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In the Matter of:) UNITED STATES BANKRUPTCY
) COURT
) DISTRICT OF NEW JERSEY
BUFFETS OF AUTOBAUM, LLC, et al.,)
) CHAPTER 11
Debtor) LEAD CASE NO. 08-34565 (MBK)
)
DONALD CONWAY,)
CHAPTER 11 TRUSTEE OF)
BUFFETS OF BENSALEM, LLC,)
)
Plaintiff,)
v.)
) ADV. PROC. NO. 09-2803 (MBK)
CHARLES ALARIO)
Defendant)
)

FIRST AMENDED VERIFIED COMPLAINT

Plaintiff, Donald Conway, Chapter 11 Trustee of Buffets of Bensalem, LLC,
("Plaintiff" or "Trustee"), with offices on Quakerbridge Road, Hamilton, NJ, by way of
Complaint, alleges:

PARTIES AND JURISDICTION

1. By an Order entered on December 30, 2009, by the United States Bankruptcy Court for the District of New Jersey (the "Court"), approved the appointment of the Plaintiff as Trustee to administer the Chapter 11 estate of Buffets of Bensalem, LLC (the "Debtor"). The Debtor's estate is jointly administered with a number of affiliated entities for which Plaintiff also serves as trustee.

2. Also pending before this Court, and also jointly administered under the captioned lead case by Order dated February 4, 2009, is the Chapter 11 proceeding of Bensalem Buffets Realty, LP (“Realty”). Pursuant to an Order entered February 18, 2009, the Court approved Plaintiff’s appointment as Trustee of Realty. As such, Plaintiff is familiar with the facts contained herein and, if required, would testify to the same.

3. The principals of the Debtor and Realty are Charles Alario and his brother Frank Alario.

4. Charles Alario was the active operator of the Debtor and Realty. Frank Alario is a physician and was a passive member of the Debtor and Realty.

5. The Debtor owns and the Trustee operates a Golden Corral Restaurant at 1465 Street Road in Bensalem, PA (the “Restaurant”). Realty owns the real estate upon which the Debtor operates and the Restaurant pays rent to Realty.

6. The Trustee, pursuant to 11 U.S.C. §363, is in the process of selling the Golden Corral restaurant and the land upon which is located to generate a distribution to creditors of both estates.

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §157 and 28 U.S.C. §1334.

8. This is a core proceeding as defined in 28 U.S.C. §157.

FACTS AND ALLEGATIONS

9. The Debtor manages its restaurant operations pursuant to a franchise agreement between Charles Alario and Golden Corral Franchising Systems, Inc., dated May 25, 2007 (the “Agreement”). A true copy of the Agreement is attached as Exhibit A.

10. The Agreement is a valuable asset of the Debtor's estate and is an integral part of the administration of both the Debtor's estate and the Realty estate.

11. Charles Alario acquired the Agreement for and on behalf of the Debtor to support the Debtor's construction and operation of a Golden Corral Restaurant.

12. Charles Alario used the Agreement to enable him to borrow millions of dollars to build and furnish the Restaurant and to obtain credit from various trade creditors and servicers.

13. Frank Alario was unaware that Charles Alario retained sole ownership of the Agreement and failed to take title in the name of the Debtor.

14. Frank and Charles Alario are involved in litigation against each other wherein Frank has alleged that Charles forged Frank and Frank's wife's names to various loan documents and guarantees, thereby committing Frank and his wife to millions of dollars of indebtedness.

15. On information and belief, Charles Alario forged his mother's name on various mortgages to collateralize loans to him or his companies, without his mother's or the family's knowledge.

16. Charles Alario formed at least four companies whose alleged purpose was to own and operate a Golden Corral restaurant on Street Road in Bensalem, PA. He then used those companies to borrow monies to finance the purchase and/or lease of restaurant equipment that, allegedly, would be used at the Restaurant.

17. Charles Alario formed said companies for the sole purpose of obtaining fraudulent financing for equipment alleged by Charles Alario to be delivered to and used by the Debtor.

18. For example, Charles Alario formed Pennsylvania Buffets, LLC and listed himself as the sole shareholder. Pennsylvania Buffets, LLC borrowed approximately \$370,000 from Butler Capital Corporation and in excess of \$1,000,000.00 from CoActiv Capital Partners to place equipment at the Restaurant.

19. After Pennsylvania Buffets, LLC defaulted on the leases/loans Charles Alario caused a Chapter 11 petition in bankruptcy to be filed on behalf of Pennsylvania Buffets, LLC, in the Southern District of New York. In connection with the filing, Charles Alario certified that Pennsylvania Buffets, LLC owned and operated a Golden Corral restaurant at 1465 Street Road, Bensalem, PA when he knew that all receipts from the operation of said restaurant were being, and had been, deposited into accounts owned by the Debtor; that the Debtor filed tax returns disclosing its ownership of the Restaurant; and that the Debtor financed its own equipment for the Restaurant.

20. In addition to funds borrowed by these shell entities, Charles Alario caused the Debtor to pledge its equipment to collateralize leases and loans in excess of \$4,000,000.00.

21. Finally, additional Alario-owned entities, which also owned and operated Golden Buffet restaurants at various locations, borrowed funds to be collateralized by equipment to be used by the Debtor at the Restaurant.

22. The claims of the various entities asserting liens on the Debtor's equipment approximate \$8,000,000.00.

23. According to the franchisor, a Golden Corral restaurant similar to the Debtor's can be fully equipped for approximately \$850,000.00.

24. Proofs of claim filed against the Debtor to date total nearly \$5,700,000.00, \$700,000.00 of which are filed as unsecured claims. PACA claims total nearly \$30,000.00.

25. The Agreement made it possible for Charles Alario to own and operate the Golden Corral restaurant through the Debtor. The Agreement and the restaurant provide value to each other. One has no value without the other.

26. Without the Agreement, the Debtor and Charles Alario would have been unable to incur the large amounts of debt that has accumulated in this case.

27. Allowing Charles Alario to retain ownership of the Agreement will perpetuate the fraud he committed on the creditors of the Debtor and Realty by over-encumbrancing the assets of the Debtor.

28. Transferring ownership of the Agreement to the Trustee will provide a larger distribution to creditors and is in the best interest of the Debtor, Realty, and their estates.

29. At the beginning of his administration of this case, the Trustee, through his counsel, requested that Charles Alario turnover ownership of the Agreement to the Trustee and Charles Alario agreed to do so.

30. Counsel for the Trustee prepared an Assignment of the Agreement and forwarded it to Charles Alario at his e-mail address of learn59@aol.com pursuant to Charles Alario's instructions.

31. Charles Alario never executed the Assignment.

32. At his deposition, Charles Alario testified he had no recollection of the Assignment.

SERVICE ISSUES

33. The Trustee's past attempts to personally serve Charles Alario have been unsuccessful.

34. At the deposition of Charles Alario, taken by the Trustee's counsel, Charles Alario testified that he lived at 8 Nantone Court in Colts Neck, NJ.

35. At the deposition of Janet Alario, wife of Charles Alario, she testified she and Charles lived at 8 Nantone Court, Colts Neck, NJ.

36. Nancy Alario, sister-in-law of Charles Alario and receiver of the Debtor who caused the Chapter 11 petition to be filed, lives across the street from 8 Nantone Court, Colts Neck, NJ and informed the Trustee that Charles and Janet Alario still live at 8 Nantone Court, Colts Neck, NJ.

37. 8 Nantone Court, Colts Neck, NJ is the corporate address that appears on most, if not all, of the formation documents for the corporations formed by Charles Alario and set forth herein.

38. The Trustee and his counsel have sent messages to Charles Alario at the above-listed e-mail address and received replies to those e-mails from Charles Alario.

ACTIONS TAKEN BY

GOLDEN CORRAL FRANCHISING SYSTEMS, INC.

39. Golden Corral Franchising Systems, Inc. (the “Franchisor”) sent a Notice of Termination of Franchise Agreement to Charles Alario, dated November 24, 2009, via certified mail and return receipt requested and UPS Priority Overnight mail. See Exhibit B.

40. The Agreement provides, among other things, for termination in the event of a default, without opportunity to cure, effective fifteen days after service of notice of termination on the franchisee.

42. Charles Alario received the Notice of Termination on December 1, 2009 (see Exhibit C).

43. The Franchisor terminated the Agreement based upon Charles Alario's loss of his right to occupy the restaurant premises and his failure to continue operations and abandonment of the franchised business.

44. In accordance with its terms, the Agreement will be terminated effective December 16, 2009.

45. The Franchisor will issue a new franchise agreement to the Trustee, which franchise agreement is assignable to a person or entity approved by the Franchisor.

WHEREFORE, the Trustee/Plaintiff requests entry of an Order

- (i) directing Charles Alario to turnover all of his ownership rights in the Agreement, if any, to Donald Conway, Chapter 11 Trustee of Buffets of Bensalem, LLC;
- (ii) providing Mr. Conway with the authority to sign, on behalf of Charles Alario, assignment documents and any additional documents that may be required to effectuate said turnover;
- (iii) allowing service of this Verified Complaint and the accompanying Order to Show Cause on Charles Alario by attaching copies to the front door of his residence at 8 Nantone Court, Colts Neck, NJ and by e-mailing copies to his last known e-mail address; and
- (iv) granting such other and further relief as the Court may deem just and equitable.

Markowitz Gravelle, LLP,
Attorneys for Trustee/Plaintiff

By /s/ Christine M. Gravelle
Christine M. Gravelle, Esq.

VERIFICATION

Donald Conway, Trustee of the Chapter 11 Estate of Buffets of Bensalem, LLC,
hereby certifies and verifies as follows:

1. I have read the foregoing First Amended Verified Complaint and I assert that the valid factual allegations contained therein are true and correct to the best of my knowledge, information and belief.

2. I hereby certify that the foregoing statements made by me are true. I am fully aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: 12/8/09

/s/Donald Conway
Donald Conway, Chapter 11 Trustee