**Dated: April 30, 2022**
**The following is ORDERED:**

**Jennie D. Latta**
**UNITED STATES BANKRUPTCY JUDGE**

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

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| In re<br>CORNELIUS RAY SANDERS and<br>VERONICA DENISE SANDERS,<br>Debtors. | Case No. 21-20065-L<br>Case No. 21-22279-L<br>Chapter 13<br>JOINTLY ADMINISTERED |
| Cornelius Ray Sanders and<br>Veronica Denise Sanders,<br>Debtors/Objectors,<br>v.<br>Dan H. Shell, III, M.D., PLLC,<br>Creditor/Claimant. | Claim No. 16-2 and ECF No. 83<br>(C. Sanders); and<br>Claim No. 12-1 and ECF No. 60<br>(V. Sanders) |

**ORDER SUSTAINING IN PART AND OVERRULING IN PART OBJECTIONS TO CLAIMS**

THE CLAIMS of Dr. Dan H. Shell, III, M.D., PLLC ("Shell PLLC") and Objections to these Claims filed by the Debtors came before the Court for trial on April 27, 2022. Shell PLLC was represented by Attorney Steven N. Douglass. Cornelius Ray Sanders and Veronica Denise

Sanders (collectively the "Debtors") were represented by Attorneys Michael P. Coury and Jerome C. Payne. Sylvia Ford Brown, the Chapter 13 Trustee, was represented by Attorney James Bergstrom.

In his opening statement, Mr. Coury conceded that the Debtors are indebted to Shell PLLC in the amount of $2,000 but denied that they were indebted to Shell PLLC in any other amount. The claim of Shell PLLC is based upon the *Order Granting Motion for Rule 37 Sanctions, Imposing Constructive Trust, and Amending Prior Order* entered March 17, 2020, in the case styled *Shell v. Spa Therapies, LLC*, CH-18-0055, Chancery Court of Shelby County Tennessee for the Thirtieth Judicial District at Memphis (the "Sanctions Order").

The Court heard the testimony of Dr. Dan H. Shell, III and Mrs. Veronica Denise Sanders. Exhibits Shell 15, Shell 16, Shell 17, Shell 19, D-1, D-5, D-7, D-8, D-11, D-15, D-16, and D-17 were admitted into evidence and relied upon by the Court.

**BACKGROUND FACTS**

Cornelius Ray Sanders filed a petition for relief under Chapter 13 of the Bankruptcy Code on January 7, 2021. (C. Sanders ECF No. 1). Cornelius Ray Sanders filed an Amended/Corrected Petition on January 22, 2021, which attempted to add Defendant Veronica Denise Sanders as a debtor. (C. Sanders ECF No. 14). On June 25, 2021, Veronica Denise Sanders voluntarily dismissed herself from the joint case. (C. Sanders ECF No. 68). On July 13, 2021, Veronica Denise Sanders filed a new voluntary petition under Chapter 13, which was assigned case number 21- 22279. At the request of the Debtors, the case of Veronica Denise Sanders is being jointly administered with the case of Cornelius Ray Sanders.

Prior to the filing of Veronica Sanders' voluntary petition, Shell PLLC filed Proof of Claim No. 16-1 on March 10, 2021, in the amount of $409,475.45, based upon the Sanctions Order. Shell

PLLC filed Amended Proof of Claim No. 16-2 on September 20, 2021, in the amount of $405,971.19, also based upon the Sanctions Order. The difference between the two proofs of claim appears to arise from a downward adjustment in the calculation of post-judgment interest. All of the claim as amended is designated to be unsecured. Also on September 20, 2021, Shell PLLC filed Proof of Claim No. 12-1 in the Veronica Sanders case, in the amount of $420,683.48, also based upon the Sanctions Order. The claim is asserted to be secured by a recorded judgment with a value of $102,327, with an unsecured balance of $318,356.48. The higher amount of the claim against Veronica Sanders appears to arise from the calculation of post-judgment interest through the later date of the filing of her bankruptcy petition.

Shell PLLC commenced an adversary proceeding to determine the dischargeability of any debt owed to it by the Debtors on April 6, 2021. (Adv. Proc. No. 21-00046.) That proceeding was dismissed upon motion of the Debtors on August 18, 2021.

The Debtors filed objections to the Shell PLLC Proofs of Claim on October 13, 2021 (V. Sanders ECF 60) and October 14, 2021 (C. Sanders ECF 83). The objections state that the Debtors are not indebted to Shell PLLC and that the recording of the Sanctions Order could not create a lien upon property of Mr. Sanders because it occurred when he was already a debtor in bankruptcy and could have only created a lien upon Mrs. Sanders' expectancy interest in property she owns with her husband as tenants by the entireties. In its reply, Shell PLLC acknowledges that its judgment lien does not apply to property of Mr. Sanders but denies that the only assets to which the lien could attach are held by the Debtors as tenants by the entirety. (C. Sanders ECF No. 93). Shell PLLC failed, however, to identify any property owned solely by Mrs. Sanders during the course of the trial.

Cornelius Ray Sanders proposes to pay $7,000 every month for 60 months to fund his plan. His plan treats the claim of Shell as a general unsecured claim. (C. Sanders ECF No. 17). Veronica Denise Sanders proposes to pay $3,500 every two weeks for 60 months to fund her plan. Her plan also treats the claim of Shell as a general unsecured claim. (V. Sanders ECF No. 2). Neither of the plans has been confirmed. At the trial of the Objections to Claims, Mr. Bergstrom announced that the Chapter 13 Trustee would withdraw her pending motion to dismiss the bankruptcy case and objection to confirmation because the Debtors have been funding their respective plans and there are significant funds on hand.

Shell PLLC filed a *Motion to Convert or Dismiss Debtors' Chapter 13 Case to Chapter 7 Pursuant to 11 U.S.C. § 1307(c)* on April 7, 2022. (C. Sanders ECF No. 157). The Debtors filed their *Motion for Summary Judgment on Objection to Claim of Dan H. Shell, III, M.D., PLLC* on April 14, 2022. (C. Sanders ECF No. 165). The Court has considered both of these motions in connection with the trial on the objections to claims.

**JURISDICTION, AUTHORITY, AND VENUE**

Jurisdiction over a contested matter arising under the Bankruptcy Code lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). The allowance or disallowance of claims against the bankruptcy estate are core proceedings arising under the Bankruptcy Code. *See* 11 U.S.C § 502(b) and 28 U.S.C. § 157(b)(2)(B). The bankruptcy court has authority to enter a final order allowing or disallowing claims against the bankruptcy estate subject

only to appellate review. *See* 28 U.S.C. § 157(b)(1). Venue of this contested matter is proper to the Western District of Tennessee because this matter arises in bankruptcy cases pending in this district. *See* 28 U.S.C. § 1409(a).

**CONTESTED ISSUES**

The parties do not agree upon the meaning of the Sanctions Order. Shell PLLC asserts that it awards it a money judgment against the individual Debtors in the amount of $382,843.21. The Debtors assert that the Sanctions Order awards Shell PLLC $2,000 as a sanction for their failure to cooperate in discovery and imposes a constructive trust upon the assets of the former Spa Therapies, LLC, a company owned by the Debtors in equal shares, in the hands of the Debtors. The Debtors further assert that there are no such assets because the assets of Spa Therapies were seized by Shell PLLC pursuant to three levies of execution. Shell PLLC counters that a legal malpractice complaint filed by the Debtors and the patient list of Spa Therapies remain in the hands of the Debtors or Ivy Spa and Wellness, LLC ("Ivy Wellness") and that these are valuable assets.

**FINDINGS OF FACT**

Spa Therapies and Shell PLLC entered into a Medical Director Agreement on January 17, 2011. (Tr Ex. D-1, Ex. A). Pursuant to the Medical Director Agreement, Shell PLLC agreed to provide a qualified physician to serve as medical director of Spa Therapies, Spa Therapies agreed to purchase certain equipment and inventory from Shell PLLC, and Spa Therapies agreed to compensate Shell PLLC for services provided by it on the basis of a percentage of gross revenue received by Spa Therapies.

In May 2015, Dr. Shell asked for an accounting from Spa Therapies of its gross revenue. This request was refused. Dr. Shell continued to make requests for financial information from Spa Therapies over the next two years. In January 2018, Shell PLLC filed suit against Spa Therapies.

The lawsuit resulted in a stipulated judgment against Spa Therapies in the amount of $380,843.21, entered May 2019. (Testimony of Dr. Dan Shell; Tr. Ex. D-1).

Shell PLLC caused a writ of execution to issue which was served upon Spa Therapies in July 2019. Personal property was removed from the offices of Spa Therapies including exam tables, office chairs, a Palomar laser machine, other laser machines, a towel warming machine, various paintings and pictures, a washer and dryer, exam lights, three computers, keyboards, and screens, and a cosmetic desk. The property, other than leased laser machines, was advertised for sale by the Shelby County Sheriff on August 27, 2019, but there were no bidders. The property was awarded to Shell PLLC in exchange for the payment of moving and storage fees in the amount of $2,107.21. (Tr. Ex. D-5). Shell PLLC remains in possession of the Palomar laser machine. Although Dr. Shell testified that the machine was broken when he received it and that $10,000 would be needed to repair it, Mrs. Sanders testified that the machine was in working order when it was seized from the premises leased by Spa Therapies, and that at least $100,000 in revenue per year could be generated from the use of that machine if it were put in working order. The Court credits the testimony of Mrs. Sanders.

Shell PLLC caused two subsequent writs of execution to be issued and served upon Spa Therapies. The second and third writs resulted in seizure of skin care products Mrs. Sanders valued at $5,000 each time. Dr. Shell testified that some of the products were disposed of because they were out of date, and that other products were sold, but he did not indicate that any credit for the sales proceeds was given against the stipulated judgment. The third seizure resulted in the commencement of voluntary dissolution of Spa Therapies by its President, Mr. Sanders. (Tr. Ex. D-8). The records of the Tennessee Secretary of State reflect that Spa Therapies was administratively dissolved on October 6, 2020. (Tr. Ex. Shell 15). It is not clear whether this

resulted from a failure of Spa Therapies to provide required documentation or from some other cause, but it is clear that Spa Therapies ceased doing business in October 2019. Testimony of Mrs. Sanders; (Tr. Ex. D-8; Tr. Ex. Shell 15).

In October 2019 Ivy Wellness was formed by the Debtors and Mrs. Sanders' sister. It began doing business in the same location previously used by Spa Therapies, but eventually moved to another nearby location. It was able to offer some but not all of the services provided by Spa Therapies because it did not have the same equipment until Mrs. Sanders' sister was able to obtain another laser machine. Spa Therapies had gross receipts of $826,000 for the ten months that it operated in 2019, for an average of $82,600 per month. Ivy Wellness had gross receipts of $148,055 for November and December 2019, for an average of $74,027.50 per month, and gross receipts of $819,000 in 2020, for an average of $81,900 per month. Mrs. Sanders testified that the business of Spa Therapies was negatively impacted by the seizures of its assets. This testimony is supported by the decline in average monthly revenue after Ivy Wellness came into existence.

Shell PLLC, by its attorney, Joseph D. Barton, filed a *Motion for Rule 37 Sanctions* against Spa Therapies, on November 8, 2019, in the Chancery Court. (Tr. Ex. Shell 17). The essence of the motion was that Spa Therapies failed to comply with discovery. The motion also alleged that income paid to Spa Therapies had been distributed to Mr. and Mrs. Sanders, its owners, to the detriment of its creditors. The motion asked for sanctions in the amount of $2,200 "for the time expended in the Discovery process and Defendant's willful failure to abide by the orders of this Court and deliberate frustration of the Discovery Process." This motion resulted in the entry of an *Order on Rule 37 Motion and for Mediation*, December 10, 2019 (the "Mediation Order"). (Tr. Ex. D-11, Ex. A). The order directs the parties to mediation with Judge George Brown within thirty days.

Shell PLLC, by its attorney, Mr. Barton, filed a second *Motion for Rule 37 Sanctions and to Amend Prior Order* on February 26, 2020, in the Chancery Court. (Tr. Ex. D-11). The prior order referred to in the motion is presumably the Mediation Order. Without explanation, the names of Mr. and Mrs. Sanders, individually, appear in the caption of the second motion for sanctions. The motion reiterates that the Sanders failed to cooperate in discovery and failed to cooperate in mediation. The motion asks that the chancellor find that moneys in fact flowed from Spa Therapies to the individuals and that "a constructive trust should be placed on those monies in that they should have gone to the creditors of the LLC prior to being taken by the Sanders." The motion also asks that attorneys fees be awarded to Shell PLLC in excess of $2,000. This motion resulted in the entry of the Sanctions Order on March 17, 2020.

The Sanctions Order recites as follows:

> By Motion Made and facts presented to this Court, and it appearing that the Plaintiff's Motion for Rule 37 Sanctions, and to Amend Prior Order is well taken, and this Court finding that,
>
> 1. The Defendants did not comply with the Courts [sic] Order for mediation, and have failed to produce the documents identified in the prior Consent Order,
>
> 2. That the dissolution of Spa Therapies, LLC without the statutorily required distribution of the assets of the LLC, to the Creditors of the LLC has necessitated a $380,843.21 judgment against Cornelius Sanders and Veronica Sanders, individually under a Constructive Trust imposed by the Court for failing to dissolve Spa Therapies, LLC as required by statute in fraud of creditors.
>
> Wherefore, it is ordered that a Constructive Trust is imposed against Cornelius Sanders and Veronica Sanders, individually, for the judgment amount of $380,843.21 for monies owed and adjudged against Spa Therapies, LLC, and a sanction of $2,000.00 is awarded to Plaintiff in attorney's fees against Cornelius and Veronica Sanders individually. For a total judgment against Cornelius and Veronica Sanders of $382,843.21 individually, with all cost [sic] assessed against Defendant's [sic] for which let execution lie.
>
> /s/ JoeDae L. Jenkins
> Judge

Prepared by

/s/ J.D. Barton
Attorney for the Plaintiff

(Claims 16-2 and 12-1, Ex. A).

Mrs. Sanders testified that she was not present when the motion for sanctions was heard and had not previously been provided with information about the motions for sanctions by Mr. William G. Hardwick, II, the attorney for Spa Therapies and Mr. and Mrs. Sanders at that time. These parties obtained new counsel, Christine W. Stephens, who filed a malpractice complaint against Mr. Hardwick on May 22, 2020. (Tr. Ex. Shell 19). The malpractice complaint recites among other things that Mr. Hardwick was not authorized to enter into the stipulated judgment against Spa Therapies. The allegations of the malpractice complaint are consistent with Mrs. Sanders' testimony in the hearing before this Court that she was not informed of the admission of liability on the part of Spa Therapies and that she was not informed of the discovery disputes that followed entry of the judgment against Spa Therapies.

Mrs. Sanders filed her first Chapter 13 bankruptcy petition on July 17, 2020. This case was dismissed on January 11, 2021. (Bankr. Case No. 20-23606).

In response to a question by Mr. Coury, Dr. Shell was not able to identify any assets that he alleges were transferred from Spa Therapies to Mr. or Mrs. Sanders between October 22, 2019 (the date the voluntary dissolution of Spa Therapies was initiated) and March 1, 2020 (the month in which the Sanctions Order was entered). Mrs. Sanders testified that all of the assets listed in the bankruptcy schedules filed by her and her husband were owned by them prior to the filing of the lawsuit by Shell PLLC. Shell PLLC offered no proof to the contrary. In response to questions by Mr. Douglass, Mrs. Sanders acknowledged that the malpractice lawsuit against Mr. Hardwick is an asset of Spa Therapies but said she did not know the value of that asset. Mrs. Sanders also

acknowledged that most of the patients of Ivy Wellness were previously patients of Spa Therapies, and that Ivy Wellness maintains its patient list using a software program known as InVision, which was the same software program used by Spa Therapies.

**CONCLUSIONS OF LAW**

In a bankruptcy case, a proof of claim is allowed as filed unless a party in interest objects. 11 U.S.C. § 502(a). If a party in interest objects, the court must "determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition." 11 U.S.C. § 502(b). The court is directed to allow the claim in that amount except to the extent that the claim is unenforceable against the debtor or property of the debtor under any agreement or applicable law. 11 U.S.C. § 502(b)(1). If a claim is not prima facie valid, the filing of an objection places the burden of proof back on the claimant to show by a preponderance of the evidence that it is entitled to be paid from the assets of the bankruptcy estate and in what amount. *See, e.g., In re Wells*, 407 B.R. 873, 882 (Bankr. N.D. Ohio 2009). In the context of a bankruptcy case, the term "claim" means:

> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
> (B) right to equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. § 101(5)(A) and (B). A creditor's right to payment arises from the underlying substantive law that created the claim subject to any contrary provision of the bankruptcy law. *Raleigh v. Illinois Dep't of Revenue*, 530 U.S. 15, 20, 120 S.Ct. 1951, 1955 (2000), citing *Butner v. United States*, 440 U.S. 48, 55, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979).

In the present case, the only source relied upon by Shell PLLC in support of its right to payment from Mr. and Mrs. Sanders is the Sanctions Order, which consists of two parts: (1) "a

Constructive Trust … imposed against Cornelius Sanders and Veronica Sanders, individually, for the judgment amount of $380,843.21 for monies owed and adjudged against Spa Therapies," and (2) "a sanction of $2,000 … awarded to Plaintiff in attorney's fees against Cornelius and Veronica Sanders individually." Mr. and Mrs. Sanders, through their attorney, have conceded that the $2,000 sanction against them is justly due and owing by them. It constitutes a valid claim against their bankruptcy estates. More troubling, however, is the claim that the individual Debtors are indebted to Shell PLLC for the debt of Spa Therapies as the result of the Sanctions Order. The Sanctions Order speaks in terms of a constructive trust and of a judgment. For the reasons that follow, this Court finds and concludes that the Sanctions Order must be read to create a constructive trust but not a money judgment against the individual Debtors.

The Sanctions Order resulted from two motions brought pursuant to Tennessee Rule of Civil Procedure 37 but does not specify the section of that rule relied upon. The first motion, filed November 8, 2019, states that it is based upon the failure to comply with discovery and the failure to comply with a consent order concerning discovery. (Tr. Ex. D-11, Ex. C; Tr. Ex. Shell 17). It thus could be read to ask for relief under Rule 37.01 (Motion for Order Compelling Discovery) or Rule 37.02 (Failure to Comply with Order). The motion asks that the Court find that the facts sought to be proved through discovery be taken as proved. The fact sought to be established was that "income paid in to Spa Therapies, LLC, has flowed from Spa Therapies, LLC to Veronica Sanders and Cornelus [sic] Sanders, the owners of the business." This motion resulted in the entry of the Mediation Order, which directed the parties to mediation with Judge George Brown. The second *Motion for Rule 37 Sanctions and to Amend Prior Order* was filed February 26, 2020. It alleges that the Debtors failed to comply with the Mediation Order, asks that this failure be deemed a failure to obey "the discovery orders of this Court" without specifying which orders these are,

realleges the allegations of the previous Rule 37 Motion, and asks that the documents that the Debtors failed to produce "should be adjudicated as proving that the income to Spa Therapies, LLC has flowed to them individually and a constructive trust should be placed on those monies in that they should have gone to the creditors of the LLC prior to being taken by Sanders." The motion also asks for attorney's fees "well in excess of $2,000." (Tr. Ex. D-11).

The Sanctions Order itself, which states that it was prepared by Mr. Barton as attorney for Shell LLC, does not specify the rule or rules upon which it is based. It recites as findings of fact that the Debtors did not comply with the Mediation Order and failed to produce documents specified in the Consent Order. It further recites that the dissolution of Spa Therapies without the statutorily required distribution of its assets "has necessitated a $380,843.21 judgment against Cornelius Sanders and Veronica Sanders, individually under a Constructive Trust imposed by the Court for failing to dissolve Spa Therapies, LLC as required by statute in fraud of creditors." It speaks in terms of "a total judgment against Cornelius and Veronica Sanders of $382,843.21 individually, with all cost [sic] assessed against Defendant's [sic] for which let execution lie." (Claims 16-2 and 12-1, Ex. A). The language of the Sanctions Order is ambiguous in that it speaks of the creation of a constructive trust (an equitable remedy) and a money judgment (a legal remedy) both arising from alleged failures to cooperate in discovery and to comply with orders concerning discovery. Moreover, it does not appear from the record how or whether the Debtors were personally brought before the Chancery Court. The original complaint and the first motion for sanctions name only Spa Therapies as a defendant. The second motion names the individuals as defendants, but there is no indication from the record that Shell PLLC was permitted to amend its complaint post judgment to add them as defendants.

> Tennessee Rule of Civil Procedure 37.02 states:
>
> If a deponent; party; an officer, director, or managing agent of a party; or, a person designated under Rule 30.02(6) or 31.01 to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under Rule 37.01 or Rule 35, or if a party fails to obey an order entered under Rule 26.06, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:
>
> A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
>
> (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
>
> (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;
>
> (D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;
>
> (E) Where a party has failed to comply with an order under Rule 35.01 requiring the party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this rule, unless the party failing to comply shows that he or she is unable to produce such person for examination.
>
> In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

Tenn. R. Civ. P. 37.02. Nowhere does Rule 37.02 mention the possibility of entering a money judgment against the officers of a party that fails to permit or provide discovery. At most, Rule 37.02(D) permits the court to treat a failure to comply with an order for discovery as a contempt but there is nothing in the Sanctions Order that indicates an intention to do so. At trial, Shell PLLC

relied solely upon the language of the Sanctions Order in support of its claim and made no attempt to resolve the ambiguity in the language of the order through testimony or other extrinsic evidence. The Court will not assume that the Chancellor intended to impose a remedy not provided by the Tennessee Rules of Civil Procedure without clear proof to the contrary. Because Rule 37.02 does not specifically permit the entry of a money judgment against the officers of a party involved in a discovery dispute, this Court finds that the Sanctions Order must be read solely as an attempt to create a constructive trust upon any assets of Spa Therapies in the hands of the Debtors. To hold otherwise would impermissibly shift responsibility for the judgment against Spa Therapies to the Debtors without the necessity of some action against them individually such as an action to pierce the corporate veil. It is somewhat clearer that the Sanctions Order intended to create an obligation on the part of the individuals to reimburse Shell PLLC for its attorney's fees. While the Court remains concerned about the lack of process that brought the individuals before the Chancellor, the Debtors have not contested this part of the Sanctions Order.

A constructive trust is an equitable remedy that is imposed when transfers are made in fraud of third persons, such as creditors of the transferor. *See* 5 AUSTIN WAKEMAN SCOTT & WILLIAM FRANKLIN FRATCHER, THE LAW OF TRUSTS § 470 (4th ed.1989). It is said that "[w]here a person holding property transfers it to another in violation of his duty to a third person, the third person can reach the property in the hands of the transferee, unless the transferee is a bona fide purchaser." *Id.*, quoted in *In re Gurley*, 222 B.R. 124, 134 (Bankr. W.D. Tenn. 1998). as amended on reh'g (June 15, 1998). The constructive trust is an *in rem* remedy, meaning that it does not give rise to a separate right to payment but instead permits a claimant to reach property in the hands of a transferee that has no legal right to it. Unfortunately, the Sanctions Order does not specify any assets impermissibly transferred by Spa Therapies to the Debtors but asks that moneys

in an unspecified amount be deemed to have been distributed to the Debtors. Shell PLLC has been provided with the bankruptcy schedules and three years of tax returns for the individual Debtors but has identified only two potential assets that could be subject to the constructive trust imposed by the Sanctions Order. Conversely, Mrs. Sanders positively stated that at the time of the filing of her bankruptcy petition she was not in possession of any asset of Spa Therapies.

As the result of the filing of objections to the proofs of claim filed by Shell PLLC, it was incumbent upon it to show by a preponderance of the evidence that it is the holder of claims against these Debtors. The Debtors have conceded that Shell PLLC holds a $2,000 claim against them. At trial, Mr. Douglass suggested that perhaps the malpractice claim and/or the Spa Therapies' patient list are assets subject to the constructive trust. These ideas were not well-developed in the proof, however.

The malpractice complaint was brought in the names of Spa Therapies *and* the individual Debtors in May 2020, several months after Mr. Sanders initiated the dissolution of Spa Therapies. There is nothing in the record to suggest that the suit was "distributed" to the individual Debtors in connection with the dissolution of Spa Therapies. It is identified as an asset of the bankruptcy estates with unknown value. No information was given at trial concerning the status of the suit. The Court finds that the malpractice suit is an asset of the bankruptcy estates of the individual Debtors, but that it is not subject to the constructive trust.

The discussion of the patient list came at the very end of the trial in questions asked of Mrs. Sanders by Mr. Douglass on redirect examination. Mrs. Sanders testified that Spa Therapies maintained its patient list through a computer software system and that Ivy Wellness uses the same software system. There is nothing to suggest that the current patient list of Ivy Wellness is in fact the patient list of Spa Therapies or traceable to it. The record reflects that three computers owned

by Spa Therapies were seized in connection with the first levy of execution. (Tr. Ex. D-8). Although Mrs. Sanders could have been asked questions about how the patient list was reconstituted after the seizure of the computers, she was not. She also was not asked how Ivy Wellness developed its patient list. The patient list is not identified as an asset of the Debtors in their schedules. Although Mrs. Sanders did acknowledge that most of the patients of Ivy Wellness had been patients of Spa Therapies at one time, this could be accounted for by the mere fact of Mrs. Sanders' personal relationships with her patients or the location of Ivy Wellness. Mr. Douglass suggested in his closing argument that the patient list must be "very valuable" because it is used to generate the income of Ivy Wellness, from which Mrs. Sanders receives income. Although it may be true that the patient list is valuable to Ivy Wellness, that does not mean that the patient list of Spa Therapies or Ivy Wellness was an asset of Mrs. Sanders when her bankruptcy petition was filed. The Court finds that the patient list is not an asset of the bankruptcy estate, and therefore is not subject to the constructive trust.

**CONCLUSION**

Based upon the foregoing, the Court finds and concludes that Shell PLLC has ALLOWED claims against Cornelius and Veronica Sanders, jointly and severally, in the amount of $2,000. The claim is unsecured as to assets of Mr. Sanders but secured as to assets owned solely by Mrs. Sanders, if any. The remainder of the claims of Shell PLLC are DISALLOWED.

Because the Debtors conceded that they are indebted to Shell PLLC in the amount of $2,000, the finds that Shell PLLC has standing to pursue its *Objection to Confirmation of Chapter 13 Plan* (C. Sanders ECF No. 36) and *Motion to Convert or Dismiss Debtors' Chapter 13 Case to Chapter 7 Pursuant to 11 U.S.C. § 1307(c)* (C. Sanders ECF No. 157). Although there was some

discussion of the objection and motion at the trial on the objections to claims, the Court will permit the parties to appear for additional argument on **Thursday, May 19, 2022, at 10:00 a.m.**

As the result of the entry of this Order, the Debtors' *Motion for Summary Judgment* (C. Sanders ECF No. 165) is MOOT.

cc: Debtors
Attorneys for Debtors
Creditor
Attorney for Creditor
Chapter 13 Trustee