

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

LYDIA CLADEK, INC.,

Case No. 3:10-bk-02805-PMG

Debtor.

(Consolidated by Prior Court Order with Case
No. 10-bk-02800-PMG)

MICHAEL PHELAN, not individually but as
Chapter 11 Trustee of the estate of the Debtor,
Lydia Cladek, Inc.,

Adv. Proc. No. 10-ap-00248-PMG

Plaintiff,

v.

LYDIA I. CLADEK; Captiva Island Vacation
Properties, LLC; Land Trust Service
Corporation as Trustee under the Trust AB,
dated October 19, 2004; Trust No. 23 dated
September 21, 2005, Land Trust Service
Corporation, as Trustee as to Parcel A; Trust
No. 25 dated September 21, 2005, Land Trust
Service Corporation, as Trustee as to Parcel B;
Trust No. 27 dated September 21, 2005, Land
Trust Service Corporation, as Trustee as to
Parcel C; Trust No. 16250-52, dated May 26,
2006, Land Trust Service Corporation, as
Trustee; Land Trust Service Corporation, as
Trustee of Trust No. 4443 dated March 9,
2005; and Trust No. 1001 dated August 26,
2005, Land Trust Service Corporation, as
Trustee,

Defendants.

FINAL JUDGMENT

This matter is before the Court upon the Motion of Plaintiff, Michael Phelan, not

individually but as the Chapter 11 Trustee (the "Chapter 11 Trustee") of the consolidated

RECORDED IN THE US BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA,
JACKSONVILLE DIVISION

S.B. VOL. 54 NO. 7383

I certify the foregoing to be true
and correct copy of the original.
CLERK OF COURT
U. S. BANKRUPTCY COURT

By: *M. Sosnick*

Dated: 5/16/2011

Chapter 11 cases of Lydia Cladek, Inc. (the "Debtor"), for a Final Default Judgment. Having granted the Chapter 11 Trustee's Motion for Entry of Final Default Judgment, the Court hereby

FINDS and ORDERS:

1. On April 2, 2010 (the "Filing Date"), several petitioning creditors filed an involuntary Chapter 11 petition against Lydia Cladek, Inc., case styled as *In re Lydia Cladek, Inc.*, Case No. 10-bk-02800-PMG, in the United States Bankruptcy Court, Middle District of Florida, Jacksonville Division (the "Involuntary Case"), in the wake of allegations that Lydia I. Cladek ("Cladek") had perpetrated a massive Ponzi scheme in which funds received from later investors were used to pay earlier investors. The Involuntary Case was initially filed after the petitioning creditors learned that Cladek had utilized the Debtor's business to fraudulently secure investments in fraudulent and/or fictitious installment automobile loans purportedly purchased from used automobile dealerships and that Cladek funneled those investment funds through accounts titled in the name of the Debtor to the Cladek Entities and Cladek personally. The Chapter 11 Trustee is currently operating the Debtor's business pursuant to sections 1106 and 1108 of the Bankruptcy Code and this Court's *Order Approving Appointment of Chapter 11 Trustee and Setting of Bond* (the "Appointment Order") [Doc. No. 47].

2. In his ten-count Verified Adversary Complaint for Damages and Other Relief (the "Cladek Complaint") filed May 19, 2010, the Chapter 11 Trustee asserts claims against Cladek and her affiliated alter ego business entities (as defined below as the "Cladek Entities") seeking, among other relief, substantive consolidation of Cladek and the Cladek Entities with and into the estate of the Debtor, an alter ego liability determination, for turnover of property of the estate, to avoid and recover fraudulent transfers from the Debtor to Cladek and the Cladek Entities (the "Avoidable Transfers"), for the entry of an order granting preliminary and

permanent injunctive relief, for conversion, and for breach of her fiduciary duties to investors and creditors of the bankruptcy estate [Adv. Doc. No. 1].

3. Specifically, the Cladek Complaint seeks the following relief against Cladek and the Cladek Entities:

- Count I - Action Seeking to Substantively Consolidate Non-Debtor Cladek and the Non-Debtor Cladek Entities with and into the Bankruptcy Estate of the Debtor.
- Count II - Action to Impose Alter Ego Liability upon Cladek and the Cladek Entities for the Debts and Liabilities of the Debtor, and to Pierce the Corporate Veil of the Cladek Entities for the Benefit of the Debtor.
- Count III - Action Requesting the Entry of a Preliminary and Permanent Injunction against Cladek and the Cladek Entities as Alter Egos of the Debtor.
- Count IV - To the Extent the Court Grants the Relief Demanded in Counts I and/or II Above, Action Seeking Turnover of Property of the Debtor's Bankruptcy Estate Pursuant to Section 542 of the Bankruptcy Code, as Well as an Accounting in Connection therewith.
- Count V - Action to Avoid and Recover Fraudulent Transfers from the Debtor to Cladek and the Cladek Entities (Defined Herein as the Avoidable Transfers).
- Count VI - Action for Conversion against Cladek and the Cladek Entities

- Count VII - Action for Unjust Enrichment against Cladek and the Cladek Entities.
- Count VIII – Action to Impose a Constructive Trust against Cladek and the Cladek Entities.
- Count IX - Action for an Accounting against Cladek and the Cladek Entities.
- Count X - Action for Breach of Fiduciary Duty against Cladek.

4. On May 20, 2010, the Chapter 11 Trustee attempted to serve the Summons and Complaint upon Cladek at her usual place of abode via regular U.S. mail and FedEx overnight delivery, both of which were returned undeliverable.

5. On June 15, 2010, the Chapter 11 Trustee filed his Motion for Entry of an Order Authorizing Service of Notice of Filing of Summons and Complaint Upon Defendant, Lydia I. Cladek, by Publication [Adv. Doc. No. 19].

6. On July 7, 2010, the Court entered its Order Authorizing Service of Notice of Filing of Summons and Complaint Upon Defendant, Lydia I. Cladek, by Publication (the “Service Order”) [Adv. Doc. No. 24].

7. An Alias Summons was issued by the Clerk on July 12, 2010.

8. In accordance with the Service Order, a copy of the Complaint together with the Alias Summons was served on July 12, 2010, by U.S. mail to Cladek at her usual place of abode and c/o Lawrence Lilly, Esq. at his usual place of business, 336 Redwing Lane, St. Augustine, Florida 32080-7979.

9. In accordance with the Service Order, a Notice of Action was published in the *St. Augustine Record* and the *Financial News & Daily Record* on July 16, 2010 and July 23, 2010.

10. On July 26, 2010, the Chapter 11 Trustee filed his Notice of Filing Proof of Publication of the Notice of Action in the *Financial News & Daily Record* [Adv. Doc. No. 30].

11. On July 28, 2010, the Chapter 11 Trustee filed his Notice of Filing Proof of Publication of the Notice of Action in *The St. Augustine Record* [Adv. Doc. No. 31].

12. In accordance with the Service Order and the Notice of Action, the deadline for Cladek to respond to the Cladek Complaint was August 23, 2010.

13. As a result of the Cladek's default for failing to answer or otherwise respond to the Cladek Complaint, on August 25, 2010, the Chapter 11 Trustee filed his Motion for Default [Adv. Doc. No. 33].

14. On August 26, 2010, the Clerk issued its Default against Cladek [Adv. Doc. No. 34].

15. As a result of the Cladek's default, each and every allegation set forth in the Cladek Complaint, which are incorporated herein by reference, is deemed admitted by Cladek. *See, e.g., Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298, 1307 (11th Cir. 2009) (quoting *Nishimatsu Constr. Co. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975) (“A ‘defendant, by his default, admits the plaintiff's well-pleaded allegations of fact, is concluded on those facts by the judgment, and is barred from contesting on appeal the facts thus established.”)); *Suntrust Bank v. Truzman*, 2010 WL 3359710, at *2 (M.D. Fla. August 06, 2010) (determining that because a default was properly entered, the plaintiff is deemed to have admitted the allegations made in the plaintiff's complaint); *see also* Fed. R. Bankr. P. 7055 (making applicable Federal Rule of Civil Procedure 55; stating that a default is entered when the defendant fails to answer the complaint in the required time period).

16. Given the substantial, undisputed proof set forth in the Cladek Complaint and the Motion (as defined below) establishing the fraudulent nature of Cladek's Ponzi scheme activities and the use of the Debtor's bank accounts and/or the alter ego Cladek Entities in perpetrating the scheme, and in order to ensure the recovery of property of the estate that was wrongfully diverted by and to Cladek and Cladek Entities as part of Cladek's fraudulent scheme to hinder, delay or defraud creditors, **JUDGMENT** is hereby entered against Cladek as follows:

17. Count I (Substantive Consolidation) of the Cladek Complaint is dismissed without prejudice.

18. Final Judgment is hereby entered in favor of the Chapter 11 Trustee and against Cladek with respect to Count II (Alter Ego Liability), and the Court hereby: (i) determines that Cladek is an alter ego of the Debtor, (ii) determines that Cladek is liable for all of the debts and liabilities of the Debtor; (iii) determines that all assets owned, controlled and/or titled in the name of Cladek are property of the Debtor's bankruptcy estate and are subject to the jurisdiction of this Court; and (iv) imposes alter ego liability upon Cladek for all of the debts and liabilities of the Debtor.

19. Final Judgment is hereby entered in favor of the Chapter 11 Trustee and against Cladek with respect to Count III (Preliminary and Permanent Injunction), and the Court shall issue a separate order granting a Permanent Injunction against the Defendants in connection with the Chapter 11 Trustee's Emergency Motion Seeking Entry of a Preliminary Injunction and for Other Relief and Request for Judicial Notice, pursuant to Rule 65 of the Federal Rules of Civil Procedure, as incorporated into Rule 7065 of the Federal Rules of Bankruptcy Procedure, section 105(a) of the Bankruptcy Code and Fed. R. Evid. 201 (the "Motion") [Adv. Doc. No. 2].

20. Final Judgment is hereby entered in favor of the Chapter 11 Trustee and against Cladek with respect to Count IV (Turnover of Property), and Cladek is hereby ordered to turnover all property of the Debtor's bankruptcy estate to the Chapter 11 Trustee pursuant to Section 542 of the Bankruptcy Code, including but not limited to, any and all real, personal, tangible, intangible and any other property wherever located and in whatever form, titled in the name of or in the possession or control of Cladek, including without limitation, each of the parcels of real property more specifically set forth below (collectively, the "Property"):

- 189 Sea Colony Parkway, St. Augustine, Florida;
- 5494 Atlantic View, St. Augustine, Florida;
- 349 Jellison Road, St. Augustine, Florida;
- 108 Seagrove Main Street, St. Augustine, Florida;
- 23 Old Mission Avenue, St. Augustine, Florida;
- 25 Old Mission Avenue, St. Augustine, Florida;
- 27 Old Mission Avenue, St. Augustine, Florida;
- 16249 Captiva Drive, Captiva, Florida;
- 16250 Captiva Drive, Captiva, Florida;
- 4443 Waters Edge Lane, Sanibel, Florida;
- 1001 Lindgren Boulevard, Sanibel, Florida; and
- 1061 SW Alaska Way, Greenville, Florida.

21. Final Judgment is hereby entered in favor of the Chapter 11 Trustee and against Cladek with respect to Count V (Fraudulent Transfers), and all transfers made by the Debtor to Cladek within two years (under Sections 544, 548 and 550 of the Bankruptcy Code) and four years (under Chapter 726 of the Florida Statutes) prior to the Filing Date, are hereby avoided and

Cladek is ordered to turnover all such transfers, Property, or the value thereof to the Chapter 11 Trustee for the benefit of the bankruptcy estate.

22. With respect to Counts VI (Conversion), VII (Unjust Enrichment), and X (Breach of Fiduciary Duties) of the Cladek Complaint, final judgment is hereby entered in favor of the Chapter 11 Trustee and against Cladek for damages in the amount of \$21,000,000.00, the value of the property Cladek improperly and illegally converted and transferred to herself and the Cladek Entities, unjustly enriching each of them, in breach of her fiduciary duties to creditors and investors of the bankruptcy estate, which sum shall accumulate interest at the legal rate of .26 % per annum from the date of this judgment, plus attorneys' fees and costs, for all of which let execution issue.

23. Final Judgment is hereby entered in favor of the Chapter 11 Trustee and against Cladek with respect to Count VIII (Constructive Trust), and the Court hereby imposes a constructive trust, for the benefit of the Debtor to be administered by the Chapter 11 Trustee, against any funds, Property or other things of value transferred by the Debtor to Cladek, and all proceeds and products thereof.

24. With respect to Count IX (Accounting) of the Cladek Complaint, Cladek, either individually or through counsel or other professionals, is hereby directed to provide the Chapter 11 Trustee by Friday, October 8, 2010, with an accounting of:

(a) all assets, liabilities and property currently held, directly or indirectly, by or for the benefit of the Debtor, Cladek and the Cladek Entities, including, without limitation, bank accounts, brokerage accounts, investments, business interests, loans, lines of credit, and real and personal property wherever situated, describing each asset and liability, its current location and amount, and including, but not limited to, the amounts

deposited by, or at the direction of, the Debtor, Cladek and the Cladek Entities in and withdrawn by, or at the direction of, the Debtor, Cladek and the Cladek Entities from the accounts of the Debtor, Cladek and the Cladek Entities, and setting forth the Debtor's and/or Cladek's interests in the Cladek Entities, and an accounting of the disposition of all funds raised from investors in the Debtor and the Cladek Entities;

(b) all money, property, assets, and income received from the Debtor by Cladek and the Cladek Entities, or for Cladek's and/or the Cladek Entities' direct or indirect benefit, at any time from April 1, 2006 through the date of such accounting, describing the source, amount, disposition and current location of each of the items listed, including all mediate or subsequent transferees of any of the foregoing;

(c) the names and last known addresses of all bailees, debtors, and other persons and entities that are currently holding assets, funds or property of the Debtor, Cladek and the Cladek Entities;

(d) the source of all funds used by the Debtor, Cladek and the Cladek Entities to pay professional fees, including but not limited to all attorneys, law firms, accountants and accounting firms;

(e) all financial records and statements from any financial institution holding funds on deposit for, or for the benefit of, the Debtor, Cladek and the Cladek Entities, individually or jointly with any other person(s) or entity(ies), identifying the account names, account numbers, and signatories for all such accounts and to provide the Chapter 11 Trustee with the balance currently on deposit in such accounts and for any and all past and future statements.

25. This Court retains jurisdiction of this action to enter further orders, requests or judgments that are proper, including, but not limited to: (i) orders authorizing the issuance of writs of replevin, writs of execution, writs of garnishment, and other post-judgment collection remedies; (ii) requests for punitive, compensatory, special or other damages; and (iii) requests for the payment of pre-judgment interest, attorneys' fees and costs.

Dated: September 7, 2010 in Jacksonville, Florida.



Paul M. Glenn
Chief United States Bankruptcy Judge

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