

The United States Bankruptcy Court for the District of Maryland allowed a Chapter 7 Trustee additional time to compel Bankruptcy Rule 2004 discovery after initiating an adversary proceeding when the Court denied in part and granted in part motions to dismiss the complaint filed by 4 of the 53 defendants.

***Roger Schlossberg v. Steven F. Madeoy, et al. (In re Madeoy)*, 2015 Bankr. LEXIS 2529 (Bankr. D. Md. July 30, 2015).**

Summary by Marissa K. Lilja, Tydings & Rosenberg LLP

In the adversary proceeding *Roger Schlossberg v. Steven F. Madeoy, et al.*, Roger Schlossberg, the Chapter 7 Trustee (the “Trustee”), filed a complaint against the debtor, Steven F. Madeoy (the “Debtor”), and 52 other defendants, including the Debtor’s wife and various business associates. The complaint consisted of 22 counts and alleged a large scheme of fraudulent transfers and activities, both pre-petition and post-petition, with the intent to hide money and defraud creditors. In this Opinion, the Honorable Thomas J. Catliota of the U.S. Bankruptcy Court for the District of Maryland considered motions to dismiss filed by 4 of the 53 defendants, and denied in part and granted in part the motions. The Court granted the Trustee additional time to resolve disputed Rule 2004 discovery issues that were not resolved in the main case prior to filing the adversary proceeding at the statute of limitations deadline. The Court then granted additional time after the discovery disputes are resolved for the Trustee to amend his complaint.

In his complaint, the Trustee alleges that the Debtor engaged in a fraudulent scheme to shelter approximately \$4.5 million in assets from the reach of the Trustee and creditors of the estate. *Madeoy* at *4-*5. The Debtor filed a voluntary petition for Chapter 7 Bankruptcy on December 21, 2012, and the facts, as alleged in the complaint, explain the Debtors business associations and activities from 2001 until present, including post-petition activities, paying special attention to the transfers made to the Debtor’s wife and her living trust, and other select defendants. *Id.* at *8-*18. Four defendants filed motions to dismiss various counts of the complaint for failure to state a claim as required by Fed. R. Civ. P. 12(b)(6) and for failure to plead fraud with the required particularity of Fed R. Civ. P. 9(b), as made applicable to adversary proceedings by Fed. R. Bank. P. 7012 and 7009. Rather than defend the sufficiency of the complaint, the Trustee primarily asserted that the defendants “stonewalled” his attempts to receive the pertinent information by failing to produce requested documents in response to his Bankruptcy Rule 2004 discovery requests. *Id.* at *6.

The Court considered the Trustee’s arguments that he could rely on (1) a liberal and relaxed construction of Rule 9(b) when the plaintiff is a trustee; and (2) that the defendants’ failure to completely respond to discovery requests hindered the Trustee’s ability to plead certain counts with specificity. *Id.* at *21-*23. As a preliminary matter, the Court granted the Trustee 21 days to bring motions to compel outstanding discovery. *Id.* at *24. The Court determined this was appropriate because the Trustee was forced to initiate the adversary proceeding prior to resolving ongoing discovery disputes because of an approaching statute of limitations. *Id.*

Next, the Court examined the sufficiency of the complaint and noted that many of the counts were conclusory and did not specify which defendants were implicated by each count. *Id.* at *25. Because the Court already determined that it would allow the Trustee additional time to complete discovery, it identified only the counts that already plainly stated a claim against certain defendants. After carefully analyzing most of the counts, the Court found 9 counts sufficiently stated claims against certain defendants, and dismissed the remaining counts without prejudice. *Id.* at *26-*51. The Court granted the Trustee 21 days from the entry of an order resolving the discovery disputes to file an amended complaint. *Id.* at *51.