

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEWYORK**

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In re: :
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THE 1031 TAX GROUP, LLC, et. al., : Chapter 11
: Case No. 07-11448 (MG)
Debtors. : Jointly Administered
: Confirmed Cases
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In re: :
: :
INVESTMENT PROPERTIES OF AMERICA, LLC, : Chapter 11
et al., : Case No. 07-13621 (MG)
: Jointly Administered
Debtors., : Confirmed Cases
: :
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**ORDER DENYING MOTION OF CORDELL CONSULTANTS, INC. AND
CORDELL FUNDING LLLP TO ENFORCE CHANNELING INJUNCTION AND
CONFIRMATION ORDER**

Cordell Consultant, Inc. and Cordell Funding LLLP (together, “Cordell”) move the Court for an order enforcing a channeling injunction included in a settlement agreement between Cordell and Gerard E. McHale, Jr., Chapter 11 Trustee of The 1031 Tax Group, LLC and Investment Properties of America, LLC (“Trustee”), and also included in the confirmed Chapter 11 Plan approved in these cases (together, the “Channeling Injunction”). (ECF # 2011.) Specifically, Cordell now seeks an order enjoining the class plaintiffs (“Class Plaintiffs”) in *Hunter v. Citibank, N.A., et al.*, Case No. 09-cv-2079-JW, pending before the Hon. James Ware in the United States District Court for the Northern District of California, San Jose Division, from proceeding with all of the claims asserted against Cordell in the *Hunter* case. The Class Plaintiffs oppose the motion, arguing that the claims asserted against Cordell in the *Hunter* case are all “direct

claims” exclusively held by the Class Plaintiffs, and that the Channeling Injunction only bars the Class Plaintiffs from asserting “derivative claims” against Cordell. (ECF # 2018.)

The Channeling Injunction provides, *inter alia*, that:

all persons or entities, who have held, hold or may hold claims against or interests in the estates of the 1031 Debtors and IPofA Debtors are permanently enjoined from (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action, cause of action or other proceeding of any kind . . . against or affecting the Cordell Parties or the Collateral on account of or respecting any claim, interest, obligation, debt, right, cause of action, remedy or liability discharged, released, to be released, governed by or relating to the Settlement Agreement that is based upon or derivative of any claim or cause of action that could have been asserted against the Cordell Parties by, or injury to, the estates of the 1031 Debtors and/or the IPofA Debtors.

Channeling Injunction ¶ 2, at 4 (ECF # 1401).

In addition to moving for an injunction in this Court, Cordell also filed a motion in the *Hunter* case to dismiss the complaint on the grounds that the claims are barred by this Court’s Channeling Injunction. On February 3, 2010, the *Hunter* court entered an Order Granting In Part and Denying In Part Defendants’ Various Motions to Dismiss, disposing not only of Cordell’s motion but also the motions of the other defendants in the *Hunter* case. (Case No. 09-cv-02079-JW, Document 264, filed February 3, 2010.) The court’s order concluded that the claims asserted against Cordell are direct claims and not derivative claims. *Id.* at 10-13. Whether the claims are direct or derivative is, ultimately, a question of state law. *See McHale v. Alvarez (In re The 1031 Tax Group, LLC)*, 397 B.R. 670, 679 (Bankr. S.D.N.Y. 2008) (“The Court looks to state law to determine which claims are direct and belong to creditors, and which claims are derivative and belong exclusively to the trustee.”). In making the determination whether the claims are direct or

derivative, the court “looks to the allegations as they are stated in the complaint”
Id.; see also *Goldin v. Primavera Familienstiftung Tag Assocss. (In re Granite Partners, L.P.)*, 194 B.R. 318, 325-26 (Bankr. S.D.N.Y. 1996). This analysis does not raise any issues requiring an interpretation of the Channeling Injunction entered by this Court.

This Court cannot sit in review of the decision of the district court in California. Having filed its motion to dismiss the complaint in the district court in California, Cordell is bound by that court’s decision unless Cordell persuades that court to change its ruling,¹ or if the decision is reversed on appeal by the Ninth Circuit.

Therefore, Cordell’s motion for an order enforcing the Channeling Injunction is
DENIED.

IT IS SO ORDERED.

DATED: February 9, 2010
New York, New York

/s/Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge

¹ During argument in this Court on February 9, 2010, Cordell’s counsel indicated its intention to ask the district court to change its ruling.