

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

NPC INTERNATIONAL, INC.,

Debtor.¹

Chapter 11

Case No. 20–33353 (DRJ)

NPC INTERNATIONAL GUC TRUST,

Plaintiff,

vs.

SCOPPECHIO LLC, f/k/a CREATIVE
ALLIANCE, INC.,

Defendant.

Adv. No. **Refer to Summons**

**COMPLAINT TO AVOID AND RECOVER
TRANSFERS PURSUANT TO 11 U.S.C. §§ 547, 548 AND 550
AND TO DISALLOW CLAIMS PURSUANT TO 11 U.S.C. § 502**

The NPC International GUC Trust (the “GUC Trust” or “Plaintiff”), by and through its undersigned counsel, files this complaint (the “Complaint”) to avoid and recover preferential and/or fraudulent transfers against Scoppechio LLC, f/k/a Creative Alliance, Inc. (the “Defendant”) and to disallow any claims (either filed or scheduled) held by Defendant against any of the debtors identified in footnote 1 (the “Debtors”). In support of this Complaint, Plaintiff alleges upon information and belief that:

¹ The Debtors in the previously jointly administered chapter 11 cases are: NPC International, Inc. (“NPCI”); NPC Restaurant Holdings I LLC; NPC Restaurant Holdings II LLC; NPC Holdings, Inc.; NPC International Holdings, LLC; NPC Restaurant Holdings, LLC; NPC Operating Company B, Inc.; and NPC Quality Burgers, Inc. On June 25, 2021, the Court entered a final decree closing each of the chapter 11 cases other than NPCI’s chapter 11 case [Docket No. 1785]. Commencing on June 25, 2021, all motions, notices and other pleadings relating to any of the Debtors shall be filed in NPCI’s chapter 11 case.

NATURE OF THE CASE

1. Plaintiff seeks to avoid and recover from Defendant, or from any other person or entity for whose benefit the transfers were made, all preferential transfers of property that occurred during the ninety (90) day period prior to the commencement of the bankruptcy cases of the Debtors pursuant to sections 547 and 550 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Subject to proof, Plaintiff also seeks to avoid and recover from Defendant or any other person or entity for whose benefit transfers were made pursuant to sections 548 and 550 of the Bankruptcy Code any transfers that may have been fraudulent conveyances.

2. In addition, Plaintiff seeks to disallow, pursuant to sections 502(d) and (j) of the Bankruptcy Code, any claim that Defendant has filed or asserted against the Debtors or that has been scheduled by the Debtors on Defendant’s behalf. Plaintiff does not waive but hereby reserves its rights to object to any such claim for any reason, including, but not limited to, any reason set forth in sections 502(a) through (j) of the Bankruptcy Code.

JURISDICTION AND VENUE

3. This court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334(b) and Article XI of the Plan (defined below). This adversary proceeding arises under and relates to the case in the United States Bankruptcy Court for the Southern District of Texas (the “Court”) captioned *In re NPC International, Inc.* and administered under Case No. 20-33353 (DRJ).

4. This adversary proceeding is a “core” proceeding to be heard and determined by the Court pursuant to 28 U.S.C. § 157(b)(2)(B), (F) and (H), and the Court may enter final orders for matters contained herein.

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

6. The statutory and legal predicates for the relief sought herein are sections 502, 547, 548 and 550 of the Bankruptcy Code and Rules 3007 and 7001 of the Federal Rules of Bankruptcy Procedure.

7. Pursuant to Rule 7008-1 of the Local Rules of Bankruptcy Practice and Procedure of the Court, Plaintiff consents to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

PROCEDURAL BACKGROUND

8. On July 1, 2020 (the “Petition Date”), the Debtors each commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. From and after the Petition Date, the Debtors continued to operate as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

9. On January 29, 2021, the Court entered an order (the “Confirmation Order”)² confirming the *Second Amended Joint Chapter 11 Plan of NPC International, Inc. and its Affiliated Debtors* (as confirmed, the “Plan”).³ The Plan became effective on March 31, 2021 (the “Effective Date”). Among other things, the Plan and Confirmation Order approved the creation of the GUC Trust.

10. On or about the Effective Date, the Debtors and U.S. Bank National Association, not individually, but solely in its capacity as trustee, executed that certain Liquidating Trust Agreement and Declaration of Trust (the “Trust Agreement”), which

² Docket No. 1528.

³ Docket No. 1477. Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Plan.

established the GUC Trust. Pursuant to the Plan and the Trust Agreement, all GUC Trust Assets, including GUC Trust Causes of Action, were transferred to the Trust.⁴

11. Pursuant to Section 4.8 of the Plan, holders of General Unsecured Claims comprise an impaired class of creditors and are not expected to be paid in full.⁵

THE PARTIES

12. Pursuant to the Plan and Trust Agreement, the GUC Trust shall be the sole representative of the Debtors' estates pursuant to section 1123(b)(3) with respect to all GUC Trust Causes of Action, with the exclusive authority to pursue, settle, release, waive, abandon or dismiss such GUC Trust Causes of Action on behalf of, and in the name of, the Debtors.⁶

13. Upon information and belief, Defendant was, at all relevant times, a vendor or creditor of one or more of the Debtors that provided advertising services. Upon further information and belief, at all relevant times, Defendant's principal place of business is located at 400 West Market Street, Suite 1400, Louisville, KY 40202.⁷ Plaintiff is informed and believes and on that basis alleges that Defendant is a limited liability company residing in and subject to the laws of the State of Kentucky.

FACTUAL BACKGROUND

14. Founded in 1962, the Debtors were the largest franchisee in the United States with over 1,600 franchised restaurants across two brands—Wendy'sTM and Pizza HutTM—spanning 30 states and the District of Columbia.

⁴ Plan, § 5.18(a).

⁵ Plan, § 4.8.

⁶ Plan, § 5.18(d); Trust Agreement, § 3.2.10.

⁷ The Defendant's registered agent is FBT LLC, 400 West Market Street, 32nd Floor, Louisville, KY 40202.

15. The Debtors' financial difficulties leading up to the Petition Date were attributable to a number of factors. Pizza Hut had seen a significant drag on profitability due to a lack of sales growth and an inflationary cost environment. Further, both of the Debtors' brands faced headwinds on a macro level, including the shifting political climate, volatility in the commodities market, increased labor pressures, and increasing minimum wage rates. Many of the pressures on the Debtors' business were exacerbated further by the COVID-19 pandemic.

16. In January of 2020, due to its rapidly deteriorating liquidity position, the Debtors sought emergency financing from its lenders. Thereafter, the Debtors engaged their stakeholders with the goal of engaging in a collaborative process to achieve a consensual restructuring.

17. The Debtors were unable to implement an out of court restructuring. The Debtors commenced the cases to pursue both a Reorganization Transaction and a Sale Transaction on a parallel path. The Debtors ultimately consummated the Sale Transaction and sold substantially all of their assets to Flynn Restaurant Group and Wendy's International, LLC.

18. As of the Petition Date, the Debtors utilized a cash management system (the "Cash Management System") to collect, transfer, and disburse funds generated in the Debtors' business, consisting of bank accounts including store depository accounts, cash concentration and collection accounts, and disbursement accounts.⁸

19. Disbursements to vendors and suppliers were made from two accounts at JPMorgan Chase Bank, N.A.: (i) account ending in 1013, which serviced accounts payable for

⁸ See *Emergency Motion of Debtors for Interim and Final Orders (I) Authorizing Debtors to Continue (A) Using Existing Cash Management System, Bank Accounts, and Business Forms and (B) Funding Intercompany Transactions, (II) Providing Administrative Expense Priority for Postpetition Intercompany Claims, and (III) Granting Related Relief*, ¶¶ 8, 14. Docket No. 8.

the Pizza Hut business; and (ii) account ending in 8806, which serviced accounts payable for the Wendy's business (collectively, the "Disbursement Accounts").⁹

20. The Debtors' funds were collected in the Disbursement Accounts through the Cash Management System. Upon information and belief, based upon the collection of the Debtors' funds from operations into the Disbursement Accounts and the Debtors' subsequent payment of their accounts, NPCI issued payment from the account ending in 1013 and NPC Quality Burgers, Inc. issued payment from account ending in 8806 on account of each Debtor's respective debt.

21. During the ninety days before the Petition Date, that is, between April 2, 2020 and July 1, 2020 (the "Preference Period"), the Debtors continued to operate their business affairs, including the transfer of property, either by checks, cashier checks, wire transfers, ACH transfers, direct deposits or otherwise to various entities.

22. Upon information and belief, during the course of their relationship, the Defendant and one or more of the Debtors entered into agreements, which are evidenced by invoices, communications and other documents (collectively, the "Agreements").

23. The Agreements concerned and related to the goods and/or services provided by Defendant. The details of the Agreements pursuant to which payments were made during the Preference Period are set forth on Exhibit A attached hereto and incorporated by reference, including the "Invoice Number," "Invoice Date," and "Invoice Amount."

24. Defendant conducted business with one or more of the Debtors through and including the Petition Date pursuant to the Agreements.

⁹ See *id.* ¶ 14.

25. As identified in the Agreements on Exhibit A, one or more of the Debtors purchased goods and/or services from Defendant.

26. Plaintiff has completed an analysis of all readily available information of the Debtors, including conducting reasonable due diligence into the circumstances of the cases and taking into account Defendant's known or reasonably knowable affirmative defenses, and is seeking to avoid all of the transfers of an interest of the Debtors' property made by the applicable Debtor(s) to Defendant within the Preference Period.

27. Plaintiff has determined that one or more of the Debtors made transfer(s) of an interest of the Debtors' property to or for the benefit of Defendant during the Preference Period through payments under the Agreements aggregating to an amount not less than \$1,661,539.15 (the "Transfer" or "Transfers"). The details of each Transfer are set forth on Exhibit A attached hereto and incorporated by reference, including the "Check Number," "Check Amount," "Check Date," and "Debtor Transferor."

28. During the course of this adversary proceeding, Plaintiff may learn (through discovery or otherwise) of additional transfers made to Defendant during the Preference Period. It is Plaintiff's intention to avoid and recover all transfers made by the Debtors of an interest in the Debtors' property and to or for the benefit of Defendant or any other transferee. Plaintiff reserves its right to amend this original Complaint to include: (i) further information regarding the Transfer(s), (ii) additional transfers, (iii) modifications of and/or revisions to Defendant's name, (iv) additional defendants, and/or (v) additional causes of action (*e.g.*, but not exclusively under, 11 U.S.C. §§ 506(d), 542, 543, 544, 545, 549 and/or 553) (collectively, the "Amendments"), that may become known to Plaintiff at any time during this adversary

proceeding, through formal discovery or otherwise, and for the Amendments to relate back to this original Complaint.

CLAIMS FOR RELIEF

COUNT I

(Avoidance of Preference Period Transfers – 11 U.S.C. § 547)

29. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

30. As more particularly described on Exhibit A attached hereto and incorporated herein, during the Preference Period, the Debtor(s) identified on Exhibit A made Transfers to or for the benefit of Defendant in an aggregate amount of not less than \$1,661,539.15.

31. Each Transfer was made from one or more of the Disbursement Accounts described herein, and constituted transfers of an interest in property of the transferring Debtor(s).

32. During the Preference Period, Defendant was a creditor at the time of each Transfer by virtue of supplying to the Debtor(s) identified on Exhibit A the goods and/or services identified in the Agreements, as more fully set forth on Exhibit A hereto, for which the Debtor(s) identified on Exhibit A was obligated to pay following delivery in accordance with the Agreements.

33. Each Transfer was to or for the benefit of a creditor within the meaning of 11 U.S.C. § 547(b)(1), because each Transfer either reduced or fully satisfied a debt or debts then owed by the Debtor(s) identified on Exhibit A hereto.

34. Each Transfer was made for, or on account of, an antecedent debt or debts owed by the Debtor(s) identified on Exhibit A hereto to Defendant before such Transfers were made, as asserted by Defendant and memorialized in the Agreements, each of which constituted

a “debt” or “claim” (as those terms are defined in the Bankruptcy Code) of Defendant prior to being paid by the transferring Debtor(s), as identified on Exhibit A hereto.

35. Each Transfer was made while the Debtors were insolvent. Plaintiff is entitled to the presumption of insolvency for each Transfer made during the Preference Period pursuant to 11 U.S.C. § 547(f).

36. Each Transfer was made during the Preference Period.

37. As a result of each Transfer, Defendant received more than Defendant would have received if: (i) the Debtors’ cases were cases under chapter 7 of the Bankruptcy Code; (ii) the Transfers had not been made; and (iii) Defendant received payment of its debts under the provisions of the Bankruptcy Code. As evidenced by the proofs of claim that have been received to date and the impaired treatment afforded holders of General Unsecured Claims under the Plan, the Debtors’ liabilities exceed their assets to the point that holders of General Unsecured Claims are not expected to receive payment in full on account of their respective allowed claims from the Debtors’ bankruptcy estates.

38. In accordance with the foregoing, each Transfer is avoidable pursuant to 11 U.S.C. § 547(b).

COUNT II
(Avoidance of Fraudulent Conveyances – 11 U.S.C. § 548(a)(1)(B))

39. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

40. To the extent one or more of the Transfers identified on Exhibit A was not made on account of an antecedent debt, or was a prepayment for goods and/or services subsequently received, or was a debt incurred by one Debtor but paid by one or more of the other Debtors, subject to proof, Plaintiff pleads in the alternative that the transferring Debtor(s) did not

receive reasonably equivalent value in exchange for such transfer(s) (the “Potentially Fraudulent Transfers”) and:

- A. was insolvent as of the date of the Transfer(s), or became insolvent as a result of the Transfer(s); or
- B. was engaged, or about to engage, in business or a transaction for which any property remaining with the transferring Debtor(s) or for whose benefit the Transfer(s) was made was an unreasonably small capital; or
- C. at the times relevant to this Complaint, intended to incur, or believed it would incur, debts beyond its ability to pay upon maturity.

41. Based upon the foregoing, the Potentially Fraudulent Transfers are avoidable pursuant to 11 U.S.C. § 548(a)(1)(B).

COUNT III
(Recovery of Avoided Transfers – 11 U.S.C. § 550)

42. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

43. Plaintiff is entitled to avoid the Transfer(s) pursuant to 11 U.S.C. § 547(b) and/or any Potentially Fraudulent Transfers pursuant to 11 U.S.C. § 548 (collectively, the “Avoidable Transfers”).

44. Defendant was the initial transferee of the Avoidable Transfer(s) or the immediate or mediate transferee of such initial transferee or the person for whose benefit the Avoidable Transfer(s) were made.

45. Pursuant to 11 U.S.C. § 550(a), Plaintiff is entitled to recover from Defendant the Avoidable Transfer(s), plus (i) pre- and post-judgment interest thereon from the date of demand to the date of payment or other satisfaction of such order and judgment; and (ii) the costs of this action.

COUNT IV

(Disallowance of all Claims – 11 U.S.C. § 502(d) and (j))

46. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

47. Defendant is a transferee of transfers avoidable under sections 547 and/or 548 of the Bankruptcy Code, which property is recoverable under section 550 of the Bankruptcy Code.

48. Defendant has not paid the amount of the Avoidable Transfer(s), or turned over such property, for which Defendant is liable under 11 U.S.C. § 550.

49. Pursuant to 11 U.S.C. § 502(d), any and all Claims of Defendant and/or its assignee against the Debtors' chapter 11 estates must be disallowed until such time as Defendant pays to Plaintiff an amount equal to the aggregate amount of the Avoidable Transfer(s), plus interest thereon and costs.

50. Pursuant to 11 U.S.C. § 502(j), any and all Claims of Defendant and/or its assignee against the Debtors' chapter 11 estates previously allowed by the Debtors or the GUC Trust must be reconsidered and disallowed until such time as Defendant pays to Plaintiff an amount equal to the aggregate amount of the Avoidable Transfer(s).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court grant the following relief against

Defendant:

- A. On Plaintiff's First, Second, and Third Claims for relief, judgment in favor of Plaintiff and against Defendant, avoiding all of the Avoidable Transfers and directing Defendant to return to Plaintiff the amount of the Avoidable Transfers, pursuant to 11 U.S.C. §§ 547(b) and/or 548 and 550(a), plus pre- and post-judgment interest from the date of demand at the maximum legal rate and to the fullest extent allowed by applicable law, together with the costs and expenses of this action, including, without limitation, attorneys' fees;
- B. On Plaintiff's Fourth Claim for relief, judgment in favor of Plaintiff and against Defendant disallowing any claims held or filed by Defendant against the Debtors or their estates until Defendant returns the Avoidable Transfers to Plaintiff pursuant to 11 U.S.C. §§ 502(d) and (j); and
- C. Granting Plaintiff such other and further relief as this Court may deem just and proper.

Dated: June 28, 2022
New York, New York

/s/ Eric R. Wilson
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Attorneys for the NPC International GUC Trust

Exhibit A: Preferential Transfers

Debtor Transferor(s)	Vendor Name	Invoice Number(s)	Check Amount	Check Number	Check Date
NPC International, Inc.	Creative Alliance, Inc.	275019 275018 276182	\$1,587.50	2622931	4/3/2020
NPC International, Inc.	Creative Alliance, Inc.	276796	\$1,500.00	2624426	4/16/2020
NPC International, Inc.	Creative Alliance, Inc.	276795 276794 276776	\$10,124.95	2624958	4/23/2020
NPC International, Inc.	Creative Alliance, Inc.	277918	\$42,640.00	2627119	5/8/2020
NPC International, Inc.	Creative Alliance, Inc.	278255 278254	\$1,691.83	2628271	5/14/2020
NPC International, Inc.	Creative Alliance, Inc.	278635 278707 278631 278630 278637 278632 278638 278704 278639 278640 278636 278633 278634	\$218,533.75	2629463	5/21/2020

		278703 278708 278705 278706			
NPC International, Inc.	Creative Alliance, Inc.	279635_VALASS IS 279634_VALASS IS 279633_VALASS IS	\$281,954.34	NA	5/26/2020
NPC International, Inc.	Creative Alliance, Inc.	279289 279287 279273 279288	\$82,397.61	2630793	5/28/2020
NPC International, Inc.	Scoppechio LLC	279833	\$206,043.56	N/A	6/5/2020
NPC International, Inc.	Creative Alliance, Inc.	279634-NONVALASS 279545 279542 279544 279540 279546 279543 279541	\$101,083.81	2632081	6/5/2020
NPC International, Inc.	Creative Alliance, Inc.	279633NONVALASSI	\$74,153.87	2632718	6/11/2020
NPC International, Inc.	Creative Alliance, Inc.	280087 280089 280084 279858 279857	\$5,251.84	2633992	6/18/2020

		279859 279860 280086			
NPC International, Inc.	Creative Alliance, Inc.	279635NONVAL ASSI 278259 278257 278256 278528 280085 280118 280422 280119 280421 280423 2802180 280424 280171 280088 280108 280111 280114 280120 280109 280112 2802190 280110	\$634,576.09	2635024	6/24/2020

Total Transfers	13
Transfer Amount	\$1,661,539.15