

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:) Chapter 11
)
SENTINEL MANAGEMENT, INC.) Case No. 07 B 14987
)
Debtor.) Judge John H. Squires

**LEE B. STERN TRUSTS’
REPLY TO THE OMNIBUS OBJECTION OF
THE AD HOC COMMITTEE OF SEG 1 CUSTOMERS, ET AL.¹**

LEE B. STERN EPSILON TRUST, LEE B. STERN DELTA TRUST, LEE B. STERN REVOCABLE TRUST, and LBS LIMITED PARTNERSHIP HOUSE FUNDS ACCOUNT (collectively, the “Stern Trusts”), by and through its counsel, Schiff Hardin LLP, hereby submit this reply regarding the Lee B. Stern Trusts’ Motion to Dismiss Claimants Objections to Claims 27, 28, 29, and 30, and Objectors’ response brief thereto (the “Omnibus Response”) submitted by the Ad Hoc Committee of Seg 1 Customers, Penson GHCO, Penson Financial Futures, Inc., Farr Financial, Inc. and IPGL Ltd. (collectively, the “Objecting Claimants”). In support of their reply, the Stern Trusts state as follows:

INTRODUCTION

1. On or about October 11, 2007, pursuant to section 501(a) of the Bankruptcy Code, the Stern Trusts properly filed Proofs of Claim (the “Claims”) in the Debtor’s case in the amount of \$64,176.38.

¹ This reply brief will not address the standing issue, raised initially by the Trustee, which is the subject of most of the Objectors’ Omnibus Response. Instead, this reply will focus on the inadequacy of the objections pursuant to federal law, and in particular, bankruptcy law.

2. On or about October 14, 2008, the Objecting Claimants filed Objections to all of the Stern Trusts' Claims.

3. On or about November 6, 2008, the Trustee filed a Motion to Dismiss the Objections to the Proofs of Claim.

4. On or about November 13, 2008, the Stern Trusts filed a Motion to Dismiss Claimants' Objections to Claims 27, 28, 29 and 30 (collectively, the "Claims") on the grounds that the objections were not properly plead and were brought in bad faith.

5. On or about December 4, 2008 the Objecting Claimants filed an Omnibus Response to the Stern Trusts Motion to Dismiss.

6. In the Omnibus Response, the Objecting Claimants fail to address the Stern Trusts allegations of bad faith. Additionally, the Objecting Claimants fail to amend their initial objections to comply with federal notice pleading rules that require factual allegations of the alleged preference amounts received by the Stern Trusts.

7. Furthermore, the Objecting Claimants have failed to allege that the debtor was insolvent, as required to allege and recover a preference under section 547(b) of the United States Bankruptcy Code (the "Bankruptcy Code"). 11 U.S.C. § 547(b).

8. As such, this Court should dismiss the Objections because they are still not properly plead, were brought in bad faith, and do not allege the minimal requirements for avoidance of a preferential transfer under section 547(b) of the Bankruptcy Code.

I. The Objecting Claimants' Omnibus Response Not Only Failed to Respond to the Stern Trusts' Allegations of Bad Faith, but Actually Admitted that the Objections to the Claims are Punitive.

9. In our Motion to Dismiss, the Stern Trusts alleged that the Objecting Claimants did not have a good faith basis for objecting to the Claims as required by Federal Rule of Bankruptcy Procedure 9011. *See* Stern Motion to Dismiss, p. 7. *See also In re Atcall*, 284 B.R.

791, 800 (Bankr. E.D. Va. 2002) (holding that pursuant to Federal Rule of Bankruptcy 9011, “[o]bjections [to proofs of claim] must be made in good faith”).

10. The Objecting Claimants failed to address in their Response the allegations of bad faith raised in the Stern Motion to Dismiss. *See* Omnibus Response.

11. Instead, the Objecting Claimants admit that their Objections to the Claims are punitive in nature and intended to punish the Stern Trusts because they have not been sued by the Trustee, or, in the alternative, gain leverage with the Trustee. *See* Omnibus Response, p. 2 (stating that their claim objections are the necessary consequence of the adversary proceedings filed by the Trustee against the Seg 1 Claimants, and the failure of the Trustee to pursue alleged pre-petition distributions made to any customers of the Debtor other than certain Seg 1 customers).

12. Since the Objecting Claimants’ Omnibus Response failed to respond to allegations of bad faith, and now acknowledge that the Objections are punitive, the Objections should be dismissed. *In re Atcall*, 284 B.R. at 800 (determining that “it is not proper for a creditor to object to a proof of claim simply to obtain a greater distribution for himself”).

II. The Objecting Claimants Failed to Amend their Objections to Comport with Federal Notice Pleading Rules, and as such, the Objections are Not Sufficiently Plead and Should be Dismissed.

13. In our Motion to Dismiss, the Stern Trusts pointed out that the Objections were not sufficiently plead because they did not contain the requisite factual allegations, mainly the amounts of the alleged preferential transfers, or the dates upon which the Stern Trusts allegedly received such transfers. *See In re Hight*, 393 B.R. 484, 495 (Bankr. S.D. Tex. 2008) (holding “to properly object to a claim, the objector must present evidence sufficient to refute at least one of the allegations that is essential to the claim’s legal sufficiency”); *Bell Atlantic Corp. v. Twombly*,

127 S.Ct. 1955, 1964 (2007) (“federal pleading rules require the plaintiff to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests”).

14. To date, the Objecting Claimants have not amended their Objections to include the requisite factual allegations.

15. As such, the Objections should be dismissed because they still fail to provide the Stern Trusts with any factual basis to respond, and are not sufficiently plead as required by Federal Notice Pleading Rules.

III. The Objections Should be Dismissed Because They Failed to Allege the Minimal Requirements for Avoidance of a Preferential Transfer under Section 547 of the Bankruptcy Code.

16. Moreover, pursuant to Section 547 of the Bankruptcy Code, one of the requirements for the avoidance of a preferential transfer is that the transfer must be “made while the debtor was insolvent.” 11 U.S.C. 547(b)(3). While Section 547(f) specifically provides that the debtor is presumed to have been insolvent on and during the 90 days prior to the petition date, “the burden of proof remains on the trustee, as with other elements of a preference, to show insolvency at the time of transfer.” 4 COLLIER ON BANKRUPTCY ¶502.03[5]. *See also Lawson v. Ford Motor Co. (In re Roblin Indus., Inc.)*, 78 F.3d 30, 34 (2d. Cir. 1996) (stating that “trustee must satisfy its burden of proof of insolvency by a preponderance of the evidence”); *Arrow Elecs., Inc. v. Justus (In re Kaypro)*, 218 F.3d 1070, 1076 (9th Cir. 2000) (“To prove insolvency, the trustee must show by a preponderance of the evidence that the debtor’s liabilities exceeded its assets”).

17. The Objecting Claimants therefore bear the burden of proving, beyond a preponderance of the evidence, that the debtor was insolvent at the times of the alleged transfers – whatever those transfers may be (but regarding which the Objectors remain silent).

18. The Objecting Claimants, however, do not allege that the Debtor was insolvent anywhere in their Objection.

19. The Objecting Claimants have thus also failed to meet their burden of proof under Section 547(b)(3), and the Objections should be dismissed.

WHEREFORE, the Stern Trusts respectfully request that this Court deny and dismiss the Objecting Claimants' Objections to Claims 27, 28, 29, and 30, and award such other relief as this Court deems just and proper.

Dated: December 15, 2008

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