Docket #0021 Date Filed: 2/26/2016

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

In re: TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., TelexFree.	Chapter 11 Cases 14-40987-MSH 14-40988-MSH 14-40989-MSH Jointly Administered
STEPHEN B. DARR AS TRUSTEE OF THE ESTATES OF TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., Plaintiffs, v. RITA DOS SANTOS, INDIVIDUALLY AND AS PUTATIVE CLASS REPRESENTATIVE, AND MARIA MURDOCH, ANGELA BATISTA JIMENEZ, ELISANGELA OLIVEIRA AND DIOGO DE ARAUGO, AS PUTATIVE CLASS REPRESENTATIVES, Defendants.	Adversary Proceeding No. 15-04055

AMENDED COMPLAINT

Introduction

Stephen B. Darr, as he is the Trustee (the "Trustee") of the Chapter 11 estates ("Estates") of TelexFree, LLC, TelexFree, Inc. and TelexFree Financial, Inc. (collectively, the "Debtors), brings this action against the Defendant, Rita Dos Santos, individually and as putative plaintiff class representative ("Dos Santos"), and Defendants, Maria Murdoch, Angela Batista Jimenez,

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Elisangela Oliveira and Diogo DeAraugo, as Putative Class Representative ("Murdoch") (hereinafter, Dos Santos and Murdoch collectively "Defendants"), for violating the automatic stay on the basis of their prosecution of certain claims characterized as Unjust Enrichment Claims against certain individuals and a class of individuals. The Trustee also seeks to enjoin the Defendants from prosecuting unjust enrichment claims against certain named individuals who they characterize as "Net Winners" or "Top-Level Promoters" (collectively, "Unjust Enrichment Claims").

The Trustee asserts that the Unjust Enrichment Claims assert substantially the same claims and seek to recover the same property that the Trustee seeks to recover in the class actions he has commenced. Accordingly, Count I of this Complaint seeks a declaration that prosecution of the Unjust Enrichment Claims is a violation of the automatic stay imposed by § 362 of the Bankruptcy Code such that prosecution of the claims constitutes an exercise of control over property of the Debtors' Estates, being the Estates' right to recover the same monies as fraudulent transfers and/or preferences made as part of Triangular Transactions (as hereinafter defined). Court II of the Complaint seeks an injunction pursuant to Bankruptcy Code § 105(a) to enjoin and restrain the Defendants from prosecuting the Unjust Enrichment Claims.

The Trustee has commenced two Defendant Class Actions seeking to recover transfers made to Participants in the Debtors' scheme who are "Net Winners" (as that term is defined by Order of this Court dated January 26, 2016 [Document # 687]) on the basis that the transfers, including those made in a Triangular Transaction, are fraudulent transfers and/or preferential payments pursuant to §§ 547, 548 of the Bankruptcy Code. The payments made in connection with a Triangular Transaction that the Trustee seeks to recover are the same payments that the Unjust Enrichment Claims of the Defendants seek to recover.

Necessary elements to allowance of the Trustee's request for injunctive relief are (1) a determination that inter-participant transfers of property pursuant to a Triangular Transaction constitute transfers of property of the Debtors' Estates, and (2) prosecution of the Unjust Enrichment Claims is an exercise of control over property of the Debtors' Estates.

Parties

1. The Plaintiff is Stephen B. Darr, as he is the duly appointed and acting Trustee of the Chapter 11 Estates of TelexFree, LLC, TelexFree, Inc. and TelexFree Financial, Inc., who has a usual place of business within this District.

2. The Defendants, Rita Dos Santos, Maria Murdoch, Elisangela Oliveira and Diogo DeAraugo, are individuals who reside in Massachusetts within this District; the Defendant Angela Batista Jimenez is an individual who resides in Las Vegas, Nevada (collectively "Defendants").

3. The Defendants assert to be representative of Participants who lost money as a result of paying money as part of a Triangular Transaction to another Participant who they generally characterize as "Net Winner" or "Top–Level Promoters."

Jurisdiction

4. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334(b). This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

5. Venue in this district is proper pursuant to 28 U.S.C. § 1409.

Background

6. On April 13, 2014 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code with the Bankruptcy Court for the District of Nevada.

7. On May 6, 2014, the Nevada Bankruptcy Court, acting on a motion by the Securities and Exchange Commission, Ordered that the cases be transferred to the Bankruptcy Court for the District of Massachusetts. The cases were transferred to this District on May 9, 2014.

8. On May 30, 2014, this Court allowed the motion of the United States Trustee to appoint a Chapter 11 Trustee. The Trustee was appointed on June 6, 2014.

Ponzi/Pyramid Scheme

9. The Debtors operated a massive Ponzi and pyramid scheme, which involved as many as 1,900,000 participants ("Participants") from multiple countries, under the guise of a "multi-level marketing" company with its headquarters in Marlborough, Massachusetts. The Debtors represented themselves as being in the business of selling telephone service plans that use "voice over Internet" ("VoIP") technology. However, the sale of VoIP constituted only a minor portion of their business; the Debtors' actual business was the recruitment of Participants.

10. From April 2012 to April 2014, individuals throughout the world, including many Participants of the Hispanic, Brazilian and Dominican immigrant communities in the United States, purchased membership plans with a transaction value of approximately $3,000,000,000. The memberships promised substantial returns – 200% per year or more – for becoming "promoters" of the business. The Debtors promised to pay Participants for placing ads on obscure classified ad sites on the internet and recruiting other Participants to do the same.

11. The basic features of the Debtors' membership program had all the hallmarks of a Ponzi and pyramid scheme: (1) Participants were promised unusually high returns – over 200% per year – for doing virtually nothing except posting meaningless internet ads; (2) Participants were promised bonuses if they recruited new Participants, who would do virtually nothing except post ads and recruit new Participants (and so on and so on); and (3) while there were some VoIP plans sold, Participants did not have to sell the plans in order to receive redeemable credits. Because Participants were strongly encouraged to recruit new Participants and were not required to sell the VoIP plans, the Debtors were using funds from later Participants to pay earlier Participants.

12. On November 25, 2015, the Court, on motion by the Trustee and after notice and hearing, entered an Order, as amended on December 21, 2015, finding that the Debtors were engaged in a Ponzi scheme and that this ruling was the law of the case in each of the jointly administered cases.

13. On January 26, 2016, the Bankruptcy Court entered an Order finding, in part:

(i) In determining the amount of claims of Participants, any claim or portion of claim based upon accumulated credits in a Participants' User Accounts as of the Petition Date shall be disallowed;

(ii) The claim amounts of Participants shall be determined on a Net Equity basis, which shall be defined as follows: the amount invested by the Participant into the Debtors' scheme, including amounts paid pursuant to Triangular Transactions, less amounts received by the Participant from the Debtors' scheme, including amounts received pursuant to Triangular Transactions.

(vi) The foregoing findings and conclusions shall be applicable for all purposes in these proceedings.

Trustee's Avoidance Actions

14. Each time that a Participant purchased a membership plan or VoIP Package, the Participant established an account with the Debtors (the "User Account") which recorded the Participant's transactions with the Debtors, including payments of invoices, accumulation of credits, bonuses, and commissions, use of credits to satisfy invoices, and cash receipts.

15. Invoices issued by the Debtors to Participants for the purchase of a membership plan could be satisfied in one of two ways. Participants could satisfy the invoice by payment in cash to the Debtors, or Participants could use their accumulated credits in one User Account to satisfy an invoice for a membership plan sold to a new User Account, either for him/herself or for another Participant.

16. In the case of a Participant satisfying his/her own invoice by payment in cash to the Debtors, the process worked generally as follows:

(i) The Participant established an online account;

(ii) The Debtors' database recorded the data entered for the new Participant and the identity of the recruiting Participant, and assigned an identification number to the new User Account;

(iii) The Debtors recorded the purchase, issued a numbered invoice, and marked the invoice as 'pending';

(iv) The new Participant could pay the invoice by cash, check, cashier's check, wire transfer, or through a third-party online payment processing account. When the invoice was paid, the Debtors would update the invoice;

(v) The new Participant could then start building a pyramid underneath the newly created User Account by recruiting other members (or by purchasing new User Accounts themselves) and generating bonuses and commissions.

17. A Participant could monetize accumulated credits by recruiting a new Participant using his/her accumulated credits to satisfy the invoice issued by the Debtors to the new

Participant for the purchase of a membership plan, and the new Participant paid the membership fee to the recruiting member, rather than to the Debtors (hereinafter a "Triangular Transaction").

18. In the case of a new User Account being opened with the use of accumulated credits in another User Account, the process worked, generally, as follows:

(i) A Participant created his/her online account, or used his/her existing account information, to establish a new User Account;

(ii) The Debtors' database recorded the details entered by the new Participant and assigned an identification number to the Participant's new User Account;

(iii) The Debtors recorded the purchase, issued an invoice to the Participant's new User Account, and marked the invoice as 'pending';

(iv) The new Participant forwarded the invoice to the recruiting Participant, who satisfied the invoice with accumulated credits in the existing User Account;

(v) The new Participant paid the invoice amount to the recruiting Participant (in those cases where there were two separate Participants involved).

19. A Triangular Transaction is a single transaction which is completed at the conclusion of a series of interdependent steps.

20. The substantive result of the Triangular Transaction is that funds otherwise payable to the Debtors from Participants for the purchase of membership plans were paid to the recruiting Participants, who in turn satisfied the invoice issued by the Debtors to the new Participant by reducing the recruiting Participant's accumulated credits.

21. The money paid by a new Participant to an existing Participant constitutes property of the Debtors, and the consummation of the Triangular Transaction results in a fraudulent transfer of the Debtors' property (e.g., cash from a new Participant) to an existing Participant in exchange for the Debtors' redemption of valueless credits.

22. In addition to being fraudulent transfers, to the extent that these Triangular Transactions were consummated within ninety days of the bankruptcy proceeding, the transfers

to recruiting participants constitute a preference to the Participant who was able to redeem credits in exchange for the cash payments. As such, the transfers are recoverable by the Estates and represent property of the Estates.

Defendants' Claim

23. On October 22, 2014, Dos Santos and others commenced an action in the United States District Court for the District of Massachusetts asserting various claims against, among others, the principals of the Debtors, five individuals alleged to be major promoters and conspirators with the principals, promoters, and a group of banks and payment processors, asserting claims for violation of M.G.L. c. 93A, and aiding and abetting violation of M.G.L. c. 93A (the "Consolidated Complaint"). The Consolidated Complaint was subsequently amended twice.

24. Among the claims asserted in the Consolidated Complaint and in the Amended Consolidated Complaints are claims for unjust enrichment against the named individuals.

25. On September 23, 2015, Dos Santos commenced an action in the United States District Court for the District of Arizona against the same defendants as named in the Second Amended Consolidated Complaint ("Arizona Action"). On October 21, 2015, the Arizona Action was transferred to the United States District Court for the District of Massachusetts.

26. The Arizona Action largely parallels the Second Amended Consolidated Complaint, except it was expanded to include request for certification of a class of Defendants who are Net Winners and received payments from other Participants, alleging that the "Direct Victim Payments to that class of Net Winners may be recovered on the basis that the New Winners were unjustly enriched by the Direct Victim Payments."

27. On February 24, 2016, Maria Murdoch, Angela Batista Jimenez, Elisangela Oliveira and Diogo DeAraugo, as Putative Class Representative commenced a civil action in the United States District Court for the District of Massachusetts (4:14-cv-40018) asserting claims against various individuals, asserting among its claims a claim for unjust enrichment (the "Murdoch Action"). (The Murdoch Action, the Consolidated Complaint and the Arizona Action shall be collectively referred to as the "Unjust Enrichment Claims.")

28. The payments subject to the Unjust Enrichment Claims are the same payments made in connection with Triangular Transactions which the Trustee is seeking to recover on behalf of all creditors of the Debtors' bankruptcy Estates in the Trustee's class action Adversary Proceedings.

29. The Unjust Enrichment Claims are not limited to a claim seeking recompense solely for damages suffered by an Individual Plaintiff for a particular harm suffered by that individual, but seek recovery on behalf of the Defendants and all similarly situated individuals against a class of defendants, which class is defined as Net Winners, who received at least one payment from a Participant in connection with the Triangular Transactions. The Unjust Enrichment Claims are general claims against the same individuals who are included in the broad class of individuals being pursued by the Trustee; as such, the Trustee is the proper party to pursue those claims.

30. Further, the Trustee's recovery will benefit a larger class of Net Losers than found within the Defendants' plaintiff classes because the Trustee's class action will benefit all Participants who are Net Losers and include those individuals who lost money as a result of direct transactions with the Debtors as well as those individuals who lost money in Triangular Transactions, whereas the Defendants' class consists only of those Participants who lost money

as a result of Triangular Transactions and excludes those who lost money as a result of direct transactions with the Debtors.

31. The Unjust Enrichment Claims seek to exercise domain and control over property of the Debtors' Estates, e.g., transfer of the Debtors' property to a class of Net Winners.

32. The Unjust Enrichment Claims brought by the Defendants or on their behalf and those similarly situated individuals assert a general claim, and the Trustee is the proper party to assert and prosecute such claims for the benefit of all creditors.

COUNT I
(Declaratory Relief)

33. The Trustee realleges and repeats the allegations contained in paragraphs 1 through 32 above and by reference incorporates them herein.

34. The property transferred as part of Triangular Transactions constitute property of the estate and are recoverable by the Trustee pursuant to §§ 547 and 548 of the Bankruptcy Code.

35. The Unjust Enrichment Claims violate the automatic stay under 11 U.S.C. § 362(a) and, therefore, the Unjust Enrichment Claims are *void ab initio*, because by seeking to recover damages from Net Winners who received payments from Participants, the Unjust Enrichment Claims interfere with the Trustee's exclusive right to seek recovery of fraudulently transferred property in direct violation of 11 U.S.C. § 362(a)(1) and (6).

36. The Unjust Enrichment Claims further improperly seek to obtain possession of the Debtors' property in direct violation of 11 U.S.C. § 362(a)(3).

37. To the extent that the Defendants contest the Trustee's assertion that the Unjust Enrichment Claims exercise control over property of the Estates, an actual controversy exists pursuant to which the Trustee is entitled to a Judgment declaring his property interest in the

money transferred pursuant to Triangular Transactions and that the Unjust Enrichment Claims are in contravention of 11 U.S.C. § 362(a).

COUNT II
(Damages)

38. The Trustee realleges and repeats the allegations contained in paragraphs 1 through 37 above and by reference incorporates them herein.

39. Upon a finding that the Defendants' actions are violations of the automatic stay imposed pursuant to 11 U.S.C. § 362(a), award the Trustee damages in the amount of his costs and expenses, including reasonable attorney fees incurred in connection with this litigation.

COUNT III
(Preliminary Injunction)

40. The Trustee realleges and repeats the allegations contained in paragraphs 1 through 39 above and by reference incorporates them herein.

41. The Trustee requests that this Court enter an order, pursuant to 11 U.S.C. § 105(a), restraining and enjoining the Defendants from further prosecution of the Unjust Enrichment Claims.

42. The Trustee requests that the Court enjoin the prosecution of the Unjust Enrichment Claims for, without limitation, the following reasons:

a. The factual bases for the Unjust Enrichment Claims arise out of the same set of facts, and the funds sought to be recovered in the Unjust Enrichment Claims are the same facts and the same funds the Trustee seeks to recover pursuant to 11 U.S.C. §§ 547 and 548. As such, the proper forum to seek to recover those funds is in this Court in the class action commenced by the Trustee;

b. The continued prosecution of the Unjust Enrichment Claims would interfere with the Trustee's efforts both to prosecute fraudulent conveyance and preference actions and to obtain resolution of those actions on behalf of all of the creditors of the Debtors;

c. There is an inadequate remedy at law to protect and preserve the assets of the Estates, and the injunction will serve to preserve and protect the property of the Estates and the Trustee's efforts to effectively collect property of the Estates for the benefit of all victims who have filed claims;

d. An injunction will maximize judicial economy, will avoid the possibility of inconsistent decisions, and will ensure the preservation of uniformity of decision; and

e. The injunction will not harm the public interest and is, in fact, in the best interests of the Debtors' creditors and orderly administration of the claims administration process.

43. The Trustee believes the injunction requested herein is necessary and appropriate to carry out his duties in accordance with the provisions of the Bankruptcy Code and that further prosecution of the Unjust Enrichment Claims prior to completion of the Trustee's actions would seriously impair and potentially defeat the Court's ability to administer the Estates.

WHEREFORE, the Trustee respectfully prays that this Court enter a judgment in favor of the Trustee against Rita Dos Santos, individually and as putative plaintiff class representative, Maria Murdoch, Angela Batista Jimenez, Elisangela Oliveira and Diogo DeAraugo, as Putative Class Representative, as follows:

1. Declaring that the funds transferred between Participants in Triangular Transactions constitute property of the Debtors' Estates;
2. Declaring that the Defendants' prosecution of the Unjust Enrichment Claims violates the automatic stay under 11 U.S.C. § 362(a) and, therefore, is *void ab initio*;
3. After trial, entering an order, pursuant to § 105(a) of the Bankruptcy Code, permanently enjoining and restraining Rita Dos Santos, individually and as putative plaintiff class representative, Maria Murdoch, Angela Batista Jimenez, Elisangela Oliveira and Diogo DeAraugo, as Putative Class Representative and those acting in concert or participation with them or on their behalf and any of the other parties from further prosecuting the Unjust Enrichment Claims or any other action against the "Net Winners";
4. Awarding the Trustee his Judgment against the Defendants, individually and collectively, in an amount reasonable to compensate the Debtors' Estates for the costs and expenses of bringing this action, including awarding of reasonable attorney fees; and
5. Granting the Trustee such other and further relief as the Court deems just and proper.

STEPHEN B. DARR AS TRUSTEE
OF THE ESTATES OF TELEXFREE,
LLC, TELEXFREE, INC. and
TELEXFREE FINANCIAL, INC.

By his attorneys,

Dated: February 26, 2016

/s/ Charles R. Bennett, Jr.

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