



SO ORDERED.

SIGNED this 04 day of December, 2006.

Dale L. Somers

Dale L. Somers
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In Re:

LAWRENCE JAMES BRUNGARDT, JR.,

DEBTOR.

**DARCY D. WILLIAMSON,
Chapter 7 Trustee,**

PLAINTIFF,

v.

**R. EDWARD ALLEN, TRUSTEE of the
LaMac Irrevocable Trust,**

DEFENDANT.

**CASE NO. 04-42369
CHAPTER 7**

ADV. NO. 06-7064

MEMORANDUM AND ORDER DENYING DEFENDANT'S MOTION TO DISMISS

This is an adversary proceeding commenced by the Chapter 7 Trustee to avoid the transfer of real property located in Ellis County, Kansas and to preserve the property for the benefit of the estate. The Plaintiff, Darcy D. Williamson, the Chapter 7 Trustee (hereafter Chapter 7 Trustee), appears by Darcy D. Williamson. R. Edward Allen, trustee of Defendant, the LaMac Irrevocable Trust, appears pro se, moving to dismiss the Complaint for failure to state a claim and lack of jurisdiction. There are no other appearances.

The Trustee's Complaint alleges the following. Prior to filing for bankruptcy, Debtor Brungardt transferred property in Ellis County, Kansas with an estimated value of \$72,000 to Defendant LaMac Irrevocable Trust for the sum of \$1.00. The Chapter 7 Trustee is contending that this transfer was a fraudulent conveyance, and seeks to avoid the transfer pursuant to 11 U.S.C. §§ 544 and 548¹ and K.S.A. 33-204 and -205 and to recover, preserve and turnover the property, or the value of such property, for the benefit of the estate pursuant to 11 U.S.C. §§ 550, 551, and 552.

In response to the Chapter 7 Trustee's complaint, the Defendant's trustee, R. Edward Allen, proceeding pro se, filed a Motion to Dismiss for failure to state a claim on which relief may be granted and lack of jurisdiction of the Bankruptcy Court to hear this matter. R. Edward Allen also objects to the adequacy of the service of process.

The Complaint clearly states a claim upon which relief may be granted. It identifies real property which was transferred by the Debtor prepetition and alleges in six separate counts the

¹ This case was filed before October 17, 2005, when most provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 become effective. All statutory references to the Bankruptcy Code are to 11 U.S.C. §§ 101 - 1330 (2004), unless otherwise specified. All references to the Federal Rules of Bankruptcy Procedure are to Fed. R. Bankr. P. (2004), unless otherwise specified.

elements required for recovery of the property for the benefit of the estate pursuant to the Code and the Kansas statutes cited in the Complaint. Whether the Trustee will be entitled to recover under one or more of these counts will be determined upon the merits and is not before the Court when ruling on a motion to dismiss. In addition, for similar reasons, the Court rejects as insufficient the allegation in the motion to dismiss that the Complaint should be dismissed because “Defendant has no knowledge of any actions upon the Debtor in bankruptcy and the transferor alleged in the complaint.”

The Court finds it has subject matter jurisdiction. The land in question is in Ellis County, Kansas, and is allegedly part of the bankruptcy estate of Debtor Lawrence Brungardt. This Court has jurisdiction over the Debtor’s bankruptcy case, the property of the bankruptcy estate, and this adversary Complaint pursuant to 28 U.S.C. § 157(a) and §§ 1334(a) and (b) and the Standing Order of the United States District Court for the District of Kansas that exercised authority conferred by § 157(a) to refer to the District’s Bankruptcy judges all matters under the Bankruptcy Code and all proceedings arising under the Code or arising in or related to a case under the Code. A proceeding to determine, avoid, or recover fraudulent conveyances is a core proceeding which this Court may hear and determine as provided in under 28 U.S.C. § 157(b)(2)(G). The Complaint also alleges matters relating to the administration of the estate and seeks an order to turnover property to the estate, which are core proceedings under 28 U.S.C. §§ 157(b)(2)(A) and (E).

The Court finds it has jurisdiction over the Defendant LaMac Irrevocable Trust. When moving to dismiss, Trustee R. Edward Allen states dismissal is required because “Defendant is domiciled in and a resident of the state of Texas.” Although this statement is ambiguous because it could be addressing

the domicile of the trustee or of the trust, domicile in Texas of either the trust or the trustee does not defeat jurisdiction.

Bankruptcy courts have authority to effectuate nationwide service of process and to thereby acquire jurisdiction over nonresidents. As provided in Bankruptcy Rule 7004(d),² applicable to all adversary proceedings, “The summons and complaint and all other process except a subpoena may be served anywhere in the United States.” Bankruptcy Rule 7004(f) then goes on to say, “If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons . . . in accordance with this rule . . . is effective to establish personal jurisdiction over the person of any Defendant with respect to a case under the Code or a civil proceeding arising under the Code, or arising in or related to a case under the Code.” Bankruptcy Rule 7004(b)(3) addresses the manner of service and reads, “[S]ervice may be made within the United States by first class mail postage prepaid . . . [u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process . . .” A trust is an unincorporated association, and service upon a trustee of a trust is proper service upon the trust.³

² Fed. Rule of Bankr. P. 7004(d) (such rules are hereafter referred to as Bankruptcy Rules). A proceeding to recover a transfer under 11 U.S.C. §§ 544 and 548 and to preserve the same for the benefit of the estate is an adversary proceeding governed by Part VII of the Bankruptcy Rules. Fed. Rule of Bankr. P. 7001.

³ *Revere Oil Co. v. Bank of Chillicothe*, 255 S.W. 219 (Tex. App. 1923) (holding service of a writ of garnishment upon a trustee is sufficient service on a trust estate, an association); see George Gleason Bogert & George Taylor Bogert, *Trusts and Trustees* § 870 (2d ed. 1995) (stating jurisdiction over the trustee or trust property of a particular trust is a matter governed by local statute or rule of civil

The Court obtained jurisdiction over the Defendant, LaMac Irrevocable Trust, by serving the trustee, R. Edward Allen. The Chapter 7 Trustee obtained from the Court a summons directed to “R. Edward Allen, trustee of the LaMac Irrevocable Trust” and mailed the summons and a copy of the Complaint by first class United States mail, postage prepaid to R. Edward Allen, Trustee of the LaMac Irrevocable Trust, PO Box 90457, Houston. Tx 77290-457. This method of service of the LaMac Irrevocable Trust complied with Bankruptcy Rule 7004((b)(3), quoted above. In accord with Bankruptcy Rule 7004(d), also quoted above, the summons could be served in Texas. Pursuant to Bankruptcy Rule 7004(f), service of the summons in accord with Rule 7004 established personal jurisdiction. The exercise of jurisdiction is consistent with the Constitution of the United States because of the Defendant trust’s contacts with Kansas arising from its ownership of Kansas real property which is claimed by the Chapter 7 Trustee.

Finally, as the Chapter 7 Trustee points out in her response to the Defendant’s motion to dismiss, pursuant to Bankruptcy Rule 9010 and Local Rule 9010.1,⁴ a corporation, partnership or any entity other than an individual may appear and participate only through an attorney in an adversary proceeding or contested matter. R. Edward Allen has not signed the motion to dismiss or his reply brief as attorney for the Defendant and has not otherwise informed the Court that he has been admitted to practice law in Kansas or any other state. R. Edward Allen is not a proper person to move to dismiss the Complaint against the LaMac Irrevocable Trust.

practice or procedure and is usually accomplished by personal service on the trustee in the state involved).

⁴ Bankr. D. Kan. L.R.9010.1.

For the forgoing reasons, Defendant's Motion to Dismiss is denied.

IT IS SO ORDERED.

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