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COUNSEL FOR DAN LAIN, TRUSTEE OF THE LIQUIDATING CREDITOR TRUST

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**CASE NO. 09-37010-sgj11**
	§	
ERICKSON RETIREMENT COMMUNITIES, LLC, *et al.*	§	**CHAPTER 11**
	§	
Debtors.[1]	§	

DAN LAIN, TRUSTEE OF THE LIQUIDATING CREDITOR TRUST,	§	
	§	
Plaintiff,	§	Adversary Proceeding
v.	§	
	§	No. _____
PERRY ROSENSWEIG AND AMSTER & ROSENSWEIG, PC,	§	
	§	
Defendants.	§	

TRUSTEE'S ORIGINAL COMPLAINT TO AVOID PREFERENTIAL TRANSFERS AND OBJECTION TO CLAIM

Dan Lain, in his capacity as Trustee ("Plaintiff") for the Liquidating Creditor Trust created in connection with the above-captioned cases (the "Trust"), hereby files this adversary

[1]The Debtors in these chapter 11 cases (the "Cases") were Erickson Retirement Communities, LLC, Ashburn Campus, LLC, Columbus Campus, LLC, Concord Campus GP, LLC, Concord Campus, LP, Dallas Campus GP, LLC, Dallas Campus, LP, Erickson Construction, LLC, Erickson Group, LLC, Houston Campus, LP, Kansas Campus, LLC, Littleton Campus, LLC, Novi Campus, LLC, Senior Campus Services, LLC, Warminster Campus GP, LLC, and Warminster Campus, LP.

proceeding to Avoid Preferential Transfers and Objection to Claims (the "Complaint") and requests an entry of an order avoiding the preferential transfers to and disallowing any and all claims of Perry Rosensweig ("Rosensweig") and Amster & Rosensweig, PC ("Amster & Rosensweig") (collectively, "Defendants"). In support of this Complaint, the Trustee respectfully states as follows:

I. PARTIES

1. Plaintiff is the successor in interest to certain causes of action of Erickson Retirement Communities, LLC, ("Debtor"), which actions vested in or were assigned to Plaintiff, so that Plaintiff might pursue them for the benefit of Debtor's unsecured creditors.

2. Upon information and belief, Rosensweig is the holder of the power of attorney for the Estate of Fern Rosensweig, residing at 1 Cedar Crest Dr., Pompton Plains, NJ 07444-2100, and Amster & Rosensweig is a law firm, located at 33 Harrison Avenue, Avenue 1A, Waldwick, NJ 07463. Pursuant to Bankruptcy Rule 7004, Rosensweig may be served with process by delivering a copy of the summons and complaint to the individual's dwelling house or usual place of abode, and Amster & Rosensweig may be served with process by mailing a copy of the summons and complaint to the attention of any officer, managing or general agent, or to any other agent authorized to receive service of process. Service of the summons in this adversary proceeding may be made upon Defendants by sending the summons and a copy of the complaint by first class mail to Perry Rosensweig, at his residence, 1 Cedar Crest Dr., Pompton Plains, NJ 07444-2100, and to Ronald A. Rosensweig, Defendant's registered agent, located at 413 Ellis Pl., Wyckoff, NJ 07481-1801. An additional summons and copy of the complaint will be sent to Amster & Rosensweig by first class mail at 33 Harrison Avenue, Avenue 1A, Waldwick, NJ 07463.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this proceeding pursuant to the provisions of 28 U.S.C. §§ 157 (a)-(b) and 1334 (b), as preserved by Section 13 of the Fourth Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code (the "Plan").

4. This proceeding constitutes a core proceeding pursuant to 28 U.S.C. § 157 (b)(2).

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409 (a).

6. This adversary proceeding is brought pursuant to one or more of sections 502, 544, 547, 548, 549, and 550 of title 11 of the United States Code, as amended (the "Bankruptcy Code"). The allegations made herein by Plaintiff are made in the alternative as allowed under the Federal Rules of Civil Procedure 8 (e), as made applicable to this adversary by Bankruptcy Rule 7008.

III. FACTUAL ALLEGATIONS

7. On October 19, 2009, the Debtors filed for protection under Chapter 11 of the Bankruptcy Code ("Petition Date").

8. Debtors remained in possession of their assets and continued to manage their business as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

9. On November 2, 2009, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (the "Creditors' Committee").

10. On March 8, 2010, Debtors filed their Fourth Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy (the "Plan") with the Court. [Docket No. 1005]. This Court entered its Confirmation Order confirming the Plan on April 16, 2010. [Docket No. 1355].

11. Pursuant to the authority granted to the Creditors' Committee in Section 6.4.11 of the Plan, the Creditors' Committee filed the Liquidating Creditor Trust Agreement (the "Trust

Agreement"), the definitive trust document establishing and governing the Trust on April 8, 2010. Dan B. Lain was appointed Trustee of the Trust.

12. On April 30, 2010, the Trustee, the Creditors' Committee, the Acquisition Companies,[2] the Debtors and the Reorganized Debtors executed the Trust Agreement.

13. Section 6.4.4 of the Plan and Article V, Sections 5.1 and 5.2 of the Trust Agreement grants authority to the Plaintiff to commence adversary or other legal proceedings to pursue any Causes of Action on behalf of the Trust.

14. Plaintiff seeks to avoid certain pre-petition transfer(s) of Debtors' interest in property totaling $106,231.49 (collectively, "Transfers").

15. Detail regarding the Transfers, to the extent currently known by Plaintiff, is set forth in Exhibit "A," which is incorporated herein by this reference as if set forth fully within this Complaint. However, Plaintiff reserves the right to add to the Transfers any other pre-petition transfers which may be avoidable by Plaintiff under applicable law.

IV. CAUSE OF ACTION: AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS

16. The Transfers were made to or for the benefit of Defendants.

17. Defendants are the initial transferees of the Transfers.

18. Alternatively, if Defendants are not the initial transferees of the Transfer, Defendants:

(a) are the immediate or mediate transferees of the Transfer; and/or

(b) did not give value in exchange for the Transfer; and/or

[2]The Acquisition Companies in these Chapter 11 cases (the "Cases") are the following companies that formed to acquire substantially all of the assets relating to the Debtors' business as of the Petition Date: Redwood, ManagementCo, DevCo, PropCo, Redwood Kansas, Redwood Concord, Redwood Dallas, Redwood Houston, Redwood Ashburn, Redwood Littleton, Redwood Novi, Redwood-ERC Tinton Falls II, LLC, and Redwood-ERC Senior Care, LLC.

(c) received the Transfer with knowledge of the voidability of the Transfer.

19. The Transfer was made while Debtor was insolvent.

20. At the time of the Transfer, Defendants were creditors of Debtor.

21. The Transfer was made for, or on account of, an antecedent debt owed by Debtor to Defendants before such Transfer was made.

22. The Transfer was made on or within ninety (90) days before the Petition Date.

23. The Transfer enables Defendants to receive more than it would receive if: (a) Debtor's bankruptcy case was a case under Chapter 7 of the Bankruptcy Code; (b) the Transfer had not been made; and (c) Defendants received payment on such debt to the extent provided by the provisions of the Bankruptcy Code.

24. The Transfer is avoidable as preferential under section 547 of the Bankruptcy Code.

25. Pursuant to section 550 of the Bankruptcy Code, Plaintiff is entitled to recover from Defendants $106,231.49, plus interest thereon from the date of each payment or transfer.

V. CAUSE OF ACTION: OBJECTION TO CLAIMS

26. Plaintiff incorporates each of the allegations contained in Paragraph 1 through 25 of this Complaint herein.

27. Defendants received the Transfers, which are avoidable under sections 544, 547, or 548 of the Bankruptcy Code.

28. Pursuant to section 502(d) of the Bankruptcy Code, any and all prepetition claims of Defendants in these cases are disallowed, unless and until Defendants return the Transfers to Plaintiff.

VI. CAUSE OF ACTION: AVOIDANCE OF FRAUDULENT TRANSFERS

29. Plaintiff incorporates each of the allegations contained in Paragraph 1 through 25 of this Complaint herein.

30. Alternatively, the Transfer was made with actual intent to hinder, delay or defraud any entity to which Debtor, whose property was directly or indirectly transferred ("Transferring Debtor"), was, or subsequently became, indebted.

31. Alternatively, if the Transfer was not made on account of an antecedent debt, Debtor did not receive reasonably equivalent value in exchange for the Transfer; and

(a) Prior to the Transfer, Transferring Debtor was insolvent or became insolvent as a result of the Transfer; and/or

(b) At the time of the Transfer, Transferring Debtor was engaged in business or a transaction, or about to engage in business or a transaction, for which any property remaining with such Debtor was an unreasonably small capital; and/or

(c) At the time of the Transfer, Transferring Debtor intended to incur, or believed it would incur debts that would be beyond its ability to pay as such debts matured.

32. The Transfer was made within one year before the Petition Date.

33. The Transfer is avoidable under section 544 or 548 of the Bankruptcy Code.

34. Pursuant to section 550 of the Bankruptcy Code, Plaintiff is entitled to recover from Defendants $106,231.49, plus interest thereon from the date of each payment or transfer.

VII. PRAYER

WHEREFORE, Plaintiff respectfully prays that this Court:

(i) declare the Transfer be and is avoided as a preferential transfer pursuant to 11 U.S.C. § 547;

(ii) declare the Transfer is fraudulent pursuant to 11 U.S.C. § 544 or 548;

(iii) avoid the Transfer described in this Complaint pursuant to section 544, 547, or 548 of the Bankruptcy Code; and

(iv) enter judgment in favor of Plaintiff and against Defendants, in an amount equal to the sum of the Transfer $106,231.49, plus pre-judgment and post-judgment interest for each payment, costs and attorneys' fees;

(v) disallow any and all of Defendants' claims against Debtor until the Transfers are returned pursuant to 11 U.S.C. § 502(d); and

(vi) grant Plaintiff such other relief as this Court deems just and proper.

DATE: December 27, 2010.

Respectfully submitted,

BRACEWELL & GIULIANI LLP

By: /s/ Tricia R. DeLeon
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ATTORNEYS FOR DAN LAIN, TRUSTEE
OF THE LIQUIDATING CREDITOR TRUST

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on December 27, 2010 via ECF upon all parties consenting to electronic service in this case.

/s/ Tricia R. DeLeon
Tricia R. DeLeon

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