

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:) Chapter 11
)
GULF PACKAGING, INC.,¹) Case No. 15-15249
)
Debtor.) Hon. Pamela S. Hollis
)

APPLICATION TO SET HEARING ON EMERGENCY MOTION

Joseph Myers, not individually but solely as trustee (the “*Creditor Trustee*”) of the Gulf Packaging, Inc. Creditor Trust (the “*Creditor Trust*”), by and through his undersigned counsel, hereby moves this Court (the “*Motion*”) for entry of an order pursuant to Local Rule 5096-1 and General Order No. 12-01 of the United States Bankruptcy Court for the Northern District of Illinois, setting a hearing on an emergency basis for the *Motion for Entry of an Order Compelling Xsys, Inc. to Turnover the Debtor’s Books and Records to the Creditor Trustee* (the “*Motion to Compel*”). In support of his Application, the Creditor Trustee states as follows:

1. On April 29, 2015 (the “*Petition Date*”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois (the “*Court*”).

2. On December 15, 2015, the Court entered an order (the “*Confirmation Order*”) confirming the Debtor’s First Amended Chapter 11 Plan, as amended (the “*Plan*”), including the Gulf Packaging, Inc. Creditor Trust Agreement (the “*Creditor Trust Agreement*”) separately filed with the Plan Supplement.

3. The Plan became effective on January 22, 2016.

¹ The last four digits of the Debtor’s tax identification number are 5030.

4. Xsys, Inc. (“Xsys”) is a company owned by Melissa Sarkisian, the wife of Arman Sarkisian who served as the Debtor’s Chief Executive Officer until a few months prior to the Petition Date when the Debtor hired a chief restructuring officer.

5. Xsys provided data, storage, accounting, and e-mail services to the Debtor and the Debtor’s affiliates prior to the Petition Date and during the pendency of the chapter 11 case.

6. Xsys continues to host the Debtor’s data, storage, accounting and e-mail on its servers.

7. In January 2016, the Creditor Trustee issued a letter to Xsys demanding the return of \$367,682.78 in allegedly preferential transfers pursuant to sections 547 and 550 of the Bankruptcy Code.

8. Xsys responded (the “*Response Letter*”) to the demand letter by serving a ten-day notice of termination that it would terminate all services to the Debtor and the Creditor Trustee unless the Creditor Trustee withdrew the preference demand letter and paid an alleged \$55,616.10 post-petition administrative claim. A true and correct copy of the Response Letter is attached to the Motion as Exhibit A.

9. The Response Letter stated that “. . . upon termination of services, the Debtor, the Creditor Trustee, and you will permanently lose all access to the Debtor’s accounting, operations, and e-mail services that are stored and maintained at Xsys’ facilities.” (Response Letter at pp. 1-2).

10. The Creditor Trustee and Xsys engaged in discussions with respect to resolution of the preference demand, the alleged post-petition debt, and the Electronic Data (defined in the Motion to Compel) hosted by Xsys.

11. Xsys has agreed to continue providing services through February 11, 2016.

12. As set forth in more detail in the Motion, on February 8, 2016, the Creditor Trustee requested that Xsys make the Debtor's Electronic Data available for copying while the parties continued to engage in negotiations regarding the preference demand, the alleged post-petition debt, and the possibility of Xsys continuing to host the Debtor's Data.

13. However, Xsys has presented the Creditor Trustee with only two options: (1) permit Xsys to continue to host the Debtor's Electronic Data (and waive the preference claim), or (2) a complete transfer of the Debtor's Electronic Data to the Creditor Trustee for which Xsys would charge the Creditor Trustee a significant fee of between \$11,240 and \$12,400.

14. The Creditor Trustee is unwilling to waive the preference claim and believes Xsys' estimate is unreasonably high and seeks to charge the Creditor Trustee for labor charges necessitated by Xsys' own flawed data management system. For these reasons, the Creditor Trustee does not believe that the parties will reach a resolution on or before February 12, 2016.

15. The Creditor Trustee submits that the relief requested in the Motion to Compel is necessary on an emergency basis because Xsys has only agreed to provide services through February 12, 2016 and believes that if Xsys terminates its services the Creditor Trustee will lose all access to the Debtor's data, storage, accounting and e-mail on Xsys' servers. A true and correct copy of the Motion to Compel is attached hereto as Exhibit A.

16. The Creditor Trust will suffer significant and irreparable harm if the Debtor's information stored on Xsys' servers is deleted, destroyed, or lost because that information is necessary to the performance of the Creditor Trustee's duties, including liquidating the Debtor's remaining inventory, pursuing avoidance actions, and reviewing and analyzing claims filed against the Debtor's estate.

17. Accordingly, for these reasons and the reasons more fully outlined in the Motion to Compel, the Creditor Trustee requests that this Court set a hearing on the Motion to Compel as soon as practicable, but in no event later than February 12, 2016.

WHEREFORE, the Creditor Trustee respectfully requests that the Court expedite the hearing on the Motion to Compel to a date and time as soon as practicable, but in no event later than February 12, 2016, and grant such other and further relief as is necessary or appropriate.

Dated: February 10, 2016

**JOSEPH MYERS, CREDITOR TRUSTEE
OF THE GULF PACKAGING, INC.
CREDITOR TRUST**

By: /s/ Shelly A. DeRousse
One of His Attorneys

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