

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 NOS. 575 AND 642 FILED BY IKTHUS TREE FARM, LLC

COMES NOW Marcus A. Watson, Sr., Chapter 7 Trustee of Pike Nursery Holding, LLC, and objects to Claim No. 575 in the amount of \$64,651.50 and Claim No. 642 in the amount of \$37,934.50 filed by Ikthus Tree Farm, LLC ("Ikthus") pursuant to 11 U.S.C. § 502 and Fed. Bankr. R. 3007 on the grounds that the claims are duplicative, fail to provide supporting documentation and include invoices which were part of the administrative claim already resolved by the parties. 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 December 20, 2007, Ikthus filed a proof of claim for \$54,026.50 asserting a general unsecured claim ("Duplicative Claim") which was Claim No. 184. On January 22, 2008, the Ikthus filed a Motion for Allowance of an Administrative Claim in the amount of \$37,567, which was reflected in the Register of Proofs of Claim as Claim No. 230 ("Motion"). On May 29, 2008, Ikthus filed a proof of claim for \$64,651.50 [Claim No. 575], asserting that \$34,072 was entitled to priority under 11 U.S.C. 507(a)(2) and attaching only the invoices that supported the priority portion of claim.

7. In November 2009, the Trustee and Ikthus entered into a Settlement Agreement regarding the preferential payments Ikthus received totaling \$17,980. Pursuant to the settlement, Ikthus withdrew the Motion and reduced the administrative portion of Claim No. 575 to \$16,092. Ikthus also waived any other or further administrative or priority claims in the case. The Trustee paid the administrative portion of Claim No. 575.

8. On January 3, 2011, Ikthus filed another general unsecured claim for \$37,934.50 which was assigned Claim No. 642. This proof of claim attached an account statement and subtracted the amount paid for the administrative claim leaving the balance as the amount requested in the claim, \$37,934.50.

9. The Trustee objected to Claim No. 184 as duplicative of the general unsecured portion of Claim No. 575 and the Court sustained the objection in the Order Granting First Omnibus Objections to Claims as Duplicative of Other Claims [Docket No. 1397].

10. Ikthus' only two remaining claims are the unsecured portion of Claim No. 575 for \$30,579.50 and Claim No. 642 which asserts a general unsecured claim for \$37,934.50. The Trustee requests that the Court disallow Claim No. 575 and reduce Claim No. 642.

11. Claim No. 642 does not attach copies of invoice, but only provides an invoice summary. The summary includes invoices that were part of the administrative claim included in the Settlement Agreement. The invoices identified in the proof of claim which are not part of the Settlement Agreement total \$27,921.50. The Trustee requests that the Court reduce Claim No. 642 to \$27,921.50.

12. Claim No. 575 fails to attach any documentation for the general unsecured portion of the claim. Accordingly, the Trustee requests that the Court disallow Claim No. 575.

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. 575 and reducing Claim No. 642 to the amount of \$27,921.50.

This 31st day of July, 2013.

/s/ John A. Christy
JOHN A. CHRISTY
Georgia Bar No. 125518
jchristy@swfllp.com
J. CAROLE THOMPSON HORD
Georgia Bar No. 291473
chord@swfllp.com

Attorneys for Chapter 7 Trustee

SCHREEDER, WHEELER & FLINT, LLP
1100 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309-4516
Telephone: (404) 681-3450
Facsimile: (404) 681-1046

K:\7031\claim objections\lkthus objection.doc

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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

NOTICE OF HEARING

PLEASE TAKE NOTICE that Marcus A. Watson, Sr., Chapter 7 Trustee, has filed Chapter 7 Trustee's Objection to Claim Nos. 575 and 642 Filed by Ikthus Tree Farm, LLC ("Motion") seeking to disallow Claim No. 575 and to reduce the Claim No. 642.

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
JOHN A. CHRISTY
Georgia Bar No. 125518
jchristy@swflp.com
J. CAROLE THOMPSON HORD
Georgia Bar No. 291473
chord@swflp.com

Attorneys for Marcus A. Watson, Sr.,
Chapter 7 Trustee

SCHREEDER, WHEELER & FLINT, LLP
1100 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309-4516
(404) 681-3450

CERTIFICATE OF SERVICE

This is to certify that the undersigned served a copy of the CHAPTER 7 TRUSTEE'S OBJECTION TO CLAIM NOS. 575 AND 642 FILED BY IKTHUS TREE FARM, LLC 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:

Ikthus Tree Farm, LLC
c/o Charles M. Gisler, Esq.
165 N. Main Street
Jonesboro, GA 30236-3568

This 31st day of July, 2013.

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

SCHREEDER, WHEELER & FLINT, LLP
1100 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309-4516
404-681-3450

CHAPTER 7 MASTER SERVICE LIST

U.S. Trustee
362 Richard Russell Bldg.
75 Spring Street, SW
Atlanta, GA 30303

Marcus A. Watson
Finley, Colmer and Company
5565 Glenridge Connector
Suite 200
Atlanta, GA 30342

John A. Christy, Esq. – via ECF
Carole Thompson Hord, Esq. – via ECF
Schreeder, Wheeler & Flint, LLP
1100 Peachtree Street, Suite 800
Atlanta, Georgia 30309
Email: *jchristy@swfllp.com*
Email: *chord@swfllp.com*

J. Robert Williamson – via ECF
Scroggins & Williamson
1500 Candler Building
127 Peachtree Street, NE
Atlanta, GA 30303
Email: *rwilliamson@swlawfirm.com*

William A. DuPre IV – via ECF
Paul M. Alexander – via ECF
Miller & Martin PLLC
1170 Peachtree St., N.E. Suite 800
Atlanta, GA 30309-7649
Email: *bdupre@millermartin.com*
Email: *palexander@millermartin.com*

Christopher T. Buchanan
James R. Langdon – via ECF
Moore & Van Allen
100 North Tryon Street
Suite 4700
Charlotte, NC 28202-4003
Email: *jimlangdon@mvalaw.com*

Jonathan S. Shenson
Klee, Tuchin, Bogdanoff & Stern, LLP
1999 Avenue of the Stars
39th Floor
Los Angeles, CA 90067-5061

Karen Fagin White – via ECF
Cohen Pollock Merlin & Small
3350 Riverwood Parkway
Atlanta, GA 30339
Email: *kfwhite@cpmas.com*

Scott B. Riddle, Esq. – via ECF
Suite 3250 One Atlantic Center
1201 W. Peachtree Street NW
Atlanta, GA 30309
Email: *sbriddle@mindspring.com*

Ron C. Bingham, II, Esq. – via ECF
Thompson, O'Brien, Kemp & Nasuti, P.C.
40 Technology Parkway South
Suite 300

Norcross, GA 30092
Email: *rbingham@tokn.com*

John C. Pennington – via ECF
P. O. Box 275
Helen, GA 30545
Email: *jcppc@alltel.net*

Priscilla H. Douglas, Esq.
Corporate Counsel
California First Leasing Corporation
18201 Van Karman Avenue
Suite 800
Irvine, CA 92612

Robert M. D. Mercer – via ECF
Gwendolyn J. Godfrey – via ECF
Bryan Cave Powell Goldstein, L.L.P.
Fourteenth Floor
One Atlantic Center
1201 West Peachtree Street, NW
Atlanta, GA 30309-3488
Email: *rmercerc@pogolaw.com*
Email: *ggodfrey@pogolaw.com*

Jeffrey N. Pomerantz – via ECF
Jeffrey W. Dulberg – via ECF
Pachulski Stang Ziehl & Jones LLP
Eleventh Floor
10100 Santa Monica Blvd.
Los Angeles, CA 90067-4100
Email: *jpomerantz@pszjlaw.com*
Email: *jdulberg@pszjlaw.com*

Bruce Z. Walker, Esq. – via ECF
Cohen Pollock Merlin & Small
3350 Riverwood Parkway
Suite 1600
Atlanta, GA 30339
Email: *bwalker@cpmas.com*
Email: *mnewsome@cpmas.com*

Sarah R. Borders – via ECF
King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, GA 30309
Email: sborders@kslaw.com

Micheal W. Bishop, Esq. – via ECF
Looper Reed & McGraw, P.C.
4600 Thanksgiving Tower
1601 Elm Street
Dallas, TX 75201
Email: mbishop@lrmlaw.com

Samuel D. Hicks
Hicks, Casey & Foster, P.C.
136 N. Fairground Street
Suite 100
Marietta, GA 30060

American Express Bank FSB – via ECF
c/o Becket and Lee LLP
POB 3001
Malvern, PA 19355-0701
Email: notices@becket-lee.com

American Express Travel & Related Svcs Co –
via ECF
c/o Becket and Lee LLP
POB 3001
Malvern, PA 19355-0701
Email: notices@becket-lee.com

Recovery Management Systems Corp.
Attn: Ramesh Singh
25 SE 2nd Avenue, Suite 1120
Miami, FL 33131-1605

Jody Charles Campbell – via ECF
Webb, Tanner, Powell, Mertz & Wilson LLP
P. O. Box 1390
Lawrenceville, GA 30046-1390
Email: jcampbell@wtpllp.com

Michael E. Hastings
Brandy M. Rapp
LeClairRyan
1800 Wachovia Tower
Drawer 1200
Roanoke, VA 24006

J. Hayden Kepner, Jr., Esq. – via ECF
Arnall Golden Gregory LLP
171 17th Street, SW, Suite 2100
Atlanta, GA 30363
Email: hkepner@agg.com

Paul M. Rosenblatt, Esq. – via ECF
Kilpatrick Stockton LLP
1100 Peachtree Street, NE
Suite 2800
Atlanta, GA 30309-4530
Email: prosenblatt@kilpatrickstockton.com

William H. Short Jr., Esq.
Haynsworth Sinkler Boyd, P.A.
P. O. Box 11889
Columbia, SC 29211-1889

Samuel R. Arden, Esq. – via ECF
Hartman, Simons, Spielman & Wood LLP
6400 Powers Ferry Road, NW
Suite 400
Atlanta, GA 30339
Email: sarden@hssw.com

Michael D. Payne, Esq. – via ECF
Lisa Ritchey Craig, Esq. – via ECF
McCullough, Payne & Haan, LLC
171 17th Street NW
Atlanta, GA 30363
Email: mpayne@mphlawfirm.com
Email: lcraig@mphlawfirm.com

David H. Conaway, Esq.
Shumaker, Loop & Kendrick, LLP
128 S. Tryon Street, Suite 1800
Charlotte, NC 28202

Mark A. Baker – via ECF
Morris Schneider Prior Johnson & Freedman
1587 Northeast Expressway
Atlanta, GA 30329
Email: M_Baker@Prommis.com

James C. Joedecke, Jr., Esq. – via ECF
Ryan D. Worsley, Esq.
Andersen, Tate & Carr, P.C.
One Sugarloaf Centre
1960 Satellite Boulevard, Suite 4000
Duluth, GA 30097
Email: gconroy@atclawfirm.com

J. Dewayne Bunch, Esq.
McCoin, McCoin and Bunch
443 Worth Street, NW
Cleveland, TN 37311

Charles M. Gisler, Esq.
165 N. Main Street
Jonesboro, GA 30236-3568

Thomas R. Walker, Esq. – via ECF
McGuireWoods LLP
The Proscenium
1170 Peachtree Street, NE
Atlanta, GA 30309
Email: trwalker@mcguirewoods.com

David W. Cranshaw – via ECF
Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, GA 30326
Email: dhp@mmmlaw.com

Michael F. Holbein, Esq. – via ECF
Arnall Golden Gregory LLP
171 17th Street, NW
Suite 2100
Atlanta, GA 30363-1031
Email: michael.holbein@agg.com

S. Elizabeth Hall, Esq. – via ECF
McKenna Long & Aldridge LLP
303 Peachtree Street, Suite 5300
Atlanta, GA 30308
Email: ehall@mckennalong.com

Alisa H. Aczel, Esq. – via ECF
Troutman Sanders LLP
5200 Bank of America Plaza
600 Peachtree Street NE
Atlanta, GA 30308-2216
Email: alias.aczel@troutmansanders.com

J. Scott Jacobson, Esq.
Melissa J. Perignat, Esq. – via ECF
Holt Ney Zatcoff & Wasserman, LLP
100 Galleria Parkway, Suite 1800
Atlanta, GA 30339-5960
Email: mperignat@hnzw.com

William Rountree, Esq. – via ECF
Macey, Wilensky & Kessler, LLP
600 Marquis Two Tower
285 Peachtree Center Avenue, NE
Atlanta, GA 30303
Email: wroundtree@MaceyWilensky.com

Monrovia Nursery Company
Attn: Tyler Page
18331 E. Foothill Blvd.
Azusa, CA 91702

Internal Revenue Service
Centralized Insolvency Operation
P. O. Box 21126
Philadelphia, PA 19114

Internal Revenue Service
Insolvency
Attn: District Director
Room 400 - Stop 334D
401 West Peachtree Street NW
Atlanta, GA 30308

Commissioner
Georgia Department of Labor
Sussex Place - Room 600
148 International Blvd., N.E.
Atlanta, GA 30303

United States Attorney General
950 Pennsylvania Avenue NW
Washington, DC 20530

US Attorney
Civil Process Clerk
1800 Richard B. Russell Building
75 Spring Street, S.W.
Atlanta, GA 30303

Secretary of Labor
U.S. Department of Labor
Frances Perkins Building
200 Constitution Ave., NW
Washington, DC 20210

Federal Trade Commission
Southeast Region
Attn: Bradley Elbein, Director
Suite 1500
225 Peachtree Street, NE
Atlanta, GA 30303

Ronald S. Gellert, Esq.
Eckert Seamans Cherin & Mellott, LLC
Two Liberty Place
50 S. 16th Street, 22nd Floor
Philadelphia, PA 19102

Mark A. Gilbert, Esq.
Coleman Talley LLP
P.O. Box 5437
Valdosta, GA 31603-5437

William L. Kidd – Via ECF
Curtis & Kidd, P.A.
3883 Rogers Bridge Road
Suite 100
Duluth, Georgia 30097

Paul N. Higbee, Jr.
Jarrard & Davis, LLC
105 Pilgrim Village Drive
Suite 200
Cumming, GA 30040