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.	)	
CHAD GRIFFIN,	)	
DEFENDANT	)	

COMPLAINT

Joanne B. Friedmeyer, Trustee ("Trustee") for the Bankruptcy Estate of Kerri L. Agee (the "Debtor"), by counsel, for her Complaint against Chad Griffin ("Griffin"), 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 claim set forth in this Complaint is a "core proceeding" 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 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. Griffin is a resident of Hamilton County, Indiana.

BACKGROUND FACTS

9. 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 headquarted first in Indianapolis, IN and later in Westfield, IN.

10. Banc-Serv packaged, originated, disbursed, serviced and liquidated loans

guaranteed by the Small Business Administration ("SBA") on behalf of their lending institution clients.

11. Defendant Griffin was a relationship manager at Banc-Serv, and later the chief marketing officer of that company.

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.") 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 account consisted of Sales Proceeds. By the Petition Date, the account had been closed, with a zero balance.

13. 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.

14. Defendant Griffin was a long-time friend and colleague of the Debtor, was employed by Banc-Serv starting in approximately 2002, and served as COO of Banc-Serv from

approximately 2010 until the company was sold in 2016. He is currently employed by ETI, Inc., a company owned by the Debtor's husband.

15. The Debtor was in personal financial straits at the time she entered into the Purchase Agreement. In 2015, the Debtor had personally guaranteed a $750,000 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 transaction, 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 run 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 was 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 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 Griffin and charged both with numerous counts of violating federal law in connection with their 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, and related to dozens of illegally obtained loans, aggregating over $10,000,000. The Amended Indictment alleged that the Debtor, along with Amended Indictment and other 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. Not long after the FBI raid, the filing of the Arbitration Action, and the Debtor's loss of her employment with Banc-Serv, the Debtor began transferring assets to her husband and various parties in return for no consideration.

FRAUDULENT TRANSFER TO GRIFFIN

For her cause of action against Griffin, the Trustee states:

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

26. On or about June 24, 2016, the Debtor made a cash payment to or for the benefit of Griffin in the amount of $28,000.00 (the “Transfer”), believed to be part of the Sales Proceeds.

27. The Transfer was a transfer of assets by the Debtor:

(a) made to or for the benefit of Amended Indictment; and

(b) made with actual intent to hinder, delay, or defraud any creditor of the Debtor; and/or

(c) a transfer for which the Debtor received less than a reasonably equivalent value in exchange for such transfer, at a time when the Debtor was insolvent; or became insolvent as a result of the Transfer.

28. The Transfer was made within four years of the filing of the Debtor's bankruptcy petition.

29. Under the above-mentioned facts and circumstances, the Trustee may avoid the Transfer and recover from Griffin for the benefit of the bankruptcy estate the transferred property and any proceeds thereof (or the value of the same), in the amount of $28,000.00, free and clear of any interest therein asserted by Griffin, pursuant to 11 U.S.C. §§ 544 and 550 and the Indiana Uniform Fraudulent Transfer Act.

WHEREFORE, your Trustee respectfully requests that the Court (a) grant a final judgment against Griffin avoiding the Transfer and recovering for the bankruptcy estate the transferred property and any proceeds thereof, or their aggregate value, in the amount of $28,000.00, free and clear of any interest therein asserted by Griffin, and (b) all other just and proper relief.

Respectfully submitted,
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By:/s/ John M. Rogers

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