

UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF NORTH CAROLINA
 WILSON DIVISION

IN RE:)	
SCOTT ARTHUR WADDELL)	CASE NUMBER: 08-02370-8-ATS
)	
Debtor)	CHAPTER 7
_____)	
)	
LYON FINANCIAL SERVICES, INC.,)	
d/b/a US BANCORP BUSINESS)	
EQUIPMENT FINANCE GROUP,)	Adversary Proceeding
)	Case No.: _____
Plaintiff,)	
)	
v.)	
)	
SCOTT ARTHUR WADDELL,)	
)	
Defendant.)	

COMPLAINT OBJECTING TO DISCHARGEABILITY OF A DEBT

NOW COMES Plaintiff Lyon Financial Services, Inc., d/b/a US BanCorp Business Equipment Finance Group (hereinafter "Plaintiff"), by and through counsel, and complaining of Debtor and Defendant Scott Arthur Waddell (hereinafter "Debtor"), alleges and says:

PARTIES AND JURISDICTION

1. Plaintiff is a Minnesota Corporation duly registered in North Carolina and authorized to transact business in North Carolina. Plaintiff maintains its registered office and conducts business in Wake County, North Carolina. Plaintiff is a creditor and a party in interest in the above referenced Chapter 7 bankruptcy case. Plaintiff holds an unsecured claim against the Debtor's estate in the principal amount of \$1,167,969.52. No proof of claim has been filed in the Debtor's case, as it is currently designated as a "No Asset" case.

2. Debtor, upon information and belief, is a citizen and resident of Wake County, North Carolina and the Eastern District of North Carolina, resided in Wake County, North Carolina at all times relevant to the transactions and matters alleged in this Complaint, and is neither an infant nor incompetent.

3. Debtor filed a voluntary petition under Chapter 7 of the United States Bankruptcy Code on April 8, 2008

4. This action constitutes an adversary proceeding under Fed. R. Bankr. P. 4007 and 7001(6), related to the above-referenced bankruptcy proceeding now pending before this Court. In this adversary proceeding, the Plaintiff seeks to have the Court deny Debtor's discharge of the debt owed to the Plaintiff under all applicable provisions of the Bankruptcy Code including, but not limited to, 11 U.S.C. § 523.

5. This Court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. § 1334 as this is an action arising under Title 11 or arising in or related to a case under Title 11 and because it involves the enforcement of rights granted by the United States Bankruptcy Code.

6. Venue for this adversary proceeding is properly with this Court pursuant to 28 U.S.C. § 1409.

7. Specifically, this Court retains jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334 and 157(b)(2), as this is a core proceeding as defined in 28 U.S.C. § 157(b)(2) in that it concerns claims under 11 U.S.C. § 523.

8. The initial deadline set by this Court to file a complaint to object to the discharge of the Debtor or to determine the dischargeability of debts was July 18, 2008. This Complaint is timely

filed.

FACTUAL ALLEGATIONS

9. The allegations set forth above in paragraphs 1 - 8 are realleged and incorporated herein by reference.

10. Non-party PST Consultants, Inc. (hereinafter "PST"), is a North Carolina corporation with its principal place of business in Raleigh, Wake County, North Carolina. On April 8, 2008, PST filed a voluntary petition under Chapter 7 of the United States Bankruptcy Code, in the United States Bankruptcy Court for the Eastern District of North Carolina, bearing case number 08-02369-8-ATS. Plaintiff is seeking no affirmative relief against PST in this action.

11. At all time relevant to this proceeding, Debtor was, and currently is, the president and sole shareholder of PST.

12. Debtor, individually and/or as president of PST, was in the business of providing and servicing office equipment to businesses and individuals, and acting as a vendor in facilitating, arranging, and negotiating Article 2A finance lease transactions for office equipment.

13. Non-party Biomerieux, Inc. (hereinafter "BMI"), is a Missouri corporation authorized to conduct business in North Carolina.

14. Plaintiff, as lessor, and BMI, as lessee, are parties to the following finance leases:

- a. Quicklease #28931 dated on or about October 21, 2004, a copy of which is attached hereto as **Exhibit A**, and incorporated herein by reference;
- b. Lease Agreement #33584 dated on or about December 15, 2004, a copy of which is attached hereto as **Exhibit B**, and incorporated herein by reference;
- c. Lease Agreement #28931-001 dated on or about November 30, 2005, a copy

of which is attached hereto as **Exhibit C**, and incorporated herein by reference; and

- d. Lease Agreement #65731 dated on or about January 26, 2006, a copy of which is attached hereto as **Exhibit D**, and incorporated herein by reference.

(Hereinafter collectively referred to as the "Leases").

15. Debtor, individually and/or as president of PST, acted as the vendor on the Leases, negotiating, facilitating, and arranging the same.

16. Debtor, individually and/or as president of PST, prepared the documents underlying the Leases, and forwarded the same to Plaintiff for approval and payment.

17. Debtor as the vendor on the Leases, individually and/or as president of PST was the supplier and/or arranged for the purchase of the equipment purported to be the subject of the Leases.

18. As the vendor on the Leases, Debtor owed a duty to Plaintiff to act pursuant to the standards and customs in the industry, pursuant to verbal discussions and written communications between Plaintiff and Debtor, pursuant to a course of performance between Plaintiff and Debtor, and pursuant to that certain Vendor Agreement attached hereto as **Exhibit E**, and incorporated herein by reference.

19. As the vendor on the Leases, Debtor had a duty and responsibility to deliver lease agreements that were truthfully and correctly executed and otherwise fully enforceable and binding according to their terms. Such duties included, but were not limited to, providing and delivering the equipment described in and covered by the Leases to BMI; accurately completing the Leases so as to reflect the actual terms that all parties had agreed to; and not otherwise interfering with the proper

and required obligations created by the Leases, including but not limited to, the obligations of BMI to make the payments as set forth in the Leases.

20. As the vendor on the Leases, a relationship of trust and confidence existed between Debtor and the Plaintiff, such that Debtor owed a fiduciary duty to Plaintiff.

21. Upon information and belief, after BMI executed the Leases, Debtor altered each lease by increasing the lease term, increasing the lease payments, and adding equipment to each lease in the "description of the leased equipment" field of the lease that BMI had not agreed to lease.

22. Debtor, individually and/or as president of PST, presented the altered lease documents to Plaintiff, and based on the representations of Debtor, Plaintiff executed the Leases and funded the Leases by making payment on the Debtor's behalf to PST and/or other entities at the Debtor's instruction, for the purported purchase of the equipment described in the Leases.

23. Upon information and belief, the majority of the equipment described in the Leases, and for which Plaintiff made payment, was never delivered to BMI, and the equipment that was delivered to BMI was not in compliance with the equipment described in the Leases, and purportedly purchased by Plaintiff.

24. Upon information and belief, Debtor made numerous false representations to Plaintiff, both orally and in writing, in connection with the Leases, including, but not limited to: that the terms set forth in the lease documents accurately reflected the terms agreed to by BMI; that the Leases had not been altered or modified after being executed by BMI; that the Leases were valid and enforceable as against BMI; and that all of the equipment described in the Leases, and paid for by Plaintiff, had been delivered to BMI and that said equipment was in compliance with the Leases.

25. Plaintiff relied on the misrepresentations of Debtor in agreeing to enter into the Leases and in making payment to fund the purported purchase of the equipment described therein.

26. Upon information and belief, in order to conceal his wrongdoings, Debtor, individually and/or as president of PST, made payments to Plaintiff according to the altered payment terms, as set forth in the Leases.

27. Plaintiff ceased receiving payments on the Leases and the same are now in default.

28. Plaintiff has fully performed all of its obligations under the Leases.

29. Plaintiff has attempted to resolve this matter in good faith, which efforts have been frustrated by Debtor's continued bad faith.

30. Debtor's conduct constitutes fraud under North Carolina law, in that:

A. Debtor concealed material facts and made false representations to Plaintiff when he presented the Leases to Plaintiff as accurate, unaltered, valid, and enforceable, and representing terms agreed to by BMI as lessee; in misrepresenting that the equipment described in the Leases was procured and delivered to BMI, and that the same was compliant; and in inducing Plaintiff to fund the Leases by paying for equipment that was never procured for or leased by BMI.

B. Debtor's concealment of material facts and false representations were reasonably calculated and intended to deceive Plaintiff. Plaintiff reasonably relied on Debtor's intentional concealment of material facts and false representations and was in fact deceived.

- C. Debtor knew that his misrepresentations concerning the Leases and the equipment, and his alteration of the Leases were false.
 - D. Plaintiff has suffered damages as a result of Debtor's fraud, including, but not limited to, the amounts remaining unpaid on the Leases in an amount equal to \$1,167,969.52, together with interest thereon, as well as consequential damages.
31. Debtor's conduct constitutes constructive fraud under North Carolina law, in that:
- A. A relation of trust and confidence existed between Plaintiff and Debtor in that Debtor owed Plaintiff a fiduciary duty as vendor under the Leases, and pursuant to the terms of the Vendor Agreement.
 - B. Debtor failed to act in good faith while altering the terms of the Leases, presenting the same to Plaintiff for approval and funding, and continuing to conceal his malfeasance after execution of the Leases and payment by Plaintiff. Debtor's misrepresentations to Plaintiff and his concealment of material facts concerning the Leases is an act of dishonesty and bad faith, as well as a material breach of the Vendor Agreement.
 - C. Debtor concealed material facts and made false representations to Plaintiff when he presented the Leases to Plaintiff as accurate, unaltered, valid, and enforceable, and representing terms agreed to by BMI as lessee; when he represented to Plaintiff that the equipment described in the Leases was procured and delivered to BMI, and that the same was compliant; and in

inducing Plaintiff to fund the Leases by paying for equipment that was never procured for or leased by BMI; all for his own personal benefit and gain.

D. Debtor's concealment of material facts and false representations were reasonably calculated and intended to deceive Plaintiff. Plaintiff reasonably relied on Debtor's intentional concealment of material facts and false representations and was in fact deceived by Debtor.

E. Plaintiff has suffered damages as a result of Debtor's constructive fraud, including, but not limited to, the amounts remaining unpaid on the Leases in an amount equal to \$1,167,969.52, together with interest thereon, as well as consequential damages.

32. Debtor's conduct constitutes a breach of fiduciary duty under North Carolina law, in that:

A. Debtor owed fiduciary duties to Plaintiff as the vendor on the Leases, and pursuant to the terms of the Vendor Agreement.

B. Debtor breached his fiduciary duties by altering the terms of the Leases; presenting the Leases to Plaintiff for approval and funding as accurate, unaltered, valid, and enforceable, and representing terms agreed to by BMI as lessee; when he represented to Plaintiff that the equipment described in the Leases was procured and delivered to BMI, and that the same was compliant; in inducing Plaintiff to fund the Leases by paying for equipment that was never procured for or leased by BMI; in accepting payment from

Plaintiff for equipment that was never requested by or delivered to the lessee; and in continuing to conceal his malfeasance after execution of the Leases and payment by Plaintiff.

- C. Plaintiff has suffered damages as a result of Debtor's breach of fiduciary duty, including, but not limited to, the amounts remaining unpaid on the Leases in an amount equal to \$1,167,969.52, together with interest thereon, as well as consequential damages. Plaintiff is further entitled to punitive damages and its attorneys fees from Debtor pursuant to N.C. Gen. Stat. §§ 1D-1 and 1D-45.

33. Debtor's actions as set forth above further constitute unfair and deceptive trade practices under Chapter 75 of the North Carolina General Statutes, were in or affecting commerce, and Plaintiff suffered actual damages as a result thereof. As such, Debtor is liable to Plaintiff for actual damages in the amount remaining unpaid on the Leases, together with interest thereon, as well as treble damages, and Plaintiff's attorneys fees.

FIRST CLAIM FOR RELIEF

11 U.S.C. Section 523(a)(2)(A)

34. The allegations set for in paragraphs 1 through 34 above, including all Exhibits, are realleged and incorporated herein by reference.

35. The actions of Debtor as set forth above constitute fraud, constructive fraud, breach of fiduciary duty, and unfair trade practices.

36. The Debtor obtained significant funds from the Plaintiff through his false pretenses,

false representations, and actual fraud, as set forth in the allegations above.

37. Plaintiff has been injured by the Debtor's fraud, constructive fraud, breach of fiduciary duty, and unfair trade practices, in an amount in excess of \$10,000.00. Plaintiff has further suffered consequential damages and attorney's fees as a result of the conduct of Debtor as set forth in the allegations above.

38. As a result of the Debtor's representations and actions, discharge of the Plaintiff's claim should be denied pursuant to 11 U.S.C. § 523(a)(2)(A). Further, discharge of the consequential damages, statutory damages, punitive damages, interest, and attorneys' fees due to the Plaintiff should be denied.

SECOND CLAIM FOR RELIEF

11 U.S.C. Section 523(a)(4)

39. The allegations set for in paragraphs 1 through 38 above, including all Exhibits, are realleged and incorporated herein by reference.

40. The actions of Debtor as set forth above constitute fraud, constructive fraud, breach of fiduciary duty, and unfair trade practices.

41. The actions of the Debtor as set forth above were committed by the Debtor while the Debtor was acting in a fiduciary capacity for the Plaintiff.

42. The Debtor obtained significant funds from the Plaintiff through his fraud and defalcation while acting in a fiduciary capacity for Plaintiff.

43. Plaintiff has been injured by the Debtor's fraud, constructive fraud, breach of fiduciary duty, unfair trade practices, and defalcation, in that Debtor obtained from Plaintiff funds

in excess of \$10,000.00, all while acting in a fiduciary capacity for Plaintiff. Plaintiff has further suffered consequential damages and attorney's fees as a result of the conduct of Debtor as set forth in the allegations above.

44. As a result of the Debtor's representations and actions, discharge of the Plaintiff's claim should be denied pursuant to 11 U.S.C. § 523(a)(4). Further, discharge of the consequential damages, statutory damages, punitive damages, interest, and attorneys' fees due to the Plaintiff should be denied.

WHEREFORE, the Plaintiff respectfully requests that the Court:

1. enter an Order denying the discharge of the Debtor's entire obligation owed to the Plaintiff pursuant to the applicable provisions of 11 U.S.C. § 523, and award judgment in favor of the Plaintiff as follows:

- a. compensatory damages in an amount in excess of \$10,000.00;
 - b. consequential damages in an amount to be proven at trial;
 - c. punitive damages in an amount to be proven at trial;
 - d. treble damages pursuant to North Carolina General Statutes § 75-16;
 - e. consequential and punitive damages in an amount to be proven at trial pursuant to North Carolina General Statutes § 1-538.2; and
 - f. that said Order also deny the Debtor's discharge of the consequential damages, statutory damages, punitive damages, interest, and attorneys' fees due to the Plaintiff;
2. grant Plaintiff recovery of interest at the North Carolina legal rate of eight

(8%) from December 26, 2006, until the entry of judgment and thereafter at the federal judgment interest rate;

3. award the Plaintiff its costs of this action, including its reasonable attorney's fees, pursuant to North Carolina General Statutes §75-16.1; and

4. grant such other and further relief as is just and proper.

This the 18th day of July, 2008.

/s/ Caren D. Enloe

Caren D. Enloe
State Bar No. 17344

/s/ Chad A. Sharkey

Chad A. Sharkey
State Bar No. 29538

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