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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re
GIRARDI KEESE,

Debtor.

ELISSA D. MILLER, Chapter 7 Trustee,

Plaintiff,

vs.

ERIKA N. GIRARDI, an individual; EJ
GLOBAL, LLC, a limited liability company
and PRETTY MESS, INC., a corporation,

Defendants.

District Court Case Number
2:22-cv-05176

Bankruptcy Court Case No.
2:20-bk-21022-BR

Chapter 7

Adversary Case Number:
2:21-ap-01155-BR

**APPELLEE’S COUNTER STATEMENT
OF ISSUES**

Appeal Filed: July 9, 2022

Judge: Hon. Dale S. Fischer

Appellee, Elissa D. Miller, the chapter 7 trustee (“Trustee”) of the debtor, Girardi | Keese (“Debtor”), submits the following Statement of Issues.

1 1. Whether the chapter 7 trustee for a debtor law firm is the de-facto successor trustee
2 for the debtor law firm’s Client Trust Account?

3 2. Whether, as the de-facto successor trustee for the debtor law firm’s Client Trust
4 Account, the Trustee has standing to sue to protect the rights and interests of the beneficiaries of
5 the Client Trust Account?

6 3. Whether the Appellant can retain possession of a pair of diamond earrings that
7 were purchased by her attorney-husband using money from the Client’s Trust Account?

8 4. Whether an attorney who steals \$750,000 from a Client’s Trust Account and uses
9 the stolen money to purchase diamond earrings for his wife, has committed the crime of
10 embezzlement, as defined by California Penal Code § 503?

11 5. Whether an attorney who steals \$750,000 from a Client’s Trust Account and uses
12 the stolen money to purchase diamond earrings for his wife and describes the trust account check
13 on the Firm’s ledger as being for the payment of “costs” committed the crime of concealing stolen
14 property as defined by California Penal Code §496.

15 6. Whether when in or about November 2021 Appellant, Erika Girardi first learned
16 the diamond earrings were purchased with money stolen from the debtor’s Client Trust Account,
17 and then refused to turn over the property to the Trustee when demand was made, has committed a
18 crime as defined by California Penal Code §496(a) (“every person who withholds any property
19 from the owner . . . knowing the property to be stolen . . . shall be punished by imprisonment in a
20 county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section
21 1170)?

22 7. Whether Appellee Erika Girardi committed the act of conversion when, after
23 learning the diamond earrings had been purchased with money stolen from the Debtor’s Trust
24 Account, she refused to turn over the same to the Trustee, upon demand being made?

25 8. Whether, in pursuing claims for the return of the Debtor’s trust fund money, the
26 doctrine of “*in pari delicto*” is not applicable?

27 9. Whether when the Appellant, Erika Girardi, refused to return the \$750,000
28 diamond earrings, knowing the same were purchased with funds stolen from the Debtor’s Client

1 Trust account, her refusal to return the same is an act separate and apart from the original theft of
2 funds, as defined by California Penal Code §496(a) and, given the legislative intent of the same,
3 the Trustee’s right to obtain a return of the “fruits of crime” is not precluded by any statute of
4 limitation.

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6 Dated: August 23, 2022,

Respectfully Submitted,
JENKINS MULLIGAN & GABRIEL LLP



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9 By: _____
10 Larry W. Gabriel, Special Litigation Counsel
11 for Appellee, Elissa D. Miller, Chapter 7
12 Trustee, Estate of Girardi | Keese
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 8001 Lurline Avenue, Winnetka, CA 91306.

A true and correct copy of the foregoing document entitled (*specify*): **APPELLEE'S COUNTER STATEMENT OF ISSUES** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **August 23, 2022**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Evan Christopher Borges**
eborges@ggtriallaw.com, cwinsten@ggtriallaw.com
- **Larry Wayne Gabriel**
lgabrielaw@outlook.com, ecf@ebg-law.com, nfields@bg.law

Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:

On (*date*) August 23, 2022, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Hon. Dale S. Fischer
U.S. District Court Judge
First Street Courthouse
350 West 1st Street, Courtroom 7D
Los Angeles, CA 90012

Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

August 23, 2022
Date

KRISTINA DOW
Printed Name

/s/ Kristina Dow
Signature