

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

In re:

BRUCE AND HEATHER ALFORD,

Debtors.

INDEPENDENCE BANK,

Movant,

vs.

BRUCE AND HEATHER ALFORD,

Respondents.

(Chapter 13 Case)

No. 18-bk-11560-SDB

Adv. No.

(Assigned to Hon. Susan D. Barrett)

**COMPLAINT OBJECTING TO DISCHARGE UNDER
11 U.S.C. § 523(A)(2)(A), (A)(2)(B), AND (A)(4)**

As and for its *Complaint Objecting to Discharge Under 11 U.S.C. §523(a)(2)(A), (a)(2)(B), and (a)(4)* (“Complaint”), Independence Bank (“Creditor”) sets for the following allegations:

GENERAL ALLEGATIONS

1. This is a Core Proceeding and the Court has jurisdiction pursuant to 28 U.S.C. §157 (b)(2) (J).

2. Bruce and Heather Alford (“Defendants”) filed a Chapter 13 Petition on November 1, 2018 (“Petition Date”). Defendants have been married at all times pertinent hereto, and all actions taken by the Defendants asserted in this Complaint were undertaken

for the benefit of the Defendants' marital community.

3. In or around June of 2012, the Defendants created a wholly owned limited liability company, CSRA Lawn & Sprinkler, LLC ("**CSRA**"). A copy of CSRA'S Name Reservation Confirmation is attached hereto as **Exhibit A**.

4. Upon information and belief, CSRA was a landscaping contractor.

5. In or around April of 2017 the Defendants changed the name of their limited liability company from CSRA Lawn & Sprinkler, LLC to Georgia-Lina Pools and Landscaping, LLC ("**Georgia-Lina**"). A copy of Georgia-Lina's Certificate of Amendment, Name Change is attached hereto as **Exhibit B**.

6. Upon information and belief, Georgia-Lina continued to operate as a landscaping contractor and expanded into swimming pool installation.

7. On or around May 22, 2018, Georgia-Lina applied for a \$150,000.00 loan ("**Loan**") under the SBA SLA program. This is an SBA loan.

8. Upon information and belief, the Defendants falsely stated the Loan proceeds were to be used as "working capital" and for the operation of Georgia-Lina. Attached hereto as Exhibit C are the Defendants' SBA 7(1) Borrower Information Forms ("**Borrower Information Form**").

9. In order to obtain the Loan proceeds, the Defendants provided the following written material to Creditor:

- a. Borrower Information Form for Applicant Georgia-Lina, signed by Bruce Alford (**Exhibit C**);
- b. Borrower Information Form for Applicant Georgia-Lina, signed by

Heather Alford (Exhibit C);

- c. Personal Financial Statement, attached hereto as Exhibit D.
- d. Schedule of Real Estate Owned, attached hereto as Exhibit E.

10. Upon information and belief, the Defendants made the following false material representations/omissions that were key to Creditor's decision to extend the Loan to Georgia-Lina:

- a. In response to question 7 on the Borrower Information Forms signed by the Defendants, the Defendants falsely represented that there were no pending legal actions against Georgia-Lina and/or its affiliates. Upon information and belief, there was at least one action pending against Georgia-Lina and Bruce Alford in the Supreme Court State of New York, County of Erie, case number 18-810162. Indeed, a Judgment by Confession was entered against Georgia-Lina and Bruce Alford on June 28, 2018. A copy of the Judgment by Confession is attached hereto as Exhibit F. Upon information and belief, there was also an action pending in the Magistrate County of Richmond, Georgia against the Defendants, case number 913048. (*See* the Defendants' Statement of Financial Affairs at docket entry 1, P. 50, ¶ 9 in the administrative case).
- b. In response to question 17 on the Borrower Information Forms signed by the Defendants, Defendants falsely represented that they were not subject to any criminal proceedings. Upon information and belief, in or around the time he applied for the Loan, Bruce Alford had been arrested,

released on various bonds, and was facing felony charges related to Georgia-Lina's failure to build/finish pools after taking monies from unsuspecting clients. Upon information and belief, in or around the time she applied for the Loan, Heather Alford had been arrested and was facing felony charges related to Georgia-Lina's failure to build/finish pools after taking monies from clients. Attached hereto as Exhibit G are I-Team Investigation's articles detailing various criminal activities of the Defendants.

- c. In response to question 18 on the Borrower Information Forms signed by the Defendants, the Defendants falsely represented that they had not been arrested in the last six (6) months for any criminal offenses. Upon information and belief, both Bruce and Heather Alford had been arrested in the six (6) months prior to completing their Loan applications. (*See* Exhibit G).
- d. The Defendants provided a false Personal Financial Statement, signed by Heather Alford. (*See* **Exhibit D**). Upon information and belief, the Defendants falsely represented their financial obligations on their Loan application. Upon information and belief, the Defendants made the following false representations as to their assets and liabilities:
 - i. That they had \$5,000.00 in cash in bank accounts. Upon information and belief, the Defendants did not have any cash and in fact relied on the Defendants' parents to support the

Defendants' family. (See **Exhibit G**, P. 1).

- ii. That they had \$494,000.00 Notes Receivable.
 - iii. That they only had \$45,000.00 in Notes Payable.
 - iv. That their vehicle liabilities were only \$10,000.00. Defendants failed to disclose at least two other secured liens of more than \$20,000.00. They also failed to disclose their medical liabilities.
 - v. The Defendants understated their credit card liabilities.
- e. Upon information and belief, the Defendants signed an SBA Authorization Form indicating that the loan proceeds were to be used solely for the purpose of operating Georgia-Lina. However, upon information and belief, the Defendants failed to inform Creditor that by the time they received the Loan monies, Georgia-Lina was essentially defunct and they had no intention of using the Loan proceeds for the purpose of operating Georgia-Lina.
- f. Upon information and belief, the Defendants failed to inform Creditor prior to the loan being disbursed that they had outstanding tax liabilities, including payroll and trust fund taxes.
- g. Upon information and belief, the Defendants failed to inform Creditor prior to the loan being disbursed that they were behind on multiple equipment notes and were facing repossession of vehicles and equipment.
- h. Bruce Alford signed a Settlement Sheet on or about June 20, 2018

specifying, *inter alia*, that there had been no adverse changes in either their personal or Georgia-Lina's financial condition since the date of the application. Upon information and belief, this was a false statement. Attached hereto as **Exhibit H** is a copy of the Settlement Sheet.

- i. Upon information and belief, upon receiving the Loan proceeds the Defendants failed to inform the Creditor that they no longer intended to operate Georgia-Lina, it was essentially defunct, and they planned on completely ceasing operations on July 9, 2018 – a mere eleven (11) days after the Loan proceeds were disbursed.
- j. Bruce Alford also signed a Borrower's Certification that there had been no adverse change in the borrower's financial condition since Loan application was signed and that Defendants' taxes were current. Attached hereto as Exhibit I is a copy of the Borrower's Certification. Upon information and belief, the Borrower's Certification also falsely states that the Defendants and Georgia-Lina were current on all taxes. This was a false statement.

11. On or about June 18, 2018, the Loan was approved.

12. Based on the above material and false representations of the Defendants, on or about June 20, 2018, the Defendants' limited liability company, Georgia-Lina and Creditor entered into a note, whereby Georgia-Lina borrowed the sum of \$150,000.00 from Creditor at Wall Street Prime (quarterly), plus 2.75% interest (hereinafter "**Note**"). A copy of the Note is attached hereto as Exhibit J.

13. On or about June 20, 2018, both Defendants guaranteed the \$150,000.00 Note. Copies of the Unconditional Guarantees are attached hereto as **Exhibit K**.

14. On or about June 20, 2018, Georgia-Lina entered into a Security Agreement with Creditor, wherein it pledged collateral to secure the Note; a copy of the Security Agreement is attached hereto as Exhibit L. (*See* **Exhibit L**, P. 2, ¶ 4).

15. On or about June 20, 2018, the Loan funds were advanced to Georgia-Lina.

16. On or about June 21, 2018 Creditor perfected its secured interest by recording a UCC Financing Statement, File Number 038-2018-010095. A copy of the UCC is attached hereto as Exhibit M.

17. Georgia-Lina defaulted on, *inter alia*, its obligations to make payments pursuant to the terms of the Note. Indeed, the Defendants terminated Georgia-Lina prior to the first payment coming due under the Note. A copy of the Certificate of Termination is attached hereto as Exhibit N. Georgia-Lina never had any intention or any ability to comply with its duties under the Note or Security Agreement.

18. Pursuant to Article 2 of the Certificate of Termination filed a mere thirty-two (32) days after execution of the Note, Security Agreement, and Unconditional Guarantees, Georgia-Lina falsely asserted it made “[a]dequate provision” for the debts, liabilities, and obligations of Georgia-Lina. (*See* **Exhibit N**, P. 2). Heather Alford signed the Certificate of Termination with the knowledge that the aforementioned provision was false. (*See* Exhibit N, P. 2).

19. Upon the default of Georgia-Lina, in accordance with the terms of the Note and Unconditional Guarantees, the Defendants are in default. The entire principal balance due

under the Note, plus accrued interest, late charges and attorneys' fees and costs are due.

20. Upon entering into the Unconditional Guarantees, upon information and belief, the Defendants never had any intention or ability to make any payments pursuant to the Unconditional Guarantees. In fact, upon information and belief, the Defendants could not even maintain their own necessary living expenses and were relying on the Defendants' parents to support their family financially. Approximately four (4) months after guaranteeing their wholly owned business debt of \$150,000.00 and without ever making a single payment to Creditor, the Defendants filed bankruptcy. The promise that the Defendants would guarantee the Note was illusory.

21. Upon information and belief, the Defendants used the proceeds from the Loan to gain a strategic advantage prior to filing their bankruptcy. Upon information and belief, the Defendants used the loan proceeds to repay deposits relating to contracts they had breached and pay off debts that would otherwise be non-dischargeable, specifically payroll and trust fund taxes. This constitutes a misuse of the Loan proceeds.

22. As of the Petition Date, the balance due and owing on the Defendants' Unconditional Guarantees is no less than \$154,215.14.

COUNT I

11 U.S.C. §523(a)(2)(A) - Fraud

23. Creditor hereby incorporates the allegations set forth herein above.

24. Section 523(a)(2)(A) exempts from discharge debts arising from:

Money property, services or an extension, renewal or refinancing of credit, to the extent obtained by-

A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition.

25. The elements to establish a claim under 523 § (a)(2)(A) include: (1) the debtor made a false representation with the purpose and intent of deceiving the creditor; (2) the debtor knew the representation was false at the time they were made; (3) the creditor relied upon the representations; (4) the creditor's reliance was justified; and (5) the creditor sustained a loss as a result of such representation(s). *In re Ortiz*, No. 13-43620-MGD, 2014 WL 4589868, 3 (Bankr. N.D. Ga. Aug. 1, 2014).

26. The plethora of the Defendants' representations and omissions more specifically set forth above were false and Defendants knew they were false.

27. As more fully set forth above, upon information and belief, the Defendants intended to deceive Creditor.

28. Creditor relied on these representations, omissions, and conduct of the Defendants and its reliance was reasonable.

29. Creditor has been damaged by these representations and sustained a loss as a result of the Defendants' representations, omissions, and conduct. Specifically, the Creditor lost \$150,000.00, plus interest pursuant to the Note.

30. Upon information and belief, the Defendants obtained \$150,000.00 by false pretenses, false representations, and/or actual fraud as more fully set forth above.

31. Creditor is entitled to judgment against the Defendants determining that Creditor's Loan of \$150,000.00 plus interest of Wall Street Prime (quarterly), plus 2.75% per annum (the interest rate will fluctuate pursuant to the Note) is not subject to discharge

under 11 U.S.C. 523 § (a)(2)(A).

32. Pursuant to O.C.G.A. 51-12-5.1, Creditor is additionally entitled to punitive damages due to fraud of the Defendants.

WHEREFORE, Creditor respectfully requests that the Court enter a judgment:

- A. Awarding judgment against the Defendants and determining that the sum of \$150,000.00, plus interest of Wall Street Prime (quarterly), plus 2.75% per annum (the interest rate will fluctuate pursuant to the Note) is not subject to discharge;
- B. Awarding such punitive damages, including attorneys fees' as allowed under applicable law; and
- C. Awarding such other and further relief as the Court deems appropriate.

COUNT II

11 .S.C. §523(a)(2)(B) - Material Misrepresentation Concerning Financial Condition

33. Creditor hereby incorporates the allegations set forth herein above.

34. Section 523(a)(2)(B) exempts from discharge debts arising from

(B) use of a statement in writing—

- (i) that is materially false;
- (ii) respecting the debtor's or an insider's financial condition;
- (iii) on which the creditor to whom the debtor is liable for such money, property, services or credit reasonably relied; and
- (iv) that the debtor caused to be made or published with intent to deceive.

35. Upon information and belief, the Defendants obtained \$150,000.00 by: (1) using false financial statements when they applied for the Loan; and (2) upon the Loan being funded, failed to inform Creditor of material changes in their finances since providing their initial financial statements. These written representations that illustrated the Defendants and Georgia-Lina had the ability to perform under the Note and Unconditional Guarantees; however neither Georgia-Lina nor the Defendants had means to meet obligations as set forth in the Note and Unconditional Guarantees.

36. Upon information and belief, these statements, more fully set forth above, were materially false.

37. These statements were made with respect to Defendants' financial condition.

38. Creditor reasonably relied on such representations.

39. Upon information and belief, these statements were made with the intent to deceive Creditor.

40. Creditor has been materially damaged by these representations.

41. Creditor is entitled to judgment against the Defendants determining that its \$150,000.00 Loan, plus interest of Wall Street Prime (quarterly), plus 2.75% per annum (the interest rate will fluctuate pursuant to the Note) is not subject to discharge under 11 U.S.C. § 523 (a)(2)(B).

42. Pursuant to O.C.G.A. § 51-12-5.1, Creditor is additionally entitled to punitive damages due to fraud of the Defendants.

WHEREFORE, Creditor respectfully requests that the Court enter a judgment:

A. Awarding judgment against the Defendants and determining that the sum of

\$150,000.00, plus interest of Wall Street Prime (quarterly), plus 2.75% per annum (the interest rate will fluctuate pursuant to the Note) is not subject to discharge;

B. Awarding such punitive damages, including attorneys fees' as allowed under applicable law; and

C. Awarding such other and further relief as the Court deems appropriate.

COUNT III

11 U.S.C. §523(a)(4) – Defalcation While Acting in Fiduciary Capacity

43. Creditor hereby incorporates the allegations set forth herein above.

44. Section 523(a)(4) exempts from discharge debts:

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.

45. To have a claim under §523(a)(4), Creditor must show: (1) the Defendants held a fiduciary position *vis a vis* the Plaintiff under a technical, express, or statutory trust; (2) the claim arose while Defendants were acting as fiduciaries; and (3) the claim is for fraud or defalcation. *In re Tamri*, No. 16-62119-MGD, 2017 WL 4325564, 3 (Bankr. N.D. Ga. Sept. 27, 2017) citing *White*, 550 B.R. at 621–22 (citing *Gen. Ret. Sys. v. Dixon*, 525 B.R. 827, 845 (Bankr. N.D.Ga. 2015)).

46. Upon information and belief, at all relevant times, the Defendants owned 100% Georgia-Lina

47. Upon information and belief, at all relevant times during the above described Loan process, Georgia-Lina was insolvent. Due to Georgia-Lina's insolvency, the

Defendants owed a fiduciary duty to conserve and manage the assets of Georgia-Lina for the benefit of its creditors, including Creditor.

48. Creditor's claim against the Defendants arose while the Defendants were acting as the fiduciaries of Georgia-Lina. The only members/owners of Georgia-Lina were the Defendants.

49. The Defendants breached their fiduciary duty by failing to conserve and maintain any of Georgia-Lina's assets for the benefit of Creditor.

50. Upon information and belief, the Defendants unlawfully converted all collateral Georgia-Lina pledged pursuant to the Security Agreement prior to the Defendants' bankruptcy.

51. Due to the Defendants plundering of all of Georgia-Lina's assets, there are no assets left to satisfy Creditor's claims against either Georgia-Lina or the Defendants.

52. To date, the Defendants have offered no explanation as to how they dissipated all of the pledged collateral.

53. Creditor has been materially harmed by the Defendants' breach of their fiduciary duty.

54. Creditor is entitled to judgment against the Defendants determining that it is entitled to a \$150,000.00 nondischargeable judgment, plus interest of Wall Street Prime (quarterly), plus 2.75% per annum (the interest rate will fluctuate pursuant to the Note) pursuant to 11 U.S.C. 523 § (a)(4).

55. Pursuant to O.C.G.A. § 51-12-5.1, Creditor is additionally entitled to punitive damages due to fraud of the Defendants.

WHEREFORE, Creditor respectfully requests that the Court enter a judgment:

- A. Awarding judgment against the Defendants determining that the sum of \$150,000.00, plus interest of Wall Street Prime (quarterly), plus 2.75% per annum (the interest rate will fluctuate pursuant to the Note) is not subject to discharge;
- B. Awarding such punitive damages, including attorneys fees' as allowed under applicable law; and
- C. Awarding such other and further relief as the Court deems appropriate.

Dated: January 25, 2019.

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