

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: : CHAPTER 7
: :
PIKE NURSERY HOLDING, LLC, : CASE NUMBER: 07-79129
: :
Debtor. :

CHAPTER 7 TRUSTEE'S OBJECTION TO
CLAIM NO. 547 FILED BY LARRY KIRK

COMES NOW Marcus A. Watson, Sr., Chapter 7 Trustee of Pike Nursery Holding, LLC, and objects to Claim No. 547 in an unspecified amount filed by Larry Kirk ("Kirk") pursuant to 11 U.S.C. § 502 and Fed. Bankr. R. 3007 on the grounds that there is no underlying claim that would give rise to contribution or indemnification. In support of his Objection, the Trustee shows this Court as follows:

1. This bankruptcy case began as a voluntary Chapter 11 petition filed on November 14, 2007.
2. On March 3, 2008, the Court entered a series of orders approving a sale of virtually all of the Debtor's wholesale and retail businesses and related assets. The Debtor thereafter ceased operations.
3. On March 17, 2008, this Court entered an Order Directing the United States Trustee to Appoint Chapter 11 Trustee in this bankruptcy case. On March

19, 2008, the Court approved the United States Trustee's appointment of Marcus A. Watson, Sr. as the Chapter 11 Trustee for the Debtor.

4. On March 24, 2008, the Court converted the case to Chapter 7 and Marcus A. Watson, Sr. was appointed as the interim Chapter 7 Trustee and became the permanent Chapter 7 Trustee after the first meeting of creditors on April 28, 2008.

5. The Debtor ceased conducting the majority of its business concurrent with the sale of its assets.

6. On May 30, 2008, Kirk filed Claim No. 547 asserting a general unsecured claim in an unspecified amount for indemnification and contribution arising out of the Debtor's Second Amended and Restated Operating Agreement, Indemnification Agreement between Kirk and the Debtor and common law indemnification and contribution. However, Kirk did not identify any claims or actions that would give rise to the alleged indemnification and contribution by the Debtor and has not amended the proof of claim in the five years since it was filed to provide a basis for recovery.

7. The Trustee is not aware of any facts that would give rise to the Debtor's alleged indemnification and contribution.

8. The Trustee requests that the Court disallow Claim No. 547.

WHEREFORE Marcus A. Watson, Sr., Chapter 7 Trustee of Pike Nursery Holding, LLC, requests that the Court enter an Order sustaining his objection and disallowing Claim No. 547.

This 31st day of July, 2013.

/s/ John A. Christy _____
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UNITED STATES BANKRUPTCY COURT
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IN RE:) CHAPTER 7
)
PIKE NURSERY HOLDING LLC,) CASE NUMBER: 07-79129-mgd
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Debtor.)
_____)

NOTICE OF HEARING

PLEASE TAKE NOTICE that Marcus A. Watson, Sr., Chapter 7 Trustee, has filed Chapter 7 Trustee’s Objection to Claim No. 547 Filed by Larry Kirk (“Motion”) seeking to disallow the claim.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the Motion in Courtroom 1201, United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia, at 10:30 a.m. on September 5, 2013.

Your rights may be affected by the Court’s ruling on the Motion. You should read the Motion carefully and discuss it with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in the Motion, or if you want the Court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the Motion with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk’s Office is Clerk, U.S. Bankruptcy Court, Suite 1340, 75 Spring Street, Atlanta, Georgia 30303. You must also mail a copy of your response to the undersigned at the address stated below and if possible also e-mail a copy to the undersigned at the e-mail address noted below.

This 31st day of July, 2013.

/s/ John A. Christy
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CERTIFICATE OF SERVICE

This is to certify that the undersigned served a copy of the CHAPTER 7 TRUSTEE'S OBJECTION TO CLAIM NO. 547 FILED BY LARRY KIRK AND NOTICE OF HEARING through the electronic case filing system (ECF) or by placing a copy of the same in the United States Mail, with sufficient postage thereon to ensure delivery upon the parties listed on the Master Service List attached hereto and the following claimant:

Larry Kirk
753 Jones Drive
Tupelo, MS 38801

This 31st day of July, 2013.

/s/ J. Carole Thompson Hord
J. CAROLE THOMPSON HORD

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