

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:)	CHAPTER 7
)	
HAVEN TRUST BANCORP, INC.)	CASE NO. 09-64497-MGD
)	
Debtor.)	

)	
CATHY L. SCARVER, Chapter 7 Trustee for Haven Trust Bancorp, Inc.,)	ADVERSARY PROCEEDING NO.
)	
Plaintiff,)	
)	
v.)	
)	
ANIL J. DESAI & ROOPAL A. DESAI, THAKOR PATEL & BHAVNA PATEL, MANKELLA JIVARAM PATEL, JAYANTIBHAI N. PATEL, PRAKASH D. DARJI & NARANJANA P. DARJI, MAHENDRA P. PATEL & HANSA M. PATEL, TARU SUMANT PATEL, NAYAN NAGIN, ASVIN S. PATEL & ARUNA A. PATEL, and MAHENDRA G. PATEL,)	
)	
Defendants.)	

COMPLAINT

COMES NOW Cathy L. Scarver (the “Trustee”), Chapter 7 Trustee for Haven Trust Bancorp, Inc. (the “Debtor”), and brings this Complaint as follows:

TRUSTEE, APPOINTMENT, JURISDICTION, AND VENUE

1. Debtor filed a petition for relief under Chapter 7 of Title 11 of the United States Code (the “Bankruptcy Code”) on February 23, 2009 (the “Petition Date”).
2. Cathy L. Scarver is the duly appointed and qualified Chapter 7 Trustee.

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and under 28 U.S.C. § 157. Venue is proper under 28 U.S.C. § 1409.
4. This is a core proceeding within the meaning of 28 U.S.C. §157(b).

BACKGROUND AND PARTIES

5. Prior to the Petition Date, Debtor was a Georgia corporation and was the holding company of Haven Trust Bank, an FDIC-insured institution located in Duluth, Georgia. Haven Trust Bank was a state-chartered, non-member institution that was established on January 24, 2000. The bank operated four branches in the Atlanta, Georgia area and loan production offices in Birmingham, Alabama, and Oklahoma City, Oklahoma. At all relevant times, the only major asset of Debtor was its ownership interest in Haven Trust Bank.

6. At all relevant times, the Debtor was organized as an S-Corporation, such that corporate income, losses, deductions, and credits passed through to shareholders for federal tax purposes.

7. At all relevant times prior to the Petition Date, Defendants Anil J. Desai & Roopal A. Desai, Thakor Patel & Bhavna Patel, Mankella Jivaram Patel, Jayantibhai N. Patel, Prakash D. Darji & Naranjana P. Darji, Mahendra P. Patel & Hansa M. Patel, Taru Sumant Patel, Nayan Nagin, Asvin S. Patel & Aruna A. Patel, and Mahendra G. Patel (hereinafter, the “Defendants”) were shareholders of Debtor, each holding between 1.0 percent and 6.73 percent of the Debtor, as individuals.

8. Defendants are subject to the jurisdiction of this Court and may be served pursuant to Fed. R. Bankr. P. 7004.

TAKEOVER OF HAVEN TRUST BANK BY THE FDIC

9. On December 12, 2008, the Georgia Department of Banking and Finance closed Haven Trust Bank and named the Federal Deposit Insurance Commission (the “FDIC”) as receiver.

10. The FDIC estimated, in January 2009, that the loss to the Deposit Insurance Fund resulting from Haven Trust Bank’s failure was \$207 million.

11. Subsequently, the FDIC conducted a material loss review of the failure of Haven Trust Bank, as required by Section 38(k) of the Federal Deposit Insurance Act. An objective of this review was to determine the causes of the financial institution’s failure and resulting material loss to the Deposit Insurance Fund.

12. In August 2009, the FDIC issued its Audit Report of Haven Trust Bank, Report No. AUD-09-017 (the “Material Loss Report”). Therein, the FDIC reported, among other things, that the key cause of the failure of Haven Trust Bank was that its Board of Directors did not adequately identify, monitor, and control risk in its loan portfolio.

13. According to the Material Loss Report, Haven Trust Bank concentrated its loan portfolio on acquisition, development, and construction (“ADC”) loans and commercial real estate (“CRE”) loans.

14. The FDIC further reported that Haven Trust Bank had grown rapidly, from \$29 million in assets in its first year of operations, to \$550 million in assets by 2007. According to the Material Loss Report, such rapid growth was partially the result of the use of non-core funding, including brokered deposits, to fund risky ADC loans and other types of CRE lending.

15. The Material Loss Report reported that the value of Haven Trust Bank’s assets declined, culminating in Georgia Banking Officials deeming the bank “not viable.” The bank

was thereafter closed in December 2008, and on February 23, 2009, Debtor filed a voluntary Chapter 7 bankruptcy case in the Northern District of Georgia.

DEBTOR'S BANKRUPTCY CASE

16. Debtor has scheduled total debt in the amount of \$9,017,437.49 and total assets in the amount of \$0.00 (Doc. No. 3, p. 1). Debtor's schedules evidence its insolvency.

17. The Trustee has identified as an asset of the bankruptcy estate claims against Debtor's shareholders for the recovery of transfers of funds from the Debtor to the shareholders in January and May 2008.

18. In its Statement of Financial Affairs, Debtor identified a portion of the transfers in question, totaling \$313,709.72, representing transfers made to insiders of the Debtor.

THE TRANSFERS

19. On January 16, 2008, Debtor made distributions to shareholders, including to the Defendants, in the total gross amount of \$242,238.00 (the "January Transfers"). The individual distributions made by Debtor to the Defendants as part of the January Transfers totaled \$56,061.56 and are identified on Exhibit "A" attached hereto.

20. On May 5, 2008, Debtor made distributions to shareholders, including to the Defendants, in the total gross amount of \$300,000.00 (the "May Transfers"). The individual distributions made by Debtor to the Defendants as part of the May Transfers totaled \$69,429.51 and are identified on Exhibit "B" attached hereto.

21. The transfers referenced in both Paragraph 19 and Paragraph 20 will be hereinafter referred to as the "Transfers." The Transfers, collectively, totaled \$542,238.00. The portion of the Transfers made to Defendants totaled \$125,491.07.

22. Debtor made the Transfers to fund payment of income taxes at the shareholder level. Debtor received no benefit or value of any kind whatsoever in exchange for the Transfers.

23. On or about May 7, 2010, the Trustee made demand on Debtor's shareholders for return of the Transfers. In response, Trustee received a total of \$13,936.87 from certain individual shareholders upon whom demand was made. Accordingly, a total of \$528,301.13 of the Transfers has not been turned over to the bankruptcy estate. A total of \$125,491.07 of that amount is due from Defendants. No funds were returned from the Defendants.

**COUNT I: AVOIDANCE AND RECOVERY OF THE TRANSFERS
UNDER 11 U.S.C. §§ 548(a)(1)(B) and 550**

24. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 23.

25. The Transfers were transfers of an interest of Debtor in property made within two (2) years before the Petition Date. Debtor received no consideration for the Transfers. Debtor received less than reasonably equivalent value in exchange for Transfers.

26. At the time of the Transfers, Debtor was insolvent or became insolvent as a result of the Transfers. Alternatively, Debtor was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the Debtor was an unreasonably small capital.

27. The Transfers are avoidable under 11 U.S.C. § 548(a)(1)(B) and are recoverable from the Defendants individually in the amounts identified on Exhibits "A" and "B" hereto under 11 U.S.C. § 550.

**COUNT II: AVOIDANCE AND RECOVERY OF THE TRANSFERS
UNDER O.C.G.A § 18-2-75(a) AND 11 U.S.C. §§ 544 & 550**

28. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 27.

29. The Transfers were transfers of an interest of Debtor in property.

30. Debtor received less than reasonably equivalent value in exchange for the Transfers.

31. Debtor was insolvent at the time of the Transfers or was made or became insolvent as a result of the Transfers.

32. At the time of the Transfers, Debtor had one or more actual unsecured creditors, and one or more of these actual unsecured creditors remain unpaid.

33. The Transfers are avoidable pursuant to § 544 and O.C.G.A. § 18-2-75(a) and recoverable against the Defendants individually in the amounts identified on Exhibits “A” and “B” attached hereto under §550 of the Bankruptcy Code.

COUNT III: CAUSE OF ACTION FOR UNJUST ENRICHMENT

34. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 33.

35. The Transfers were made for the benefit of Debtor’s shareholders, including the Defendants.

36. The Transfers were made to shareholders, including the Defendants, to enable payment of income taxes which were never due and for which payment was never made. Rather, the Defendants retained the Transfers for themselves.

37. As a result, the Defendants have been unjustly enriched and have benefitted at the direct expense of the bankruptcy estate.

38. Accordingly, the Defendants should be required to disgorge the portions of the Transfers made to them, and Plaintiff should recover from the Defendants the value of the portions of the Transfers made to them.

WHEREFORE, Trustee prays that the Court enter judgment in her favor and against the Defendants as follows:

- (a) avoiding the Transfers;
- (b) awarding judgment to Plaintiff and against each Defendant on the avoided Transfers in the amount of the distribution to each Defendant as identified on Exhibits “A” and “B” attached hereto;
- (c) awarding pre-judgment and post-judgment interest at the legal rate on the amount of Plaintiff’s judgment as allowed under 28 U.S.C. § 1961 from the date of this Complaint;
- (d) awarding the costs, expenses, and fees incurred by Plaintiff in prosecuting this Complaint; and
- (e) providing such other and further relief as the Court may deem just and proper.

Respectfully submitted this 22nd day of February, 2011.

LAMBERTH, CIFELLI, STOKES
ELLIS & NASON, P.A.

Counsel for Trustee

By: /s/J. Michael Lamberth

J. Michael Lamberth

Georgia Bar No. 431975

By: /s/ Maggie Rentz

Maggie Rentz

Georgia Bar No. 126457

3343 Peachtree Road, N.E.

East Tower, Suite 550

Atlanta, Georgia 30326-1022

Phone: (404) 262-7373

Fax: (404) 262-9911

EXHIBIT "A"
JANUARY 2008 TRANSFERS TO DEFENDANTS

<u>Shareholder Defendant</u>	<u>% Owned</u>	<u>Distribution Amount</u>
Anil J. Desai Roopal A. Desai	1.93%	\$4,681.29
Thakor Patel Bhavna Patel	1.93%	\$4,494.04
Mankella Jivaram Patel	2.71%	\$6,553.81
Jayantibhai N. Patel	1.93%	\$ 4,681.29
Prakash D. Darjit Naranjana P. Darjit	2.24%	\$5,213.08
Mahendra G. Patel	2.14%	\$4,967.53
Taru Sumant Patel	6.73%	\$16,302.68
Nayan Nagin	1.86%	\$4,314.28
Asvin S. Patel Aruna A. Patel	1.00%	\$2,336.90
Mahendra P. Patel Hansa M. Patel	1.08%	\$2,516.66

Total: \$56,061.56

EXHIBIT "B"
MAY 2008 TRANSFERS TO DEFENDANTS

<u>Shareholder Defendant</u>	<u>% Owned</u>	<u>Distribution Amount</u>
Anil J. Desai Roopal A. Desai	1.93%	\$5,797.55
Thakor Patel Bhavna Patel	1.93%	\$5,565.65
Mankella Jivaram Patel	2.71%	\$8,116.57
Jayantibhai N. Patel	1.93%	\$ 5,797.55
Prakash D. Darjit Naranjana P. Darjit	2.24%	\$6,456.15
Mahendra G. Patel	2.14%	\$6,152.04
Taru Sumant Patel	6.73%	\$20,190.08
Nayan Nagin	1.86%	\$5,343.02
Asvin S. Patel Aruna A. Patel	1.00%	\$2,894.14
Mahendra P. Patel Hansa M. Patel	1.08%	\$3,116.76

Total: \$ 69,429.51