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10 ADMITTED *PRO HAC VICE*

11 Of Attorneys for Creditor Rexus Forest By-Products, Inc.

12
13 IN THE UNITED STATES BANKRUPTCY COURT
14 FOR THE DISTRICT OF IDAHO

15 In re:)
16 KERRY ANGELOS and JAQUELINE) Case No. 11-01289- JDP
17 ANGELOS,)
18 Debtors.)
19 _____)
20 REXIUS FOREST BY-PRODUCTS, INC.,) Adversary No.
21 Plaintiff,) 11-06044-JDP
22 vs.)
23 KERRY ANGELOS,) FIRST AMENDED COMPLAINT
24 Defendant.) OBJECTING TO DISCHARGABILITY
OF CERTAIN DEBTS

1 Plaintiff, Rexius Forest By-Products, Inc., (“Rexius”) for its First Amended Complaint
2 objecting to dischargeability of certain debts, alleges as follows:

3 **GENERAL ALLEGATIONS**

4 1.

5 This is a core proceeding over which the court has jurisdiction pursuant to 28 USC
6 §§157(I) and 1334. The matters in controversy arise under 11 USC §523(a)(2). Venue is proper
7 pursuant to 28 USC §1409.

8 2.

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

13 3.

14 Sometime in 2006, Kerry Angelos and his business partner, Patrick McCourt, agreed to
15 form an entity known as Union Land Company, LLC, (“Union Land”) to own, acquire and
16 develop various real estate projects in Idaho. Union Land was a member-managed limited
17 liability company with a McCourt entity, Barclays North, and an Angelos entity, Rescom, acting
18 as members. Various Angelos developments were each put into separate limited liability
19 companies with Union Land being the sole member of each limited liability company. The
20 Union Land limited liability companies relevant to this case include: L222-1 ID Summerwind
21 LLC; L222-2 ID Summerwind LLC; L222-3 Summerwind LLC. These entities were formed by
22 Angelos and his business partners through Union Land to develop a project known as
23 “Summerwind.”
24

1 4.

2 In December of 2006, Rexus entered into a contract with L222-2 ID Summerwind, LLC to
3 construct the golf course for the Summerwind Development.

4 5.

5 Rexus provided labor and materials on the Summerwind golf course between December
6 of 2006 and November of 2007. Rexus has only been paid on labor and materials provided
7 through its June 2007 billing. All labor and materials provided subsequent to the June billing
8 has remained unpaid.

9 6.

10 Kerry Angelos and his business partners obtained financing from Integrated Financial
11 Associates, Inc., ("IFA") for the Summerwind Development. The Loan proceeds for the project
12 were placed in a construction disbursement account governed by a disbursement agreement that
13 required all monies be paid out to the contractors completing work on the Summerwind project.

14 7.

15 Seven Draw Requests were made on the Summerwind project. Each of the seven Draw
16 Requests included a signed certification from Kerry Angelos attaching a list of contractors who
17 would be paid out of the disbursement which stated: "The project Costs to be paid with the
18 proceeds of this requested Advance, broken down by categories to correspond to the categories
19 of Project Costs, and all appropriate information relating are set forth on Attachment 1 hereto."
20 Kerry Angelos further certified that: "All project costs itemized on Attachment 1 are costs
21 specified in the project budget and are due and payable and do not exceed the project budget
22 amount."

8.

Draw Requests were made and received on or about the following dates and in the following amounts:

Draws:

	Request Date	Date Received	Amt. Requested	Amt. Requested for Rexius	Paid to Rexius
Draw 1	05.22.07	05.25.07	\$1,395,024.00	\$328,007 and \$391,868	07/20/07 05/25/07
Draw 2	06.18.07 (faxed 06.19.07)	06.22.07	\$318,679.80	\$193,900	08/21/07
Draw 3	07.20.07	07.25.07	\$428,438.90	\$239,997	09/14/07
Draw 4	07.27.07	08.03.07	\$166,815.40	- 0 -	
Draw 5	08.08.07 (faxed 08.09.07)	08.17.07	\$466,784.86	\$430,000	Never paid
Draw 6	09.06.07	09.14.07	\$1,025,810.95	\$838,666	Never paid
Draw 7	10.10.07 (faxed 10/12/07)	10.18.07	\$730,399.77	\$419,200	Never paid

9.

Upon making each Draw Request to IFA, monies, as noted in paragraph 8, were received by L222-2 ID Summerwind LLC, within 10 days of the date of the Draw Request.

10.

Despite Kerry Angelos' certifications that money from each Draw Request (with the exception of Draw Request No. 4) would be paid to Rexius, Rexius never received payments under Draw Requests 5, 6, and 7 and Kerry Angelos significantly delayed payments under Draw Requests 1, 2 and 3.

1 11.

2 Instead of disbursing the Draw Request advances as represented, Kerry Angelos diverted
3 the Draw Request advances to his and his business partner's other entities.

4 12.

5 On Draw Request No. 5 for \$466,000, \$430,000 was certified to be paid to Rexius.
6 Despite the money being received and deposited into Summerwind's account on August, 17,
7 2007, it was diverted with immediate transfers to Union Land for, among other things, a \$15,000
8 transfer to Status Homes which in turn wrote a personal check to Kerry Angelos for that amount.
9 No money from this draw request was paid to Rexius.

10 13.

11 On Draw Request No. 6 for \$1,025,810.95, \$828,000 was certified to be paid to Rexius.
12 However, after the advance was deposited into Summerwind's account on September 14, 2007,
13 multiple transfers were made to Union Land and from Union Land to Status Homes to be used
14 on other projects and debts unrelated to Summerwind. No money was paid to Rexius.

15 14.

16 On Draw Request No. 7 for \$733,391, \$419,200 was certified to be paid to Rexius. After
17 the advance was deposited into Summerwind's account on October 18, 2007, the bulk of the
18 money was immediately diverted to Union Land and no money was paid to Rexius.

19 15.

20 On July 9, 2007, Union Land employee, Anna Yantis, at the direction of Kerry Angelos,
21 represented in an email to Rexius that Draw Request 2 had not yet been submitted to IFA. However,
22 Draw Request 2 had been submitted on June 19, 2007 and the money received by Summerwind on
23 June 22, 2007.

24

1 16.

2 On or about August 22, 2007, Kerry Angelos participated in a phone conference with Rexius
3 wherein he falsely represented that:

- 4 i. There was no problem with the Summerwind account;
- 5 ii. That monies due to Rexius were in an earmarked fund for the project, and that the funds
6 were specifically set aside for Rexius to be drawn on as billings were submitted and
7 approved;
- 8 iii. That there had been difficulty processing payments due to the lender (IFA) moving their
9 office and a change in computer software;
- 10 iv. That Rexius' billings had been sent to an out of state title company by mistake;
- 11 v. That the Summerwind project had millions of dollars in equity and that solvency was not
12 an issue;
- 13 vi. That Summerwind had made previous Rexius payments in good faith despite problems
14 with receiving money from IFA.

15 17.

16 Rexius provided additional labor and materials on the Summerwind project between on or
17 about August 25, 2007 through November 26, 2007 on the basis of Kerry Angelos' representations
18 in the August 22, 2007 phone call in the amount of \$654,328.00.

19 18.

20 Kerry Angelos knew that his representations were false, in part, because he had signed
21 each of the Draw Requests for the Summerwind project and knew that the funds intended for
22 Rexius had been immediately diverted for other personal and business purposes. Furthermore, at
23 the time Kerry Angelos was making promises of payments to Rexius and misrepresenting the
24 status of the construction funds he knew that national contractors had cancelled millions of

1 dollars in contracts with Kerry Angelos and McCourt entities to build homes in developments
2 like the Summerwind development he sought to fund; the capital markets had dried up for his
3 other companies and that some of his companies were writing checks for hundreds of thousands
4 of dollars with insufficient funds such that he needed to divert money from the loans and
5 construction disbursement accounts to other companies' uses just to keep those companies alive;
6 and interest payments on various other projects were not going to be fundable from their various
7 projects before they were built-out without improperly diverting money from the Summerwind
8 loan; and his main business interests were in dire straits and heading for disaster.

9 19.

10 Kerry Angelos intended for Rexius to rely on his false representations in order to
11 continue work on the Summerwind project.

12 20.

13 Rexius reasonably relied on the false representations of Kerry Angelos and trusted Kerry
14 Angelos to use the loan and construction funds as represented.

15 21.

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

20 22.

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

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23.

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

24.

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

25.

Kerry Angelos' actions in diverting the Draw Request money were willful and malicious.

26.

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

CLAIM 1

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

27.

Rexius realleges paragraphs 1-26.

28.

The debt owed by Kerry Angelos to Rexius is on account of false pretenses, false representations or actual fraud of Kerry Angelos.

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CLAIM 2

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

29.

Rexius realleges paragraphs 1-26.

30.

The debt owed by Kerry Angelos to Rexius is the result of Kerry Angelos' willful and malicious injury to Rexius in diverting monies owed to Rexius and that Rexius was entitled to for the purpose of using those monies for his own benefit or for the benefit of his entities.

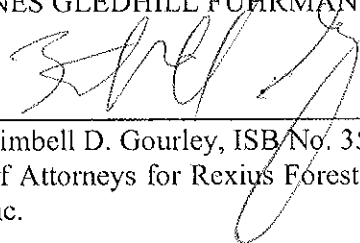
WHEREFORE, Plaintiff prays:

1. For Claim 1, for judgment and order of this Court excepting Plaintiffs' debt from discharge pursuant to 11 USC §523(a)(2), and for judgment in the sum of \$1,657,498;
2. For Claim 2, for judgment and order of this Court excepting Plaintiffs' debt from discharge pursuant to 11 USC §523(a)(6), and for judgment in the sum of \$654,328 ; and
3. For such further relief as is just and equitable.

DATED this 19th day of October, 2011

TROUT JONES GLEDHILL FUHRMAN GOURLEY, PA

By:

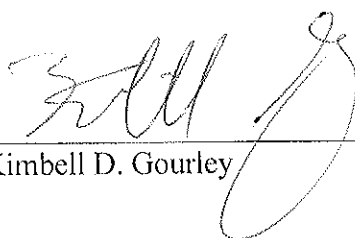


Kimbell D. Gourley, ISB No. 3578
Of Attorneys for Rexius Forest By-Products Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of October, 2011, a true and correct copy of the foregoing document was filed with the Clerk of the Court using the CM/ECF System which sent a Notice of Electronic Filing to the following persons:

David E. Wishney – david@wishneylaw.com
Brendt C. Butler – bbutler@mandersonllp.com
John P. Schafer – jschafer@mandersonllp.com



Kimbell D. Gourley