP (“Lucky 7”), states as follows:

Jurisdiction and Venue

1. The United States District Court for the Southern District of Indiana has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334. In accordance with 28 U.S.C. § 157(a), that jurisdiction has properly been referred to this Court pursuant to S.D. Ind. L.R. 83-8 and the Standing Order of Reference dated July 11, 1984.

2. The claims set forth in this Complaint constitute “core proceedings” as defined by 28 U.S.C. § 157(b)(2)(A) and (H).

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

4. This proceeding is correctly initiated as an adversary proceeding pursuant to Fed. R. Bankr. P. 7001(1). The statutory grounds for relief are 11 U.S.C. §§ 544, 548, and 550 and Ind. Code § 32-18-2 *et seq.* (the “Indiana Uniform Fraudulent Transfer Act”).

5. Pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure, the Trustee states that she consents in this matter to the entry of final orders and judgments by the Bankruptcy Court.

PARTIES

6. The Debtor filed for voluntary relief under Chapter 7 of Title 11 of the United States Code (the “Bankruptcy Code”) on June 19, 2019 (the “Petition Date”). and is the debtor in the main case in which this adversary proceeding is filed.

7. The Trustee was appointed as the interim trustee under § 701 of the Bankruptcy Code on the Petition Date, and in accordance with § 702(d) of the Bankruptcy Code became the permanent trustee following the meeting of creditors held under § 341(a). Pursuant to 11 U.S.C. § 323(a), the Trustee is the representative of the Estate with full capacity to prosecute this action.

8. ETI is an OEM manufacturer of sensors and controls and “heat trace” with a principal place of business at 1850 North Sheridan Street, South Bend, Indiana.

9. Crawford is a resident of Hamilton County, Indiana, the owner, president and CEO of ETI, and at all material times was married to the Debtor.

10. On information and belief, Lucky 7 is an Indiana limited liability company, which is solely owned by Crawford, its only member.

BACKGROUND FACTS

11. At all material times, the Debtor has been a financially sophisticated and experienced business person. For a number of years prior to filing her bankruptcy petition, the Debtor was the founder, owner, president and chief financial officer of Banc-Serv Partners, LLP (“Banc-Serv”), a/k/a ADR Partners, LLC, a lending service provider headquartered first in Indianapolis, IN and later in Westfield, IN. Banc-Serv packaged, originated, disbursed, serviced and liquidated loans guaranteed by the Small Business Administration (“SBA”) on behalf of their lending institution clients.

12. On June 24, 2016, the Debtor sold her 100% interest in Banc-Serv pursuant to a Membership Interest Purchase Agreement (the “Purchase Agreement”) and other documents (collectively, the “Transactional Documents”) to Banc-Serv Acquisition, Inc., a New York corporation and a wholly owned subsidiary of Newtek Business Services Corp. (referred to simply as “Newtek”) for \$5.4 million (the “Sale.”)

13. After payment of a loan owing by Banc-Serv, the Debtor received \$4,509,582.25 in cash (the “Sales Proceeds”), which was wired to a bank account held in the names of the Debtor and Crawford at Merchants Bank (“Merchants”) on June 24, 2016. Before those funds were deposited, the Merchants account had a balance of \$107.39. At all material times from and after June 24, 2016, virtually all of the funds in the Merchants bank account were Sales Proceeds. By the Petition Date, the account had been closed, with a zero balance.

14. As required by the Purchase Agreement, Banc-Serv entered into an employment agreement with the Debtor (the “Employment Agreement”), dated June 23, 2016. Under the Employment Agreement, Banc-Serv would continue to employ the Debtor as its president and chief executive officer for a period of two years following the closing, subject to the right to

terminate the Debtor's employment with or without just cause. The Employment Agreement is one of the Transactional Documents, as defined in the Purchase Agreement.

15. The Debtor was in difficult personal financial straits at the time she entered into the Purchase Agreement. In 2015, the Debtor had personally guaranteed a \$750,000.00 loan to Banc-Serv from a company called Wing Financial, which was in default in early 2016. The Debtor had tried unsuccessfully to sell her interest in Banc-Serv to numerous entities, and was in need of funds to pay off the Wing Financial loan and obtain a release of her liability under her guaranty of such loan.

16. On information and belief, after the Closing of the Sale, Newtek learned that another potential purchaser of the Debtor's interests in Banc-Serv had broken off negotiations with the Debtor after accusing her of providing material false financials of Banc-Serv.

17. On October 12, 2017, the FBI "raided" the Banc-Serv offices, seizing records relating to Banc-Serv operations during the time the company had been owned and operated by the Debtor.

18. On information and belief, in March of 2018, Newtek was informed by Banc-Serv personnel there had been a deficit for several years of as much as \$800,000.00 in the company's Servicing Account holding funds to be paid to lenders, and that Banc-Serv employees had repeatedly raised the issue with the Debtor and former chief operating officer Kelly Isley. According to Newtek, it eventually learned that the deficit -- which had not been disclosed by the Debtor to Newtek at the time of the Sale -- was approximately \$801,000.00.

19. There is reason to believe that at the time of the Sale to Newtek, and at all times thereafter, the Debtor knew or should have known that Newtek would be asserting claims against the Debtor, based on the information disclosed by the Banc-Serv personnel regarding such deficit.

20. On April 2, 2018, Newtek notified the Debtor of its intention to assert a claim that the Debtor had defrauded Newtek in the sale of Banc-Serv. Thereafter, on April 9, 2018, the Debtor's employment with Banc-Serv was terminated. On June 22, 2018, Newtek filed an arbitration proceeding (the "Arbitration Action") against the Debtor, asserting its fraud claims.

21. Less than a year later, on March 20, 2019, a federal grand jury for the Southern District of Indiana indicted the Debtor and various co-defendants, charging them with numerous violations of federal law in connection with her actions at Banc-Serv, including counts for: (i) Conspiracy to Commit Wire Fraud Affecting a Financial Institution in violation of 18 U.S.C. § 1349 (Count 1); (ii) Wire Fraud Affecting a Financial Institution in violation of 18 U.S.C. § 1343 and 2 (Counts 2 through 5); and (iii) Conspiracy to Make False Statements in Purchases and Applications for Guarantees in violation of 8 U.S.C. § 1371 (Count 6). An Amended Indictment was filed on December 9, 2019 (the "Amended Indictment").

22. According to the Amended Indictment, the Debtor's use of Banc-Serv to conduct her criminal scheme took place over a 13-year period (2004 through 2017), and related to dozens of illegally obtained loans, aggregating over \$10,000,000. The Amended Indictment alleged that the Debtor, along with co-conspirators, would seek to obtain SBA guarantees for loans that did not meet SBA's guidelines and requirements. To ensure the loans would appear to meet SBA lending guidelines, the Debtor and co-conspirators allegedly would make false statements on loan-guarantee applications and purchase requests sent to the SBA about matters such as a

borrower's eligibility to receive a loan and how loan proceeds would be disbursed. The Amended Indictment alleges that as a result, the SBA incurred losses by purchasing loans that, had it known of the misrepresentations made in the loan files by the co-conspirators, it never would have guaranteed in the first place.

23. Plainly, if the evidence supports the allegations made in the Amended Indictment, the Debtor had reason to know she would subject to substantial claims for damages and restitution as soon as her fraud was uncovered.

24. Both before and after the FBI raid, the filing of the Arbitration Action, and the Debtor's loss of her employment with Banc-Serv, the Debtor transferred substantial assets to her husband, Crawford, for no consideration

COUNT I - FRAUDULENT TRANSFERS TO CRAWFORD AND ETI

For her first cause of action against Crawford and ETI, the Trustee states:

25. The allegations of paragraphs 1 through 24 above are incorporated by reference.

26. On or about January 3, 2017, the Debtor made a cash payment to Crawford in the amount of \$75,000.00, believed to be part of the Sales Proceeds.

27. On or about February 20, 2018, the Debtor made a cash payment to or for the benefit of Crawford in the amount of \$839,125.00, believed to be part of the Sales Proceeds, which were utilized by Crawford in his purchase of ETI.

28. On or about February 28, 2018, the Debtor made a cash payment to or for the benefit of Crawford in the amount of \$19,989.87, believed to be part of the Sales Proceeds, which were utilized by Crawford in his purchase of ETI.

29. On or about June 6, 2018, a check in the amount of \$200,000.00 was written on a Chase bank account to ETI, for the benefit of Crawford, which funds were believed to be part of the Sales Proceeds, and were utilized by Crawford as part of his “paid in capital” with regard to his ownership interest in ETI. The Chase bank account was owned in whole or in part by the Debtor.

30. On or about March 15, 2019, the Debtor made a cash payment to or for the benefit of Crawford totaling approximately \$230,000.00, which was utilized by Crawford in his purchase of real estate located at 563 Flatwoods Forest Loop, Santa Rosa Beach, FL.

31. Mere months after the purchase of the property in Santa Rosa Beach, FL, the Debtor’s husband applied for a \$250,000.00 loan secured by the property, seeking to obtain cash for all of the equity created by the Debtor’s transfer of \$230,000.00.

32. The transfers described in preceding Paragraphs 26 through 30 are collectively referred to herein as the “Cash Transfers.”

33. The Cash Transfers were transfers of assets by the Debtor which were:

- (a) made to or for the benefit of Crawford; and
- (b) made with actual intent to hinder, delay, or defraud any creditor of the Debtor; and/or
- (c) transfers for which the Debtor received less than a reasonably equivalent value in exchange for such transfers, at a time when the Debtor was insolvent; or became insolvent as a result of the Cash Transfers.

34. With the exception of the transfer made on January 3, 2017 in the amount of \$75,000.00, all of the Cash Transfers were made within two years of the filing of the Debtor's bankruptcy petition. All of the Cash Transfers were made within four (4) years of the filing of the Debtor's bankruptcy petition.

35. Under the above-mentioned facts and circumstances, the Trustee may avoid the Transfers and recover from Crawford for the benefit of the bankruptcy estate the transferred property and any proceeds thereof (or the value of the same), in the amount of \$1,364,114.87, free and clear of any interest therein asserted by Crawford, pursuant to 11 U.S.C. §§ 544, 548 and 550, and the Indiana Uniform Fraudulent Transfer Act.

36. In addition, with respect to any and all of the Transfers which were paid directly to ETI, including but not limited to the June 6, 2018 check in the amount of \$200,000.00 referenced in paragraph 29 above, the Trustee may avoid such Transfers paid to ETI and recover from ETI for the benefit of the bankruptcy estate the transferred property and any proceeds thereof (or the value of the same), free and clear of any interest therein asserted by Crawford, pursuant to 11 U.S.C. §§ 544, 548 and 550 and the Indiana Uniform Fraudulent Transfer Act.

WHEREFORE, your Trustee respectfully requests that the Court (a) grant a final judgment against Crawford avoiding the Transfers and recovering for the bankruptcy estate the transferred property and any proceeds thereof, or their aggregate value, in the amount of \$1,364,114.87, free and clear of any interest therein asserted by Crawford; (b) grant final judgment against ETI avoiding the Transfers which were paid directly to ETI, including but not limited to the June 6, 2018 check in the amount of \$200,000.00 referenced above; (c) all as subject to the provision of 11 U.S.C. § 550(d) that the trustee is entitled to only a single

satisfaction of judgment for property transferred by the Debtor; and (d) all other just and proper relief.

COUNT II - FRAUDULENT TRANSFER OF REAL ESTATE

37. For her second cause of action against Crawford, and her first cause of action against Lucky 7, the Trustee states:

38. The allegations of paragraphs 1 through 24 above are incorporated by reference.

39. On or about August 28, 2018, the Debtor and Crawford purchased real estate at 2009 Peachtree Lane, South Bend, IN (the "Peachtree Property"), utilizing a mortgage loan in the amount of \$129,600.00, with the balance of the purchase price, believed to be approximately \$57,400.00 (the "Peachtree Down Payment") being paid in whole or in part from Sales Proceeds owned by the Debtor.

40. On information and belief, the value of the Peachtree Property was approximately \$191,000.00.

41. Also on August 28, 2018, the Debtor and Crawford conveyed the Peachtree Property to Lucky 7 (the "Peachtree Property Transfer"), the sole consideration for which was Lucky 7's agreement to assume and pay the mortgage obligation of \$129,600.00.

42. The Peachtree Down Payment and the Peachtree Property Transfer were transfers:

- (a) made to or for the benefit of Crawford and Lucky; and
- (b) made with actual intent to hinder, delay, or defraud any creditor of the Debtor; and/or
- (c) transfers for which the Debtor received less than a reasonably equivalent

value in exchange for such transfers, at a time when the Debtor was insolvent; or became insolvent as a result of the transfer.

43. The Peachtree Down Payment and the Peachtree Property Transfer were made within two years of the filing of the Debtor's bankruptcy petition.

44. Under the above-mentioned facts and circumstances, the Trustee may avoid the Peachtree Down Payment and the Peachtree Property Transfer and recover from Crawford and/or Lucky 7 for the benefit of the bankruptcy estate the Peachtree Down Payment and the Peachtree Property Transfer and any proceeds thereof (or the value of the same), free and clear of any interest therein asserted by Lucky 7 or Crawford, pursuant to 11 U.S.C. §§ 544, 548 and 550 and the Indiana Uniform Fraudulent Transfer Act, all as subject to the provision of 11 U.S.C. § 550(d) that the trustee is entitled to only a single satisfaction of judgment for property transferred by the Debtor.

WHEREFORE, your Trustee respectfully requests that the Court (a) grant a final judgment avoiding the Peachtree Down Payment and the Peachtree Property Transfer and recovering for the bankruptcy estate from Crawford and/or Lucky 7 the Peachtree Down Payment and the Peachtree Property Transfer and any proceeds thereof, or their aggregate value, in an amount to be determined; all as subject to the provision of 11 U.S.C. § 550(d) that the trustee is entitled to only a single satisfaction of judgment for property transferred by the Debtor; and (b) all other just and proper relief.

Respectfully submitted,

RUBIN & LEVIN, P.C.

Attorneys for Joanne B. Friedmeyer, Trustee

By: /s/ John M. Rogers

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