

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

LYDIA CLADEK, INC.,

Case No. 3:10-bk-02805-PMG

Debtor.

(Consolidated by Prior Court Order with Case
No. 10-bk-02800-PMG)

MICHAEL PHELAN, not individually but as
Chapter 11 Trustee of the estate of the Debtor,
Lydia Cladek, Inc.

Adv. Proc. No. 10-ap-00248-PMG

Plaintiff,

v.

LYDIA I. CLADEK; Captiva Island Vacation
Properties, LLC; Land Trust Service
Corporation as Trustee under the Trust AB,
dated October 19, 2004; Trust No. 23 dated
September 21, 2005, Land Trust Service
Corporation, as Trustee as to Parcel A; Trust
No. 25 dated September 21, 2005, Land Trust
Service Corporation, as Trustee as to Parcel B;
Trust No. 27 dated September 21, 2005, Land
Trust Service Corporation, as Trustee as to
Parcel C; Trust No. 16250-52, dated May 26,
2006, Land Trust Service Corporation, as
Trustee; Land Trust Service Corporation, as
Trustee of Trust No. 4443 dated March 9,
2005; and Trust No. 1001 dated August 26,
2005, Land Trust Service Corporation, as
Trustee,

Defendants.

ORDER GRANTING PERMANENT INJUNCTION

THIS MATTER having originally come before the Court on May 25, 2010 at 1:30 p.m.
(the "Hearing") on the Emergency Motion of Michael Phelan, not individually but as Chapter 11

Trustee (the "Chapter 11 Trustee") for the estate of Lydia Cladek, Inc. (the "Debtor"), for Entry of a Preliminary Injunction and for Other Relief and Request for Judicial Notice, pursuant to Rule 65 of the Federal Rules of Civil Procedure, as incorporated into Rule 7065 of the Federal Rules of Bankruptcy Procedure, section 105(a) of title 11 of the United States Code (the "Bankruptcy Code") and Fed. R. Evid. 201 (the "Motion") [Adv. Doc. No. 2]; and the Court having granted the Motion by order dated and effective as of May 25, 2010 at 1:30 p.m. (the "Order") and scheduled status conferences on the Order for July 6, 2010 at 10:00 a.m. and September 7, 2010 at 10:00 a.m. (the "Status Conferences"), after hearing the argument of counsel and evidence presented at the Hearing, and having taken judicial notice of the pending civil action concerning the above-captioned Debtor's former President, Lydia I. Cladek ("Cladek") referenced in the Motion, the Default entered on August 26, 2010 [Adv. Doc. No., 34], Plaintiff's Motion for Entry of Final Default Judgment [Adv. Doc. No., 36], and being otherwise duly advised in the premises; and after hearing additional argument from counsel and evidence presented at the Status Conference, the Court finds good cause for the relief sought for the reasons stated in the record.¹

Accordingly, the Court FINDS as follows:

A. In the Motion, the Chapter 11 Trustee sought the entry of a preliminary and permanent injunction. In his ten-count Verified Adversary Complaint for Damages and Other Relief (the "Cladek Complaint") filed May 19, 2010, the Chapter 11 Trustee asserts claims against Cladek and her affiliated alter ego business entities (as defined below as the "Cladek Entities") seeking, among other relief, substantive consolidation of Cladek and the Cladek Entities with and into the estate of the Debtor, an alter ego liability determination, for turnover of

¹ Unless specifically defined otherwise herein, defined terms in the Motion are incorporated by reference in to this Order.

property of the estate, to avoid and recover fraudulent transfers from the Debtor to Cladek and the Cladek Entities (the “Avoidable Transfers”) and for the entry of an order granting preliminary and permanent injunctive relief [Adv. Doc. No. 1].

Specifically, the Cladek Complaint seeks the following relief against Cladek and the Cladek Entities:

- Count I - Action Seeking to Substantively Consolidate Non-Debtor Cladek and the Non-Debtor Cladek Entities with and into the Bankruptcy Estate of the Debtor.
- Count II – Action to Impose Alter Ego Liability upon Cladek and the Cladek Entities for the Debts and Liabilities of the Debtor, and to Pierce the Corporate Veil of the Cladek Entities for the Benefit of the Debtor.
- Count III - Action Requesting the Entry of a Preliminary and Permanent Injunction against Cladek and the Cladek Entities as Alter Egos of the Debtor.
- Count IV - To the Extent the Court Grants the Relief Demanded in Counts I and/or II Above, Action Seeking Turnover of Property of the Debtor’s Bankruptcy Estate Pursuant to Section 542 of the Bankruptcy Code, as Well as an Accounting in Connection therewith.
- Count V - Action to Avoid and Recover Fraudulent Transfers from the Debtor to Cladek and the Cladek Entities (Defined Herein as the Avoidable Transfers).
- Count VI - Action for Conversion against Cladek and the Cladek Entities
- Count VII - Action for Unjust Enrichment against Cladek and the Cladek Entities.

- Count VIII – Action to Impose a Constructive Trust against Cladek and the Cladek Entities.
- Count IX - Action for an Accounting against Cladek and the Cladek Entities.
- Count X - Action for Breach of Fiduciary Duty against Cladek.

B. On April 2, 2010, several petitioning creditors filed an involuntary Chapter 11 petition against Lydia Cladek, Inc., case styled as *In re Lydia Cladek, Inc.*, Case No. 10-bk-02800-PMG, in the United States Bankruptcy Court, Middle District of Florida, Jacksonville Division (the "Involuntary Case"), in the wake of allegations that Cladek had perpetrated a massive Ponzi scheme in which funds received from later investors were used to pay earlier investors. The Involuntary Case was initially filed after the petitioning creditors learned that Cladek had utilized the Debtor's business to fraudulently secure investments in fraudulent and/or fictitious installment automobile loans purportedly purchased from used automobile dealerships and that Cladek funneled those investment funds through accounts titled in the name of the Debtor to the Cladek Entities and Cladek personally. The Chapter 11 Trustee is currently operating the Debtor's business pursuant to sections 1106 and 1108 of the Bankruptcy Code and this Court's *Order Approving Appointment of Chapter 11 Trustee and Setting of Bond* (the "Appointment Order") [Doc. No. 47].

C. A permanent injunction would serve to maintain the *status quo* and preserve this Court's ability to award equitable relief and provide for a fair distribution to the Debtor's creditors and/or investors. The Chapter 11 Trustee likewise satisfies all of the necessary elements to obtain permanent injunctive relief set forth as follows: (1) given the substantial, undisputed proof establishing the fraudulent nature of Cladek's Ponzi scheme activities and the use of the Debtor's bank accounts and/or the alter ego Cladek Entities in perpetrating the scheme, the

Chapter 11 Trustee and the estate has suffered an irreparable injury; (2) because the assets of Cladek and the Cladek Entities are comprised of funds transferred to them from the Debtor, the bankruptcy estate will suffer continued irreparable injury if a permanent injunction is not imposed because cash and other assets will continue to be further transferred and/or dissipated; (3) that, considering the balance of hardships between the Chapter 11 Trustee and the bankruptcy estate, and Defendants, a remedy in equity is warranted and the harm, if any, to be suffered by Cladek or the Cladek Entities is outweighed by the substantial harm that will continue to befall the estate if a permanent injunction is not imposed; and (4) the public interest will not be disserved if a permanent injunction is imposed to protect, among other things, the estate, creditors and other parties in interest to the recovery of funds that are the subject of Cladek's fraudulent scheme. The entry of a permanent injunction is also necessary and appropriate to assist the Chapter 11 Trustee in the recovery of property of the estate that was wrongfully diverted by and to Cladek and Cladek Entities as part of a fraudulent scheme to hinder, delay or defraud creditors.

Accordingly, it is ORDERED as follows:

1. The Motion is granted on a final and permanent basis on and effective as of this 7th day of September, 2010, at 10:00 a.m.
2. A permanent injunction shall be and is hereby entered against the following: Lydia I. Cladek; LYDIA I. CLADEK; Captiva Island Vacation Properties, LLC; Land Trust Service Corporation as Trustee under the Trust AB, dated October 19, 2004; Trust No. 23 dated September 21, 2005, Land Trust Service Corporation, as Trustee as to Parcel A; Trust No. 25 dated September 21, 2005, Land Trust Service Corporation, as Trustee as to Parcel B; Trust No. 27 dated September 21, 2005, Land Trust Service Corporation, as Trustee as to Parcel C; Trust

No. 16250-52, dated May 26, 2006, Land Trust Service Corporation, as Trustee; Land Trust Service Corporation, as Trustee of Trust No. 4443 dated March 9, 2005; and Trust No. 1001 dated August 26, 2005, Land Trust Service Corporation, as Trustee (collectively, the "Cladek Entities") and each of Cladek's and/or the Cladek Entities' members, managers, partners, joint venturers, officers, directors, agents, attorneys, employees, shareholders, and affiliates, past or present, and all others in custody, possession or control of funds, documents, or other property of the Debtor, Cladek, and the Cladek Entities and the proceeds or products thereof, and all persons or entities acting in concert or participating with any of the foregoing, and all persons and entities having actual knowledge of the preliminary and/or this permanent injunction (collectively, the "Enjoined Parties"), restraining and enjoining Enjoined Parties from:

- (a) Taking any action, directly or indirectly, to transfer, conceal, dissipate, destroy, encumber, hypothecate, abandon or otherwise dispose of any and all income, revenue, funds, contracts, licenses, contract rights, real property, tangible and intangible personal property and any other legal or equitable interest or property right (collectively, the "Assets") of, or received, directly or indirectly, from the Debtor, Cladek, and/or the Cladek Entities without the written consent of the Chapter 11 Trustee;
- (b) Authorizing, causing, effectuating or acquiescing in such acts which might have the effect of impairing the value of the Assets of the Debtor, Cladek, and/or the Cladek Entities;
- (c) Transferring or withdrawing balances on deposit in financial institution accounts of the Debtor, Cladek, the Cladek Entities, and/or any of their affiliates; and

(d) Taking any and all actions seeking a receivership or commencing an involuntary bankruptcy proceeding against Cladek and the Cladek Entities.

3. The Chapter 11 Trustee is hereby authorized, but not directed, to publish notice of this permanent injunction in the legal notices section of the *St. Augustine Record* and *The Daily Record* once per week for two consecutive weeks, or as otherwise appropriate to provide notice to the parties enjoined by this Order granting the permanent injunction.

4. The Chapter 11 Trustee is hereby authorized, but not directed, to record this Order in the public records of St. Johns County, Florida, or any other jurisdiction wherever any real property is situated and which was acquired with funds from the Debtor, Cladek or the Cladek Entities. Such recordation shall constitute notice of the Chapter 11 Trustee's lien on said property pending resolution of this litigation.

5. The Chapter 11 Trustee is hereby authorized, but not directed, to take any and all actions to facilitate the sale of any of the real property that is the subject of the Forfeiture Complaint and is hereby authorized to execute any and all documents on behalf of Cladek and the Cladek Entities that are necessary and appropriate to facilitate the sale and closing of such real estate. Proceeds of any such sale, after payment of valid secured claims against such real property and costs of closing, shall be held by the Chapter 11 Trustee pending further Order of this Court. Actions of the Federal Bureau of Investigations and the Office of the United States Attorney in furtherance of the relief sought in the Forfeiture Complaint, with respect to the real property that is the subject of the Forfeiture Complaint, and with respect to already seized personal property, that includes approximately \$4,500 in funds from three bank accounts, a 2001 Mercedes Benz, and a 2009 Ford F250, shall not violate the terms and conditions of this Order.

6. The Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order and the relief requested in the Motion.

DATED: September 7, 2010, at Jacksonville, Florida.



Paul M. Glenn
Chief United States Bankruptcy Judge

Copies furnished to:

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9075 June Lane
St. Augustine, FL 32080

Andrea Levinson & Michael Egelman
c/o Michael Egelman
127 Bonita Road
St. Augustine, FL 32086

RAD Management Company
c/o Donald R. Radbill
221 N. Forest Dune Dr.
St. Augustine, FL 32080

Captiva Island Vacation Properties, LLC, at its usual place of business
3201 Fern Valley Rd., Suite 212
Louisville, KY 40213

Captiva Island Vacation Properties, LLC,
c/o its Registered Agent, Bruce M. Essen, Esq., at his usual place of business
2532 East First Street
Fort Myers, FL 33901

Land Trust Service Corporation as Trustee under the Trust AB, dated October 19, 2004, at its
usual place of business
28 West Park Avenue
Lake Wales, FL 33853

Land Trust Service Corporation as Trustee under the Trust AB, dated October 19, 2004,
c/o its Registered Agent, L.C. Warda, at her usual place of business
28 West Park Avenue
Lake Wales, FL 33853

Trust No. 23 dated September 21, 2005, Land Trust Service Corporation, as Trustee as to Parcel
A, at its usual place of business
28 West Park Avenue
Lake Wales, FL 33853

Trust No. 23 dated September 21, 2005, Land Trust Service Corporation, as Trustee as to Parcel
A
c/o its Registered Agent, L.C. Warda, at her usual place of business,
28 West Park Avenue
Lake Wales, FL 33853

Trust No. 25 dated September 21, 2005, Land Trust Service Corporation, as Trustee as to Parcel
B, at its usual place of business
28 West Park Avenue
Lake Wales, FL 33853

Trust No. 25 dated September 21, 2005, Land Trust Service Corporation, as Trustee as to Parcel
B
c/o its Registered Agent, L.C. Warda, at her usual place of business,
28 West Park Avenue
Lake Wales, FL 3385

Trust No. 27 dated September 21, 2005, Land Trust Service Corporation, as Trustee as to Parcel
C, at its usual place of business
28 West Park Avenue
Lake Wales, FL 33853

Trust No. 27 dated September 21, 2005, Land Trust Service Corporation, as Trustee as to Parcel
C, c/o its Registered Agent, L.C. Warda, at her usual place of business,
28 West Park Avenue
Lake Wales, FL 33853

Trust No. 16250-52, dated May 26, 2006, Land Trust Service Corporation, as Trustee, at its usual place of business
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at its usual place of business
28 West Park Avenue
Lake Wales, FL 33853

Land Trust Service Corporation, as Trustee of Trust No. 4443 dated March 9, 2005, as Trustee
c/o its Registered Agent, L.C. Warda, at her usual place of business,
28 West Park Avenue
Lake Wales, FL 33853

Trust No. 1001 dated August 26, 2005, Land Trust Service Corporation, as Trustee, at its usual
place of business
28 West Park Avenue
Lake Wales, FL 33853

Trust No. 1001 dated August 26, 2005, Land Trust Service Corporation, as Trustee
c/o its Registered Agent, L.C. Warda, at her usual place of business,
28 West Park Avenue
Lake Wales, FL 33853