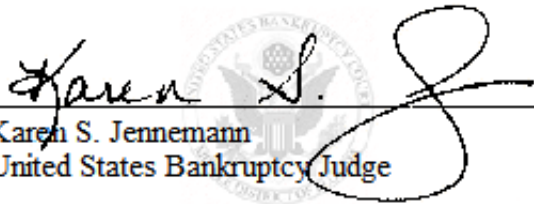


ORDERED.

Dated: August 25, 2020



 Karen S. Jennemann
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
 MIDDLE DISTRICT OF FLORIDA
 ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	
)	
Advanced Telecommunication Network,)	Case No. 6:03-bk-00299-KSJ
Inc.,)	Chapter 11
)	
Debtor.)	
_____)	
)	
Advanced Telecommunication Network,)	
Inc.,)	
)	
Plaintiff,)	
)	
vs.)	Adversary No. 6:11-ap-00007-KSJ
)	
Arnstein & Lehr LLP,)	
)	
Defendant.)	
_____)	

**ORDER DENYING DEFENDANT'S
MOTION FOR FINAL SUMMARY JUDGMENT**

Defendant, Arnstein & Lehr, LLP, seeks summary judgment¹ arguing this adversary proceeding was filed untimely. Finding no issues of material fact, the Court concludes that the

¹ Doc. No. 77. Plaintiff filed a Response in Opposition to Defendant's Motion for Final Summary Judgment. Doc. No. 83. Defendant filed a Reply in Support of its Motion for Final Summary Judgment. Doc. No. 87. And Plaintiff filed a Sur-Reply in Opposition to Defendant's Motion for Final Summary Judgment. Doc. No. 95.

applicable one-year statute of limitations started to run on January 15, 2010, making this adversary proceeding, filed on January 14, 2011, timely. Summary judgment is denied.

Defendant, a law firm, represented Daniel and David Allen (the “Allens”) in a related adversary proceeding filed to avoid a transfer of \$6,250,000 made by the Debtor to the Allens (the “Related Adversary Proceeding”).² After a long and contested history, on July 10, 2009, this Court entered an Amended Final Judgment for Advanced Telecommunication Network, Inc. (“ATN”) and against the Allens for \$6,250,000.³ But, this judgment acknowledged in Paragraph 3 that a counterclaim remained unresolved. And, the Court had not addressed six affirmative defenses asserted by the Allens. On January 15, 2010, this Court entered a Second Amended Final Judgment finally resolving these last remaining issues and reducing ATN’s recovery from \$6,250,000 to \$6,000,000.⁴

On January 14, 2011, Plaintiff filed this adversary proceeding against Defendant alleging it may recover later transfers made by the Allens to Defendant under § 550 of the Bankruptcy Code.⁵ Defendant contends the filing was untimely because it was filed more than one year after the Amended Final Judgment in the Related Adversary Proceeding, entered on July 10, 2009, which began tolling the one-year statute of limitations under § 550(f).⁶ Defendant argues it is entitled to summary judgment because this action is untimely, as a matter of law.⁷ Plaintiff opposes summary judgment arguing this adversary proceeding was timely filed. It contends the Second

² See Adv. Proc. No. 6:03-ap-00122-KSJ.

³ Doc. No. 367 in Adv. Proc. No. 6:03-ap-00122-KSJ. This Court avoided two fraudulent transfers made by ATN to the Allens.

⁴ Doc. No. 385 in Adv. Proc. No. 6:03-ap-00122-KSJ.

⁵ See Doc. No. 1. All references to the Bankruptcy Code refer to 11. U.S.C. § 101 *et. seq.*

⁶ § 550(f) provides “[a]n action or proceeding under this section may not be commenced after the earlier of one year after the avoidance of the transfer on account of which recovery under this section is sought; or the time this case is closed or dismissed.”

⁷ Federal Rule 56(a), made applicable by Federal Rule of Bankruptcy Procedure 7056, provides that “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”

Amended Final Judgment in the Related Adversary Proceeding, entered on January 15, 2010, started tolling the statute of limitations. As such, this adversary proceeding, filed 364 days later on January 14, 2011, was timely.

The one-year statute of limitations in § 550(f) begins to run once an avoidance action is final.⁸ Generally, a final decision ends the litigation on the merits and leaves a court with nothing to do but execute the judgment.⁹ A final decision must clearly evidence the court's intention it shall be the final act in the case.¹⁰ The entry of a judgment labeled as final is not actually final if it leaves certain matters like affirmative defenses adjudicated.¹¹

The Second Amended Final Judgment was the final act in the Related Adversary Proceeding and began tolling the statute of limitations. The Second Amended Final Judgment finally avoided the transfers made by ATN to the Allens and determined the actual amount to be avoided. The earlier Amended Final Judgment conversely left issues, such as the Allens' affirmative defenses and counterclaim, adjudicated. These issues were only resolved with the entry of the Second Amended Final Judgment.

Accordingly, it is

ORDERED:

1. Defendant's Motion for Final Summary Judgment (Doc. No. 77) is **DENIED**.
2. Plaintiff timely filed this Adversary Proceeding on January 14, 2011, within the statute of limitations period for an action under § 550 of the Bankruptcy Code.

⁸ *In re Serrato*, 233 B.R. 833, 835 (Bankr. N.D. Cal. 1999); *In re Data Lease Financial Corp.*, 176 B.R. 285, 286 (Bankr. S.D. Fla. 1994).

⁹ *In re Serrato*, 233 B.R. at 835.

¹⁰ *Id.*

¹¹ *Stillman v. Travelers Ins., Co.*, 88 F.3d 911, 914 (11th Cir. 1996). The Eleventh Circuit explained a final judgment that leaves affirmative defenses adjudicated "is not final to all the parties or as to any party or as to the whole subject matter of the litigation."

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Attorney, Lawrence A. Kellogg, is directed to serve a copy of this order on all interested parties who are non-CM/ECF users and file a proof of service within three days of entry of the order.