

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

In re:)	
)	Bankruptcy No. 15-22330-CMB
)	
ODYSSEY CONTRACTING CORP.,)	Chapter 7
)	
Debtor.)	
)	
)	
CRYSTAL THORNTON-ILLAR,)	Adv. No. 23-2003-CMB
Chapter 7 Trustee,)	
)	
Plaintiff,)	Related to Doc. Nos. 132, 138, 139,
)	140, 141
v.)	
)	
NICHOLAS S. SEMANDERES, HOUSTON)	
INDUSTRIAL CORPORATION, GERONIMO)	
PAINTING, CO., and AMARI PAINTING AND)	
LINING, LLC,)	
)	
Defendants.)	
)	

MEMORANDUM OPINION

Essentially, this adversary proceeding brought by the Chapter 7 Trustee boils down to allegations that, prior to conversion, Odyssey Contracting Corp. (“Odyssey” or “Debtor”), acting as debtor-in-possession, conspired with others to divide the remaining funds of a joint venture in which Debtor had an interest in such a way that the bankruptcy estate would receive nothing. According to the Trustee, the funds, which included profits of the joint venture, were wrongfully diverted to Geronimo Painting, Co. (“Geronimo”), Houston Industrial Corporation (“Houston”), Nicholas Semanderes (“Nicholas”),¹ and Amari Painting & Lining, LLC (“Amari,” collectively,

¹ As the allegations involve multiple members of the Semanderes family, the Court will identify each of these individuals initially by full name and then only by first name for clarity and ease of reference.

“Defendants”). This all was accomplished through a post-petition settlement agreement, signed on behalf of Debtor by its principal, without disclosure to or approval by the Court. Ultimately, the Trustee seeks avoidance and recovery for the benefit of the estate. In her Amended Complaint, she seeks relief pursuant to 11 U.S.C. §§542, 549, and 550 and asserts claims of unjust enrichment and conspiracy.² Each Defendant filed a Motion to Dismiss. Upon consideration of the Motions to Dismiss, the Trustee’s omnibus response, the record of the hearings held February 11, 2026, and the parties’ briefs, the Court finds no need for further argument. The Motions to Dismiss will be granted in part and denied in part as set forth herein.

Standard

Defendants seek dismissal of the Amended Complaint for failure to state a claim upon which relief can be granted. Defendants rely upon Fed.R.Civ.P. 12(b)(6), made applicable to adversary proceedings by Fed.R.Bankr.P. 7012. As the rule tests the sufficiency of a complaint, the Court must determine if the Amended Complaint “contain[s] sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). In completing this analysis, the Court is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Iqbal*, 556 U.S. at 678 (quoting

² This Court has jurisdiction pursuant to 28 U.S.C. §§157(a) and 1334(b). While the Trustee characterizes the proceeding as core, Defendants contend this is a non-core proceeding such that the Court exercises “related to” jurisdiction. To the extent a bankruptcy court does not have the authority to dismiss non-core claims, that is not an issue here. *See Taggart v. PHH Mortgage Corp. (In re Taggart)*, Nos. 23-2826 & 23-2986, 2025 WL 618818, 2025 U.S. App. LEXIS 4482 (3d Cir. Feb. 26, 2025). In ruling on these Motions to Dismiss, to the extent dismissal is found to be appropriate, the claims involve substantive rights created under the Bankruptcy Code, specifically 11 U.S.C. §§542 and 549. Furthermore, dismissal is without prejudice.

Twombly, 550 U.S. at 555). Ultimately, “[d]etermining whether a complaint states a plausible claim for relief will...be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *See Iqbal*, 556 U.S. at 679.

Factual Allegations³

Prior to this bankruptcy case, Odyssey was in the business of commercial bridge painting and repair. *See* Am. Compl. at ¶28. Particularly relevant to the allegations herein, Stavros and Helene Semanderes (hereinafter, “Stavros” and “Helene”) jointly own eighty percent of Odyssey, and Stavros served as Odyssey’s president. *See id.* at ¶20. In May 2010, Odyssey, through Stavros, entered into a Joint Venture Agreement with Geronimo, through its president, John Q. Todd (“Todd”), which created the joint venture operating under the name “Odyssey-Geronimo JV” (hereinafter, the “Joint Venture”). *See id.* at ¶35 and Exhibit D to Am. Compl. (the “Joint Venture Agreement”). The Joint Venture was formed for the limited purpose of performing work on a project (the “Project”) for the Washington State Department of Transportation. *See id.* Work on the Project commenced in July 2010. *See* Am. Compl. at ¶41.

The Joint Venture was controlled by an administrative committee, comprised of Stavros and Todd, with Todd serving as managing partner. *See id.* at ¶¶37-38. By agreement, the Joint Venture was to have its own bank account and maintain its own insurance. *See* Joint Venture Agreement at ¶¶11, 13. The parties’ Joint Venture Agreement provided for equity disbursement to the joint venturers only after all work was complete and all outstanding amounts owed by the Joint Venture were paid. *See* Am. Compl. at ¶¶39-40. Contrary to these terms and notwithstanding the existence of outstanding invoices, both Odyssey and Geronimo took early profit draws throughout the course of the Project, which was completed at the end of May 2014. *See id.* at ¶¶41-50. Despite

³ The facts set forth herein are those alleged in the Amended Complaint, and these factual allegations are accepted as true for the purpose of resolving the pending Motions to Dismiss.

conclusion of its work on the Project, disputes arose between the Joint Venture and the Washington State Department of Transportation resulting in the commencement of a lawsuit by the Joint Venture (“Project Dispute Litigation”). *See* Exhibit A to Am. Compl. (“Exhibit A”).

On June 29, 2015, Debtor commenced this case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. *See* Am. Compl. at ¶12. Debtor identified in its Schedules a fifty-percent interest in the Joint Venture. *See id.* at ¶¶13, 21. Debtor also filed an *Application for Approval of Special Counsel* in relation to the Project Dispute Litigation, acknowledging that Debtor may seek approval to contribute to the Joint Venture’s legal fees. *See* Exhibit A at ¶7. Debtor represented that a recovery in the Project Dispute Litigation “would be beneficial to the Debtor in that it would be entitled [to] a share of the recovery based on its interest in [the Joint Venture].” *See id.* at ¶4. Ultimately, the Project Dispute Litigation settled in late 2020 for \$3,500,000.00, though that outcome was unknown to this Court until much later. *See* Am. Compl. at ¶¶22, 29-30, 52.

Following the settlement of the Project Dispute Litigation between the Joint Venture and Washington State Department of Transportation, discussions commenced regarding how to divide the settlement proceeds between entities controlled by Todd and entities controlled by Stavros, with the goal of precluding any distribution to Debtor and avoiding any disclosure to or approval from this Court. *See* Am. Compl. at ¶¶53-55, 57, 95-99. The participants in these discussions included Todd, Geronimo, Stavros, Debtor, Houston, Nicholas, Cristos Semanderes (“Cristos”), and Amari. *See id.* at ¶53. The inclusion of these additional parties is significant as efforts were made to structure the settlement in a way that would provide for a return to Stavros through related entities and individuals without transferring funds to Debtor. *See id.* at ¶¶99-100. Nicholas and Cristos are principals of Amari as well as the sons of Stavros and Helene. *See id.* at ¶¶7,11. Helene

is the owner and president of Houston⁴ and draws a salary from Amari. *See id.* at ¶¶8-9. Ultimately, the parties' discussions resulted in Geronimo and Debtor entering into a Close Out and Settlement Agreement (the "Settlement Agreement")⁵ in August 2021. *See id.* at ¶57.

The Settlement Agreement purported to resolve all disputes, claims, and interests between Geronimo and Debtor, including disputes regarding Geronimo's alleged improper charges to the Joint Venture, and provided for disbursement of all remaining assets held by the Joint Venture. *See id.* at ¶¶56, 59, 68. Pursuant to the agreement, the funds were disbursed as follows:

- Payment to Nicholas in the amount of \$415,442.56, of which \$161,800.00 went to Amari;
- Payment to Houston in the amount of \$323,600.00;
- Payment to Geronimo in the amount of \$2,775,941.10; and
- No payment to Debtor.

See id. at ¶¶60-62. Upon completion of the items identified in the Settlement Agreement, the Joint Venture was to be "closed out." *See id.* at ¶58. The terms of the Settlement Agreement were in stark contrast to the settlement Stavros suggested approximately two months earlier, proposing *he* would agree to accept \$1,150,000.00. *See id.* at ¶97; Exhibit E to Am. Compl. Ultimately, Stavros consented to Debtor's receipt of no funds and the release of its rights in the Joint Venture. *See Am. Compl.* at ¶¶60, 68, 115.

With respect to when the Settlement Agreement came to light in this bankruptcy case, that did not occur until approximately one year later and only after the Court's Order requiring Debtor to submit an affidavit regarding the litigation in which Debtor had an interest. *See id.* at ¶22. On August 2, 2022, Debtor filed the affidavit, signed by Stavros as president and owner of Debtor. *See id.* at ¶¶29-32; Exhibit C to Am. Compl. Among other items, Debtor disclosed that its interest

⁴ In Debtor's Schedules, Houston was also identified as holding a claim against Debtor; however, Houston did not file a proof of claim in this case. *See Am. Compl.* at ¶¶14-15.

⁵ The Settlement Agreement is filed with the Amended Complaint as Exhibit 2 to the Trustee's Exhibit C.

as it related to the Joint Venture and the Project Dispute Litigation was resolved through the Settlement Agreement, pursuant to which Debtor received no payment. *See id.* Not long after, in October 2022, the Court granted the United States Trustee's motion to convert this case to Chapter 7. *See Am Compl.* at ¶25. The revelations within Debtor's affidavit prompted the Chapter 7 Trustee's commencement of this adversary proceeding.

The Trustee takes issue with the disbursement of funds to each of the Defendants. Despite being characterized as debt of the Joint Venture, the Trustee contends that neither Nicholas nor Amari had written contracts to perform work for the Joint Venture, and their invoices appear to be manufactured. *See id.* at ¶¶102-114. With respect to the payment to Houston, the Trustee alleges that Houston, which was controlled by Stavros, waived any right to payment of its invoices when early profit draws were taken by the joint venturers. *See id.* at ¶¶45-50, 89-94. The argument, based on the terms of the Joint Venture Agreement, interprets the early profit draws as an affirmative acknowledgement that the funds taken for profit were no longer required for the Joint Venture. The Trustee draws the same conclusion with respect to Geronimo's outstanding invoices. *See id.* In addition, with respect to Geronimo, there were alleged excessive rental charges to the Joint Venture, a questionable loan to the Joint Venture used to pay a Geronimo-affiliated entity, and issues related to recovery for legal payments. *See id.* at ¶¶56, 70-88. According to the Trustee, the Settlement Agreement is nothing more than a manipulation designed to transfer and improperly dispose of assets through the close-out of the Joint Venture. *See id.* at ¶33.

Analysis

Based on these allegations, the Trustee filed her Amended Complaint. Count I relies on the Trustee's ability to avoid post-petition transfers of property of the estate under 11 U.S.C. §549(a), and Count IV seeks recovery from the Defendants through 11 U.S.C. §550 to the extent a transfer

is avoided under §549(a). Specifically, the Trustee contends that the disposal of Debtor’s interest in the Joint Venture through the unapproved, concealed Settlement Agreement and the ensuing distributions pursuant to that Settlement Agreement were transfers of property of the estate that may be avoided. In response, Defendants argue that the Trustee failed to plead any facts to support the conclusion that the funds transferred were property of the estate at all. With respect to the Trustee’s proposed use of §549(a), the Court must consider the Debtor’s interest in the Joint Venture as well as the funds that were transferred.

In pertinent part, §549(a) provides a trustee with the ability to “avoid a transfer of property of the estate that occurs after the commencement of the case; and...that is not authorized under this title or by the court.” For the purpose of resolving the Motions to Dismiss, the dispute mainly focuses on the issue of whether the Trustee has adequately alleged a transfer of property of the estate. Property of the estate is broadly defined and generally includes “all legal or equitable interests of the debtor in property as of the commencement of the case.” *See* 11 U.S.C. §541(a). Property rights of a debtor are typically determined by state law, and the filing of a case “does not create new property rights or value where there previously were none.” *See Majestic Star Casino, LLC v. Barden Dev., Inc. (In re Majestic Star Casino, LLC)*, 716 F.3d 736, 751 (3d Cir. 2013) (quoting *In re Messina*, 687 F.3d 74, 82 (3d Cir. 2012)).

With respect to applicable law, the Joint Venture Agreement provided for “[a]ll questions relative to the execution, validity, interpretation and performance” of the Joint Venture Agreement to be governed by the law of Ohio. *See* Joint Venture Agreement at ¶20. As pointed out by Defendants, the courts of Ohio have generally applied partnership law to joint ventures. *See Ladd v. Planchak*, 233 N.E.3d 725, 735 (Ohio Ct. App. 2024); *Vargo v. Clark*, 716 N.E.2d 238, 242 (Ohio Ct. App. 1998). Applying Ohio partnership law, a debtor’s interest in a partnership is

property of the estate. *In re Johnson*, 565 B.R. 835, 840-41 (Bankr.S.D. Ohio 2017). This interest is distinguished, however, from any interest in the assets owned by the partnership, which are not within the bankruptcy estate of the individual partner. *Id.* at 841. This distinction is the primary point of contention between the Trustee and Defendants with respect whether the Trustee's allegations are sufficient for purposes of §549(a).

As a starting point, it is hardly controversial that Debtor's fifty-percent interest in the Joint Venture constitutes property of the estate, and Debtor was obligated to (and did) identify that interest as an asset in its Bankruptcy Schedules. *See* Am. Compl. at ¶¶13 and 21. In fact, at one point in this case, it was Debtor's expectation that it would share in a recovery from the Project Dispute Litigation based on its interest in the Joint Venture to the benefit of this estate. *See* Am. Compl. at ¶18. That did not occur. Instead, the post-petition Settlement Agreement reflected "a full and complete compromise of matters involving disputed issues and amounts" between the joint venturers in order to resolve those issues without litigation. *See* Settlement Agreement at 1. As clearly set forth within the Amended Complaint, leading up to the Settlement Agreement, there were disputes between the joint venturers regarding entitlement to the remaining funds and discussions regarding how to divide the funds between Todd/Geronimo, on one hand, and Stavros/his related entities/individuals, on the other (to the exclusion of Debtor as joint venturer). In signing off on this agreement, Debtor settled its interest in the Joint Venture for a value of zero dollars. As such, it is alleged that Debtor's interest in the Joint Venture was disposed of⁶ post-petition without authority to do so while ensuring that funds to which Debtor was entitled were redirected to others. Consequently, the remaining funds of the Joint Venture flowed to the

⁶ *See* Am. Compl. at ¶33 (alleging fraudulent and improper disposal of Debtor's assets). A "transfer" includes "each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or an interest in property." *See* 11 U.S.C. §101(54)(D).

Defendants and avoided the creditors of this estate. The Trustee alleges that this was by design of Stavros⁷ and the Defendants in crafting the Settlement Agreement. Accordingly, the Trustee has sufficiently alleged that Debtor, through the Settlement Agreement, disposed of its interest in the Joint Venture without Court approval after the filing of this case thereby permitting Defendants to receive the value of that interest at the expense of this estate. Counts I and IV⁸ must be permitted to proceed on these grounds.⁹

That, however, does not conclude the analysis of Count I. The Trustee also seeks to utilize §549(a) to avoid the transfer of funds paid to Defendants. With respect to the payments out of the Joint Venture, Defendants assert that the funds belonged to the Joint Venture, a separate entity, and were not “property of the estate” within the purview of the Trustee’s §549 avoidance powers. The Defendants contend that the allegations within the Amended Complaint and the terms of the Joint Venture Agreement, attached as an exhibit thereto, confirm their position. The Trustee, though hesitant, seems to agree with the general proposition that the Joint Venture was a separate entity from Debtor.¹⁰ Moreover, as acknowledged in the Amended Complaint, the Debtor’s rights

⁷ The Court notes that Stavros is not a named party in this adversary proceeding despite his central role in the allegations set forth in the Amended Complaint. It is unknown if the Trustee intends to proceed in any way against Stavros regarding these troubling allegations.

⁸ As appears to be relevant here, §550(a) permits the Trustee to recover the value of the property transferred from “the entity for whose benefit such transfer was made.” None of the Defendants directly addressed grounds for dismissal of Count IV. Geronimo asserted there was no need for an independent analysis of Count IV as it would be subject to the same outcome as Count I. *See* Geronimo’s Brief (Doc. No. 159) at 3 n.2.

⁹ Some of the Defendants have asked the Court to consider what would happen if the Settlement Agreement were to be invalidated. *See* Brief of Nicholas and Amari (Doc. No. 157) at 6; Houston’s Brief (Doc. No. 158) at 6. For the limited purpose of assessing the sufficiency of the allegations within the Amended Complaint, it is not clear how these concerns are relevant, and the Court will not endeavor to find a different result simply because the parties may be placed in a procedural quandary. Further, the Court does not necessarily agree with the Defendants’ speculation that “the answer is clear,” including any suggestion that the Trustee would ultimately sign off on the same Settlement Agreement that she so vociferously opposes. Nonetheless, the parties may have to address at some later date the vacuum created in the absence of the Settlement Agreement if it is ultimately invalidated.

¹⁰ *See* Trustee’s Resp. (Doc. No. 149) at ¶89 (“The Defendants also appear to rely on the basic premise that a joint venture is a separate and distinct entity. Again, the Trustee does not necessarily dispute this

arise out of the Joint Venture Agreement, which provides that Debtor is not entitled to funds until all obligations of the Joint Venture are satisfied first. As is clear in the Amended Complaint, the legitimacy of such obligations is at the core of the parties' dispute. While the Trustee has certainly alleged the Debtor had rights to enforce under the Joint Venture Agreement, the allegations are insufficient to conclude that the funds of the Joint Venture were property of the estate such that the transfers can be avoided and recovered by the Trustee. The Trustee has pointed to no applicable law that would enable the Court to treat the Joint Venture's funds as property of the estate.¹¹ Accordingly, to the extent the Trustee seeks to proceed under §549 to recover the transfers out of the Joint Venture to the Defendants, the factual allegations taken as true are insufficient to support the claim. As set forth above, the Trustee is limited to pursuing avoidance of the transfer and recovery of the value of Debtor's interest in the Joint Venture.¹²

basic premise[.]"). *See also* Am. Compl. at ¶59 ("The Settlement Agreement provided for distribution of all *Joint Venture Assets*[.]") (emphasis added).

¹¹ The Trustee cites to *Trauner v. Thadikamalla (In re Thadikamalla)*, 488 B.R. 791 (Bankr.N.D. Ga. 2013), for the proposition that the Court has jurisdiction to oversee any process settling a debtor's rights in an entity such as a partnership or joint venture. *See* Trustee's Resp. (Doc. No. 149) at ¶91. In that case, the Court clarified that the partnership assets were not property of the estate and that the wind up of the partnership was not a core matter. 488 B.R. at 793. The trustee was directed to comply with applicable state law to wind up the partnership. *Id.* This is distinguishable from treating the Joint Venture's funds as property of this estate subject to recovery by the Trustee under §549. In *Thadikamalla*, the Court recognized the state law process was a step that needed to be completed as part of the trustee's duty to administer the assets of the estate, specifically the debtor's partnership interest. Perhaps the Trustee will end up in a procedural posture more akin to *Thadikamalla* if the Settlement Agreement is avoided.

¹² The matter may be clarified by considering *what would have happened* had the Settlement Agreement been brought to this Court for approval in the first place. The Court would have assessed whether the settlement of Debtor's interest in the Joint Venture was appropriate under the applicable *Martin* factors. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996) (identifying four factors for consideration: "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors"). In that limited context, the Court would have considered (but not decided) many of the concerns now raised by the Trustee. In doing so, the Court may have denied approval of the proposed settlement, sending the parties back to the drawing board with respect to another settlement proposal or leaving the Debtor to litigate its rights under the Joint Venture Agreement to determine the extent of its potential interest in the funds.

In Count II, the Trustee alleges a conspiracy to commit post-petition transfers of property of the estate, which caused harm to Debtor, its creditors, and this estate. The Trustee seeks damages in an amount to be determined at trial. In addressing this count in her brief, the Trustee sets forth the applicable elements to state a claim for civil conspiracy under Pennsylvania law while identifying the requisite underlying, unlawful act as the violation of 11 U.S.C. §549. *See* Trustee’s Brief (Doc. No. 156) at 9-10. Defendants assert that such a claim is not a recognized cause of action and must be dismissed.¹³ With respect to this hybrid claim under state law and the Bankruptcy Code, the Trustee concedes she has not located any case law permitting or precluding such a claim. *See id.* at 10 n.2. However, courts have expressed doubt in similar situations on the basis that §550 provides the sole remedy for an avoided transfer under the Bankruptcy Code. *See Official Comm. of Unsecured Creditors v. Goldman Sachs Credit Partners L.P. (In re Fedders North America, Inc.)*, 405 B.R. 527, 548-49 (Bankr.D.Del. 2009). The Trustee has located no contrary authority, and this Court shares the concerns raised in *Fedders* that such a claim should not be used to expand remedies beyond what is permissible under the Code. *See Majestic Star Casino*, 716 F.3d at 761 n.26 (discussing limitations on the scope of relief under §550 for transfers avoided pursuant to §549). Accordingly, Count II will be dismissed. Dismissal, however, is without prejudice to the extent the Trustee may seek leave to amend and plead an appropriate underlying, unlawful act.

In Count III, the Trustee seeks turnover of property of the estate pursuant to 11 U.S.C. §542(a), specifically pleading her entitlement “to an order directing the Defendants to turnover and deliver the Transfers, or the value of the Transfers, to the Trustee.” *See* Am. Compl. at ¶141.

¹³ One of the cases cited by Defendants does not appear to squarely address the issue. *See Estate of BG Petroleum, LLC v. Cmty. State Bank of Orbisonia (In re BG Petroleum, LLC)*, No. 19-07014-JAD, 2021 WL 5749839, 2021 Bankr. LEXIS 3286 (Bankr.W.D.Pa. Dec. 2, 2021) (finding a conspiracy claim failed as plaintiffs did not sufficiently set forth underlying civil causes of action).

As discussed in relation to Count I, the transfers received by Defendants were transfers of funds held by the Joint Venture. A required element for a successful turnover claim is that the property subject to the request is property of the estate, and such action cannot succeed where the property is subject to a bona fide dispute. *See Seitz v. 6130 West, LLC (In re Joey's Steakhouse, LLC)*, 474 B.R. 167, 188 (Bankr. E.D.Pa. 2012). “Moreover, case law distinguishes between a cause of action to recover property allegedly owed to the estate and a claim for turnover of property of the estate.” *See Drivetrain, LLC v. Crown Financial, LLC (In re Abeinsa Holding Inc.)*, 653 B.R. 713, 721 (D.Del. 2023).

Here, the Trustee contends that she has sufficiently alleged facts, which must be accepted as true, such that “there is no bona fide dispute as [to] the ownership of the property.” *See* Trustee’s Brief (Doc. No. 156) at 10. In support of this contention, she cites to her allegations that certain Defendants waived the right to payment while all Defendants “conspired to ensure the Debtor did not receive *its proper share* of the funds.” *See id.* (emphasis added). The Trustee then identifies the “sum certain amount sought,” which consists of *all the payments out of the Joint Venture* under the Settlement Agreement. *See id.* at 11. The Trustee’s position is inconsistent, at one point alleging that Debtor is entitled to some share of the funds that were disbursed while in the next breath seeking *turnover* of all funds, despite there being no certainty as to what portion the Debtor is entitled to receive. The Trustee’s position seems to overlook what is otherwise clearly alleged in her Amended Complaint.¹⁴ Tellingly, the Trustee’s statement at the commencement of the Amended Complaint acknowledges that “[t]he Trustee brings this action to recover the payments made to Defendants *unless and until* any such payments are approved by this Court.” *See* Am.

¹⁴ The Court notes that the Amended Complaint and attached exhibits identify Geronimo as co-venturer in the Joint Venture. To the extent the Trustee contends profits existed for the benefit of the joint venturers, it is not clear how the Trustee is entitled to recovery of all transferred funds to the exclusion of Geronimo on that basis alone.

Compl. at ¶1 (emphasis added). In other words, according to the Amended Complaint, there is no undisputed right to the turnover of the funds. The Trustee essentially seeks to neatly collapse the underlying issues and disputes into a §542 turnover action. Though that might seem like the simplest path forward, it does not provide the appropriate mechanism for determining the Debtor's entitlement to any portion of the funds held by the Joint Venture. As is clear from the allegations in the Amended Complaint, such a process would necessarily involve the resolution of the challenged debts of the Joint Venture assuming the Settlement Agreement is avoided under Count I. As such, Count III will be dismissed without prejudice as premature at this juncture.¹⁵

In the final count of the Amended Complaint, the Trustee alleges that recovery is appropriate on the grounds of unjust enrichment. To state such a claim, a plaintiff must confer benefits on the defendant; there must be appreciation of the benefits conferred; and defendant must accept and retain the benefits such that it is inequitable to do so without paying the value. *See Henkel v. Highgate Hotels, LP*, Nos. 24-2984 & 24-3099, 2026 WL 146695 at *2, 2026 U.S. App. LEXIS 1362 at *3 (3d Cir. Jan. 20, 2026)(citing *Shafer Elec. & Constr. v. Mantia*, 96 A.3d 989, 993 (Pa. 2014)).¹⁶ As applicable here, the Trustee clearly alleges that the Defendants accepted and retained payments with knowledge they were not entitled to the full extent of payments received.

¹⁵ *See In re Roman Catholic Diocese of Harrisburg*, 640 B.R. 59, 83 (Bankr.M.D.Pa. 2022)(finding turnover action to be premature thus not properly pleaded).

¹⁶ As this count is not based on the Joint Venture Agreement, which is explicitly governed by Ohio law, the parties did not rely exclusively on Ohio law. Instead, the parties cited to both Pennsylvania and Ohio law in addressing the requisite elements to prove unjust enrichment. With respect to whether there is a conflict, the parties agree there is not. The Court pauses here to raise an issue which the parties have yet to address. It has been held that unjust enrichment is inapplicable when the relationship between parties is based in contract. *See Mark Hershey Farms, Inc. v. Robinson*, 171 A.3d 810, 817-18 (Pa. Super. Ct. 2017). As alleged in the Amended Complaint, the relationship between Debtor and Geronimo was governed by the Joint Venture Agreement.

Specifically, the Trustee contends that, either by waiver¹⁷ and/or improper billing, Defendants unjustly received funds with the express purpose of eliminating any profits for Debtor. Those will be factual disputes for another day. The crux of the dispute for the purpose of resolving the Motions to Dismiss is whether the Trustee sufficiently alleged facts in support of the following element of the claim: plaintiff must confer benefits on the defendant. According to Defendants, the allegations are insufficient to show that *Debtor*, as opposed to the Joint Venture, conferred the benefits.

Citing to the *Henkel* case, Defendants contend that an indirect payment is insufficient to satisfy the elements of unjust enrichment. The facts in *Henkel*, however, are distinguishable. In *Henkel*, an employee, on behalf of hotel servers and housekeepers, alleged the defendants/resorts failed to share the proceeds from gratuity fees paid by guests. See *Henkel*, 2026 WL 146695 at *1, 2026 U.S. App. LEXIS 1362 at *1. The Court found this did not satisfy the requirement that the benefit was conferred by plaintiff. See *Henkel*, 2026 WL 146695 at *2, 2026 U.S. App. LEXIS 1362 at *3. The entities conferring the benefit were the guests of the resorts. *Id.* In contrast, the facts alleged in the Amended Complaint clearly state the Trustee’s position that Debtor, by signing off on the Settlement Agreement with Geronimo, enabled these payments to be made to Defendants at its own expense.¹⁸ Moreover, the applicability of unjust enrichment is dependent

¹⁷ Citing to conduct inconsistent with the terms of the Joint Venture Agreement, the Trustee alleges that both Geronimo and Houston waived rights to payment. As acknowledged by Geronimo, the Trustee’s allegations against it are not limited to waiver. See Geronimo’s Brief (Doc. No. 159) at 19 n.6. With respect to the alleged waiver by Houston, the conduct alleged is that of Stavros. Specifically, the Trustee pleads that Stavros was an insider of Houston and exercised control over Houston while also controlling Odyssey’s involvement in the Joint Venture. See Am. Compl. at ¶¶8, 47-48, 54, 91, 95. A determination regarding waiver appears to be a fact-intensive analysis which is not appropriate for resolution at this stage of the proceedings.

¹⁸ Under the terms of the Settlement Agreement, it appears Debtor’s consent was required. See Settlement Agreement at 1-2 (providing “WHEREAS, pursuant to the JV Agreement (section 3 and otherwise), the Joint Venturers comprise the two permanent members of the Administrative Committee, whose approval is necessary for certain actions and activities of the Joint Venture, including making certain payments to Joint Venturers” and “WHEREAS, for the purposes of this Agreement and for settlement purposes only, the Administrative Committee has approved, and confirms in this Agreement, its approval

upon the unique facts of a particular case,¹⁹ and the Trustee’s allegations are sufficient to permit the court to proceed.

Finally, as to Amari only, dismissal is sought based on the applicable statutes of limitations. Although this adversary proceeding was filed on January 11, 2023, Amari was not added as a party until the filing of the Amended Complaint on November 26, 2025. While the Trustee does not challenge the limitations periods cited by Amari, the Trustee contends that she is nonetheless able to proceed as she did not learn of the payment made to Amari until June 3, 2025, through the course of discovery.

Within this Circuit, a statute of limitations defense may be raised in a motion under Rule 12(b)(6) if the bar is apparent on the face of the complaint. *See Fried v. JP Morgan Chase & Co.*, 850 F.3d 590, 604 (3d Cir. 2017). Notwithstanding the foregoing, a court “may not allocate the burden...in a way that is inconsistent with the rule that a plaintiff is not required to plead, in a complaint, facts sufficient to overcome an affirmative defense.” *See Schmidt v. Skolas*, 770 F.3d 241, 251 (3d Cir. 2014).²⁰ There is clearly a factual dispute regarding when the Trustee should

of the accounting, accounts, liabilities and satisfaction (and insufficiency of funds to satisfy) of the same reported in Exhibit A”).

¹⁹ *See Mark Hershey Farms, Inc. v. Robinson*, 171 A.3d 810, 817 (Pa. Super. Ct. 2017).

²⁰ Amari argues that the Trustee failed to plead or otherwise assert facts in support of equitable tolling for purposes of 11 U.S.C. §549. *See* Brief of Nicholas and Amari (Doc. No. 157) at 20 n.4. *Even if* the Trustee were required to plead around the affirmative defense, the Court would find that the Trustee’s filings sufficiently address this issue. *See* Am. Compl. at ¶¶61-63; Trustee’s Resp. (Doc. No. 149) at ¶117. Case law has permitted tolling in similar circumstances. *See Peterson v. Imhof*, No. 2:13-cv-00537 (DMC)(JBC), 2013 WL 5567561 at *6, 2013 U.S. Dist. LEXIS 145107 at *15-16 (D.N.J. Oct. 8, 2013) (holding that §549(d) can be equitably tolled until the transfers at issue have been discovered or should have been through reasonable diligence); *Joseph v. Feit (In re Liberty Brands, LLC)*, 476 B.R. 443, 450 (Bankr.D.Del. 2012) (finding grounds for equitable tolling where the liquidating trustee could not have known the facts regarding the post-petition transfer until discovery was done in the adversary proceeding).

have known that Amari received funds as a result of the challenged Settlement Agreement.²¹
Resolution of that factual dispute is not appropriate at this stage of the proceedings.

Conclusion

Based on the foregoing, the Motions to Dismiss will be granted in part and denied in part. Counts II and III are dismissed without prejudice. The Amended Complaint shall otherwise be permitted to proceed. An Order will be entered consistent with this Memorandum Opinion.

Date: April 20, 2026

/s/ Carlota M. Böhm
Carlota M. Böhm
United States Bankruptcy Judge

FILED
4/20/26 9:00 am
CLERK
U.S. BANKRUPTCY
COURT - WDPA

²¹ Amari asserts in a footnote in its brief that “the Trustee was provided with written disclosures and discovery more than two years prior to the filing of the Amended Complaint which clearly show a payment to Amari.” *See* Brief of Nicholas and Amari (Doc. No. 157) at 20 n.3.