

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION**

IN RE:

CLASSICSTAR, LLC

CASE NO. 07-51786

DEBTORS

**JAMES D. LYON, CHAPTER 7 TRUSTEE
OF CLASSICSTAR, LLC**

PLAINTIFF

VS:

**ADV. NO. 09-5180
Consolidating ADV. NO. 09-5180,
09-5218, and 10-5023**

WOODFORD THOROUGHBREDS, LLC

DEFENDANT

MEMORANDUM OPINION AND ORDER

This matter having come before the Court on the Defendant Tony Ferguson's Motion for Summary Judgment [Doc. 73], the Court having heard arguments of counsel and being otherwise sufficiently advised, finds as follows:

On May 31, 2007, the Debtor, through its wholly-owned subsidiary ClassicStar Farms LLC, sold two parcels of land to Hyde Park Real Estate LLC and Pebble Beach Farms LLLP for \$8.6 million. In addition to the real estate sold, the Debtor, also through ClassicStar Farms LLC, sold 48 thoroughbred broodmares to Woodford Thoroughbreds, LCC ("Woodford") for approximately \$9.8 million.

Woodford is a Florida limited liability company. Woodford has two members: Bluegrass Thoroughbreds LLLP ("Bluegrass") and Hyde Park Equity Investments LLC ("Hyde Park"). Bluegrass is a Florida limited liability company with two general partners, Tony and Deborah Ferguson. Hyde Park is a Florida limited liability company owned and managed by John Sykes.

Both Sykes and Ferguson, in addition to having an interest in Bluegrass and Hyde Park, serve as managers of Woodford.

The Debtor filed for voluntary Chapter 11 bankruptcy on September 14, 2007. On April 14, 2008, the Debtor's Chapter 11 case was converted to a Chapter 7. James D. Lyon was appointed to serve as the Trustee for the Debtor's estate.

On September 11, 2009, the Trustee filed this adversary proceeding seeking to recover, as preferential or fraudulent transfers, two alleged transfers totaling \$937,097.31 from Tony Ferguson made on the date of the sale. Ferguson has moved for summary judgment with respect to the second alleged transfer of \$797,041.75.

Ferguson argues that he is entitled to summary judgment because there is no genuine issue of material fact and the evidence proves (1) no transfer of \$797,041.75 occurred and (2) if a transfer was made, it was paid to Bluegrass and not to Ferguson. In support of his argument, Ferguson relies on a portion of the closing documentation, or a Funds Flow Memorandum ("FFM"), signed by the parties in their various capacities that reflects a deduction from Bluegrass's disbursement amount of \$797,041.75 as "amounts payable to Bluegrass by ClassicStar for expenditures by T. Ferguson on behalf of ClassicStar." According to Ferguson, because the FFM does not show an actual disbursement of money, no transfer occurred. Furthermore, even if a transfer occurred, the Trustee has failed to allege in his Complaint that Ferguson is a beneficiary transferee or even a theory of alter ego liability, so the Trustee cannot reach Ferguson to recover the transfer. See *In re Hansen*, 341 B.R. 638, 643 (Bankr. N.D. Ill. 2006); *Sudamax Industria e Comercio de Cigarrows, LTDA v. Buttes & Ashes, Inc.*, 516 F. Supp. 2d 841, 847 (W.D. Ky. 2007).

The Trustee argues that there are genuine issues of material fact that show Ferguson received the benefit of a transfer. The Trustee primarily relies on Ferguson's role as manager of ClassicStar Farms, LLC, and Ferguson's ownership interest in Bluegrass, part owner of

Woodford. The Trustee further relies on Ferguson's testimony that the \$797,041.75 transfer was a reimbursement to Ferguson for money he had advanced the Debtor for insurance and as payment for four of the mares that he allegedly contributed to the transaction, as well as other expenses of the Debtor. The Trustee also points to documentation related to the four mares allegedly owned by Ferguson as contradictory to Ferguson's claim of ownership. Finally, the Trustee counters that his theory has been consistent throughout, but orally requested at the hearing on the motion for summary judgment for leave to amend his Complaint to plead alter ego liability.

Addressing first Ferguson's argument that the Trustee has failed to properly plead Ferguson is a beneficiary transferee, a review of the Complaint reveals in paragraph 13(a) the Trustee alleged the transfer was made "to or for the benefit of the Defendant." Further, paragraphs 18 and 28 allege the Trustee is entitled to recover the transfer "from any initial transferees or the entities for whose benefit such transfers were made." The Trustee has sufficiently alleged that the transfer was made for the benefit of Ferguson.

But nowhere in the Trustee's Complaint does the Trustee make any allegation of alter ego liability. For this reason, the Trustee's oral motion to amend the Complaint to add an allegation of alter ego liability, raised for the first time at the summary judgment stage, is prejudicial to the Defendant where discovery has closed and shall be denied.

Second, while the FFM suggests a transfer was made to Bluegrass rather than Ferguson, the testimony and documents relied upon by the Trustee contradict this argument. There clearly remains a genuine issue of material fact as to whether Ferguson received the benefit of the transfer.

Because the testimony and documents relied on by the parties raise a genuine issue of material fact as to whether Ferguson received the benefit of a transfer of \$797,041.75, IT IS HEREBY ORDERED Ferguson's Motion for Summary Judgment [Doc. 73] is DENIED. The

Trustee's oral Motion to Amend the Complaint is also DENIED.

Copies To:

Barbara Edleman, Esq.

Graham Morgan, Esq.

Joseph Click, Esq.

~~~~~  
***The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.***



**Signed By:**  
**Joseph M. Scott, Jr.**  
**Bankruptcy Judge**  
**Dated: Friday, February 25, 2011**  
**(jms)**