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5 Of Attorneys for Creditor Rexius Forest By-Products, Inc.

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8 **IN THE UNITED STATES BANKRUPTCY COURT**
9 **FOR THE DISTRICT OF IDAHO**

10	In re:)	
)	Case No. 11-01289- JDP
11	KERRY ANGELOS and JAQUELINE)	
	ANGELOS,)	
12)	
	Debtors.)	
13	_____)	
)	
14	REXIUS FOREST BY-PRODUCTS, INC.,)	Adversary No.
)	_____
15	Plaintiff,)	
)	
16	vs.)	COMPLAINT OBJECTING TO
)	DISCHARGEABILITY OF CERTAIN
17	KERRY ANGELOS,)	DEBTS
)	
18)	
	Defendant.)	
19	_____)	

20 Plaintiff, Rexius Forest By-Products, Inc., (“Rexius”) for a complaint objecting to
21 dischargeability of certain debts, alleges as follows:

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24

GENERAL ALLEGATIONS

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2 1.

3 This is a core proceeding over which the court has jurisdiction pursuant to 28 USC
4 §§157(I) and 1334. The matters in controversy arise under 11 USC §523(a)(2). Venue is proper
5 pursuant to 28 USC §1409.

6 2.

7 Defendant Kerry Angelos has owned and operated numerous entities including Status
8 Homes, Inc., an Idaho corporation, Status Homes, Inc., an Oregon corporation, Status
9 Corporation of Idaho, an Idaho corporation, (collectively the various Status entities are referred
10 to as “Status Homes”) and Rescom Holdings LLC, an Idaho limited liability company.

11 3.

12 Sometime in 2006, Kerry Angelos and his business partner, Patrick McCourt, agreed to
13 form an entity known as Union Land Company, LLC, (“Union Land”) to own, acquire and
14 develop various real estate projects in Idaho. Union Land was a member-managed limited
15 liability company with a McCourt entity, Barclays North, and an Angelos entity, Rescom, acting
16 as members. Various Angelos developments were each put into separate limited liability
17 companies with Union Land being the sole member of each limited liability company. The
18 Union Land limited liability companies relevant to this case include: L222-1 ID Summerwind
19 LLC; L222-2 ID Summerwind LLC; L222-3 Summerwind LLC. These entities were formed by
20 Angelos and his business partners through Union Land to develop a project known as
21 “Summerwind.”

22 4.

23 Rexius was a subcontractor performing millions of dollars of work on the Summerwind
24 project. It ultimately was not paid what was owed to it and obtained a judgment against Union

1 Land and McCourt for \$1,657,498 plus interest of \$308,975.61 as of June 15, 2009, and fees of
2 \$140,195.26, based in part on piercing the LLC veil due to misrepresentations and commingling
3 of funds. The judgment remains unpaid.

4 5.

5 Rexius was not paid because over \$1.6 million dollars of Rexius' draw money was
6 concealed and diverted along with millions of other dollars from investors and lenders by Kerry
7 Angelos. He did this by:

- 8 a. Providing outdated financial statements and making false written representations
9 to obtain loans on the Summerwind project from Integrated Financial Associates
10 ("IFA"), stating that his financial conditions had not materially changed and no
11 material adverse events had occurred since the date of the financial statements
12 presented to IFA;
- 13 b. Making or authorizing false written representations on each draw request
14 reaffirming all representations in an IFA loan agreement stating that there was no
15 material change in his financial condition and that prior draws had been used as
16 required by the loan agreements to pay subcontractors on the Summerwind job in
17 order to divert money from being paid directly to Rexius from the construction
18 loan disbursement account and to instead get draw money paid directly to
19 Summerwind rather than Rexius;
- 20 c. Making false representations to Rexius about Summerwind, Union Land, his and
21 McCourt's financial condition to keep Rexius working on the project;
- 22 d. Representing Summerwind and each of the principal owners had a substantial net
23 worth when at the time Summerwind's financials showed a negative value and the
24 principal owners were considering bankruptcy and reorganization;

1 e. Obtaining loans and inducing Rexius to continue working and to wait for its
2 money by representing the Summerwind project had a \$20 million dollar value
3 and millions in equity when Kerry Angelos knew that value was based on false or
4 pre-textual presold lot prices which were, in fact, to a large degree, fictional or
5 forged options consisting of companies set up by real estate agents, employees
6 and relatives, and purporting to be sales at inflated prices and that (contrary to
7 representations made to obtain loan funds) did not have hard money deposited and
8 which largely never closed. In fact, Kerry Angelos knew the project's appraised
9 value was half of what they were representing, that the project was fully
10 encumbered such that there was no equity and that the \$20 million dollar value
11 was not only based on fictional options with non-existent cash deposits but that
12 the market conditions had dramatically worsened making the project value far
13 less;

14 f. Telling Rexius he was waiting for his lenders to disburse funds and that the loan
15 funds would be used to pay Rexius, never intending to use such funds to pay
16 Rexius and falsely representing to lenders including IFA that the funds for those
17 loans were for the development of Summerwind when, in fact, Kerry Angelos
18 intended to and did immediately divert and use millions of dollars of those funds
19 to his and his insiders' other companies experiencing severe cash flow problems
20 and to pay interest on other companies' debt that was coming due; and to cover
21 insufficient funds checks on other companies' bank accounts;

22 g. Inducing Rexius and others to supply services based on the misrepresentation that
23 loan fund disbursements from the IFA loans had been delayed and that all
24 construction loan funds were set aside in trust and could only be used to pay the

1 draws on the Summerwind project when Kerry Angelos knew he had already
2 received disbursement of draw and loan money and that he was consistently and
3 immediately diverting and transferring away the funds to other projects and
4 entities owned by him and his insiders' and that he had lied on pay certification
5 requests to get those funds by falsely representing that entities like Rexius had
6 been paid or would be paid from draw money. Kerry Angelos knew every draw
7 request submitted by him was false and that he had no intent to use the draw or
8 loan money to pay Rexius and most of the other subcontractors from the specific
9 draw in the amount certified and that the trust funds/escrow funds had almost
10 always been diverted and used for purposes other than those certified;

11 h. By immediately directing and participating in the diversion of Summerwind trust
12 funds designated for Rexius and others doing the work on the Summerwind
13 project to other projects being performed by other companies in which Kerry
14 Angelos participated;

15 i. By lying on draw certifications that there were no defaults in the development
16 loan documents to divert and obtain money required to be paid directly by the
17 escrow company to Rexius when, in fact, multiple defaults of the development
18 loan documents had occurred, in part, because Kerry Angelos had already
19 knowingly diverted money required to be paid to Rexius in direct contravention of
20 written draw certifications and development loan documents;

21 j. Immediately transferring and diverting \$300,000 of money from the \$2.3 million
22 dollars of the Summerwind equity loan to pay for the development of
23 Summerwind (which work was being performed by entities such as Rexius) and
24

1 using it instead to fund accounts of his other entities that had written checks for
2 which they had insufficient funds totaling over \$300,000;

3 k. Immediately transferring over \$1.8 million dollars of funds from the Summerwind
4 equity loan to another company to be used on multiple other projects not owned
5 by Summerwind and from which Summerwind had received no value in
6 exchange;

7 l. Either lying to or manipulating or co-opting the escrow company to violate the
8 terms of the disbursement account requirements for construction funds designated
9 for Rexius by disbursing the funds directly to Summerwind and Status without
10 proof that the prior draw monies had actually reached the designated
11 subcontractor; by getting the escrow company to disburse directly to the
12 developer funds that were required by the escrow terms to be paid directly to
13 entities such as Rexius and by insuring that some of the Summerwind funds
14 would be diverted back to the title company and escrow company on other
15 projects contrary to any appropriate use of such funds;

16 m. Actively concealing and lying about his fraud and diversion of funds to be paid to
17 Rexius; and

18 n. Inducing Rexius to provide over a million dollars of work by falsely representing
19 the funds to pay it had not yet been received from his lenders or the construction
20 disbursement account but would be placed in a trust account and could only be
21 used to pay Rexius when, at the time of the representations, the funds had already
22 been disbursed to Summerwind or Status Homes and were long gone and had
23 been obtained and diverted by the fraudulent actions and scheme alleged above.

24 6.

1 Kerry Angelos knew that his representations were false, in part, because national
2 contractors had cancelled millions of dollars in contracts with Kerry Angelos and McCourt
3 entities to build homes in developments like the Summerwind development he sought to fund;
4 the capital markets had dried up for his other companies and that some of his companies were
5 writing checks for hundreds of thousands of dollars with insufficient funds such that he needed
6 to divert money from the loans and construction disbursement accounts to other companies' uses
7 just to keep those companies alive; and interest payments on various other projects were not
8 going to be fundable from their various projects before they were built-out without improperly
9 diverting money from the Summerwind loan; and his main business interests were in dire straits
10 and heading for disaster. At the same time, the false representations were being made to Rexus,
11 such representations were being reaffirmed to the lenders. Kerry Angelos knew the funds
12 intended for Rexus were being improperly and immediately diverted for other personal and
13 business purposes.

14 7.

15 Kerry Angelos intended for Rexus to rely on his false representations in order to
16 continue funding work on the Summerwind project.

17 8.

18 Rexus reasonably relied on the false representations of Kerry Angelos and trusted Kerry
19 Angelos to use the loan and construction funds as represented.

20 9.

21 Rexus itself was damaged by the false representations and conversion of draw funds in
22 the sum of \$1,657,498, plus interest.

23 ///

24 ///

1 10.

2 Rexius was entitled to direct payment of the draw funds certified and warranted in the
3 draw requests alleged above and which were represented to Rexius as being controlled in an
4 escrow account and required to be paid solely to pay Rexius and the subcontractors designated in
5 draw requests on the Summerwind project.

6 11.

7 Kerry Angelos intentionally exercised either control or dominion over the Rexius draw
8 monies at one time or another and participated in or authorized diversion of at least \$1,657,498
9 of the draw money designated for Rexius to his personal or business benefit.

10 12.

11 Rexius repeatedly demanded payment of the unpaid, but diverted, draw money but did
12 not receive any portion thereof.

13 13.

14 Kerry Angelos' actions resulted in Rexius being permanently deprived of its draws on the
15 Summerwind project of at least \$1,657,498 plus interest from the date Rexius should have had its
16 draw money, resulting in serious damage to its company.

17 14.

18 Defendant Kerry Angelos so seriously interfered with the draw money certified and
19 warranted to be held solely to pay Rexius and the designated subcontractors on each draw
20 request such that he should justly be liable to repay Rexius the full amount of the \$1,657,498 of
21 draw money diverted from Rexius plus interest as permitted by law.

22 15.

23 Rexius is and was a creditor with claims to the draw money in the amounts certified as
24 owed to it in each draw request by Kerry Angelos on the Summerwind project.

1 16.

2 Kerry Angelos had knowledge of the false representations made to Rexius and of Rexius'
3 claim to the draw money disbursed from the construction disbursement account.

4 17.

5 Over \$1,657,498 of draw money to be paid to Rexius was diverted and transferred away
6 to others by Kerry Angelos. Rexius' claim and entitlement to the draw money arose before each
7 diversion and transfer by Defendants.

8 **CLAIM 1**

9 **(Dischargeability of Debt- §523(a)(2)(A))**

10 18.

11 Rexius realleges paragraphs 1-17.

12 19.

13 The debt owed by Kerry Angelos to Rexius is on account of actual fraud and
14 misrepresentations of Kerry Angelos.

15 **CLAIM 2**

16 **(Dischargeability of Debt - §523(a)(2)(B))**

17 20.

18 Rexius realleges paragraphs 1-17.

19 21.

20 The debt owed by Kerry Angelos to Rexius is on account of the use of written statements
21 that were made by Kerry Angelos that were materially false respecting the financial condition of
22 the Debtor and his associated entities and on which Rexius reasonably relied in performing work
23 on the Summerwind project.

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CLAIM 3

(Dischargeability of Debt - §523(a)(6))

22.

Rexius realleges paragraphs 1-17.

23.

The debt owed by Kerry Angelos to Rexius is the result of Kerry Angelos’ willful conversion of monies that Rexius was entitled to for the purpose of using those monies for his own benefit or for the benefit of his entities.

WHEREFORE, Plaintiff prays for judgment and order of this Court excepting Plaintiffs’ debt from discharge pursuant to 11 USC §523(a)(2) and (6), for judgment in the sum of \$1,657,498, plus interest, and for such further relief as is just and equitable.

DATED this 28th day of July, 2011.

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By: /s/ Robert S. Russell
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Of Attorneys for Rexius Forest By-Products
Inc.