

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANAH DIVISION**

In Re:	§	Case No.: 23-40569-EJC
	§	
MASTER LENDING GROUP, LLC,	§	Chapter 7
	§	
Debtor	§	

MOTION FOR TURNOVER PURSUANT TO 11 U.S.C. §542

COMES NOW, Tiffany E. Caron, as Chapter 7 Trustee (“**Trustee**”) for the bankruptcy estate of Master Lending Group, LLC (“**Debtor**” or “**MLG**”), and files this *Motion for Turnover Pursuant to 11 U.S.C. §542* (the “**Motion**”), seeking an Order requiring Debtor’s Counsel, Judson Hill and Gastin & Hill (“Debtor’s Counsel”), to turnover documents and records which are property of the bankruptcy estate pursuant to 11 U.S.C. §542, and, in support of this Motion, hereby states as follows:

1. On July 6, 2023, Debtor, Master Lending Group, LLC (“Debtor”), filed a Chapter 7 Petition with this Court¹ (the “Petition Date”)(Doc No. 1).
2. On July 7, 2023, Tiffany E. Caron was appointed as the Chapter 7 Trustee (“Trustee”) in this case (Doc No. 7).
3. The Petition and Schedules initially filed in this case show assets totaling \$6,070,100.00.
4. The Debtor filed its Petition along with the Schedules including a completed Schedule A/B.
5. On Schedule A/B, the Debtor lists the following assets:
 - a) Cash on hand: \$975,000.00
 - b) Truist Bank Checking Account \$95,100.00
 - c) Deeds to Secure Debt on the following properties:

¹ Petition and Schedules signed by Owner, Gregory M. Hirsch by POA held by Judith Hirsch.

- 2701 Bull Street, Savannah, GA 31405;
 - 10 West Victory Drive, Savannah, GA 31405; and
 - 423 East River Street, Savannah, GA 31401.
- d) Unvested, Equitable Interest in Prudential Life Insurance Policy (Judith Hirsch, Beneficiary): \$5,000,000.00
- e) Rison Advisory Group, et al Promissory Note/Revolving Loan Agreement: Unknown Value
- f) Synergy Homes of Georgia, et al Promissory Note(s): Unknown Value
6. On July 16, 2023, Debtor filed an Amended Schedule A/B which purported to be signed by Gregory M. Hirsch via POA held by Judith Hirsch², removing the following items from Schedules A/B (the “July 16th Amendment”)(Doc No. 31):
- a) Cash on Hand: \$975,000.00;
 - b) Deeds to Secure Debt on the following properties:
 - 2701 Bull Street, Savannah, GA 31405;
 - 10 West Victory Drive, Savannah, GA 31405; and
 - 423 East River Street, Savannah, GA 31401.
7. On July 26, 2023, Debtor filed an Amended Schedule A/B which purported to be signed by Gregory M. Hirsch via POA held by Judith Hirsch³, removing the following items from Schedules A/B (the “July 26th Amendment”)(Doc No. 46):
- a) Synergy Homes of Georgia, et al Promissory Note(s): Unknown Value

² This Amendment included a Declaration Under Penalty of Perjury with the electronic signature of Gregory M. Hirsch via POA held by Judith Hirsch, Owner of Master Lending Group, LLC.

³ This Amendment included a Declaration Under Penalty of Perjury with the electronic signature of Gregory M. Hirsch via POA held by Judith Hirsch, Owner of Master Lending Group, LLC.

8. On August 4, 2023, Debtor filed an Amended Schedule A/B which purported to be signed by Gregory M. Hirsch via POA held by Judith Hirsch⁴, removing the following items from Schedules A/B (the “August 4th Amendment”)(together with the July 16th Amendment and the July 26th Amendment, the “Amendments”)(Doc No. 71):
 - a) Synergy Homes of Georgia, et al (“Synergy”) Promissory Note(s): Unknown Value
9. Debtor’s Counsel informs the Trustee he did not receive and has not maintained wet ink signatures for the Amendments filed in this case, that no documentation exists authorizing the filing of the Amendments, and that the Amendments were filed at the request and/or direction of attorneys for Gregory Hirsch and Judith Hirsch.
10. As a result of the Amendments, the scheduled assets were reduced from a total value of \$6,070,100.00 to \$92,418.00.
11. On July 21, 2023, the Trustee notified Debtor’s Counsel (the “First Request”), as the successor representative of the Debtor, she was waiving the pre-petition attorney client privilege in this case and demanded turnover of various documents, including communications with MLG or representatives of MLG and Debtor’s Counsel and all files and documents whatsoever relating to MLG including all emails and other electronic communications, letters, memorandums and written legal advice, concerns or warnings (collectively the “Pre-Petition Records”).
12. In response to the First Request, Debtor’s counsel provided twelve (12) pages of emails between himself and Judith Hirsch along with two (2) banker’s boxes of documents collected from the residence and offices of Gregory Hirsch and MLG.

⁴ This Amendment included a Declaration Under Penalty of Perjury with the electronic signature of Gregory M. Hirsch via POA held by Judith Hirsch, Owner of Master Lending Group, LLC.

13. On September 21, 2023, the Trustee notified Debtor's counsel (the "Second Request") as the successor representative of the Debtor, she was waiving the post-petition attorney client privilege in this case and demanded turnover of various documents including but not limited to emails, copies of electronic communications (including text messages), memorandum (including attorney work product), notes from meetings, correspondence with investors and creditors, correspondence with co-counsel, research, letters, and meeting summaries, the entire file on MLG, specifically including correspondence and all communications between Debtor's counsel and Timothy Roberts and any other attorneys, creditors or interested parties (the "Post-Petition Records", together with the Prepetition Records, the "Records"). To be clear, the Records are intended to include all notes (handwritten or electronic), memos or other writings reflective of each conversation Debtor's Counsel has had with anyone and the directives concerning the Amendments or the content of the schedules as well as to any other assets or liabilities.
14. Because Debtor's counsel has not and does not represent Gregory Hirsch and/or Judith Hirsch, and did not represent MLG pre-petition, other than in contemplation of the filing of this bankruptcy case, any communications between him and anyone regarding this case would necessarily relate to his representation of MLG in this case and would thus be subject to the Trustee's attorney client privilege waiver.
15. The Records are property of the Debtor, Master Lending Group, LLC, and are subject to turnover to the Trustee.
16. The Trustee further requested a scanned copy of the ink signed petition and schedules and all amendments thereto as required to be signed by Rule 9011 and maintained pursuant to Local Rule 7.

17. Debtor's Counsel provided copies of the original Petition and Schedules with the wet ink signature of Judith Hirsch, as POA for Gregory Hirsch; however, in response to the Trustee's Request, stated "None of the amendments have a wet ink signature" and "There are no emails or other writings instructing me to amend the schedules."
18. Debtor's counsel has agreed to provide to the Trustee, "work product and/or emails between our firm and creditors." (the "Offered Production").
19. The Offered Production does not satisfy the Trustee's request for the Records.

TURNOVER OF DOCUMENTS

20. The Trustee is requesting immediate turnover of the Records pursuant to 11 U.S.C. §542.
21. The Records are property of the Debtor and are subject to turnover to the Trustee.
22. The Trustee has waived the attorney client privilege; therefore, none of the Records are subject to a privilege objection as to the Trustee and are subject to turnover.
23. The lack of written authorization for the filing of the Amendments raises concerns about what has been authorized in this case, exactly when and by whom.
24. The July 16th Amendment removes from the schedules three Deeds to Secure Debt on various properties which removed based on Debtor's Counsel's receipt of copies of recorded Cancellations on the Properties. However, the filing of a Cancellation in the real estate records is not conclusive proof that a debt has been repaid; it is merely evidence a Security Deed has been released. Security Deeds are released for less than full payment or no payment for various reasons. In addition, Cancellations are a matter of public record which could have been discovered in a basic real estate search which a Debtor's attorney should always make prior to filing a bankruptcy case. The Trustee has found in her search

of public records other Deeds to Secure Debt which have not been cancelled but which remain unscheduled.

25. Debtor's counsel states the July 26th Amendment was filed based on information he received showing the debt had been paid in full. However, a review of the Debtor's records and bank statements along with information provided by Synergy shows debts outstanding and owing to MLG by Synergy, amounting to millions of dollars. Related to this is a whole life insurance policy with Northwestern Mutual assigned to MLG by Read Brannen, owner of Synergy, which was and remains unscheduled.
26. Judith Hirsch was, by law, no longer the POA holder upon the death of Gregory Hirsch on the filing date of the August 4th Amendment due to his death on August 3, 2023. Therefore, there appears to be nothing in writing authorizing the filing of the August 4th Amendment to remove a \$5,000,000.00 asset of the bankruptcy estate.
27. The filing of the August 4th Amendment resulted in the filing of an Adversary Proceeding against Judith Hirsch for turnover of the \$5,000,000.00 life insurance policy proceeds.
28. The Amendments have harmed the Debtor and investors in this case and added significant administrative expenses to the bankruptcy estate.
29. It is necessary for the Trustee to determine exactly how Debtor's Counsel received verbal instructions to file the amendments, exactly when and from whom.
30. Debtor's Counsel advises the Trustee he is unable to turnover various communications, especially regarding the Amendments, for the reason that the other parties who are named in email communications and/or instructed the filing of the Amendments object to any communications between them being turned over to the Trustee; however, a legal basis for such objection has not been stated.

TURNOVER OF PROPERTY OF THE ESTATE

Pursuant to 11 U.S.C. §542(e), “Subject to any applicable privilege, after notice and hearing, the court may order an attorney, accountant, or other person that holds recorded information, including books, documents, records, and papers, related to the debtor’s property or financial affairs, to turn over or disclose such recorded information to the trustee.” The Trustee has waived the attorney-client privilege.

According to the Federal Rules of Evidence, Rule 501 defines the attorney-client privilege as the legal protection that a person has against disclosure of written or oral communications with the person’s attorney. In a legal proceeding, if a party seeks to compel a person to turn over letters, e-mails or other communications that are protected by the attorney-client privilege, the person can refuse to turn them over. However, the Bankruptcy court has ample authority to authorize the trustee to waive the corporate-debtor's attorney-client privilege. Indeed, that is precisely what occurred in *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 105 S. Ct. 1986, 85 L. Ed. 2d 372 (1985): corporate officers objected to the trustee's waiver of the corporation's attorney-client privilege and the parties turned to the courts to resolve the debate.

In *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981), the Court stated that the attorney client privilege “is the oldest of the privileges for confidential communications known to the common law,” and its purpose is “to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice.” The attorney-client privilege belongs to the client, although an attorney may assert the privilege on the client’s behalf. A business entity planning to file for bankruptcy must beware that its attorney-client privileged e-mails, letters, and other written and oral communications could fall into the hands of a bankruptcy trustee after the case is filed. The logic

is outlined in *Weintraub*, which concerned a Chapter 7 case and Chapter 7 trustee. The *Weintraub* court reasoned that a corporation is an inanimate legal construct that is capable of acting only through its human agents. Ordinarily, the power to exercise the corporate attorney-client privilege rests with the corporation's officers and directors.

Upon the filing of a bankruptcy petition, however, the relationship between an attorney and his client changes as the Bankruptcy Code provides for the appointment of a Chapter 7 Trustee who succeeds to many of the interests of the Debtor. *See generally*, 11 U.S.C. § 541. When a Chapter 7 bankruptcy case is filed, control and authority of the corporation, its business and its assets pass to the Chapter 7 trustee, and the corporation's officers and directors "retain virtually no management powers."

It is well-established, black letter law, that a bankruptcy trustee has the authority to waive the attorney-client privilege on behalf of a corporate debtor. The *Weintraub* court concluded that the Chapter 7 trustee—not the corporation's officers and directors—should control the debtor's attorney-client privilege. The United States Supreme Court held that "the trustee of a corporation in bankruptcy has the power to waive the corporation's attorney-client privilege . . ." *Id.* at 358. The Supreme Court noted that, for solvent corporations, the power to waive the privilege rests with the officers and directors of the corporation at issue. *Id.* at 348. The Supreme Court then reasoned that control of a corporation's attorney-client privilege in bankruptcy belongs to the party having the most analogous duties to the solvent corporation's officers and directors. *Id.* at 351. The Supreme Court concluded that since the duties of a bankruptcy trustee are most similar to the duties of the officers and directors of a solvent corporation, a bankruptcy trustee controls the attorney-client privilege of a bankruptcy corporation. *Id.* at 353; see also *U.S. v. Campbell*, 73 F.3d 44, 47 (extending a bankruptcy trustee's authority to waive the attorney-client privilege to partnerships,

reasoning that, like a corporation, a partnership “is an inanimate entity that can act only through its agents.”).

Although it was decided over 30 years ago, *Weintraub* remains the controlling law on the question of ownership of the attorney-client privilege of a corporate debtor in Chapter 7 bankruptcy. In order to dutifully fulfill their fiduciary duties, trustees may need the power to access a debtor’s privileged communication with its attorney to investigate the debtor’s financial affairs and location of assets. As an estate representative, under section 323(a) of the Bankruptcy Code, a trustee owes a fiduciary duty to creditors. In connection with this duty, the trustee controls the property of the estate. Therefore, in order to appropriately manage the property, the trustee may require information acquired through the waiver of the attorney-client privilege.

The trustee is not required to meet a “best interests” showing when he/she chooses to waive the privilege. Instead, as the *Weintraub* court noted, the trustee may waive the privilege and then an objecting party may challenge the waiver as contrary to the fiduciary duties of the trustee. *In re AmeriLink, Ltd.*, 2014 U.S. Dist. LEXIS 69806 (E.D. NC). The Trustee has broad discretion to decide the best way to uncover assets or potential causes of action against unknown persons and/or entities. *See* 11 U.S.C. § 704. The Trustee may very well determine the best interest of creditors would be served by waiving the attorney-client privilege in such litigation. The Trustee has full authority and discretion to determine if a waiver is appropriate. The Trustee in this case has made the determination to waive the Debtor’s attorney-client privilege. Therefore, it shall be waived.

A Chapter 7 trustee is empowered to waive the privilege as to both pre-petition and post-petition communications. *See In re Bame*, 251 B.R. 367, 375 (Bankr. D. Minn. 2000). In the case of *In re Amerilink, Ltd.*, the Court affirmed that the Trustee has complete and exclusive authority to waive the corporate Debtor’s pre-petition and post-petition attorney-client privilege. Case No.

09-1055-8-CRA (Bankr. E.D. NC March 3, 2014) (affirmed *In re AmeriLink, Ltd.*, 2014 U.S. Dist. LEXIS 69806 (E.D. NC)). Courts have also held that upon conversion of a Chapter 11 case to one under Chapter 7, and upon appointment of the Chapter 7 trustee, the attorney-client privilege passed to trustee as regards communications between debtor and his attorneys, during time that debtor served as debtor-in-possession, as to all matters having to do with estate administration; privilege was trustee's privilege, to waive or assert as he saw fit. *In re Bame*, 251 B.R. 367, 373-74 (Bankr. D. Minn. 2000).

RULE 9011 AND LOCAL RULE 7

Rule 9011 requires that, "An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party." Local Rule 7 also requires, "Documents that are electronically filed and require an original signature, other than that of the filer, should be maintained in paper form by the filer for at least five (5) years."

WHEREFORE, the Trustee hereby moves this Court for an Order:

- A. requiring the Debtor's Counsel to turnover the Records to the Trustee; and
- B. for such other and further relief the Court deems appropriate under the circumstances.

This 2nd day of October, 2023.

Respectfully submitted,

By: /s/ Tiffany E. Caron
Tiffany E. Caron
Georgia Bar Number 745089
Attorney for Trustee

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Debtor §

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have served the persons named below by sending a copy of the Motion for Turnover by electronic service or by regular U.S. Mail to the address indicated, in envelopes bearing adequate postage to:

Judson C. Hill
Gastin & Hill
P O Box 8012
Savannah, GA 31412

Office of the U.S. Trustee
33 Bull Street, Suite 400
Savannah, GA 31401

And all parties automatically receiving notice through the Court's CM/ECF Filing System.

This 2nd day of October, 2023.

By: /s/ Tiffany E. Caron
Tiffany E. Caron
Georgia Bar Number 745089
Attorney for Trustee

P.O. Box 711
West Palm Beach, FL 33402
404-647-4917
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ORDER ON TRUSTEE’S MOTION FOR TURNOVER PURSUANT TO 11 U.S.C. §542

This matter came before the Court on the Trustee's Motion for Turnover Pursuant to 11 U.S.C. §542 (the “Motion”).

The Court having considered the Motion, proper notice having been given, after notice, hearing and consideration of the Trustee’s Motion, and it appearing that such Motion should be granted; it is therefore:

ORDERED, ADJUDGED, and DECREED that the Motion filed by the Trustee in the above-captioned Chapter 7 case is granted as follows:

The Trustee in this case has made the determination to waive the Debtor’s attorney-client privilege. Therefore, it shall be waived. The Debtor’s Counsel shall, immediately upon the entry

of this Order, turn over all Records, as requested by the Trustee, as the term Records is defined in the Trustee's Motion.

END OF DOCUMENT

Prepared by:

/s/ Tiffany E. Caron

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