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Attorneys for Todd Frealy, Chapter 7 Trustee

FILED & ENTERED

JAN 12 2017

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY harris DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA - RIVERSIDE DIVISION

In re

HN ENGINEERING, INC.,

Debtor.

Case No. 6:11-bk-36779-MH

Chapter 7

Adv. Case No. 6:13-ap-01321-MH

CHAPTER 7 TRUSTEE, TODD A. FREALY,
solely in his capacity as duly appointed trustee
for the bankruptcy estate of HN
ENGINEERING, INC.,

Plaintiff,

vs.

HORST UWE HARNEIT,

Defendant.

**ORDER GRANTING MOTION TO
AMEND JUDGMENT TO ADD “HORST
UWE HARNEIT, TRUSTEE OF THE
HARNEIT FAMILY 1999 TRUST” AS
ADDITIONAL JUDGMENT DEBTOR
PURSUANT TO FRCP 69(A) AND CCP §
187**

Hearing

Date: January 11, 2017
Time: 2:00 p.m.
Location: Courtroom 303
3420 Twelfth Street
Riverside, CA 92501

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2 The *Motion to Amend the Default Judgment* [AP Docket No. 46] (the “Motion”) came on
3 for hearing on January 11, 2017 at 2:00 p.m. Appearances were as noted on the record. The Court
4 having reviewed all pleadings filed in this matter, considered the oral arguments of counsel, and
5 upon finding good cause,

6 **IT IS HEREBY ORDERED:**

- 7 1. The Motion is granted for the reasons set forth in the Court’s Tentative Ruling,
8 dated January 11, 2017, a copy of which is attached hereto.

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26 Date: January 12, 2017



Mark Houle
United States Bankruptcy Judge

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, January 11, 2017

Hearing Room 303

2:00 PM

6:11-36779 HN Engineering, Inc.

Chapter 7

Adv#: 6:13-01321 Frealy, (TR) v. Harneit

#25.00 Motion to Amend Judgment to Add "Horst Uwe Harneit, Trustee of the Harneit Family 1999 Trust" as Additional Judgment Debtor Pursuant to FRCP 69(A) and CCP § 187

EH__

Docket 46

Tentative Ruling:

01/11/2017

BACKGROUND

On August 22, 2011 ("Petition Date"), HN Engineering ("Debtor") filed for bankruptcy protection under chapter 7 of the Bankruptcy Code. Todd Frealy ("Trustee" or "Plaintiff") is the duly appointed Chapter 7 Trustee. Horst Uwe Harneit ("Harneit" or "Defendant") was the former CEO and 100% shareholder of the Debtor. On November 30, 2011, Defendant filed two proofs of claim, Claim #17, in the amount of \$3,079,071.43 and Claim #18 in the amount of \$412,061.94 related to alleged unpaid shareholder loans and wages. The Trustee, in turn, filed a Complaint on August 19, 2013, against Harneit, seeking recovery of both preferential and fraudulent transfers (the "Complaint").

On November 14, 2014, the Court entered its Order Granting Motion for Default Judgment and Judgment against Harneit. The Judgment awarded \$821,974.20 to the Estate on its claims against Harneit. The Trustee is now seeking to execute the Judgment against certain real property located at 1247 North School Lane in Amargosa Valley, Nevada (the "Property"), which has a fair market value ranging \$400,000 to \$600,000. The Trustee has discovered that the Property belonged to Harneit and his wife until 2002, when Harneit and his wife transferred their interests in the Property to the Harneit Family 1999 Trust (the "Trust"). The Trustee now seeks to add Horst Uwe Harneit, as trustee of the Harneit Family 1999 Trust, as an additional judgment debtor.

On December 16, 2016, the Trustee filed his Motion to Amend Judgment to

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Add Judgment Debtor ("Motion"). Service was proper and the Motion is unopposed.

DISCUSSION

The Trustee moves under FRCP 69(a) and California Code of Civil Procedure (CCP)

§ 187. FRCP 69(a) provides that "[t]he procedure on execution – and in proceedings supplementary to and in aid of judgment or execution--must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies." California law, in turn, permits courts to amend judgments to add judgment debtors. CCP §187; *In re Levander*, 180 F.3d 1114, 1121 (9th Cir. 1999). To amend a judgment under § 187, two requirements must usually be met: "(1) that the new party be the alter ego of the old party and (2) that the new party had controlled the litigation, thereby having had the opportunity to litigate, in order to satisfy due process concerns." *Id.* (internal citations omitted).

The Trustee asserts that Harneit as trustee of the Harneit Family 1999 Trust is the alter ego of Harneit, the individual, who had a full and fair opportunity to litigate the Complaint. The Trustee further asserts that *Greenspan v. LADT, LLC*, 191 Cal. App. 4th 486, 517, 121 Cal. Rptr. 3d 118, 142 (2010), supports the addition of Harneit as trustee, as a judgment debtor.

The *Greenspan* Court summarized the following California procedure relating to addition of trusts as judgment debtors: "[u]nlike a corporation, a trust is not a legal entity. Legal title to property owned by a trust is held by the trustee...." ' "A ... trust ... is simply a collection of assets and liabilities. As such, it has no capacity to sue or be sued, or to defend an action." ' " "[T]he proper procedure for one who wishes to ensure that trust property will be available to satisfy a judgment ... [is to] sue the trustee in his or her representative capacity. *Id.* at 522 (internal citations omitted). The *Greenspan* Court then found that if it can be shown that a trustee for a trust is the alter ego of a judgment debtor, then that trustee may be considered the owner of the trust's assets for purposes of satisfying the judgment.

Here, there is no dispute that Harneit as trustee of the Harneit Family 1999 Trust is the alter ego as Harneit the individual. Harneit and his wife are the settlors, beneficiaries, and trustees of the Trust. Additionally, Harneit as trustee has the absolute authority to revoke or amend the trust during his lifetime, and has absolute

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discretion to use the trust's income and principal for his "health, education, support, comfort, welfare, or happiness..." (Mot. at Ex. 4). Thus, having reviewed the Harneit Trust provisions, the Court finds that Harneit as trustee of the Trust is the alter ego of Harneit the individual, and on that basis finds that the Trustee has met the requirements under California law for addition of Harneit as trustee of the Trust as a Judgment Debtor.

Finally, the Court deems the failure to file opposition by Harneit as trustee of the Trust as consent to the granting of the Motion.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to GRANT the motion in its entirety.

APPEARANCES REQUIRED. Movant to lodge an order and an amended judgment within 7 days

Party Information

Debtor(s):

HN Engineering, Inc.

Represented By
Martha A Warriner

Defendant(s):

Horst Uwe Harneit

Pro Se

Movant(s):

Todd A Frealy, (TR)

Represented By
Robert P Goe

Plaintiff(s):

Todd A Frealy, (TR)

Represented By
Robert P Goe

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Trustee(s):

Todd A. Frealy (TR)

Represented By
Robert P Goe
Rew R Goodenow