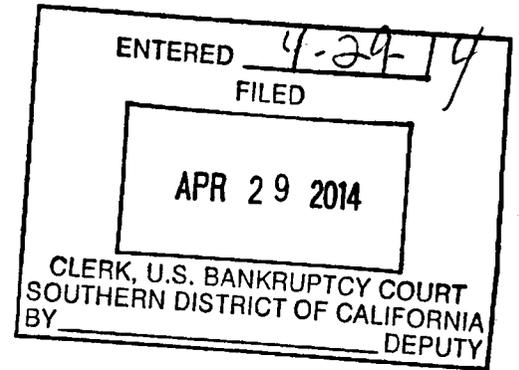


1 WRITTEN DECISION - NOT FOR PUBLICATION



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6 UNITED STATES BANKRUPTCY COURT
7 SOUTHERN DISTRICT OF CALIFORNIA

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11 In re) Case No. 09-12113-PB7
12 QUALITYBUILT.COM, a California) Adv. No. 11-90424-PB
13 corporation,) ORDER ON PLAINTIFF'S
14 Debtors,) MOTION FOR LEAVE TO FILE
15) FIRST AMENDED COMPLAINT
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16 LESLIE T. GLADSTONE, Chapter 7
17 Trustee,)
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22 On March 17, 2014, the Court heard argument on the Trustee's
23 motion for leave to file a First Amended Complaint and took the
24 matter under submission. In a subsequent review of the
25 materials, the Court has come across a potentially dispositive
26 issue which had not been addressed by the parties. Additional

1 briefing is required.

2 Resolution of the Trustee's motion hinges, in part, upon
3 whether some or all of the proposed claims for relief are barred
4 by the time limitations of § 546(a). Section 546(a) provides:

5 (a) An action or proceeding under section 544, 545,
6 547, 548, or 553 of this title may not be commenced
7 after the earlier of--

8 (1) the later of--

9 (A) 2 years after the entry of the order for relief; or
10 (B) 1 year after the appointment or election of the
11 first trustee under section 702, 1104, 1163, 1202, or
12 1302 of this title if such appointment or such election
13 occurs before the expiration of the period specified in
14 subparagraph (A); or

15 (2) the time the case is closed or dismissed.

16 The Trustee does not contend that the FAC, first proposed
17 on January 10, 2014, is timely under § 546(a). Rather, she
18 contends that the FAC relates back to the complaint originally
19 filed by the Debtor. The Defendant disagrees. Both parties
20 briefed that issue and addressed it at oral argument. The issues
21 which were not addressed, however, are whether the original
22 complaint was timely, and if not, how that impacts the current
23 motion.

24 The order for relief in this case was entered on August 14,
25 2009, when Debtor filed its petition under chapter 11. See
26 Bankruptcy Code § 301. Thus, the two-year time limitation of §
546(a) appears to have expired no later than August 15, 2011.¹
The original complaint was not filed until August 30, 2011,
apparently after expiration of the time limitations of § 546.

¹ The one-year limitation of § 546(a)(1)(B) is not applicable since the Trustee was appointed after the two-year period of § 546(a)(1)(A) had expired.

1 In his answer Defendant included as an affirmative defense
2 "Plaintiff's claims are barred by the applicable statute(s) of
3 limitations." However, the Court is not aware of any other
4 challenge to the timeliness of the original complaint.

5 The Court is not aware of any agreement by the Defendant to
6 waive or extend the limitations of § 546. On August 2, 2011, the
7 Court entered an order approving a stipulation between the Debtor
8 and Elizabeth Michaelis that the "limitations period provided by
9 11 U.S.C. § 546(a)(1) for the commencement of an avoidance action
10 to avoid and recover alleged preferential transfers against
11 Elizabeth Michaelis is extended up to and including August 14,
12 2012." See Docket No. 255. A similar stipulation was entered
13 into between the Debtor and Science Buildings Partners, LLC. See
14 Docket No. 256. However, so far as the Court can tell, no such
15 stipulation was entered into between the Debtor and Luhr.

16 As noted, the Trustee and Defendant disagreed about whether
17 the FAC should relate back to the original complaint, and both
18 sides briefed and argued the issue. However, neither party
19 addressed the fact that the original complaint appears to have
20 been filed outside the two-year limitation of § 546(a).

21 Before the Court will decide whether the FAC relates back,
22 the issue of to what it would relate back must be addressed.
23 Accordingly the Court hereby orders that the Trustee and the
24 Defendant file briefs addressing this issue. Concurrent briefs

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26 \\\

1 shall be filed within thirty (30) days of the service of this
2 order. No replies shall be filed. When the briefs are filed,
3 the matter will be re-taken under submission.

4 IT IS SO ORDERED.

5 DATED: APR 9 2014

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7 A handwritten signature in black ink, appearing to read "Peter W. Bowie", is written over a horizontal line.

8 PETER W. BOWIE, Judge
9 United States Bankruptcy Court
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West F Street, San Diego, California 92101-6991

In re Bankruptcy Case Name: Qualitybuilt.com No.: 09-12113-PB7
Adversary Name: Gladstone v. Luhr No.: 11-90424-PB

CERTIFICATE OF MAILING

The undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies that a true copy of the attached document, to wit:

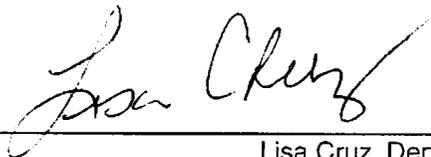
ORDER ON PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

was enclosed in a sealed envelope bearing the lawful frank of the bankruptcy judges and mailed to each of the parties at their respective addresses listed below:

Geraldine A. Valdez
401 Via Del Norte
La Jolla, CA 92037

K. Todd Curry
525 B Street, Ste. 1500
San Diego, CA 92101

Said envelope(s) containing such document was deposited by me in a regular United States Mail Box in the City of San Diego, in said District on April 29, 2014.



Lisa Cruz, Deputy Clerk

Notice Recipients

District/Off: 0974-3
Case: 11-90424-PB

User: melimu
Form ID: pdf01

Date Created: 4/29/2014
Total: 6

Recipients of Notice of Electronic Filing:

tr	Leslie T. Gladstone	candic@flgsd.com
aty	Geraldine A. Valdez	geraldinev@flgsd.com
aty	K. Todd Curry	tcurry@currylegal.com
aty	L. Scott Keehn	scottk@keehnlaw.com

TOTAL: 4

Recipients submitted to the BNC (Bankruptcy Noticing Center):

pla	Qualitybuilt.com	1939 Friendship Drive, Ste. E	El Cajon, CA 92020
dft	Stan Luhr	1939 Friendship Drive Suite E	El Cajon, CA 92020

TOTAL: 2