

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

IN RE:	:	CASE NO. 23-40569-EJC
	:	
MASTER LENDING GROUP, LLC,	:	CHAPTER 7
	:	
Debtor.	:	
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	:	
TIFFANY E. CARON, Chapter 7 Trustee	:	
for the Bankruptcy Estate of	:	
Master Lending Group, LLC	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Adv. Pro. No. _____
	:	
JUDITH HIRSCH,	:	
	:	
Defendant.	:	
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VERIFIED COMPLAINT

COMES NOW Tiffany E. Caron, as Chapter 7 Trustee (“**Plaintiff**”) for the bankruptcy estate of Master Lending Group, LLC (the “**Bankruptcy Estate**”), by and through undersigned counsel, and files this *Verified Complaint* (“**Complaint**”) against Judith Hirsch (“**Mrs. Hirsch**”), respectfully showing the Court as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this adversary proceeding under 28 U.S.C. §§ 157 and 1334.
2. This adversary proceeding is a core proceeding under 28 U.S.C. §§

157(b)(2)(A), (E), (K), and (O).

3. This adversary proceeding is initiated under Rules 7001(1) and (2) of the Federal Rules of Bankruptcy Procedure and 11 U.S.C. §§ 105(a), 541, and 542.

4. Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409(a) because this adversary proceeding arises under Title 11, U.S.C. §§ 541 and 542 and arises in and relates to the Chapter 7 bankruptcy case of Master Lending Group, LLC (the “**Debtor**”), Case No. 23-40569-EJC (the “**Bankruptcy Case**”) pending in the United States Bankruptcy Court for the Southern District of Georgia, Savannah Division.

5. Plaintiff consents to the entry of final orders or judgments by the Bankruptcy Court.

6. Defendant may be served under Rule 7004 of the Federal Rules of Bankruptcy Procedure.

7. Defendant is subject to the jurisdiction of this Court.

Statement of Facts
a. General Background

8. Debtor filed a voluntary petition (the “**Petition**”) [Doc. No. 1] under Chapter 7 of Title 11 of the United States Code on July 6, 2023 (the “**Petition Date**”) and initiated the Bankruptcy Case.

9. Also on the Petition Date, Debtor filed under penalty of perjury its *Statement of Financial Affairs* (“**Sworn Statements**”), *Schedule of Assets* (“**Sworn Schedules**”) and *Liabilities* (collectively, “**Sworn Statements and Schedules**”).

10. On July 7, 2023, Plaintiff was appointed to the Bankruptcy Case as the

interim Chapter 7 Trustee under 11 U.S.C. § 701(a)(1) [Doc. No. 7].

11. The original meeting of creditors was scheduled to be held on August 9, 2023, in accordance with 11 U.S.C. § 341(a) but was instead continued to August 15, 2023 (the “**341 Meeting**”).

12. The 341 Meeting was conducted telephonically and concluded on August 15, 2023, after which time Plaintiff became the permanent Chapter 7 Trustee under 11 U.S.C. § 702(d).

b. The POA

13. The Petition identifies Debtor’s “owner” as Gregory M. Hirsch (“**Mr. Hirsch**”) [Doc. 1, page 5 of 50].

14. Due to deteriorating health caused by Lou Gehrig’s disease, or ALS, Mr. Hirsch executed a power of attorney (“**POA**”) naming Mrs. Hirsch as his agent on November 8, 2022 [Doc. No. 4].

15. The POA granted Mrs. Hirsch full authority to handle the business and personal affairs and assets of Mr. Hirsch as fully as Mr. Hirsch could, acting for himself, and was filed contemporaneously with the filing of the Petition and related Sworn Statements and Schedules.

16. The authority granted to Mrs. Hirsch under the POA included, but was not limited to, the authority to sign and file Debtor’s Petition and Sworn Statements and Schedules.

17. Pursuant to the POA, Mrs. Hirsch signed and filed Debtor’s Petition and Sworn Statements and Schedules for Mr. Hirsch, with the assistance of bankruptcy counsel,

on the Petition Date.

18. On August 3, 2023, Mr. Hirsch died due to complications related to his disease.

c. The Life Insurance Policy

19. Mr. Hirsch purchased a life insurance policy from Pruco Life Insurance Company (“Pruco”) in the amount of \$5,000,000.00 on July 15, 2020 (the “**Policy**”).

20. Named as the beneficiary of the Policy is Mrs. Hirsch.

21. At some point prior to the time of filing Debtor’s bankruptcy Petition, however, Mr. Hirsch informed Mrs. Hirsch that he wanted the Policy proceeds to go for the benefit of the Bankruptcy Estate, rather than to Mrs. Hirsch, individually.

22. Mr. Hirsch was still able to communicate, despite his ALS diagnosis, before his untimely passing.

23. Mr. Hirsch did not equivocate in his desire to have the entirety of the Policy proceeds inure to the benefit of the Bankruptcy Estate.

d. The Material Representations and Misrepresentations of Mrs. Hirsch

24. Consistent with Mr. Hirsch’s directive, Mrs. Hirsch swore under penalty of perjury in the original Sworn Schedules filed on the Petition Date (the “**First Sworn Schedules**”), that the Debtor had assets totaling \$6,070,100.00, comprised, among other things, of a \$5,000,000.00 “[u]nvested, equitable interest”¹ in the Policy, together with cash

¹ There is no dispute that this is a direct quote from Line Item #73 of Debtor’s originally filed Sworn Schedules, as well as each of the first two amendments thereto, which were signed and filed by Mrs. Hirsch, with the assistance of bankruptcy counsel, prior to the death of Mr. Hirsch.

in the amount of \$975,000.00, and a Truist Bank checking account valued at \$95,100.00 [Doc. No. 1, pages 8-12 of 50].

25. In a subsequent amendment dated July 17, 2023 (the “**Second Sworn Schedules**”), Mrs. Hirsch modified Debtor’s Sworn Schedules to reflect that the true value of the Truist Bank checking account is \$92,148.00, not the \$95,100.00 she had stated in Debtor’s original Sworn Schedules, and to remove as an asset of the Debtor the \$975,000.00 cash [Doc. No. 31, page 1].

26. Notably, Mrs. Hirsch did not remove from the Second Sworn Schedules the afore-listed equitable interest of the Debtor in the Policy. *See id.* at p. 3.

27. Rather, for a second time, Mrs. Hirsch swore under penalty of perjury that the proceeds of the Policy belonged to the Bankruptcy Estate as Mr. Hirsch intended. *Id.*

28. On July 26, 2023, Mrs. Hirsch again amended Debtor’s Schedule of Assets (the “**Third Sworn Schedules**”) to include Debtor’s potential claims against various entities and one individual for breach of a promissory note. [Doc. No. 46].

29. No other amendments were otherwise made to Debtor’s Schedule of Assets at that time. *Id.*

30. Thus, Mrs. Hirsch continued to swear for a third time, under penalty of perjury, that the Debtor maintained the sole equitable interest in the Policy, the proceeds of which, according to Debtor’s counsel, and pursuant to Mr. Hirsch’s wishes, were to be disbursed, or at the very least turned over, to the Trustee upon Mr. Hirsch’s death.

31. On August 4, 2023, one day after Mr. Hirsch’s passing, Mrs. Hirsch attempted to file a fourth amendment to Debtor’s Schedule of Assets (the “**Fourth Sworn**

Schedules”).

32. This time, Mrs. Hirsch removed the Policy as an asset of the Bankruptcy Estate, thereby contradicting each of her prior sworn representations to the Court, given on three separate occasions under penalty of perjury, that Debtor held a beneficial interest in the entirety of the Policy proceeds. [Doc. No. 71].

33. The Fourth Sworn Schedules were not authorized, however, because Mrs. Hirsch’s appointment as Mr. Hirsch’s power of attorney had expired upon his death on August 3, 2023.

34. The Fourth Sworn Schedules were therefore a nullity, not binding and were ineffective as an amendment to the three prior Sworn Schedules.

35. Mrs. Hirsch testified under oath at the 341 Meeting that it was Mr. Hirsch’s unequivocal directive to her that the Policy proceeds be issued for Debtor’s benefit and the Bankruptcy Estate more broadly.

36. This is independently confirmed by various actions taken by Mrs. Hirsch during the course of this bankruptcy action, including, but not limited to, the following: (1) scheduling the Policy, under penalty of perjury, as an asset of Debtor’s Bankruptcy Estate on not one, but three separate occasions; (2) making statements to Debtor’s counsel that the Policy proceeds will be turned over to the Trustee upon Mr. Hirsch’s death; and (3) testifying under oath that Mr. Hirsch directed her to issue the Policy proceeds to the Debtor.

37. The relationship between Mr. and Mrs. Hirsch was one of confidence and trust, such that Mrs. Hirsch had a duty to act in good faith in carrying out Mr. Hirsch’s

directives and with respect to the interests of Mr. Hirsch.

38. This action arises because Mrs. Hirsch has acted contrary to the directives of Mr. Hirsch and seeks to unjustly deprive the Debtor and the Bankruptcy Estate more broadly of the Policy proceeds by retaining said proceeds for her personal use and benefit.

39. Mrs. Hirsch holds only bare legal title to the Policy proceeds, without any equitable interest.

40. Mrs. Hirsch's possession of bare legal title to the Policy proceeds is insufficient to establish her interest as an intended beneficiary of the Policy proceeds.

41. Indeed, by virtue of its equitable interest, Debtor is the true intended beneficiary and rightful owner of the entirety of the Policy proceeds - a fact which has been sworn to and conceded by Mrs. Hirsch on more than three separate occasions.

COUNT I

Determination of Validity, Priority and Extent of Liens and Interest

42. Plaintiff re-alleges and incorporates paragraphs 1 through 41 of this Complaint as if the same were set forth verbatim herein.

43. At the commencement of the Case, the Debtor's Bankruptcy Estate was created pursuant to 11 U.S.C. § 541(a).

44. The Bankruptcy Estate includes all of Debtor's legal or equitable interests in property as of the commencement of the Bankruptcy Case. 11 U.S.C. § 541(a)(1).

45. The proceeds of the Policy constitute property of the Bankruptcy Estate based on the Bankruptcy Estate's 100% equitable interest therein.

46. Pursuant to Rule 7001(2), Plaintiff is entitled to a determination that the Policy proceeds are 100% property of the Bankruptcy Estate.

COUNT II

Turnover

47. Plaintiff re-alleges and incorporates paragraphs 1 through 46 of this Complaint as if the same were set forth verbatim herein.

48. By virtue of the status of the Policy proceeds as property of the Bankruptcy Estate, and the fact that Mrs. Hirsch's interest in the Policy proceeds is limited to bare legal title, the Policy proceeds belong to the Bankruptcy Estate unencumbered by any interest of Mrs. Hirsch or anyone else.

49. Mrs. Hirsch is required *instanter* to turn over the Policy proceeds to Plaintiff, or direct Pruco to do so, pursuant to 11 U.S.C. § 542.

COUNT III

Breach of Confidential Relationship and The Duty of Good Faith

50. Plaintiff re-alleges and incorporates paragraphs 1 through 49 of this Complaint as if the same were set forth verbatim herein.

51. Under O.C.G.A. § 23-2-58, a relationship is confidential where "one party is so situated as to exercise a controlling influence over the will, conduct, and interest of another or where, from a similar relationship of mutual confidence, the law requires the utmost good faith, such as the relationship between partners, principal and agent, etc."

52. Mrs. Hirsch had a confidential relationship with Mr. Hirsch, and it was Mr. Hirsch's directive that Debtor receive the proceeds of the Policy for the benefit of the Bankruptcy Estate.

53. Mrs. Hirsch had a duty to act in good faith in carrying out Mr. Hirsch's directives and with respect to the interests of Mr. Hirsch.

54. As detailed in the general allegations of the Complaint, Mrs. Hirsch has acted contrary to the best interests and directives of Mr. Hirsch and, furthermore, to unjustly deprive the Debtor and the Bankruptcy Estate more broadly of the Policy proceeds.

55. When Mrs. Hirsch filed Debtor's Fourth Schedules, Mrs. Hirsch falsely represented that Debtor no longer maintained an interest in the Policy. Mrs. Hirsch also falsely represented herself as Mr. Hirsch's agent, despite the fact that her power of attorney had expired at the time of Mr. Hirsch's death.

56. Those representations were made by Mrs. Hirsch in furtherance of her plan to misappropriate the Policy proceeds for her personal benefit.

57. Even after Mr. Hirsch's death, Mrs. Hirsch has continued to exercise a controlling influence over the interests of Mr. Hirsch, such that her obligation to act in good faith continues with respect to Mr. Hirsch's affairs.

58. Mrs. Hirsch's attempts to retain the Policy proceeds for herself, in contravention of Mr. Hirsch's directive, and to abrogate Debtor's interest in said proceeds, were actions unquestionably made in bad faith and constitute abuses of Mrs.

Hirsch's confidential relationship with Mr. Hirsch.

59. The Bankruptcy Estate has sustained loss and damage as the proximate result of Mrs. Hirsch's breach of her confidential relationship with Mr. Hirsch.

60. Plaintiff requests that this Court order that the proceeds of the Policy be paid from Pruco to Plaintiff on behalf of Debtor as a result of Mrs. Hirsch's abuse of her confidential relationship with Mr. Hirsch and failure to act in good faith in carrying out Mr. Hirsch's directives and with respect to the interests of Mr. Hirsch.

COUNT IV

Constructive Fraud

61. Plaintiff re-alleges and incorporates paragraphs 1 through 60 of this Complaint as if the same were set forth verbatim herein.

62. O.C.G.A. § 23-2-51 provides, in relevant part, that "[c]onstructive fraud consists of any act of omission or commission, contrary to legal or equitable duty, trust, or confidence justly reposed, which is contrary to good conscience and operates to the injury of another."

63. Mrs. Hirsch has committed acts of omission or commission, contrary to legal or equitable duty, trust, or confidence justly reposed, which is contrary to good conscience and operates to the injury of another.

64. More specifically, when Mrs. Hirsch filed Debtor's Fourth Schedules, Mrs. Hirsch falsely represented that Debtor no longer maintained an interest in the Policy. Mrs. Hirsch also falsely represented herself as Mr. Hirsch's agent, despite the fact that her power of attorney expired at the time of Mr. Hirsch's death.

65. Those representations were made by Mrs. Hirsch in furtherance of her plan to misappropriate the Policy proceeds for her personal benefit and despite Mr. Hirsch's plain directive that the Debtor receive the proceeds of the Policy for the benefit of the Bankruptcy Estate upon his death.

66. The aforementioned actions of Mrs. Hirsch constitute constructive fraud.

67. The Bankruptcy Estate has sustained and will continue to sustain loss and damage as the proximate result of Mrs. Hirsch's constructive fraud.

68. Plaintiff requests that this Court order that the proceeds of the Policy be paid from Pruco to Plaintiff on behalf of Debtor as a result of Mrs. Hirsch's constructive fraud.

COUNT V

Unjust Enrichment

69. Plaintiff re-alleges and incorporates paragraphs 1 through 68 of this Complaint as if the same were set forth verbatim herein.

70. Mrs. Hirsch has taken no steps to ensure that the proceeds of the Policy inure to the benefit of the Bankruptcy Estate, and not to Mrs. Hirsch personally, as Mr. Hirsch intended.

71. Furthermore, by attempting to remove the Debtor's interest in the Policy as an asset of the Bankruptcy Estate, Mrs. Hirsch has done the exact opposite of what Mr. Hirsch intended and directed Mrs. Hirsch to do, which was to ensure that the Policy proceeds be turned over to Plaintiff on the Debtor's behalf.

72. To allow Mrs. Hirsch to retain for her personal benefit the proceeds of the Policy would unjustly enrich her because doing so would be in direct and clear contravention of Mr. Hirsch's directive and indeed, his right, to change the beneficiary of the Policy.

73. Plaintiff requests that this Court order that the proceeds of the Policy be paid from Pruco to Plaintiff on behalf of Debtor based upon the equitable principle of unjust enrichment.

COUNT VI

Conversion (In the Alternative)

74. Plaintiff re-alleges and incorporates paragraphs 1 through 73 of this Complaint as if the same were set forth verbatim herein.

75. Debtor is the rightful beneficiary of the proceeds of the Policy.

76. In spite of Mr. Hirsch's directive to Mrs. Hirsch that said proceeds be awarded to Debtor to benefit the Bankruptcy Estate, Mrs. Hirsch has asserted dominion over the Policy proceeds, as demonstrated by her wrongful and tortious conduct in attempting to remove the Policy proceeds from Debtor's Schedules for her individual and personal benefit.

77. Based upon the foregoing, and as a direct and proximate result of Mrs. Hirsch's actions, Plaintiff requests disgorgement immediately upon receipt by Ms. Hirsch of the entirety of the Policy proceeds that have been or will have been wrongfully paid to

or retained under the Policy by Mrs. Hirsch, or anyone else on her behalf or as her assignee, other than the Plaintiff.

COUNT VII

Constructive Trust

78. Plaintiff re-alleges and incorporates paragraphs 1 through 77 of this Complaint as if the same were set forth verbatim herein.

79. On three separate occasions, in Debtor's First, Second and Third Sworn Schedules, Mrs. Hirsch swore under penalty of perjury that Debtor retained a 100% equitable interest in the Policy proceeds.

80. Additionally, Mrs. Hirsch has made statements to Debtor's counsel that the Policy proceeds would be disbursed to Plaintiff upon Mr. Hirsch's death.

81. Mrs. Hirsch also testified at the 341 Meeting that Mr. Hirsch directed her, as his power of attorney at the time, to have the Policy proceeds issued to the Debtor for the Bankruptcy Estate's benefit.

82. The intent of Mr. Hirsch, that Debtor receive the Policy proceeds upon his death, and Mrs. Hirsch's awareness of Mr. Hirsch's intent, are unmistakably clear and are independently confirmed by the actions Mrs. Hirsch has taken throughout the course of this Bankruptcy Case, as further described hereinabove.

83. Mrs. Hirsch acted within the full scope of her authority as power of attorney for Mr. Hirsch when she filed Debtor's First, Second and Third Sworn Schedules and therein swore that Debtor retained a 100% equitable interest in the Policy proceeds.

84. Mrs. Hirsch acted with absolutely no authority, however, when after the

death of Mr. Hirsch, she suddenly changed course by attempting to remove the asset from Debtor's bankruptcy Schedules.

85. Mrs. Hirsch's attempt to remove the Policy proceeds from Plaintiff's reach constitutes a concerted effort by Mrs. Hirsch to exert exclusive authority and control over said proceeds, so as to enrich herself personally, on information and belief.

86. It would be unfair to unjustly deprive the Debtor, to the detriment of the Bankruptcy Estate, the benefit of the Policy proceeds Mr. Hirsch intended for it to have.

87. A constructive trust is an equitable device used by courts to avoid unjust enrichment whenever the circumstances are such that it would be inequitable for the person holding legal title to property to retain the beneficial interest therein. O.C.G.A. § 53-12-132.

88. Based upon the foregoing, and as a direct and proximate result of Mrs. Hirsch's actions, Plaintiff requests the imposition of a constructive trust upon the proceeds of the Policy, together with immediate disgorgement of the entirety of the Policy proceeds wrongfully paid to or retained under the Policy by Mrs. Hirsch, or anyone else on her behalf or as her assignee, other than the Plaintiff.

RESERVATION OF RIGHTS

89. Plaintiff reserves the right to amend this Complaint or to file a new complaint should facts be discovered to assert additional claims arising under Title 11 of the United States Code or applicable law.

WHEREFORE, Plaintiff prays for the following relief:

a) That the Bankruptcy Estate be determined to have a 100% equitable interest in the Policy proceeds;

b) That Mrs. Hirsch be determined to have only bare legal title to the Policy proceeds;

c) That the Policy proceeds be determined to be property of the Bankruptcy Estate;

d) That Mrs. Hirsch be ordered to turnover any and all proceeds of the Policy to Plaintiff pursuant to 11 U.S.C. §542;

e) That Mrs. Hirsch be entitled to recover nothing from the Policy proceeds;

f) That a constructive trust upon the proceeds of the Policy be imposed, together with an order requiring the immediate disgorgement of the Policy proceeds wrongfully paid to or retained under the Policy by Mrs. Hirsch, or anyone else on her behalf or as her assignee, other than the Plaintiff;

g) That Plaintiff be permitted to maintain the Policy proceeds in her bonded fiduciary account, to prevent depletion of the Bankruptcy Estate;

h) That Plaintiff be awarded all of her costs, expenses, and attorneys' fees in connection with this action, pursuant to applicable law; and

i) for such other and further relief that the Court deems just and proper.

This 5th day of September, 2023.

Respectfully submitted,

TAYLOR ENGLISH DUMA, LLP
Attorneys for Chapter 7 Trustee

By: /s/Natalie R. Rowland

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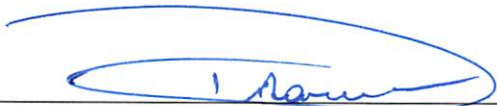
VERIFICATION

I, Tiffany E. Caron, as Chapter 7 Trustee of the Estate of Master Lending Group, LLC, have personal knowledge of the facts set forth in this Verified Complaint and hereby certify that all said facts are true, except such facts as are alleged on information and belief, which facts I believe to be true.



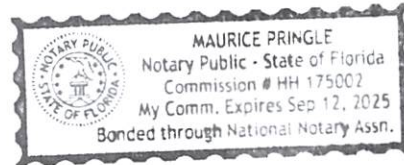
TIFFANY E. CARON, as Chapter 7 Trustee of the Estate of Master Lending Group, LLC

Sworn to and subscribed before me this
5th day of September, 2023.



Notary Public Maurice Pringle

My Commission Expires: 09/12/2025



(SEAL)