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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re

FOX ORTEGA ENTERPRISES, INC.,
dba PREMIER CRU,

Debtor.

Case No. 16-40050-WJL

Chapter 7

MICHAEL G. KASOLAS, Trustee,

Plaintiff,

vs.

RICHARD LACK,

Defendant.

Adversary Proceeding No.

**COMPLAINT TO AVOID AND
RECOVER FRAUDULENT TRANSFERS**

Plaintiff Michael G. Kasolas ("Plaintiff" or "Trustee"), trustee of the chapter 7 bankruptcy estate of Fox Ortega Enterprises, Inc., dba Premier Cru ("Debtor"), alleges as follows:

JURISDICTION AND VENUE

1. The above-captioned Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b) and 28 U.S.C. § 157(a).

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

3. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (H), which seeks relief under 11 U.S.C. §§ 544(b) and 550 and Rule 7001(1) of the Federal Rules of Bankruptcy Procedure.

4. Plaintiff consents to the entry of a final order by the Bankruptcy Court.

GENERAL ALLEGATIONS

5. The Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code (Title 11 of the United States Code) on January 8, 2016 (the "Petition Date").

6. The Trustee is the duly appointed trustee of the Debtor's chapter 7 case (the "Case").

7. Richard Lack ("Defendant") is an individual residing in the State of California.

8. On or about August 11, 2016, the Debtor's founder and president, John Fox, entered into a guilty plea in his criminal case [*United States v. John Fox*, Case No. CR 16-281 JD, N.D. Cal] and in his Plea Agreement admitted that the Debtor had been running a fraudulent enterprise since at least 2010 that involved both the sale of "phantom wines" and his use of current customer payments to satisfy prior customer orders; in short, the Debtor was running a Ponzi scheme.

9. John Fox further admitted in his Plea Agreement that he embezzled funds from the Debtor to purchase or lease expensive cars, to pay for charges incurred on his and his wife's personal credit cards, and to pay for other goods and services obtained for his personal use.

10. Commencing in November 2009, the Debtor made 11 monthly payments in the aggregate sum of \$107,129.00 (the "Funds") to Defendant on the dates and in the amounts as indicated in the attached **Exhibit A** (the "Transfers"), which Exhibit is made a part hereof.

11. The Funds used to make the Transfers came from the Debtor's operating accounts at Community Bank of the Bay and Heritage Bank of Commerce and were property of the Debtor.

12. Plaintiff is informed and believes and thereon alleges that the Transfers were made on account of a rental property located at 517 Oakshire Place, Alamo, California that was leased to John Fox and his wife, Abigail Fox, for their personal use.

13. Plaintiff is currently unaware of any other payments by the Debtor to Defendant on account of John Fox's or any other parties' personal obligations and Plaintiff will amend this complaint to include any such transfers as they are discovered.

14. The Trustee may invoke 11 U.S.C. §544(b) to avoid the Transfers under California Civil Code §§3439 et seq. because on the Petition Date, at least one creditor holding an unsecured claim that is allowable in the Case under 11 U.S.C. §502 held a claim against the Debtor's transferees to avoid its fraudulent transfers under Cal. Civil Code §3439 et seq.; among such creditors were Albert Nassi (Claim No. 1936) and Albert Rose (Claim No. 754).

15. Based on information and belief, Plaintiff alleges that Defendant had dominion and control of the Funds once it received the Transfers from the Debtor.

FIRST CLAIM FOR RELIEF
(Claim to Avoid and Recover Constructive Fraudulent Transfers)
(California Civil Code § 3439.4(a)(2) et seq.; 11 U.S.C. §§ 544(b) and 550)

16. Plaintiff realleges paragraphs 1 through 15 as though fully set forth herein.

17. At the time of each Transfer, (i) the Debtor was insolvent, (ii) the remaining assets of the Debtor were unreasonably small in relation to its business, or (iii) the Debtor believed or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

18. The Debtor did not receive a reasonably equivalent value in exchange for the Transfers.

WHEREFORE, Plaintiff prays for relief as set forth below.

SECOND CLAIM FOR RELIEF
(Claim to Avoid and Recover Intentional Fraudulent Transfers Under California Civil Code § 3439.04(a)(1) et seq.; 11 U.S.C. §§ 544(b) and 550)

19. Plaintiff realleges paragraphs 1 through 18 as though fully set forth herein.

20. The Debtor made the Transfers with intent to hinder, delay or defraud the Debtor's creditors.

WHEREFORE, Plaintiff prays for relief as follows.

PRAYER FOR RELIEF

Plaintiff prays for judgment:

1. Determining that the Trustee may invoke 11 U.S.C. §544(b) to avoid the Transfers under Cal Civil Code §3439 et seq.;
2. Avoiding the Transfers as intentional or constructive fraudulent transfers;
3. Determining that Defendant is the initial transferee under 11 U.S.C. §550(a)(1);
4. Granting recovery against Defendant in the amount of \$107,125.00 plus any additional amounts as may be established according to proof;
6. Awarding pre-judgment interest at the rate of 7 percent per annum from the date of each Transfer as provided under California law;
7. For costs of suit, and
8. For such other relief as the Court deems proper.

Dated: December 13, 2017

WENDEL, ROSEN, BLACK & DEAN LLP

By: /s/ Mark S. Bostick

Mark S. Bostick
Attorneys for Plaintiff
Michael G. Kasolas, Trustee

EXHIBIT A

SEQ#					Payee	Payee	
1572	HBC	1035	11/19/2009	7751	Lack	Richard	8,129.00
1808	HBC	1035	1/5/2010	7909	Lack	Richard	18,000.00
2038	HBC	1035	2/24/2010	8031	Lack	Richard	9,000.00
2295	HBC	1035	4/12/2010	8242	Lack	Richard	9,000.00
2626	CBB	1248	6/14/2010	1034	Lack	Richard	9,000.00
2818	CBB	1248	7/12/2010	1155	Lack	Richard	9,000.00
3007	CBB	1248	8/12/2010	1252	Lack	Richard	9,000.00
3158	CBB	1248	9/13/2010	1349	Lack	Richard	9,000.00
3309	CBB	1248	10/13/2010	1459	Lack	Richard	9,000.00
3478	CBB	1248	11/15/2010	1556	Lack	Richard	9,000.00
3682	CBB	1248	12/14/2010	1704	Lack	Richard	9,000.00
18926					Lack	Richard	107,129.00