

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION**

IN RE: : Case No. 11-31083
 :
 JAMES DONNAN III, et al., : Judge James P. Smith
 :
 Debtors : Chapter 11
 :
 : Adversary No. _____

GLC LIMITED
6276 County Road 107
Proctorville, Ohio 45669

Plaintiff,

vs.

JAMES DONNAN
246 Hamilton Road
Athens, Georgia 30606

and

MARY DONNAN
246 Hamilton Road
Athens, Georgia 30606,

Defendants.

**ADVERSARY COMPLAINT FOR
INJUNCTIVE RELIEF,
PROHIBITION OF USE OF CASH
COLLATERAL, CONSTRUCTIVE
TRUST AND OTHER RELIEF**

NOW COMES the Plaintiff, GLC LIMITED (“GLC”), by and through counsel, and for its Adversary Complaint Constructive Trust and Other Relief against Defendants JAMES DONNAN and MARY DONNAN states as follows:

INTRODUCTION

GLC is a retail liquidation company, with its principal business being the sale and/or redistribution of wholesale retail consumer products. Defendant James Donnan represented to third-parties that he was an officer of GLC, or otherwise controlled the assets or operations of GLC. Defendant James Donnan is substantially, if not principally, responsible for the initiation and operation of a far-reaching ponzi scheme that defrauded GLC and its investors of approximately \$27,752,159.00. Yet, while the ponzi scheme doomed GLC and its investors to severe financial losses and, in GLC's case, bankruptcy, Defendants reaped millions of dollars in profits. In total, Defendants' received approximately \$14,557,228.50 from GLC – a profit of nearly \$10,000,000.00. Defendants' investment scheme relied upon the continuous influx of additional investors prepared to offer increasing investments. When Defendants failed to secure the volume of new investments necessary to maintain their investment scheme, GLC defaulted on its financial obligations, including outstanding notes to investors solicited by Defendants. On February 28, 2011, GLC filed a chapter 11 petition in the Bankruptcy Court for the Southern District of Ohio, Case Number 11-11090.

Now, Defendants seek the protection of this Court in an eleventh-hour attempt to avoid responsibility for their wrongful, unlawful, and fraudulent acts. GLC requests that the Court establish a constructive trust over all proceeds of the Defendants' ponzi scheme or any property or other assets purchased with such proceeds. Additionally, and of immediate importance, GLC requests that the Court issue a preliminary injunction or other equitable relief precluding Defendants from dissipating or liquidating any cash, property, or other assets currently owned or controlled by Defendants prior to the resolution of GLC's claims against Defendants for imposition of a constructive trust over or the return of those proceeds and, in the alternative, an

order prohibiting Defendants' use of GLC's cash collateral. These measures are a proper exercise of the Court's equitable powers and are immediately necessary in order to preserve GLC's right to recover the funds diverted from GLC and its investors as a result of Defendants' ponzi scheme.

ALLEGATIONS COMMON TO ALL COUNTS

I. THE PARTIES

A. The Debtor and Chapter 11 Petition

1. On or about July 1, 2011, Defendants filed a Voluntary Petition (the "Petition") under Chapter 11 of the United States Bankruptcy Code with the United States Bankruptcy Court for the Middle District of Georgia.

B. Parties to the Complaint

2. Plaintiff GLC is a West Virginia Corporation, organized and existing under the laws of West Virginia, and operates certain retail and/or other business facilities in Ohio, West Virginia, Indiana and Tennessee. GLC maintains a principal mailing address of 720 Brixworth Blvd., Suite 200, Knoxville, TN 37934.

3. On or about February 28, 2011 (the "GLC Petition Date"), GLC filed a Voluntary Petition (the "GLC Petition") under Chapter 11 of the United States Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Ohio. The GLC Petition is pending in the Bankruptcy Court for the Southern District of Ohio, Western Division, before Judge Jeffrey P. Hopkins, Case Number 11-11090 (the "GLC Bankruptcy").

4. Upon information and belief, Defendant James Donnan is a natural person residing at the address referenced in the caption above. James Donnan was involved in the operation of, and profited substantially from, the ponzi scheme allegedly used to fund GLC's

business operations. Additionally, James Donnan represented to third parties, including GLC's financial institutions, that he was an officer of and was involved in the day-to-day business of GLC.

5. Upon information and belief, Defendant Mary Donnan is a natural person residing at the address referenced in the caption above. Mary Donnan is an investor in GLC and profited substantially from the ponzi scheme allegedly used to fund GLC's business operations.

II. JURISDICTION AND VENUE

6. This is a civil proceeding arising under the Bankruptcy Code or arising in or related to a case under the Bankruptcy Code within the meaning of 28 U.S.C. 1334(b).

7. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 because this action is related to the underlying bankruptcy case of Defendants which is pending before this Court. This Court also has jurisdiction over this adversary proceeding pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 7001(7) and 7065.

8. This is a core proceeding under 28 U.S.C. § 157 and Bankruptcy Rule 6004 because this proceeding (a) concerns the administration of Defendants' estate; (b) involves the request to turn over property in which Defendants have, at most, legal title; (c) includes GLC's objection to discharge of Defendants and requests the an order determining that debt owed by Defendants is not dischargeable; (d) requests an order prohibiting Defendants from using GLC's cash collateral; and affects the liquidation of the assets of Defendants' bankruptcy estate.

9. Defendants' chapter 11 bankruptcy case is pending before this Court. Accordingly, venue of this adversary proceeding is proper in this Court under 28 U.S.C. 1409(a).

10. Upon information and belief, at all times relevant herein, the Defendants conducted business in the State of Georgia, and the claims raised in this adversary proceeding arose in part from Defendants' actions in Georgia.

III. BACKGROUND FACTS

A. GLC's Formation and Business Operations

11. GLC was formed on or about March 24, 2004.

12. GLC is a retail liquidation company, with its principal business being the sale and/or redistribution of wholesale retail consumer products.

13. GLC maintains warehouses in Huntington, West Virginia and Columbus, Ohio.

14. In addition to the above-referenced warehouses, GLC maintains or has maintained retail locations in (1) Proctorville, Ohio; (2) Huntington, West Virginia; (3) Nitro, West Virginia; (4) LeSage, West Virginia; and (5) Pigeon Forge, Tennessee, (6) Newport, Tennessee and (7) Milan, Indiana.

15. Gregory and Linda Crabtree are the sole shareholders of GLC and, until February 21, 2011, Gregory and Linda Crabtree, as the directors, officers, and shareholders of GLC, had primary responsibility for the assets and operation of GLC.

16. At all time relevant to this Complaint, James Donnan represented to third-parties that he was an officer of GLC, or otherwise controlled the assets or operations of GLC. Specifically, James Donnan:

- a. represented to various third parties that he was an officer of GLC;
- b. was an authorized signor for GLC's accounts at First Sentry Bank;
- c. signed numerous checks on behalf of GLC;

- d. signed GLC's application for a depository account at First Sentry Bank as an officer of GLC;
- e. represented to First Sentry Bank that he was secretary or co-secretary of GLC;
- f. executed agreements on behalf of GLC with GLC's financial institutions, including First Sentry Bank; and
- g. entered into agreements on behalf of GLC with GLC's individual investors¹.

B. Defendants' Ponzi Scheme

17. In order to fund and operate GLC's meager business operations, Gregory and Linda Crabtree were required to obtain capital from outside lenders or investors.

18. Following GLC's formation, Gregory and Linda Crabtree solicited others to invest in GLC.

19. Upon information and belief, Defendants were among the very first investors in GLC. Upon information and belief, Defendants invested amounts in excess of \$5,400,000.00 in GLC at interest rates in excess of 50%.

20. While James Donnan may have initially been merely an investor in GLC, his role quickly grew. Indeed, James Donnan represented to third parties that he was the Vice President of GLC and represented to one of GLC's lenders, First Sentry Bank, that he was the secretary or

¹ Nothing contained herein, including but not limited to the use of certain terms such as "investment" or "investor," shall be construed as an admission on behalf of and/or a determination by the Debtor that any of the Investors would constitute equity holders of the Debtor, rather than creditors of the Debtor, nor shall anything contained herein be construed as an admission on behalf of and/or a determination by the Debtor as to the validity and/or extent of any claim or interest held by any individual or entity against the Debtor. The Debtor expressly reserves any and all rights with respect to any determination as to whether any Investor would constitute an equity holder and/or creditor of the Debtor. The Debtor further reserves any and all rights to contest the validity and/or extent of any asserted claim or interest against the Debtor.

co-secretary of GLC. *See, e.g.,* Exhibit C². He and Mary Donnan also executed numerous agreements on behalf of GLC with GLC's financial institutions and with GLC's investors. *See, e.g.,* Exhibits C and D. James Donnan also had direct access to GLC's bank accounts, wrote checks from those accounts, and received monthly statements from several of GLC's financial institutions. *See, e.g.,* Exhibit C, D, E. James Donnan's involvement in the operations and funding of GLC were so substantial that he often claimed that GLC was located in Athens, Georgia (despite the fact that the only tie between GLC and Athens, Georgia is that Defendants reside in Athens). *See* Exhibit K.

21. Defendants' primary responsibility in regard to GLC was to solicit additional parties to make substantial investments in GLC. James Donnan's own handwritten notes, excerpts of which are attached as Exhibit L, demonstrate that involvement. Those notes reflect the continuous influx of funds into the ponzi scheme, as well as payments to investors (including Defendants) and the payment of exorbitant commissions to Defendants. Additionally, those handwritten notes contain handwritten agreements with Gregory and Linda Crabtree pursuant to which Defendants were assured that they would be paid commissions and other cash payments in exchange for their solicitation of additional investors.

22. In exchange for that agreement, and upon information and belief, Defendants received commissions of approximately 15-20% of all of the investments they arranged or solicited from individuals to GLC.

23. Defendants solicited investments from more than 50 individuals and entities to GLC. Many of these investors were Defendants' co-workers or other acquaintances.

² For the Court's convenience, all exhibits referenced in this Complaint, the motion for injunctive relief and the accompanying memorandum filed contemporaneously herewith are contained in a separate document. *See* Notice of Filing Exhibits to (a) Complaint, (b) Motion for Injunctive Relief and (c) Memorandum in Support thereof.

24. James Donnan assured investors that the money loaned was used to purchase, close-out, discounted merchandise and excess production runs from highly-recognized companies such as Sears, Target, and Rite-Aid. Furthermore, James Donnan told various investors that inventory purchases by GLC were presold and that GLC did not maintain warehouse inventory, except for seasonal buys.

25. Based upon a preliminary financial analysis for the years 2007 through 2010, a tremendous disparity exists between amounts invested in GLC by the investors and the actual inventory purchases by GLC:

	<u>Investor Money</u>	<u>Inventory Purchased</u>
2007	799,000	775,000
2008	12,349,000	2,100,000
2009	33,411,000	5,281,000
2010	<u>35,357,000</u>	<u>3,637,000</u>
Total	\$81,916,000	\$11,793,000

See Exhibit F.

26. The majority of the investments solicited from individual investors to GLC were secured by notes given by GLC to the investors.

27. The terms for each investment in GLC were similar. Investors generally agreed to invest in GLC funds for 6 months to 1 year at interest rates ranging from 50-70% per annum. Principal and interest were generally paid upon maturity of the note. In addition to these staggering interest rates, GLC was required to pay, and did pay, Defendants lucrative and excessive commissions on each investment.

28. As initial notes became due, GLC was required to secure ever-increasing investments from new investors. Increasing volumes of new money was necessary in order to ensure that GLC would have sufficient funds available to repay prior principal investments, satisfy the interest rates promised to such investors, and to pay the commissions claimed to be due to Defendants.

29. Defendants' investment scheme thus relied upon the continuous influx of additional investors prepared to offer increasing investments.

30. The inevitable, of course, happened. While Defendants' ponzi scheme rendered GLC insolvent soon after it was commenced, that insolvency deepened as GLC was required to solicit ever-increasing investments from an ever-increasing numbers of investors. Eventually, Defendants were unable to secure the volume of new investments necessary to maintain their investment scheme and GLC defaulted on its financial obligations, including outstanding notes to investors solicited by Defendants.

31. Defendants' ponzi investment scheme allowed Defendants to make and retain substantial personal profits at the expense of GLC and its individual investors.

32. Specifically, pursuant to Defendants' ponzi scheme, GLC made approximately 293 transfers (collectively, the "Transfers") to Defendants or their immediate family members totaling \$14,557,228.50. The Transfers were made to or for the benefit of the Defendants and are also set forth on Exhibit G, a copy of which is attached hereto and incorporated herein.

33. Additionally, upon information and belief, Defendants' ponzi investment scheme allowed Defendants to transfer, convey, pay, and otherwise benefit from the cash, credit, equipment, and other personal and real property, services, and resources of GLC for their own

personal benefit and for the benefit of their business and personal associates all without consideration to GLC.

34. While Defendants may contend that they believed that GLC could legitimately pay the exorbitant interest rates and commissions, that reliance is not credible and belied by the facts. Moreover, to the extent that Defendants rely on an exculpatory statement signed by Gregory Crabtree in November 2010, that statement is wholly false, was written by James Donnan, and was obtained by James Donnan so that he could save face with acquaintances and co-workers Defendants had solicited to invest in the ponzi scheme.

C. Defendants' Bad Faith Filing of the Petition to Avoid GLC's Claims in the GLC Bankruptcy

35. On or about March 15, 2011, the Bankruptcy Court for the Southern District of Ohio entered an Order Authorizing Examination of James and Mary Donnan Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "2004 Order").

36. The 2004 Order required Defendants to produce various financial and other records to GLC on or before April 15, 2011. A true and accurate copy of the 2004 Order is attached hereto as Exhibit H.

37. Defendants made an initial production of documents on or about April 15, 2011. And, in response to GLC's concerns regarding the completeness of the Donnans' document production, Defendants produced additional documents to GLC in the weeks following the April 15, 2011 deadline.

38. The documents produced by Defendants provided substantial detail regarding the above-described ponzi scheme and Defendants' active role in initiating and maintaining that scheme.

39. The documents produced by Defendants also revealed that Defendants' liquid assets were worth approximately \$5 million.

40. On June 14, 2011, after conducting a thorough review of the documents produced by Defendants as well as documents and information produced by Gregory Crabtree, Linda Crabtree, and other relevant third parties, GLC mailed a demand letter to counsel for James and Mary Donnan (the "Demand Letter").

41. The Demand Letter set forth GLC's claims against the Defendants and demanded that Defendants return to GLC the proceeds of the above-described ponzi scheme. GLC further indicated in its demand letter that if the Defendants refused to return proceeds from the above-described ponzi scheme by July 1, 2011, GLC would file its adversary complaint and motion for injunctive relief against Defendants.

42. Defendants did not substantively respond to the Demand Letter.

43. Instead, on July 1, 2011, the deadline for Defendants to return the proceeds of their wrongful and unlawful ponzi scheme or face legal action in the GLC Bankruptcy, Defendants filed the Petition.

44. Defendants' Petition reflects only seven creditors.

45. Upon information and belief, Defendants have not defaulted on any obligations owed to their creditors.

46. Defendants' Petition was filed for the sole purpose of avoiding a single potential liability – the return of those assets Defendants' acquired through their involvement in the operation of the above-described ponzi scheme.

47. Thus, Defendants' Petition is nothing more than an eleventh-hour attempt to avoid responsibility for their own far-reaching and wrongful conduct.

48. And, Defendants have almost certainly filed their Petition to prevent the Bankruptcy Court for the Southern District of Ohio from granting the injunctive relief requested herein.

49. Furthermore, Defendants' continued exercise of control over property of GLC's bankruptcy estate and refusal to return such property is in violation of the automatic stay in place with respect to GLC's bankruptcy case.

50. Defendants have paid hundreds of thousands of GLC's funds - all of which were derived by Defendants in the conduct of the ponzi scheme - to fund their combat of GLC's attempts to recover GLC's property. Specifically, Defendants made the following pre-petition payments to their counsel:

- a. On or about November 15, 2010, Defendants paid \$20,000.00 to Miller & Martin, PLLC;
- b. On or about January 5, 2011, Defendants paid \$65,000.00 to Miller & Martin, PLLC;
- c. On or about March 11, 2011, Defendants paid \$31,314.56 to Miller & Martin, PLLC;
- d. On or about March 23, 2011, Defendants paid \$50,000.00 to Cook, Noell & Bates, LLC ("Tolley")
- e. In April 2011, Defendants paid \$25,000.00 to Harris & Liken, L.L.P. ("Harris") (Case No. 11-31083, Docket No. 12, ¶ 6);
- f. On or about June 28, 2011, Defendants paid \$200,000.00 to Tolley, purportedly as a retainer to pay Tolley, Harris, and Defendants' accountant, Ted M. Robertson (Case No. 11-31083, Docket No. 13, ¶ 6).

51. In total, Defendants have paid their counsel almost \$400,000.00 of GLC's property, all of which were derived by Defendants through their ponzi scheme and which GLC believes to be approximately 20% of Defendants' previously-liquid assets. GLC and/or the Official Committee of Unsecured Creditors intend to file an objection to Defendants' applications to employ Tolley, Harris and Robertson.

52. As Defendants are no doubt aware, on March 24, 2011, GLC filed an adversary complaint and motion for preliminary injunction and/or pre-judgment attachment against Greg and Linda Crabtree, Bankruptcy Court for the Southern District of Ohio, Adversary Case No. 1:11-ap-01030, seeking similar relief to the relief sought herein. On March 30, 2011, the Bankruptcy Court for the Southern District of Ohio granted GLC's motion and issued an injunction identical to the injunctive relief requested herein prohibiting Greg and Linda Crabtree from selling, disposing of, or otherwise transferring any assets (the "Injunction Order"). A true and accurate copy of the Injunction Order is attached as Exhibit J.

COUNT ONE – INJUNCTIVE RELIEF
(As to All Defendants)

53. GLC re-alleges paragraphs 1-50 of the Adversary Complaint as if fully restated herein.

54. This Court has jurisdiction to issue an injunction pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 7001 and 7065(a).

55. Defendants' liability to GLC's bankruptcy estate exceeds \$14 million. Defendants' liquid assets, which, upon information and belief, were acquired from GLC are approximately \$5 million.

56. Accordingly, Defendants are insolvent.

57. Because Defendants are insolvent, have misappropriated GLC's assets, are in possession of property properly belonging to GLC's estate, and are spending and dissipating GLC's property, GLC is entitled to a temporary restraining order and interlocutory injunction or permanent injunction to preserve its rights associated with the imposition and turnover of funds subject to a constructive trust or which are property of GLC's estate, including, but not limited to, the \$200,000.00 retainer paid by Defendants to Tolley.

58. Given the unlawful and wrongful conduct described above, GLC has a reasonable fear that Defendants will transfer assets in a manner that GLC would no longer be able to reach them. Moreover, every dollar spent by Defendants is subject to dissipation and waste and will be not recoverable by GLC.

59. Defendants' actions since the filing of the Petition only highlight the necessity of injunctive relief to protect GLC in this matter. Indeed, on or about June 28, 2010, Defendants paid their long-time personal attorney, Tolley, \$200,000.00 as a retainer, all of which constitutes GLC's assets or property. The relief requested herein should attach to the retainer held by Tolley and all other funds paid by Defendants to their counsel, including, but not limited to, Miller & Martin PLLC, Tolley, and Harris.

60. Without an injunction prohibiting Defendants from liquidating or transferring all property in their possession or control, GLC will not have an adequate remedy at law to recover the spent or transferred property and will suffer irreparable harm. Further, GLC will likely succeed on the merits and public interest factors support the entry of an injunction.

61. Accordingly, this Court should enjoin Defendants from liquidating or transferring during the pendency of this Action any and all property or assets owned by each of the Defendants or in which one or more of the Defendants has or may claim to have an interest of

any nature, kind, or description, including but not limited to, any and all real property, personal property, cash or cash equivalents, accounts, general intangibles, or contract rights. Such injunction should extend to and include the \$200,000.00 retainer paid by Defendants to Tolley and all other funds paid by Defendants to their past and/or present counsel.

62. For the foregoing reasons, GLC requests the issuance of an injunction, without bond, pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 7001 and 7065, enjoining Defendants, or any other party, from liquidating or transferring any and all property or assets owned by each of the Defendants or in which one or more of the Defendants has or may claim to have an interest of any nature, kind, or description, including but not limited to, any and all real property, personal property, cash or cash equivalents, accounts, general intangibles, or contract rights. Said injunction should apply to Defendants' property (as previously described) as well as any property of GLC in Defendants' possession or which was obtained from GLC, including but not limited to all funds paid by Defendants to their counsel, including the \$200,000.00 retainer paid by Defendants to Tolley.

COUNT TWO – PROHIBITION OF USE OF CASH COLLATERAL - 11 U.S.C. § 363 -
AND OTHER EQUITABLE RELIEF
(As to All Defendants)

63. GLC re-alleges paragraphs 1-60 of the Adversary Complaint as if fully restated herein.

64. Sections 105(A) and 363 of the United States Bankruptcy Code provide the Court with equitable discretion regarding the use of Defendants' property and assets.

65. Much, if not all, of the Defendants' cash and other property and assets were secured as a result of Defendants' wrongful and unlawful ponzi scheme or were purchased or otherwise acquired with the proceeds of that ponzi scheme.

66. Under section 363 of the Bankruptcy Code, “cash collateral” is defined as “cash . . . in which the estate or any entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property”

67. The property in Defendants’ possession or control was obtained fraudulently by Defendants and the cash in Defendants’ possession or control is cash in which the estate of GLC has an interest by virtue of its claim that the cash is GLC’s property or that GLC has a right to a constructive trust over the cash and, therefore, is GLC’s cash collateral. Accordingly, the Court should enter an order prohibiting Defendants’ use GLC’s cash collateral unless GLC’s interests in its cash collateral are adequately protected.

68. In the alternative, GLC requests that the Court enter an order strictly limiting Defendants’ use of the proceeds of the above-described ponzi scheme or any property or assets purchased or acquired with such proceeds.

COUNT THREE – CONSTRUCTIVE TRUST
(As to All Defendants)

69. GLC re-alleges paragraphs 1-66 of the Adversary Complaint as if fully restated herein.

70. Some or all of the above outlined cash, credit, equipment, and other personal and real property, services, and resources of GLC paid, transferred, or otherwise conveyed by GLC to Defendants were made fraudulently, without consideration or other reasonably equivalent value being paid by Defendants to GLC, or in violation of other applicable law or equitable principles.

71. Some or all of the personal or real property now titled to Defendants was secured by Defendants as a result of the previously described wrongful conduct and/or through

Defendants' improper use of the above outlined cash, credit, equipment, and other personal and real property, services, and resources of GLC.

72. Defendants cannot enjoy the beneficial interest in the above-described property or assets without violating established principles of equity.

73. GLC is entitled to the imposition of a constructive trust and/or a purchase money resulting trust covering any and all property or assets owned by each of the Defendants or in which one or both of the Defendants has or may claim to have an interest of any nature, kind, or description, including but not limited to, any and all real property, personal property, cash or cash equivalents, accounts, general intangibles, or contract rights. *See, e.g.*, O.C.G.A. § 53-12-132(a); *City Nat'l Bank of Miami v. Gen. Coffee Corp. (In re: Gen. Coffee Corp.)*, 828 F.2d 699 (11th Cir. 1987).

COUNT FOUR - ACTION FOR TURNOVER OF PROPERTY OF GLC'S ESTATE
11 U.S.C. § 541(d)
(As to All Defendants)

74. GLC re-alleges paragraphs 1-71 of the Adversary Complaint as if fully restated herein.

75. Defendants' Petition asserts that Defendants own or possess cash and other assets or property that Defendants acquired from the above-described ponzi scheme or that were purchased with the proceeds of the above-described ponzi scheme and that such cash, assets, or property are, and should be, part of the Defendants' bankruptcy estate.

76. Such cash, assets, or other property include, but are not limited to, cash or marketable securities totaling \$14,557,228.50 and any and all property or assets purchased with such cash or marketable securities.

77. Some or all of the personal or real property now titled to Defendants and asserted to be property of the bankruptcy estate was secured by Defendants as a result of the above-described wrongful conduct and/or through Defendants' improper use of the above outlined cash, credit, equipment, and other personal and real property, services, and resources of GLC.

78. Defendants have, at most, legal title, and not an equitable interest, in cash, property, or assets that were obtained through the above-described ponzi scheme or that were purchased with such proceeds. All cash, property, and other assets obtained by the Defendants through the ponzi scheme or purchased with the proceeds of such scheme properly belong to GLC's bankruptcy estate, and are not property of Defendants' bankruptcy estate.

79. GLC is entitled to the possession and turnover by Defendants of the cash, or other property or assets Defendants acquired through the above-described ponzi scheme or that were purchased or otherwise acquired with proceeds from the above-described ponzi scheme.

COUNT FIVE - VIOLATION OF THE AUTOMATIC STAY
11 U.S.C. § 362
(As to All Defendants)

80. GLC realleges paragraphs 1-77 of the Adversary Complaint as if fully restated herein.

81. Pursuant to Defendants' ponzi scheme, GLC made approximately 293 transfers (collectively, the "Transfers") to Defendants or their immediate family members totaling \$14,557,228.50.

82. Some or all of the personal or real property now titled to Defendants and asserted to be property of the bankruptcy estate was secured by Defendants as a result of the above-described wrongful conduct and/or through Defendants' improper use of the above outlined cash, credit, equipment, and other personal and real property, services, and resources of GLC.

83. Defendants have, at most, legal title, and not an equitable interest, in cash, property, or assets that were obtained through the above-described ponzi scheme or that were purchased with such proceeds. All cash, property, and other assets obtained by the Defendants through the ponzi scheme or purchased with the proceeds of such scheme properly belong to GLC's bankruptcy estate, and are not property of Defendants' bankruptcy estate.

84. GLC is entitled to the possession and turnover by Defendants of the cash, or other property or assets Defendants acquired through the above-described ponzi scheme or that were purchased or otherwise acquired with proceeds from the above-described ponzi scheme.

85. Prior to Defendants' bankruptcy filing, GLC made a demand on Defendants for the return of property of GLC's estate.

86. Defendants, however, have refused and/or failed to return to GLC property properly belonging to GLC's estate in violation of 11 U.S.C. § 362(a)(3).

87. GLC is entitled to judgment against Defendants for damages caused by Defendants' continued exercise of control and possession of property of GLC's estate.

COUNT SIX – DISCHARGEABILITY OF DEFENDANTS' DEBTS TO GLC
11 U.S.C. §§ 1141(d)(2), 523(a)(4), 523(a)(6)
(As to All Defendants)

88. GLC re-alleges paragraphs 1-85 of the Adversary Complaint as if fully restated herein.

89. 11 U.S.C. § 1141(d)(2) provides that a discharge under Chapter 11 does not discharge a debtor who is an individual from any debt excepted from discharge under 11 U.S.C. § 523.

90. Defendants' liability, obligations, and debts to GLC are excepted from discharge under 11 U.S.C. § 523.

91. Specifically, the above-described facts demonstrate the debts to GLC for which Defendants seek discharge in this matter include debts for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny as those terms are used in 11 U.S.C. § 523(a)(4).

92. Similarly, the above-described facts demonstrate the debts for which Defendants seek discharge in this matter include debts to GLC for willful and malicious injury by Defendants to GLC or its property as those terms are used in 11 U.S.C. § 523(a)(6).

93. GLC is entitled to an order holding that Defendants' debts to GLC in this action, which arise solely from Defendants' wrongful, unlawful, and fraudulent conduct, are not dischargeable.

COUNT SEVEN – OBJECTION TO DISCHARGE
11 U.S.C. §§ 1141(d)(3)(C), 727(a)(2), 727(a)(5)
(As to All Defendants)

94. GLC re-alleges paragraphs 1-91 of the Adversary Complaint as if fully restated herein.

95. 11 U.S.C. § 1141(d)(3)(C) provides that the confirmation of a plan does not discharge a debtor if the debtor would be denied a discharge under 11 U.S.C. § 727(a) if the case were a case under chapter 7 of the Bankruptcy Code.

96. Confirmation of a plan in this action should not discharge Defendants because Defendants would be denied a discharge under 11 U.S.C. § 727(a) if this case were a case under chapter 7 of the Bankruptcy Code.

97. Specifically, pursuant to 11 U.S.C. § 727(a)(2), Defendants have attempted to hinder, delay, or defraud their creditors, including GLC, or have transferred, removed, destroyed, mutilated, or concealed their property within one year of the filing of the Petition or the property of the estate following the filing of the Petition.

98. Similarly, pursuant to 11 U.S.C. § 727(a)(5), Defendants have failed to explain satisfactorily any loss of assets or deficiency of assets to meet their liabilities.

99. For the above reasons, GLC is entitled to an order denying Defendants' requested discharge in this matter.

WHEREFORE, having fully stated its claims against the Defendants, Plaintiff GLC Limited prays for judgment in its favor as follows:

A. Imposing a constructive trust and/or a purchase money resulting trust covering any and all property or assets owned by each of the Defendants or in which one or both of the Defendants has or may claim to have an interest of any nature, kind, or description, including but not limited to, any and all real property, personal property, cash or cash equivalents, accounts, general intangibles, or contract rights and, in the alternative, issuing an Order strictly limiting Defendants' use of the proceeds of the above-described ponzi scheme or any property or assets purchased or acquired with such proceeds;

B. Issuing an order granting GLC possession of any proceeds of the above-described ponzi scheme in Defendants' possession, as well as any and all property or assets acquired by either of the Defendants with proceeds from the above-described ponzi scheme;

C. Issuing an order prohibiting Defendants' use any property or assets owned by Defendants or in which one or both of the Defendants has or may claim to have an interest, all of which constitute GLC's cash collateral, unless and until Defendants adequately protect GLC's interest in its cash collateral;

D. Issuing an order holding that Defendants' debts to GLC in this action, which arise solely from Defendants' wrongful, unlawful, and fraudulent conduct, are not dischargeable;

E. Issuing an order denying Defendants' requested discharge in this matter;

F. Issuing an order entering judgment against Defendants and in favor of GLC for damages caused by Defendants' violation of the automatic stay of section 362(a).

G. Issuing an preliminary injunction prohibiting Defendants from liquidating or transferring any and all property or assets owned by each of the Defendants or in which one or more of the Defendants has or may claim to have an interest of any nature, kind, or description, including but not limited to, any and all real property, personal property, cash or cash equivalents, accounts, general intangibles, or contract rights. Said injunction should apply to Defendants' property (as previously described) as well as any property of GLC in Defendants' possession; and

H. Granting such other and further relief as is just and appropriate under the circumstances.

Respectfully Submitted,
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