

SILVERMANACAMPORA LLP

Attorneys for Kenneth P. Silverman, Esq.,
Chapter 7 Trustee
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300
Ronald J. Friedman, Esq.
Jay S. Hellman, Esq.
David J. Mahoney, Esq.
Wade C. Wilkinson, Esq.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
AT CENTRAL ISLIP

-----X

In re:

Chapter 7
Case No. 09-70660 (DTE)
Substantively Consolidated

AGAPE WORLD, INC.,
AGAPE MERCHANT ADVANCE LLC,
AGAPE COMMUNITY LLC, AGAPE
CONSTRUCTION MANAGEMENT LLC,
AGAPE WORLD BRIDGES LLC, AND
114 PARKWAY DRIVE SOUTH LLC,

Debtors.

-----X

KENNETH P. SILVERMAN, ESQ., as
Chapter 7 Trustee of Agape World, Inc., *et al.*

Plaintiff,

Adv. Pro. No. 10-_____ (DTE)

-against-

JOSEPH SCHIMEK and
SUSI SCHIMEK,

Defendants.

-----X

COMPLAINT

Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee" of "Plaintiff") of the substantively consolidated bankruptcy estate of Agape World, Inc., *et al.* ("Agape" or the "Debtor"), by his attorneys, SilvermanAcampora LLP, complaining of defendant Joseph Schimek ("Joseph") and Susi Schimek ("Susi" and, together with Joseph, collectively, the "Defendants") alleges as follows:

Nature of the Action

1. This adversary proceeding is commenced pursuant to 11 U.S.C. §§105, 502, 544, 547, 548, 550 and 551, New York Debtor and Creditor Law §§273, 274, 275, 276 and 276-a, and New York common law to set aside and recover transfers made by the substantively consolidated debtors to Defendants.

Jurisdiction and Venue

2. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§157 and 1334.

3. The statutory predicates for the relief sought herein are 11 U.S.C. §§105(a), 502, 544, 547, 548, 550 and 551, New York Debtor and Creditor Law §§273, 274, 275, 276 and 276-a, and New York common law.

4. This is a core proceeding pursuant to 28 U.S.C. §§157(b)(1), 157(b)(2)(A), 157(b)(2)(B), 157(b)(2)(E), 157(b)(2)(F), 157(b)(2)(H), and 157(b)(2)(O).

5. Venue is proper in this Court pursuant to 28 U.S.C. §1409.

Parties and Procedural History

6. At all relevant times, Agape World, Inc. was a domestic corporation with principal places of business located at 150 Motor Parkway, Suite 106, Hauppauge, New York; 64-13B Grand Avenue, Maspeth, New York; and 82-11 37th Avenue, Suite 602, Jackson Heights, New York.

7. On February 5, 2009 (the "Filing Date"), an involuntary chapter 7 petition was filed by four petitioning creditors (the "Petitioning Creditors") pursuant to 11 U.S.C. §303(b), against Agape World, Inc., in the United States Bankruptcy Court for the Eastern District of New York.

8. On February 9, 2009, the Petitioning Creditors filed a motion to appoint an interim chapter 7 trustee under 11 U.S.C. §303(g).

9. On February 12, 2009, this Court granted the Petitioning Creditors' motion and entered an order directing the United States Trustee's Office to immediately appoint an interim chapter 7 trustee in the Agape World, Inc. case.

10. On February 12, 2009, Kenneth P. Silverman, Esq., was appointed the interim trustee in the Agape World Inc. case, and has since duly qualified as is now the permanent Trustee in the Agape World, Inc. substantively consolidated case.

11. On March 4, 2009, the Court issued an Order for relief in the Agape World, Inc. chapter 7 case.

12. On April 14, 2009, the Court issued an Order substantively consolidating Agape World, Inc., Agape Merchant Advance LLC, Agape Community LLC, Agape Construction Management, LLC, Agape World Bridges LLC, and 114 Parkway Drive South LLC.

13. Upon information and belief, Joseph was and is an individual currently residing at 283 Walton Drive Appomattox, Virginia 24522.

14. Upon information and belief, Susi was and is an individual currently residing at 283 Walton Drive Appomattox, Virginia 24522.

Background Facts Common To All Claims For Relief

15. Upon information and belief, since at least 1999 Agape was purportedly operating as a bridge lender, whereby investors were advised that Agape provided short-term bridge loans to commercial borrowers in order to generate high rates of return.

16. Prior to the Filing Date, various "brokers" and "sub-brokers" of Agape, recruited third-parties to invest money with the Debtor.

17. Upon information and belief, the Debtor, and the various "brokers" and/or "sub-brokers" offered contracts to various third-parties to induce those third-party "investors" to "invest" in the purported bridge loans.

18. Upon information and belief, pursuant to the terms of the various contracts entered into between the Debtor and the purported investors, those investors were permitted to

receive payments from their purported investments in the form of “interest payments” or, alternatively, the purported investors were permitted to “roll-over” their investments to a future bridge loan offered.

19. Upon information and belief, the representations to investors were, in large measure, false.

20. Upon information and belief, rather than utilizing all of the third-party funds to invest in bridge loans, the majority of the investor funds were, among other things, (i) utilized to pay prior investors their promised rate of interest or to provide a return of their investment, (ii) squandered in connection with undisclosed and unauthorized commodity futures trading, and/or (iii) transferred to Agape’s alter-egos or to Defendants themselves for their own personal enrichment and to the detriment of Agape’s legitimate creditors.

21. Defendants were such third parties, who, pursuant to various contracts with the Debtor, was purportedly entitled to receive payments under the contracts allegedly arising out of Defendants’ “investment.”

22. Upon information and belief, between February 5, 2003 and the Filing Date, Defendants received transfers from Agape, net after deposits into Agape, in amount to be determined at trial, but, in no event less than One Hundred Eight Thousand Seven Hundred Sixty-Six Dollars And Forty-Eight Cents (\$108,766.48) (the “Net Transfers”).

23. The Net Transfers were made for no consideration or less than reasonably equivalent value.

24. Agape was either insolvent at the times the Net Transfers were made, or was rendered insolvent as a result of the Net Transfers.

25. At the times the Net Transfers were made, there existed unsecured creditors of the Agape who remained unsecured creditors as of the Filing Date.

First Claim For Relief Against Defendants
(incorporating all previous allegations)

26. The Net Transfers constituted fraudulent conveyances in violation of New York Debtor and Creditor Law §273.

27. By reason of the foregoing, under Bankruptcy Code §544(b), the Trustee is entitled to a judgment (a) avoiding the Net Transfers pursuant to New York Debtor and Creditor Law §273, and (b) pursuant to 11 U.S.C. §§550(a) and 551, may recover from Defendants an amount as yet undetermined, but, in no event less than One Hundred Eight Thousand Seven Hundred Sixty-Six Dollars And Forty-Eight Cents (\$108,766.48), plus appropriate interest thereon.

Second Claim For Relief Against Defendants
(incorporating all previous allegations)

28. Upon information and belief, at the time of the Net Transfers, Agape was engaged or about to engage in a business or transaction for which the property remaining in its possession after the conveyance was unreasonably small capital.

29. The Net Transfers constituted fraudulent conveyances in violation of New York Debtor and Creditor Law §274.

30. By reason of the foregoing, under Bankruptcy Code §544(b), the Trustee is entitled to a judgment (a) avoiding the Net Transfers pursuant to New York Debtor and Creditor Law §274, and (b) pursuant to 11 U.S.C. §§550(a) and 551, may recover from Defendants an amount as yet undetermined, but, in no event less than One Hundred Eight Thousand Seven Hundred Sixty-Six Dollars And Forty-Eight Cents (\$108,766.48), plus appropriate interest thereon.

Third Claim For Relief Against Defendants
(incorporating all previous allegations)

31. Upon information and belief, at the time of the Net Transfers, Agape had incurred, was intending to incur or believed that it would incur debts beyond its ability to pay them as they matured.

32. The Net Transfers constituted fraudulent conveyances in violation of New York Debtor and Creditor Law §275.

33. By reason of the foregoing, under Bankruptcy Code §544(b), the Trustee is entitled to a judgment (a) avoiding the Net Transfers pursuant to New York Debtor and Creditor Law §275, and (b) pursuant to 11 U.S.C. §§550(a) and 551, may recover from Defendants an amount as yet undetermined, but, in no event less than One Hundred Eight Thousand Seven Hundred Sixty-Six Dollars And Forty-Eight Cents (\$108,766.48), plus appropriate interest thereon.

Fourth Claim For Relief Against Defendants
(incorporating all previous allegations)

34. The Net Transfers were made with the actual intent to hinder, delay or defraud the Agape's creditors.

35. The Net Transfers constituted fraudulent conveyances in violation of New York Debtor and Creditor Law §276.

36. Based upon the foregoing, the Trustee is entitled to judgment (a) avoiding the Net Transfers pursuant to New York State Debtor & Creditor Law §276, and (b) pursuant to 11 U.S.C. §§550(a) and 551, may recover from Defendants an amount as yet undetermined, but, in no event less than One Hundred Eight Thousand Seven Hundred Sixty-Six Dollars And Forty-Eight Cents (\$108,766.48), plus interest thereon, and may recover attorneys' fees pursuant to New York Debtor and Creditor Law §276-a.

Fifth Claim For Relief Against Defendants
(incorporating all previous allegations)

37. The Net Transfers to Defendants were impermissible transfers of Agape's interest in property. As a result, Defendants were the ultimate beneficiary of the Net Transfers under circumstances in which Defendants would be unjustly enriched if they were to retain such Transfers since Agape did not receive reasonably equivalent value therefor.

38. As a result, Defendants have been unjustly enriched and may not in equity and good conscience retain the Net Transfers.

39. By reason of the foregoing, Defendants are liable to the Trustee under New York common law for unjust enrichment in an amount as yet undetermined, but, in no event less than One Hundred Eight Thousand Seven Hundred Sixty-Six Dollars And Forty-Eight Cents (\$108,766.48), plus appropriate interest thereon.

Sixth Claim For Relief Against Defendants
(incorporating all previous allegations)

40. Upon information and belief, between November 7, 2008 and the Filing Date, Defendants received transfers from Agape in an amount to be determined at trial, but, in no event less than One Hundred Sixty-Five Thousand Two Hundred Seventy-Six Dollars And Fifty Cents (\$165,276.50) (the "Preferential Transfers" and, together with the Net Transfers, collectively, the "Transfers").

41. The Preferential Transfers, in an amount to be determined at trial, but in no event less than One Hundred Sixty-Five Thousand Two Hundred Seventy-Six Dollars And Fifty Cents (\$165,276.50) were made within ninety (90) days of the Filing Date.

42. Upon information and belief, the following Preferential Transfers were made:

Date Cleared	Check Number	Amount
11/19/08	3032	\$5,913.75
12/03/08	3553	\$2,225.00

12/16/08	3792	\$5,913.75
01/07/09	4292	\$2,225.00
01/12/09	4330	\$35,000.00
01/14/09	4331	\$113,999.00
TOTAL		\$165,276.50

43. The Preferential Transfers were made within ninety (90) days of the Filing Date.

44. The Preferential Transfers were made while the Debtor was insolvent.

45. The Preferential Transfers were made from the one or more of the Debtor's several bank accounts, and constituted transfers of Agape's interest in property.

46. To the extent that the Preferential Transfers were made on account of antecedent debts owed by Agape to Defendants, the Preferential Transfers were made to, or for the benefit of, Defendants, a creditor of Agape.

47. To the extent that the Preferential Transfers were made on account of antecedent debts, those debts arose by virtue of various contracts that the Debtor and Defendants entered into before the Preferential Transfers were made.

48. Pursuant to the terms of the various contracts entered into between the Debtor and Defendants, Defendants was permitted to receive payments from Defendants' purported investments in the form of "interest payments" or, alternatively, Defendants was permitted to "roll-over" their investments to a future bridge loan.

49. To the extent that the Preferential Transfers were made on account of antecedent debts owed by Agape to Defendants, the alleged debts were incurred by Agape to Defendants before the Preferential Transfers were made.

50. The Preferential Transfers enabled Defendants to receive more than they would have received if: (a) Agape's case was filed under chapter 7 of the Bankruptcy Code; (b) the Preferential Transfers had not been made; and (c) Defendant received payment of their claim as provided under chapter 7 of the Bankruptcy Code.

51. In the event that the Preferential Transfers are not otherwise avoided under the First through the Seventh Claims for relief, the Preferential Transfers constituted avoidable transfers pursuant to Bankruptcy Code §547(b) and, in accordance with Bankruptcy Code §550(a), the Trustee may recover the amount of the Preferential Transfers from Defendant, plus appropriate interest thereon.

52. Based upon the foregoing, the Trustee is entitled to a judgment (i) avoiding the Preferential Transfers, and (ii) pursuant to 11 U.S.C. §§550(a) and 551, may recover from Defendants an amount is equal to the Preferential Transfers, which amount is, in no event less than One Hundred Sixty-Five Thousand Two Hundred Seventy-Six Dollars And Fifty Cents (\$165,276.50), plus appropriate interest thereon.

Seventh Claim For Relief Against Defendants
(incorporating all previous allegations)

53. Upon information and belief, Defendants have filed or may file a proof of claim against Agape.

54. Defendants are the recipient of the Transfers which constitute avoidable transfers under Bankruptcy Code §§547(b) and 548(a)(1)(B).

55. Defendants have not paid the amount, or turned over such property, for which Defendants are liable under Bankruptcy Code §550.

56. Based upon the foregoing, and in accordance with Bankruptcy Code §502(d), any claims filed by Defendants against Agape should be disallowed unless and until Defendants return the Transfers to the Trustee.

WHEREFORE, plaintiff Kenneth P. Silverman, Esq., the chapter 7 Trustee demands judgment:

- (a) against Defendants on the Trustee's first claim for relief (a) avoiding the Net Transfers pursuant to New York Debtor and Creditor Law §273, and (b) pursuant to 11 U.S.C. §§550(a) and 551, recovering an amount to be determined at trial, but in no event less than One Hundred Eight Thousand Seven Hundred Sixty-Six Dollars And Forty-Eight Cents (\$108,766.48) from Defendants plus appropriate interest thereon;

- (b) against Defendants on the Trustee's second claim for relief (a) avoiding the Net Transfers pursuant to New York Debtor and Creditor Law §274, and (b) pursuant to 11 U.S.C. §§550(a) and 551, recovering an amount to be determined at trial, but in no event less than One Hundred Eight Thousand Seven Hundred Sixty-Six Dollars And Forty-Eight Cents (\$108,766.48) from Defendants plus appropriate interest thereon;
- (c) against Defendants on the Trustee's third claim for relief (a) avoiding the Net Transfers pursuant to New York Debtor and Creditor Law §275, and (b) pursuant to 11 U.S.C. §§550(a) and 551, recovering an amount to be determined at trial, but in no event less than One Hundred Eight Thousand Seven Hundred Sixty-Six Dollars And Forty-Eight Cents (\$108,766.48) from Defendants plus appropriate interest thereon; and
- (d) against Defendants on the Trustee's fourth claim for relief (a) avoiding the Net Transfers pursuant to New York Debtor and Creditor Law §276, and (b) pursuant to 11 U.S.C. §§550(a) and 551, recovering an amount to be determined at trial, but in no event less than One Hundred Eight Thousand Seven Hundred Sixty-Six Dollars And Forty-Eight Cents (\$108,766.48) from Defendants plus appropriate interest thereon and may recover attorneys' fees pursuant to New York Debtor and Creditor Law §276-A;
- (e) against Defendants on Trustee's fifth claim for relief for unjust enrichment under New York common law in an amount to be determined at trial, but in no event less than One Hundred Eight Thousand Seven Hundred Sixty-Six Dollars And Forty-Eight Cents (\$108,766.48) from Defendants plus appropriate interest thereon; and
- (f) against Defendants on the Trustee's sixth claim for relief (a) avoiding the Preferential Transfers pursuant to 11 U.S.C. §547(b), and (b) pursuant to 11 U.S.C. §§550(a) and 551, recovering the Preferential Transfers in the sum of One Hundred Sixty-Five Thousand Two Hundred Seventy-Six Dollars And Fifty Cents (\$165,276.50) from Defendants plus appropriate interest thereon; and
- (g) against the Defendants on the Trustee's seventh claim for relief pursuant to 11 U.S.C. §502(d) disallowing any claim of Defendants against Agape unless and until Defendants return the Transfers to the Trustee; and

(h) For such other, further and different relief as the Court deems proper.

Dated: Jericho, New York
December 13, 2010

SILVERMANACAMPORA LLP
Attorneys for Plaintiff Kenneth P. Silverman, Esq.
the Chapter 7 Trustee

By: s/ David J. Mahoney
Jay S. Hellman, Esq.
David J. Mahoney, Esq.
Members of the Firm
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300