IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

IN THE MATTER OF:	§	
	§	CASE NO. 20-60063
MAX JAMES OGLE & CHRISTINA LEE OGLE,	§	
	§	
	§	
DEBTORS.	§	CHAPTER 7

HILLARY BARTON, BRETT BARTON, KATHLEEN HUNTSMAN, KEITH POWELL, ERIC RUTHERFORD, LINDA STANFORD, and DON STANFORD,	§	
Plaintiffs,	§	
	§	
v.	§	ADV. NO. ____________
	§	
MAX JAMES OGLE AND CHRISTINA LEE OGLE,	§	
Defendants.	§	

COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBTS§

COMES NOW Hillary Barton, Brett Barton, Kathleen Huntsman, Keith Powell, Eric Rutherford, Linda Stanford and Don Stanford (collectively, the "Plaintiffs"), creditors in the instant case, and file this Complaint to Determine Dischargeability of a Debt. In support thereof, the Plaintiffs would show as follows:

JURISDICTION, VENUE AND PARTIES

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(I). Plaintiffs consent to entry of a final judgment by this Court.

2. Venue is proper in this court for the reason that the main bankruptcy case is pending here.

3. Plaintiffs are unsecured creditors in the above-referenced bankruptcy case and may be served through their counsel: H. Charlie Shelton, Hajjar Peters, LLP, 3144 Bee Caves Road, Austin, TX 78746.

4. Max James Ogle and Christina Lee Ogle (collectively, the "Defendants") are individuals who may be served at the address listed in their bankruptcy petition (4709 Country Aire Drive, Waco, Texas 76708) and by serving their counsel, Tyler S. Sims, 600 Austin Avenue, Suite 23, Waco, Texas 76701.

FACTUAL BACKGROUND

Substantive background

5. Defendants own 100% of the equity in a Texas limited liability company called Sometimes Partners, LLC ("Sometimes Partners").

6. The Defendants at all times relevant to the instant action were controlling persons in charge of Sometimes Partners.

7. Between 2013 and 2015, Sometimes Partners held itself out as having developed and operated a successful handyman and household services business.

8. Sometime after 2015, Sometimes Partners converted its business to a franchise and established itself as the franchisor of Sometimes Spouse businesses.

9. During 2016, the Defendants aggressively marketed the Sometimes Spouse brand of franchises across the State of Texas.

10. During 2016, Sometimes Partners sold a number of franchises to third parties.

11. Defendants advertised Sometimes Spouse as a successful and profitable business for franchisees to operate.

12. During 2017, Defendants represented to all of the Plaintiffs that then-active Sometime Spouse franchisees made certain amounts of income, experienced certain profit margins, and that future prospective franchisees, including each of the Plaintiffs, could expect a comparable amount of income if they were to purchase a franchise from Sometimes Spouse in various locations in Texas.

13. Each of the Plaintiffs relied on Defendants' foregoing representations, along with other representations, including representations regarding the viability of the franchise in locations in which they were established.

14. Plaintiffs' reliance on Defendants' representations resulted in Plaintiffs purchasing a Sometimes Spouse franchise from Sometimes Partners.

15. Each of the Plaintiffs' purchases of a Sometimes Spouse franchise was memorialized in a written agreement signed by the respective parties.

16. Each agreement executed by the Plaintiffs and Sometimes Partners required Plaintiffs to either deliver a fixed amount of money to Sometimes Partners, or execute a promissory note in favor of Sometimes Partners.

17. A number of the agreements executed by the Plaintiffs required the respective Plaintiff pay an initial fee of up to Twenty Four Thousand Nine Hundred Ninety Nine Dollars ($24,999.00) and then, after six months, a minimum of Seven Hundred Fifty Dollars ($750.00) each month in royalties regardless of the level of profit or loss a Plaintiff's franchise experienced.

18. The agreements between the parties also declared Defendants would provide certain items, systems, and know-how to support the Plaintiffs as individual franchisees of Sometimes Spouse.

19. Despite the agreements requiring Defendants to provide support to Plaintiffs, Defendants failed to provide Plaintiffs an operations manual—the most basic and fundamental item needed to operate a franchise—until nearly one full year after operating, and for some Plaintiffs, the operations manual was never provided.

20. Additionally, the franchise disclosure document Defendants provided to Plaintiffs was incomplete and inaccurate because the franchise disclosure document failed to include the Sometimes Spouse's franchise failure rate.

21. After Plaintiffs began operating their franchises, their calls to Defendants seeking guidance and support were repeatedly ignored and not returned by the Defendants.

22. Defendants also failed to provide other items, systems and know-how to the Plaintiffs.

23. As a result of Defendants' misrepresentations and failures to provide business support to the Plaintiffs, each of the Plaintiffs' franchises failed to generate income and each was ultimately forced to shut down.

24. Each of the Plaintiffs experienced a lack of support from Defendants, financial loss, and the discovery they were misled by the Defendants.

25. The Defendants' representations of Sometimes Spouses' franchisees were profitable was false.

26. Unfortunately, Plaintiffs discovered the levels of income and the levels of profit margin represented by Defendants were false only after suffering significant pecuniary loss and paying Defendants several thousand dollars in fees.

27. It appears Defendants' efforts were entirely focused on selling more franchises and generating more revenue for Sometimes Partners without concern for the success of current and

future franchisees, or any regard for the Plaintiffs who had each invested significant amounts of money in purchasing and operating the Sometimes Spouse franchises.

Procedural background

28. On November 17, 2017, Plaintiffs initiated a suit in McLennan County District Court against Defendants and other parties setting forth the allegations referenced above ("State Court Proceeding").[1]

29. Plaintiffs' claims were not tried to a jury or judge in the State Court Proceeding.

30. On January 28, 2020, the Defendants filed for relief under Chapter 7 of the Bankruptcy Code.

31. On May 18, 2020, this Court extended the deadline for Defendants' creditors to file a complaint to determine dischargeability from May 26, 2020 to July 3, 2020. (Docket No. 24).

CAUSES OF ACTION

523(a)(2)(A) - Fraud by false pretenses, a false representation or actual fraud.

32. Defendants' fraud or false misrepresentations caused the Plaintiffs significant harm. The Plaintiffs are therefore seeking: a) a liquidation of the amount of damages; and b) a determination that those damages, as well as all attorney's fees arising therefrom, are excepted from discharge pursuant to 11 U.S.C. § 523(a)(2)(A).

33. Defendants, during their operation of Sometimes Partners made representations to the Plaintiffs, seeking to have Plaintiffs purchase Sometimes Spouse franchises from Sometimes Partners, or, alternatively, have Plaintiffs execute notes in favor of Sometimes Spouse in exchange for a Sometimes Spouse franchise.

1.

[1] Sheila Powell was an additional plaintiff in the above-referenced state court lawsuit. Ms. Powell is not a party to this proceeding.

34. Prior to Plaintiffs purchasing a Sometimes Spouse franchise, the Defendants represented to all of the Plaintiffs that then-active Sometimes Spouse franchisees made certain amounts of income, experienced certain profit margins, and that Plaintiffs, as owners of future Sometimes Spouse franchisees, could expect similar amounts of income and revenue.

35. Defendants' representations to Plaintiff were false statements of fact and false promises of future performance.

36. Defendant's misrepresentations induced Plaintiffs to purchase franchises from Sometimes Partners, or, alternatively, execute notes payable to Sometimes Spouse.

37. A number of the Plaintiffs executed agreements with Sometimes Partners that required a Plaintiff pay an initial fee of up to Twenty Four Thousand Nine Hundred Ninety Nine Dollars ($24,999.00) and then after six months a minimum of Seven Hundred Fifty Dollars ($750.00) each month in royalties.

38. Plaintiffs later learned Defendants' representations were false when they were made.

39. Defendants made the false representations knowing they were false.

40. Defendants intended for Plaintiffs to rely on or had reason to expect Plaintiffs would act in reliance on the Defendants' false representations.

41. Plaintiffs justifiably relied on Defendants' false representations.

42. The Defendants' false representations directly and proximately caused injury to Plaintiffs, which resulted in actual damages.

43. Under 11 U.S.C. § 523(a)(2)(A), a debt for money, property, services or extension, renewal or refinancing of debt is excepted from discharge to the extent obtained by false pretenses, a false representation or actual fraud. A false representation may include a material omission.

Accordingly, Plaintiffs requests that the Court find the Defendants committed fraud and that the Court liquidate the amount of Plaintiffs' damages, and after doing so, make a determination that those damages, as well as all attorney's fees arising therefrom, are excepted from discharge pursuant to 11 U.S.C. § 523(a)(2)(A).

523(a)(6) - Willful and malicious injury.

44. The Defendants' above-described actions were all done with the subjective intent to injure Plaintiffs or were done with an objective substantial certainty that they would result in harm.

45. Therefore, Plaintiffs request that the Court find the Defendants willfully and maliciously injured them and that the Court find that any debts arising therefrom are excepted from discharge pursuant to 11 U.S.C. § 523(a)(6).

DAMAGES

46. Plaintiffs asserts that the Defendants' unlawful conduct has caused them damages in excess of Three Hundred Fifty Thousand Dollars ($350,000.00), including attorney's fees and costs.

47. Plaintiffs further seeks attorneys' fees to the extent allowed at law.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that: (i) the Court find in their favor on each of the counts above; (ii) the Court declare the debts owed by the Defendants to Plaintiffs, as well as all attorney's fees arising therefrom, including the prosecution of the instant action, be declared non-dischargeable under 11 U.S.C. §523(a)(2) and (a)(6); (iii) that Plaintiffs recover their reasonable attorney's fees; and (iv) for such other and further relief as this Court may deem just.

Dated: July 2, 2020.

Respectfully Submitted,

/s/ Charlie Shelton

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