

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION**

In re:	)	
	)	
YLG Partners, Inc.	)	Case No. 23-10709
	)	
Debtor.	)	Chapter 7
	)	

**MOTION TO DETERMINE THAT THE CHAPTER 7 TRUSTEE HAS NO  
DUTY TO REPORT THE DEBTOR’S BENEFICIAL OWNERSHIP  
INFORMATION TO THE U.S. DEPARTMENT OF THE TREASURY**

The U.S. Bankruptcy Administrator (the “BA”), under 11 U.S.C. §§ 105 and 704, 31 U.S.C. § 5336, and 31 C.F.R. § 1010.380, moves the Court for an order determining that the chapter 7 trustee has no duty to report beneficial ownership information on the debtor’s behalf under the Corporate Transparency Act. In support of this request, the BA states as follows:

**SUMMARY**

New reporting obligations under the Corporate Transparency Act require most corporations, limited liability companies, and similar entities to report information about their beneficial owners, with the laudable goal of enhancing transparency to combat financial crimes. The U.S. Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) started accepting reports this year, and existing companies have a filing deadline of January 1, 2025. Most debtors in business chapter 7 cases will be subject to these reporting requirements, including the debtor in this case. The BA believes that bankruptcy trustees have no duty to file these

reports, since they are representatives of the bankruptcy estate created upon the filing of the case. A bankruptcy trustee is not the “reporting company” as defined in the statute. Nor does 11 U.S.C. § 704 create a duty for a bankruptcy trustee to file such reports on a debtor’s behalf. However, bankruptcy trustees should not be left to guess about the scope of their duties, especially here where noncompliance can come with civil and criminal penalties. Therefore, the BA requests an order determining that the trustee has no duty to report beneficial ownership information on the debtor’s behalf.

### **BACKGROUND**

1. The Court has jurisdiction over this case under 28 U.S.C. § 1334. Under 28 U.S.C. § 157(a), the United States District Court for the Middle District of North Carolina has referred this case and this proceeding to this Court by its Local Rule 83.11. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2).

2. The debtor filed a voluntary petition under chapter 7 on December 27, 2023. Brian R. Anderson is the chapter 7 trustee.

3. The debtor, YLG Partners, Inc., is a corporation whose principal place of business was in Burlington, NC.

4. The public records available with the North Carolina Secretary of State reflect that the debtor was incorporated in 2017. The articles of incorporation were signed by Douglas Calaway in the capacity of President and Chief Executive Officer.

5. In more recent years, the debtor’s annual reports with the Secretary of State were signed by Ralph M. Holt III as President and Chief Executive Officer.

6. The debtor's statement of financial affairs identifies Ralph M. Holt III and Michael M. Holt as the debtor's officers and identifies over 70 shareholders.

7. The debtor's filings do not include passport numbers, driver's license numbers or other identifying numbers for its officers and shareholders. No images of these documents are included. Similarly, the birth dates of these individuals are not provided. Of course, one would not expect to find these things in the debtor's bankruptcy filings, since they are not required by Bankruptcy Code or the prescribed forms.

### **ARGUMENT**

Under the Corporate Transparency Act, any "reporting company" is required to submit information about its beneficial ownership to FinCEN. 31 U.S.C. § 5336(b)(1). A reporting company is required to identify "each beneficial owner . . . and each applicant," by their legal name, birth date, address, and identifying number such as a passport number or driver's license. 31 U.S.C. § 5336(b)(2). An image of the identification document must also be submitted. 31 C.F.R. § 1010.380(b)(1)(ii)(E).

"Reporting company" is defined to include "a corporation, limited liability company, or other similar entity that is . . . created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe." 31 U.S.C. § 5336(a)(11). There are certain exceptions, which are inapplicable here.<sup>1</sup>

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<sup>1</sup> One exception, addressing inactive entities, is initially tempting as creating a possible exception. However, it only applies to inactive businesses, that, among other things, hold no assets and have not sent or received funds of greater than \$1,000 in the preceding year.

Certainly, the debtor in this case is a corporation, and constitutes a reporting company under the statute. However, the trustee does not. We know this from the basic structure of the Bankruptcy Code. Under § 541, the filing of a bankruptcy case “creates an estate.” 11 U.S.C. § 541. All of the debtor’s property interests become property of the estate. In chapter 7, a trustee is appointed to administer the newly created estate. The trustee is “the representative of the estate.” 11 U.S.C. § 323(a).

A trustee does not become the debtor or the debtor’s agent. *See, e.g., In re Adelphi Hosp. Corp.*, 579 F.2d 726, 727 (2d Cir. 1978) (holding that a trustee was not subject to state recordkeeping regulations, because they applied to the debtor’s “governing authority” such as its officers and directors, and “[a] trustee in bankruptcy is neither a director nor a trustee of a corporation”); *In re Obie Elie Wrecking Co., Inc.*, 35 B.R. 114, 115 (Bankr. N.D. Ohio 1983) (finding that “the trustee is not the agent of the debtor” and “acts as representative of the estate”).

This view is further supported by a review of a chapter 7 trustee’s enumerated duties under 11 U.S.C. § 704(a). In some instances, the trustee has an obligation to perform a debtor’s duties, such continuing to perform a debtor’s obligations as administrator of an employee benefit plan. *See* 11 U.S.C. § 704(a)(11). But none of the enumerated duties can be construed as requiring a chapter 7 trustee to file beneficial ownership reports to FinCEN on a debtor’s behalf.

This is a new issue, and the BA believes there is currently no caselaw on the

subject. However, based upon a plain reading of the statutory language, the debtor is the reporting company under the Corporate Transparency Act, not the bankruptcy trustee. This is sufficient to end the analysis, but there are also strong policy reasons not to pin this reporting obligation on chapter 7 trustees. It would require trustees to conduct discovery to obtain the required information, on a subject that is entirely unrelated to the administration of the bankruptcy estate. In this case for example, the trustee would need to obtain full legal names, birth dates, addresses, and identification documents for over 70 individuals. Surely this was not Congress's intent, and the plain statutory language supports that view.

THEREFORE, the BA requests that the Court enter an order:

1. Determining that the chapter 7 trustee has no duty to report beneficial ownership information to FinCEN on the debtor's behalf; and
2. Granting such other relief as the Court deems proper.

Respectfully submitted on February 23, 2024.

JOHN PAUL H. COURNOYER  
U.S. BANKRUPTCY ADMINISTRATOR

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**CERTIFICATE OF SERVICE**

This is to certify that, on this date, the foregoing document was served upon the following parties or counsel by automatic CM/ECF service or by depositing a copy in the United States mail, first class, postage prepaid, addressed as follows:

**SERVED BY CM/ECF**

Brian R. Anderson, trustee

James C. White, on behalf of Jo Ann Agliata

Samantha K. Brumbaugh, on behalf of the debtor

**SERVED BY US MAIL**

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Dated: February 23, 2024

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