

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
GIORGIO MEDICI,)	CASE NO. 12-67154-bem
)	
Debtor.)	

JEFFREY K. KERR, as Chapter 7 Trustee,)	
)	
Plaintiff,)	
)	ADVERSARY PROCEEDING
v.)	NO. _____
)	
BELLAGIO, LLC,)	
)	
Defendant.)	

COMPLAINT TO AVOID AND RECOVER FRAUDULENT TRANSFERS

COMES NOW Jeffrey K. Kerr, in his capacity as Chapter 7 Trustee (“Plaintiff”) for the bankruptcy estate of Giorgio Medici (the “Debtor”), and files this Complaint to Avoid and Recover Fraudulent Transfers against Bellagio, LLC. In support of the claims raised in the Complaint, Plaintiff alleges the following:

I. PARTIES, JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334(b) and the Standing Order of Reference of the United States District Court for the Northern District of Georgia. This is a core proceeding under 28 U.S.C. §157(b)(2)(H) & (O).
2. Venue is proper in this district in accordance with 28 U.S.C. § 1409(a).

3. This case was initiated by the filing of a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code on July 6, 2012 (the "Petition Date"). Jeffrey K. Kerr was appointed Chapter 7 trustee for bankruptcy estate of the Debtor.

4. Bellagio, LLC ("Bellagio") is a Nevada limited liability company. Bellagio may be served pursuant to Federal Rule of Bankruptcy Procedure 7004 through its Resident Agent, CSC Services of Nevada, Inc., 2215-B Renaissance Drive, Las Vegas, NV 89119.

II. THE DEBTOR'S REAL ESTATE SPECULATION AND FINANCIAL COLLAPSE

5. Prior to the Petition Date, the Debtor, either individually or through entities that he owned or controlled, heavily speculated in various real estate ventures.

6. The Debtor's real estate ventures, and accordingly the Debtor's financial condition, began to collapse no later than 2008. The Debtor's individual income tax return for 2008 shows that the Debtor reported losses from his real estate activities of \$990,461.00. Income from all other sources totaled only \$44,048.00.

7. Related to Debtor's real estate ventures and in December of 2008, the Federal Deposit Insurance Corp and related parties initiated an action in the Superior Court, Gwinnett County, Georgia (Case No. 08-C-20827-S6) against the Debtor seeking to recover in excess of two million dollars. Numerous other suits, which either resulted in judgments as set forth below or were stayed by the Debtor's bankruptcy filing, followed.

8. On January 22, 2010, Quailwood Homeowners Association Inc. obtained a judgment against the Debtor in the amount of \$44,179.09 arising out of Civil Action No. 09-C-13321-S3, Superior Court, Hall County, Georgia. A writ of *fieri facias* evidencing such judgment was filed

with the clerk of Superior Court of Hall County, Georgia on February 22, 2010 at Book 330, Page 623.

9. On February 24, 2010, SunTrust Mortgage, Inc. filed a Deed Under Power of Sale with the clerk of Superior Court, Fulton County, Georgia at Deed Book 48811, Page 540 evidencing the foreclosure sale of the Debtor's principal residence at 4201 Regency Court, Atlanta, GA for the price of \$2,720,000.00.

10. On April 15, 2010, Gwinnett Community Bank obtained a judgment against the Debtor in the amount of \$2,769,861.60 arising out of Civil Action No. 09-C-13321-S3, Superior Court, Gwinnett County, Georgia. A writ of *feri facias* evidencing such judgment was filed with the clerk of Superior Court of Gwinnett County, Georgia on April 16, 2010 at Book 2922, Page 291.

11. On June 16, 2010, Gwinnett Community Bank obtained a judgment against the Debtor in the amount of \$4,680,041.76 arising out of Civil Action No. 09-C-13437-S1, Superior Court, Gwinnett County, Georgia. A writ of *feri facias* evidencing such judgment was filed with the clerk of Superior Court of Gwinnett County, Georgia on October 28, 2010 at Book 3097 Page 65.

12. On June 16, 2010, Gwinnett Community Bank obtained a judgment against the Debtor in the amount of \$570,653.83 arising out of Civil Action No. 09-C-13437-S1, Superior Court, Gwinnett County, Georgia. A writ of *feri facias* evidencing such judgment was filed with the clerk of Superior Court of Gwinnett County, Georgia on October 28, 2010 at Book 3097 Page 66.

13. On September 10, 2010, Multibank 2009-1 RES-ADC Venture, LLC obtained a judgment against the Debtor in the amount of \$2,825,429.61 arising out of Civil Action No. 08-

C-20827-S6, Superior Court, Gwinnett County, Georgia. A writ of *feri facias* evidencing such judgment was filed with the clerk of Superior Court of Gwinnett County, Georgia on November 3, 2010 at Book 3100 Page 237.

14. When the Debtor filed his amended schedules (Doc. No. 20) on July 31, 2012, he listed debts in excess of thirty-six million dollars (non-inclusive of numerous claims that are listed as being of an unknown amount) as contrasted with assets of only \$153,800.

III. THE DEBTOR'S GAMBLING ACTIVITY AT BELLAGIO

15. The Debtor began gambling on a regular basis at Bellagio no later than March 2008.

16. On or about March 27, 2008, the Debtor applied for credit from Bellagio in the form of markers. The Debtor's markers at Bellagio originally totaled \$75,000. The Debtor periodically paid the markers and received increases of available credit.

17. Related to his credit relationship with Bellagio and on approximately August 25, 2008, the Debtor provided Bellagio with a post-dated check of \$300,000. The Debtor requested multiple times that the \$300,000 check not be cashed. Said check ultimately proved to be valueless.

18. On September 12, 2008, and September 28, 2008, the Debtor executed and delivered to Bellagio nine markers totaling \$300,000 that were dated December 24, 2008.

19. On or about December 24, 2008, the markers of \$300,000 (the "Unpaid Markers") were deposited with The Brand Banking Co., but were subsequently returned as uncollectable with the designation "AC."

20. On April 30, 2009, Bellagio filed a complaint against the Debtor in the District Court, Clark County, Nevada seeking a judgment of \$300,000 related to the Unpaid Markers.

21. The Debtor subsequently made payment to Bellagio of \$22,079.00 thereby reducing the indebtedness owing under the Unpaid Markers.

22. On December 21, 2009, the District Court for Clark County, Nevada (Case No. A-09-589161-C) entered judgment in favor of Bellagio and against Debtor in the principal amount of \$277,921 (the "Judgment"), plus interest at the rate of 18% until paid in full, attorneys' fees of \$3,500, and costs of \$819.20.

23. On about December 26, 2009, the Debtor made a payment to Bellagio of \$27,079.00 for purposes of application against the Judgment

24. Bellagio and the Debtor subsequently entered into settlement negotiations regarding the amount remaining due under the Judgment.

25. Related to such negotiations, on or about April 2, 2010, the Debtor informed a representative of Bellagio that he was considering filing bankruptcy.

26. On or about April 14, 2010, Bellagio agreed to accept \$165,000.00 from the Debtor in full satisfaction of Judgment, which resulted in a forgiveness of debt of at least \$85,842.00.

27. In approximately October 2011, the Debtor began regularly gambling at Bellagio again. When the Debtor began gambling again and despite Bellagio's previous experiences with the Debtor, Bellagio made no effort to review the Debtor's financial condition, the source of the funds transferred to it, or existing claims against the Debtor. Had it done so, Bellagio would have become aware of the existence of judgments against the Debtor totaling in excess of \$10,000,000.00 that were matters of public record no later than November 3, 2010.

IV. BELLAGIO TRANSFERS

28. Between October 7, 2011 and June 1, 2012, the Debtor transferred \$258,400 (the

“Transfers”) to Bellagio as detailed on Exhibit “A” attached hereto.

29. After the Transfers were made, Bellagio exercised dominion and control over the transferred funds.

30. The Transfers to Bellagio are avoidable and recoverable by Plaintiff. Additionally, all other transfers to Bellagio are avoidable and recoverable even if not specifically referenced herein and notwithstanding the fact that such Transfers may exceed the amount specifically identified herein.

COUNT I

AVOIDANCE AND RECOVERY OF THE TRANSFERS UNDER 11 U.S.C. §§ 548(a)(1)(A) and 550

31. Plaintiff incorporates by reference paragraph nos. 1 through 30 as if fully set forth herein.

32. The Transfers were transfers of interests of the Debtor in the property.

33. The Transfers were made within two years of the Petition Date.

34. The Debtor was insolvent at the time the transfers were made.

35. The Transfers were made with the actual intent to hinder, delay or defraud entities which the Debtor was or became, on or after the date that the Transfers were made, indebted.

36. Bellagio was the initial transferee of the Transfers.

37. Bellagio did not receive the Transfers in good faith.

38. The Transfers are avoidable pursuant to § 548(a)(1)(A) of the Bankruptcy Code and are recoverable from Bellagio pursuant to § 550 of the Bankruptcy Code.

COUNT II

**AVOIDANCE AND RECOVERY OF THE TRANSFERS UNDER 11 U.S.C. §§
548(a)(1)(B) and 550**

39. Plaintiff incorporates by reference paragraph nos. 1 through 38 as if fully set forth herein.

40. The Transfers were transfers of interests of the Debtor in the property.

41. The Transfers were made within two years of the Petition Date.

42. The Debtor received less than reasonably equivalent value for the Transfers.

43. On the dates of the Transfers, the Debtor either was insolvent, was engaged in a business for which any property remaining with the Debtor was unreasonably small capital, or intended to incur, or believed that he would incur, debts that would be beyond his ability to pay as such debts matured.

44. Bellagio was the initial transferee of the Transfers.

45. The Transfers are avoidable pursuant to § 548(a)(1)(B) of the Bankruptcy Code and are recoverable from Bellagio pursuant to § 550 of the Bankruptcy Code.

WHEREFORE, Plaintiff requests that the Court enter judgment in his favor and against Bellagio:

- a. Under Count I, avoiding the Transfers to Bellagio and awarding recovery to Plaintiff in an amount not less than \$258,400; and
- b. Under Count II, but only to the extent that relief is not granted under Count I, avoiding the Transfers to Bellagio and awarding recovery to Plaintiff in an amount not less than \$258,400;

- c. For pre-judgment and post-judgment interest at the legal rate on the amount of Plaintiff's judgment as allowed under 28 U.S.C. §1961 from the date of this Complaint;
- d. For the costs, expenses and fees incurred by Plaintiff in prosecuting his Complaint;
and
- e. Providing for such other relief as the Court may deem just and proper.

Respectfully submitted, this 30th day of June, 2014.

LAMBERTH, CIFELLI, STOKES, ELLIS
& NASON, P.A.
Attorneys for the Trustee

By: /s/ Christopher D. Phillips
Stuart F. Clayton, Jr.
Georgia Bar No. 129743
sclayton@lcsenlaw.com
Christopher D. Phillips
Georgia Bar No. 575913
cphillips@lcsenlaw.com

3343 Peachtree Road, N.E.
East Tower, Suite 550
Atlanta, Georgia 30326-1022
(404) 262-7373

EXHIBIT "A"

DETAIL OF TRANSFERS

Date	Amount	Comment
10/7/2011	5,900.00	Wire
10/20/2011	50,000.00	Wire
3/8/2012	20,000.00	Wire
4/16/2012	102,500.00	Wire
5/7/2012	50,000.00	Wire
5/28/2012	20,000.00	Cage Deposit
6/1/2012	10,000.00	Wire
Total	<u>258,400.00</u>	