

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

In re: JEFFREY BEAUVOIR AND
CHRISTINA TASSY-BEAUVOIR

Case No. 09-30570-LMI

Chapter 7 Proceeding

Adv. No. _____

JULES PIERRE DIERICKX a/k/a
FRANK DIERICKX

Petitioner

vs.

JEFFREY BEAUVOIR AND
CHRISTINA TASSY-BEAUVOIR

_____ Debtors _____ /

COMPLAINT TO DENY DISCHARGEABILITY OF DEBT

Comes Now Jules Pierre Dierickx a/k/a Frank Dierickx (“Dierickx”), a Creditor in the above-styled Chapter 7 bankruptcy proceeding, by and through his counsel of record, and files his Complaint to Deny Dischargeability of Debt, and in support thereof and as grounds therefore respectfully alleges as follows:

JURISDICTION

1. This Court has jurisdiction pursuant to the provisions of 28 U.S.C. Section 157(a) and (b)(2)(i) and Section 1334 (b) and 11 U.S.C. Section 523 and Rule 7001(4).

2. This Court has jurisdiction over the parties in that the parties either reside or conduct business within Miami-Dade County, Florida.

BACKGROUND FACTS

3. In or about October 2004, Debtors Jeffrey Beauvoir and Christina Tassy-Beauvoir induced Creditor Dierickx to enter into an agreement regarding the purchasing and subsequent reselling of real estate properties. In furtherance of this agreement, Debtors Jeffrey Beauvoir and Christina Tassy-Beauvoir formed Debtor Beauvoir Real Estate Investments, Inc. Based on the representations of Debtors Jeffrey Beauvoir and Christina Tassy-Beauvoir, Creditor Dierickx in fact contributed approximately seven hundred thousand dollars (\$700,000.00) towards the joint venture.

4. According to the agreement between the parties, Creditor Dierickx was to supply the necessary capital to preliminarily fund the joint venture, and Debtors were required to (a) locate and purchase certain real estate properties in Miami-Dade County, Florida; (b) take all necessary actions to repair and restore the real estate properties purchased using their own funds (not those provided by Creditor Dierickx); (c) make all mortgage payments taken on any real estate property purchased, (d) collect any rental payments earned from real estate property purchased for the benefit of the joint venture; and (e) market any real estate properties purchased for sale, with profits divided as fifty-percent (50%) to Creditor Dierickx and the remaining fifty-percent (50%) to Debtors collectively.

5. Subsequent to Creditor Dierickx funding said venture, as evidenced by **Composite Exhibit A**, Debtors failed to comply with the terms agreed to by the parties by (a) failing to utilize the funds provided by Creditor Dierickx for the sole benefit of the joint venture, (b) utilized the funds provided by Creditor Dierickx for their own use and benefit, (c) allow certain security interests to attach

to the real estate properties purchased while failing to keep current the obligations of same, and (d) failing to provide adequate accounting to Creditor Dierickx. As a result, Debtors are indebted to Creditor Dierickx for the funds provided to the Debtors related to said joint venture in an amount likely exceeding \$700,000.00¹. Creditor Dierickx has made repeated demand upon Debtors for an accounting of the joint venture but Debtors have failed or refused to remit said accounting.

6. Furthermore, as a result of Debtor Beauvoir Real Estate Investments, Inc.'s seemingly erroneous and inaccurate and possibly intentional reporting to the Internal Revenue Service, Creditor Dierickx was forced to incur a tax liability of twenty eight thousand seven hundred and forty six dollars (\$28,746.00) for profits in which Creditor Dierickx never realized, as evidenced by **Exhibit B**. Moreover, Debtor Beauvoir Real Estate Investments, Inc. filed its Statement of Financial Affairs showing profits earned in 2006, 2007, and 2008. [D.E. 1 at 19 in case 09-30624-RAM, consolidated in D.E. 18 with this case]. Creditor Dierickx has not received any profits from the Debtors for said years as required by the agreement of the parties for the joint venture.

7. Because of the aforementioned actions of the Debtors, Creditor Dierickx has been forced to hire counsel and to file a state court civil action against the Debtors in Miami-Dade County, Florida to recover the amount due to Creditor Dierickx. The state court action has been attached hereto as **Exhibit C**. Creditor Dierickx has agreed to pay said counsel a reasonable fee for the

¹ Due to the lack of disclosures from Debtors, including but not limited to an adequate accounting, Creditor Dierickx is unable to ascertain the exact amount he has been damaged in excess of his known contributions.

services rendered in connection with the collection of the amount due Creditor Dierickx from the Debtors.

8. At all times relevant hereto, Debtors stood in a fiduciary and trust relationship with Creditor Dierickx with the obligation to forward monies received as a result of the joint venture to Creditor Dierickx. Debtors breached this fiduciary duty by not forwarding monies received as a result of the joint venture to Creditor Dierickx and instead converted same to their own use and benefit.

9. Petitioner would show that Debtors have violated the provisions of 28 U.S.C. § 523(a)(2)(A) in that Debtors received said funds from Creditor Dierickx under false pretenses and fraud.

10. Creditor Dierickx would show that Debtors are guilty of fraud while acting in a fiduciary capacity in that Debtors converted money to their own use although same was rightfully the property of Creditor Dierickx in violation of 11 U.S.C. § 523(a)(4).

11. Debtors should be denied a discharge for the Debt to Creditor Dierickx based upon the allegations set forth above so as to allow Creditor Dierickx to collect same.

FIRST CAUSE OF ACTION

(Non-Dischargability of Debt)

12. Paragraphs 1 through 11 are incorporated by reference as if fully set forth herein.

13. 28 U.S.C. §523(a)(2)(A) of the Bankruptcy Code states that “[a] discharge under section 727...of this title does not discharge an individual debtor from any debt – for money, property, services, or an extension, renewal, or

refinancing or credit, to the extent obtained by – false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor’s or an insider’s financial condition....” See *Lady Iris Corporation v. Norman Docteroff (In Re Norman Docteroff)*, 133 F.3d 210, 216 (3rd Cir. 1997) (stating that “A debt is not dischargeable under 28 U.S.C. §523(a)(2)(A) if it is obtained by "actual fraud"). In the case at hand, Creditor Dierickx has established sufficient prima-facie facts that suggest Debtors have obtained monies from Creditor Dierickx by false representation, namely, representing to Creditor Dierickx that said monies would be used in the joint venture when in fact said monies were diverted for the Debtor’s own use and enjoyment and have failed to provide an adequate accounting of same notwithstanding the fact that Creditor Dierickx has demanded such. Therefore, any debt owed to Creditor Dierickx should not be discharged under this proceeding.

14. 11 U.S.C. §523(a)(4) states that “[a] discharge under section 727...of this title does not discharge an individual debtor from any debt – for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.” See *Paul Kuck v. David and Penny Shane (In Re David and Penny Shane)*, 140 B.R. 964, 966 (Bankr. N.D. Ohio 1991) (stating that a party who entered onto an oral contract to form a joint venture owed a fiduciary duty to his partner, and said duty was breached when that party appropriated funds belonging to the joint venture for his own use). In the case at hand, Creditor Dierickx has established sufficient prima-facie facts that suggest Debtors have converted monies for their own use and benefit, breaching the fiduciary duty they owed to Creditor Dierickx. Therefore, any debt owed to Creditor Dierickx should

not be discharged under this proceeding.

PRAYER FOR RELIEF

WHEREFORE, Jules Pierre Dierickx a/k/a Frank Dierickx respectfully request that this Honorable Court not discharge any debt debtors may owe for any judgment Jules Pierre Dierickx a/k/a Frank Dierickx obtains against Debtors for fraud or breach of fiduciary duty or any other no-dischargeable claim.

NOTICE

I HEREBY CERTIFY notice of this Complaint has been electronically filed with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to the CM/ECF participants, and the following non-CM/ECF participants listed below are being served by first class mail:

Jeffery Beauvoir, Debtor
11100 SW 124 Street
Miami, FL 33176-4571

Christina Tassy-Beauvoir, Debtor
11100 SW 124 Street
Miami, FL 33176-4571

Beauvoir Real Estate Investments, Inc., Debtor
11100 SW 124 Street
Miami, FL 33176-4571

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court as set forth in Local Rule 2090-1(A).

I HEREBY CERTIFY no previous application for the relief requested herein has been made by the Debtor to this or any other court.

WHEREFORE, Creditor Dierickx respectfully requests that this Court enter an order granting his Complaint to Deny Dischargeability of Debt and such other relief as is just and proper.

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