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By DavisY at 11:46:11 AM, 10/19/2021

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re: Matt Garton and Associates, LLC, Debtor.	Case No.: 19-18917-TBM Chapter: 7
Jeffrey A. Weinman as Chapter 7 Trustee of the Estate of Matt Garton and Associates, LLC, Plaintiff, v. Matthew G. Garton, Defendant.	Adversary Case No.:

ADVERSARY COMPLAINT

Jeffrey A. Weinman, in his capacity as Chapter 7 Trustee of the Bankruptcy Estate of Matt Garton and Associates, LLC, by and through his undersigned attorneys, for his adversary complaint against Matthew G. Garton states as follows:

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Jeffrey A. Weinman (the “Trustee” or “Plaintiff”) is the duly appointed Chapter 7 trustee of the bankruptcy estate of Matt Garton & Associates, LLC (“Debtor”) in the above-captioned bankruptcy case.

2. Defendant, Matthew G. Garton (“Defendant” or “Garton”) is an individual who is a resident of Broomfield County, State of Colorado, with a principal address of 11833 Ridge Parkway, Apt. 531, Broomfield, CO 80021.

3. At all relevant times herein, Garton was the president and chief executive officer of Debtor.

4. At all times relevant herein, Defendant was an insider of the Debtor as that term is defined by 11 U.S.C. § 101(31).

5. This Court has jurisdiction over this matter pursuant to 11 U.S.C. § 1334 and the automatic referral of bankruptcy matters from the United States District Court for the District of Colorado under D.C. COLO. L.Civ.R 84.1 (A).

6. Venue is proper pursuant to 28 U.S.C. §§ 1408 and/or 1409.

7. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), as it involves issues concerning the administration of the bankruptcy estate of Debtor under 11 U.S.C. § 541 and recovery of fraudulent conveyances and voidable preferences pursuant to 11 U.S.C. §§ 544, 547, 548, 549 and 550.

8. This adversary proceeding is commenced pursuant to Rule 7001(1) of the Federal Rules of Bankruptcy Procedure.

9. The Trustee hereby consents to this Court's entry of final orders and judgment.

II. GENERAL ALLEGATIONS

10. On October 16, 2019 (the "Petition date"), Debtor filed its voluntary petition under Chapter 7 of the United States Bankruptcy Code in this Court commencing this bankruptcy case.

11. Jeffrey Weinman (the "Trustee") was appointed as the Chapter 7 Trustee of the bankruptcy estate of the Debtor (the "Estate").

12. Prior to its filing for relief under Chapter 7 of the Bankruptcy Code, Debtor operated as a third-party hotel and resort booking company. Debtor conducted its business operations under five separate "dba" entities: Hotels for Everyone, All Inclusives for Everyone, Affordable Luxury Hotels, Just Right Hotels, and HotelDeck. Dkt. No. 1, at p. 1.

A. Debtor's Pre-Petition Independent Bank Account

13. On or about September 7, 2010, Garton LLC opened a bank account ("the "Account") at and entered into a deposit account agreement with Home State

Bank, which agreement was governed by certain terms and conditions (collectively “Account Agreement”).

14. In opening the Account, Garton, as manager of the Debtor, and Defendant’s wife, Carol Garton, as agent of Debtor signed the Account Agreement and agreed on behalf of Debtor that the Account Agreement could be amended from time to time by Home State Bank.

15. On or about September 8, 2016, Guaranty Bancorp acquired by way of merger Home State Bancorp and its banking subsidiary, Home State Bank, and Guaranty Bancorp’s banking subsidiary, Guaranty Bank and Trust Company, assumed Home State Bank’s rights and obligations under the Account Agreement.

16. On November 11, 2018, Defendant, his wife, Carol Garton, and their son, Christopher Garton, executed a Limited Liability Company Authorization Resolution as to the Account, which included an acknowledgment that all signatories agreed to abide by the terms and conditions contained in the applicable Account Agreement.

17. Since the Debtor’s September 7, 2010 Account opening, the Account Agreement has been amended from time to time, including but not limited to amendments corresponding with the ownership changes due to merger from Home State to Guaranty to Independent Bank.

18. The Account Agreement prohibited overdrawing the Account and required that the Account be immediately repaid to resolve any shortages.

A. Debtor’s Pre-Petition Business

19. Defendant was the originating and sole member of Debtor when it was formed in 2003.

20. Pre-petition, Debtor’s principal office was located at 6873 Westwoods Circle, Arvada, Colorado, which, at that time, was also Garton’s personal residence.

21. Pre-petition, Debtor conducted business through various trade names, including Hotels For Everyone and Hotel Deck.

22. Through Hotel Deck, Debtor provided a hotel and reservation booking engine and technology to other companies and organizations.

23. Through Hotels For Everyone, Debtor acted as an affiliate marketing and consulting business to the travel industry, facilitating the booking of hotel reservations for its customers.

24. Debtor maintained a website as HotelsForEveryone.com which marketed hotel owners' properties to potential hotel patrons.

25. Upon information and belief, when a customer booked a reservation through Hotels For Everyone's website, the customer immediately remitted credit card payment to Debtor, and Debtor, in turn, became responsible for booking the hotel room and paying for the cost of the hotel booking.

26. Upon information and belief, after its customer remitted payment, Debtor either directly or through an intermediary entity (Hotel Beds) later paid the actual hotel where the customer had selected to stay.

27. In order to facilitate its business, Debtor entered into a Merchant Card Processing Agreement whereby the Account received provisional credits from Independent Bank *via* the credit card processor, TSYS, as a result of customers remitting credit card payment in advance of staying at hotels.

28. If a customer paid Debtor in advance for its reservation and later canceled or contested the hotel services provided, a chargeback would be made to the Account, which resulted in withdrawal from the Account and a refund to the customer's credit card.

29. Pursuant to the terms of the Account Agreement, Debtor was immediately liable for any account shortages.

[Debtor] agrees to be jointly and severally (individually) liable for any account shortage resulting from charges or overdrafts, whether caused by you or another with access to this account. This liability is due immediately, and can be deducted directly from the account balance whenever sufficient funds are available. You have no right to defer payment of this liability, and you are liable regardless of whether you signed the item or benefited the charge or overdraft.

B. Garton's May 2019 Communications with Independent Bank

30. On or about May 2, 2019, Defendant communicated with Independent Bank to advise that one of Debtor's suppliers, Hotel Beds, was canceling numerous reservations previously made on behalf of Debtor's customers and for which those customers had previously paid Debtor.

31. Upon information and belief, with respect to those reservations that Defendant informed Independent Bank would be canceled, Debtor had not previously paid the hotels for those reservations.

32. Upon information and belief, on May 6, 2019, Brian Brennan, a Senior Vice President from Independent Bank, went to Defendant's personal residence, which was also Debtor's business address, and Defendant again advised that numerous chargebacks would be made on the Account with Independent Bank, as customers who had previously paid for hotel reservations would need to be refunded their advance payments.

33. Also on May 6, 2019, upon information and belief, Defendant informed Independent Bank that Debtor was working on "negative operating cycle" and that the money received as provisional credits from Independent Bank were gone and had been spent on marketing and business expenses.

34. In an email dated May 6, 2019, responding to an inquiry from Independent Bank made earlier that day, Defendant stated that "[i]f all cancellations had gone into place when expected, the total liability number would be \$5.9 million. To be fair [Defendant] would estimate the actual range of chargebacks received will be \$4.5 to \$6.2 million given that [they were] no longer in a position to determine what ha[d] and ha[dn't] been canceled, and [could not] defend illegitimate chargebacks."

C. Debtor's Overdrawn Independent Bank Account

35. As of May 16, 2019, Debtor's Account had insufficient funds to cover the actual chargebacks and was overdrawn by a total of \$824,177.22. Pre-petition, that amount continued to grow on a daily basis.

36. On February 6, 2020, Independent Bank filed a claim in the amount of \$4,737,901.38 which purportedly includes, *inter alia*, the pre-petition overdrawn amounts as a result of those chargebacks.

37. Upon information and belief, pre-petition, Debtor was using future, unearned revenue which had been advanced by its customers to meet current and past operational and business expenses.

38. Upon information and belief, pre-petition, Debtor had been working on a “negative operating cycle” for a substantial period of time.

D. The Pre-Petition Transfers

39. From the date of formation of the Debtor through the Petition Date, Defendant owned, managed, and controlled all assets and operations of the Debtor. In that capacity, Defendant made extensive and impermissible payments from Debtor’s various accounts in respect of Defendant’s personal expenses unrelated to Debtor’s business operations.

40. Upon information and belief, Debtor was insolvent by at least mid-April 2019.

41. Upon information and belief, by no later than April 1, 2019, Defendant knew or should have known that Debtor was insolvent and knew that Debtor could not maintain the business known as Hotels For Everyone.

42. Upon information and belief, Defendant had been using Debtor’s unearned revenue (advance payments by its customers) to pay his own personal expenses.

43. For numerous months, Defendant had been using Debtor’s accounts to pay his personal credit card bills, including payments of more than \$55,000.00 in January 2019, payments of more than \$80,000.00 in February 2019, payments of more than \$110,000.00 in March 2019; and payments of more than \$80,000.00 in April 2019.

44. Knowing that chargebacks would be forthcoming into the Account, Defendant caused four wire transfers to be made from Debtor’s Account totaling \$450,000.00, including two transfers on April 26, 2019, one on April 29, 2019, and one

on April 30, 2019 (these and other pre-petition charges are collectively referred to as the “Transfers”).

45. These Transfers were made to Debtor’s Account at BBVA Compass Bank (the “Compass Account”), and upon information and belief, subsequently transferred into Defendant’s personal accounts and/or withdrawn or utilized by Defendant for personal expenses unrelated to Debtor’s operations.

46. At the time the April 2019 wire transfers were made to Compass Account, Defendant knew that chargebacks in an amount greater than \$450,000.00 would be forthcoming and that Debtor did not have the ability to pay such amounts.

47. At the time the April 2019 wire transfers were made to the Compass Account and, upon information and belief, Defendant’s personal accounts, Garton knew that the \$450,000.00 would have satisfied various chargebacks posting to the Account.

III. FIRST CLAIM FOR RELIEF:

Avoidance and recovery of transfers –

11 U.S.C. §§ 548(a)(1)(B) and 550(a)(1) and C.R.S. § 38-8-105

48. The Trustee realleges all prior allegations as if fully set forth herein.

49. Defendant, as the sole member and manager of Debtor, caused funds of the Debtor to be transferred from Debtor’s accounts to himself and or utilized for his own personal use and benefit, including to pay his personal expenses and credit card debts.

50. Defendant, as the sole member and manager of Debtor, transferred \$450,000 from the Debtor’s Independent Bank Account to its Compass Bank Account in April 2019.

51. The Transfers were all transfers of an interest of the Debtor in property.

52. The Transfers were made within four years prior to the Petition Date.

53. The Transfers are avoidable under 11 U.S.C. § 548(a)(1) either because:

- a. they were made with the actual intent to hinder, delay or defraud any entity to which Debtor was or became, on or after the date that such Transfers were made or such obligation was incurred, indebted; or
- b. because Debtor received less than a reasonably equivalent value in exchange for such transfer or obligation; and
 - i. was insolvent on the date that such Transfers were made or such obligations incurred, or became insolvent as a result of such transfers or obligations; or
 - ii. was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the Debtor was an unreasonably small capital; or
 - iii. intended to incur, or believed that the Debtor would incur, debts that would be beyond the Debtor's ability to pay as such debts matured.

54. The Transfers were made to Defendant for less than reasonably equivalent value, as no value was given by Defendant for the Transfers.

55. Defendant did not take the Transfers for value or in good faith within the meaning of 11 U.S.C. § 548(c) and did not give value in exchange therefor.

56. The Trustee is entitled to judgment against Defendant in the amount of such Transfers under 11 U.S.C. § 550(a)(1).

**IV. SECOND CLAIM FOR RELIEF
AVOIDANCE OF TRANSFERS PURSUANT TO 11 U.S.C. §§ 544(b)(1),
550(a)(1), AND C.R.S. §§ 38-8-105(b) AND/OR 38-8-106**

57. The Trustee hereby restates and incorporates by reference all of the prior allegations of this Complaint as if fully set forth herein.

58. In the four years prior to the Petition Date, the Transfers were made from Debtor's Account to Defendant, and/or utilized by Defendant for his personal benefit.

59. The Trustee is entitled to avoid the Transfers under 11 U.S.C. § 544(b)(1), because as they were transfers of an interest of the Debtor in property that are avoidable by creditors of Debtor (*i.e.*, Intendent Bank) under applicable law by a creditor holding an unsecured claim that is either allowable under 11 U.S.C. § 502 or not allowable only under § 502(2).

60. The Transfers are avoidable under C.R.S. § 38-8-105 either because:

a. they were made with the actual intent to hinder, delay or defraud any entity to which Debtor was or became, on or after the date that such Transfers were made or such obligation was incurred, indebted; or

b. because Debtor received less than a reasonably equivalent value in exchange for such transfer or obligation; and

i. was insolvent on the date that such Transfers were made or such obligations incurred, or became insolvent as a result of such transfers or obligations; or

ii. was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the Debtor was an unreasonably small capital; or

iii. intended to incur, or believed that the Debtor would incur, debts that would be beyond the Debtor's ability to pay as such debts matured.

61. The Transfers are also avoidable under C.R.S. § 38-8-106 because:

a. Debtor did not receive reasonably equivalent value in exchange for the Transfers;

b. Debtor was insolvent or became insolvent as a result of the Transfers; and

c. Debtor was insolvent or became insolvent as a result of the Transfers.

62. The Transfers are therefore voidable under § 544 of the Bankruptcy Code.

63. The Trustee is entitled to recover from Defendant, the amount of money equal to the payments and interest from the date of each of the Transfers pursuant to 11 U.S.C. § 550,

**V. THIRD CLAIM FOR RELIEF:
AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS –
11 U.S.C. §§ 547(b)(1) and 550**

64. The Trustee hereby restates and incorporates by reference all of the prior allegations of this Complaint as if fully set forth herein.

65. Defendant is an insider of the Debtor under 11 U.S.C. §101(31).

66. Included, among the Prepetition Transfers are those which occurred within one (1) year prior to the Petition Date, that were made to Defendant or for Defendant's benefit (the "Preferential Transfers").

67. The Preferential Transfers were transfers of Debtor's property.

68. Defendant is the initial transferees of the Preferential Transfers.

69. Upon information and belief, the Preferential Transfers were made on account of one or more antecedent debts owed by the Debtor to Defendant before the Preferential Transfers were made by virtue of his status as officer, member and employee of the Debtor.

70. The Preferential Transfers were made while the Debtor was insolvent and/or presumed to be insolvent under the Bankruptcy Code.

71. The Preferential Transfers enabled Defendant to receive more than he would have received if (a) the Debtor's case were a case under Chapter 7 of the Bankruptcy Code; (B) the Preferential Transfers had not been made; and (c) had Defendant received payment only to the extent provided by the provisions of Title 11, U.S.C.

72. The Preferential Transfers made to or for the benefit of Defendant, along with any other transfers of property or payments to or for the benefit of Defendant within the one (1) year before the Petition Date, are avoidable under § 547 of the Bankruptcy Code.

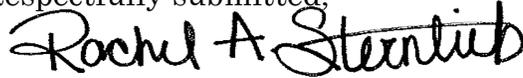
73. The Trustee is entitled to recover from Defendant the value of the Preferential Transfers along with the value of any other transfers made to or for the benefit of Defendant in the one year prior to the Petition Date under § 550 of the Bankruptcy Code.

VI. PRAYER FOR RELIEF

WHEREFORE, The Trustee respectfully requests that the Court enter judgment in his favor and against Defendant, Matthew G. Garton: (i) avoiding the Prepetition and Preferential Transfers; (ii) preserving the value of the Prepetition and Preferential Transfers for the benefit of Debtor's estate; (iii) for pre- and post-judgment interest as allowed by law; and (iv) for costs and any other relief the Court deems just and appropriate.

DATED this 15th day of October, 2021.

Respectfully submitted,



s/ Rachel A. Sternlieb

Patrick D. Vellone

Rachel A. Sternlieb

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**ATTORNEYS FOR JEFFREY A. WEINMAN,
CHAPTER 7 TRUSTEE**

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of October, 2021, I electronically filed and served the foregoing **ADVERSARY COMPLAINT** via CM/ECF pursuant to Fed.R. Bankr.P and the L.B.R., upon the following:

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s/Salowa Khan
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