

IN THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

In re

ULRICH FELIX ANTON ENGLER and
PRIVATE COMMERCIAL OFFICE, INC.

Case No. 9:08-BK-04360-ALP

CHAPTER 7
(Substantively Consolidated)

ROBERT E. TARDIF, JR. AS TRUSTEE
FOR THE CHAPTER 7 BANKRUPTCY
ESTATES OF ULRICH FELIX ANSON
ENGLER AND PRIVATE COMMERCIAL
OFFICE, INC.,

ADV. NO.

Plaintiff,

v.

DAVID DOUGLAS, DEBRA DOUGLAS,
DOUGLAS INVESTMENTS, LLC, DEEP
CREEK DEVELOPMENTS I, LC, DEEP
CREEK DEVELOPMENTS II, LLC, and
BIANCA BOROWSKI,

Defendants.

**ANSWER TO COMPLAINT TO AVOID AND RECOVER FRAUDULENT
TRANSFERS AND TO RECOVER TRANSFERS FROM SUBSEQUENT
TRANSFEREES**

COMES NOW Defendants David Douglas, Debra Douglas, Douglas Investments, LLC, Deep Creek Developments I, LLC and Deep Creek Developments II, LLC (the "Douglas Defendants") and respond, defend and answer the Plaintiff Robert E. Tardif's Complaint as follows:

1. The Douglas Defendants admit the allegations in this paragraph.

2. The Douglas Defendants admit the allegations in this paragraph.

3. The Douglas Defendants admit the allegations in this paragraph.

4. The Douglas Defendants admit the allegations in this paragraph.

5. The Douglas Defendants admit that David Douglas resides part time in Lee County, Florida and Teton County, Idaho.

6. The Douglas Defendants admit that Debra Douglas resides part time in Lee County, Florida and Teton County, Idaho.

7. The Douglas Defendants admit the allegations in this paragraph.

8. The Douglas Defendants admit the allegations in this paragraph.

9. The Douglas Defendants admit the allegations in this paragraph.

10. The Douglas Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph and therefore deny the same.

11. This paragraph contains legal conclusions that the Douglas Defendants can neither admit nor deny.

12. This paragraph contains legal conclusions that the Douglas Defendants can neither admit nor deny.

13. This paragraph contains legal conclusions that the Douglas Defendants can neither admit nor deny.

14. The Douglas Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph and therefore deny the same.

15. The Douglas Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph and therefore deny the same.

16. The Douglas Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph and therefore deny the same.

17. The Douglas Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph and therefore deny the same.

18. The Douglas Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph and therefore deny the same.

19. The Douglas Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph and therefore deny the same.

20. The Douglas Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph and therefore deny the same.

21. The Douglas Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph and therefore deny the same.

22. The Douglas Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph and therefore deny the same.

23. The Douglas Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph and therefore deny the same.

24. The Douglas Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph and therefore deny the same.

25. The Douglas Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph and therefore deny the same.

26. The Douglas Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph and therefore deny the same.

27. The Douglas Defendants deny the allegations in this paragraph.

28. The Douglas Defendants admit that David Douglas is the member and manager of Douglas Investments, LLC, Deep Creek Investments I, LLC, and Deep Creek Investments II, LLC.

29. The Douglas Defendants deny the allegations in this paragraph.

30. The Douglas Defendants deny the allegations in this paragraph.

31. The Douglas Defendants admit that Engler rented a home from Douglas.

32. The Douglas Defendants admit that Engler paid rent in the amount set forth in this paragraph, but deny the remaining allegations of this paragraph.

33. The Douglas Defendants admit that Engler purchased the Deep Creek Properties.

34. The Douglas Defendants deny the allegations in this paragraph.

35. The Douglas Defendants admit the allegations in this paragraph.

36. The Douglas Defendants admit that Douglas Investments purchased properties but are not familiar with the term "GM Ski Resort" and no legal description is attached; thus, The Douglas Defendants deny the same.

37. The Douglas admit that Engler gave them the vehicle identified in this paragraph as a gift.

38. The Douglas Defendants admit that Engler and/or PCO loaned funds to the Douglas Defendants.

39. The Douglas Defendants admit the allegations in this paragraph.

40. The Douglas Defendants admit that Engler purchased the property.

41. The Douglas Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph and therefore deny the same.

42. To the extent this paragraph restates previous allegations in the complaint, the Douglas Defendants refer to and incorporate their responses to those allegations and deny the remaining allegations in this paragraph.

43. To the extent this paragraph restates previous allegations in the complaint, the Douglas Defendants refer to and incorporate their responses to those allegations and deny the remaining allegations in this paragraph.

44. The Douglas Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph and therefore deny the same.

45. The Douglas Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph and therefore deny the same.

46. This paragraph contains no allegations that the Douglas Defendants can admit or deny.

47. This paragraph contains legal conclusions that the Douglas Defendants can neither admit nor deny.

48. The Douglas Defendants deny the allegations in this paragraph.

49. The Douglas Defendants deny the allegations in this paragraph.

50. The Douglas Defendants deny the allegations in this paragraph.

51. The Douglas Defendants deny the allegations in this paragraph.

52. This paragraph contains no allegations that the Douglas Defendants can admit or deny.

53. This paragraph contains legal conclusions that the Douglas Defendants can neither admit nor deny.

54. The Douglas Defendants deny the allegations in this paragraph.

55. The Douglas Defendants deny the allegations in this paragraph.

56. The Douglas Defendants deny the allegations in this paragraph.

57. The Douglas Defendants deny the allegations in this paragraph.

58. The Douglas Defendants deny the allegations in this paragraph.

59. This paragraph contains no allegations that the Douglas Defendants can admit or deny.

60. This paragraph contains legal conclusions that the Douglas Defendants can neither admit nor deny.

61. The Douglas Defendants deny the allegations in this paragraph.

62. The Douglas Defendants deny the allegations in this paragraph.

63. The Douglas Defendants deny the allegations in this paragraph.

64. This paragraph contains no allegations that the Douglas Defendants can admit or deny.

65. This paragraph contains legal conclusions that the Douglas Defendants can neither admit nor deny.

66. The Douglas Defendants deny the allegations in this paragraph.

67. The Douglas Defendants deny the allegations in this paragraph.

68. The Douglas Defendants deny the allegations in this paragraph.

69. This paragraph contains no allegations that the Douglas Defendants can admit or deny.

70. This paragraph contains legal conclusions that the Douglas Defendants can neither admit nor deny.

71. The Douglas Defendants deny the allegations in this paragraph.

72. The Douglas Defendants deny the allegations in this paragraph.

73. The Douglas Defendants deny the allegations in this paragraph.

74. This paragraph contains no allegations that the Douglas Defendants can admit or deny.

75. The Douglas Defendants deny the allegations in this paragraph.

76. The Douglas Defendants deny the allegations in this paragraph.

77. This paragraph contains no allegations that the Douglas Defendants can admit or deny.

78. The Douglas Defendants admit that Engler purchased the Deep Creek Properties and deny any remaining allegations in this paragraph.

79. The Douglas Defendants admit that Engler transferred the Deep Creek Properties in exchange for promissory notes and deny the allegations in this paragraph.

80. The Douglas Defendants deny the allegations in this paragraph.

81. The Douglas Defendants deny the allegations in this paragraph.

82. The Douglas Defendants admit that Engler purchased the property and are without sufficient knowledge and information to form a belief as to the truth of any remaining allegations in this paragraph and therefore deny the same.

83. The Douglas Defendants admit that the property was transferred upon receipt of the purchase price.

84. The Douglas Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph and therefore deny the same.

85. The Douglas Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations in this paragraph and therefore deny the same.

86. The Douglas Defendants deny the allegations in this paragraph.

87. This paragraph contains no allegations that the Defendants can admit or deny.

88. The Douglas Defendants admit that Engler and/or PCO transferred funds that were used to purchase certain properties as admitted or denied previously in this answer.

89. The Douglas Defendants admit that certain properties are titled in the names of non-debtors.

90. The Douglas Defendants deny the allegations in this Paragraph.

91. The Douglas Defendants deny the allegations in this Paragraph.

92. The Douglas Defendants deny the allegations in this Paragraph.

93. The Douglas Defendants deny the allegations in this Paragraph.

94. This paragraph contains no allegations that the Defendants can admit or deny.

95. The Douglas Defendants deny the allegations in this Paragraph.

96. The Douglas Defendants deny the allegations in this Paragraph.

97. The Douglas Defendants deny each and every allegation in the Complaint not explicitly admitted herein.

AFFIRMATIVE DEFENSES

(Conditions Precedent)

1. The Douglas Defendants allege that conditions precedent to Douglas Investments' obligations under the loan agreements between Douglas Investments and PCO have not occurred and Douglas Investments' performance is not yet due.

(Excused Performance)

2. The Douglas Defendants allege that their performance under the loan agreements was excused.

(Set Off)

3. The Douglas Defendants allege that they are entitled to a set-off under any applicable document or law.

(Failure to Mitigate)

4. The Douglas Defendants allege that Plaintiff has failed to mitigate his damages, if any, and any recovery awarded should be reduced by the amount of damages that could reasonably have been avoided by such actions.

(Failure To State A Cause Of Action)

5. The Douglas Defendants allege that the Complaint and each purported cause of action therein, fail to state facts sufficient to constitute a valid cause of action against the Douglas Defendants.

(Waiver)

6. The Douglas Defendants allege that Plaintiff and/or Engler and PCO have engaged in conduct and activities with respect to the subject matter of this dispute by

reason of which they have waived any claims or demands asserted against the Douglas Defendants in the Complaint, and each purported cause of action therein.

(Estoppel)

7. The Douglas Defendants allege that Plaintiff and/or Engler and PCO have engaged in conduct and activities with respect to the subject matter of this dispute by reason of which they are estopped from asserting any of the causes of action alleged against the Douglas Defendants in the Complaint, and each purported cause of action therein.

(Laches)

8. The Douglas Defendants allege that the Complaint and each purported cause of action therein, is barred as against Plaintiff by the doctrine of laches.

(Unjust Enrichment)

9. The Douglas Defendants allege that Plaintiff would be unjustly enriched if allowed to recover on the Complaint or any purported cause of action therein.

(Unclean Hands)

10. The Douglas Defendants allege that the Complaint and each purported cause of action therein, is barred by the doctrine of unclean hands.

(Value Provided)

11. The Douglas Defendants allege that they provided reasonably equivalent value for all transfers from Engler and/or PCO in the form of promissory notes.

(Intervening Acts)

12. The Douglas Defendants allege that Plaintiff's losses or injuries, if any, were caused by their intervening acts and omissions of other third parties, for whom the Douglas Defendants bear no responsibility.

(Statute of Limitations)

13. The Douglas Defendants allege that the Complaint and each purported cause of action therein, is barred, in whole or in part, by the applicable statute of limitations.

(Insufficiency of Service of Process)

14. The Douglas Defendants allege that service of process upon them was insufficient.

(No Waiver of Any Affirmative Defense)

15. By asserting the above specific affirmative defenses, the Douglas Defendants do not waive any other affirmative defenses not asserted herein, and hereby reserve the right to assert any applicable defenses now existing or disclosed by investigation and discovery in this action.

Defendants request a trial by jury on all issues.

WHEREFORE, the Douglas Defendants pray and demand:

(a) That Plaintiff's Complaint be dismissed with prejudice and that Plaintiff take nothing thereunder;

(b) That a judgment be entered in favor of the Douglas Defendants for an award of their expenses of litigation, including reasonable attorneys' fees; and,

(c) That a judgment be entered in favor of the Douglas Defendants for the recovery of such other and further relief which this Court deems just and equitable under the circumstances.

Dated this 6th of October, 2009.

Henderson Franklin Starnes & Holt, P.A.
Attorneys for Douglas Defendants
1715 Monroe Street
Fort Myers, FL 33901
(239)344-1100
(239)344-1200 - facsimile

/s/ Douglas B. Szabo
DOUGLAS B. SZABO
FBN: 710733

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of October, 2009, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means as more fully reflected on the Notice of

Electronic Filing:

Robert Elgidely
Counsel for Plaintiff

DATED this 6th day of October, 2009.

Henderson Franklin Starnes & Holt, P.A.
Attorneys for Douglas Defendants
1715 Monroe Street
Fort Myers, FL 33901
(239)344-1100
(239)344-1200 - facsimile

/s/ Douglas B. Szabo
DOUGLAS B. SZABO
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