

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

IN RE: * CASE NO. 20-60069 -RBK
*
OGLE MAX JAMES * CHAPTER 7
*
DEBTOR *

REGIAN TOOLS & EQUIPMENT CO. * ADVERSARY NO.
*
Plaintiff *
*
vs *
*
OGLE MAX JAMES *
CHRISTINE LEE OGLE *
*
Defendants *

**COMPLAINT TO DETERMINE DISCHARGEABILITY OF
DEBTS PURSUANT TO 11 U.S.C. §523**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES REGIAN TOOLS & EQUIPMENT CO, Plaintiff, and files this Complaint to Determine Dischargeability of Debts Pursuant to 11 U.S.C. §523 and as grounds therefore, respectfully shows the Court as follows:

1. Plaintiff is Regian Tools & Equipment Co., a Texas corporation authorized to do business in Texas with its principal office located at 209 Douglas Ave, Woodway Texas 76712.
2. Defendant is Max James Ogle, one of the Debtors in this case. Defendant may be served with this complaint by serving his attorney of record, Tyler Sims at 7215 Bosque Blvd, Suite 101, Waco Texas 76710.
3. This case was filed on or January 28, 2020.
4. The first meeting of creditors was conducted on April 16, 2020. The discharge date was originally set for May 26, 2020.

5. James Studensky, the chapter 7 trustee, timely filed a motion to extend deadlines for objections on or about April 24, 2020. The trustee requested that the deadline for filing objections be extended to July 3, 2020. The Debtors agreed to the terms of the motion. The order granting the extension was granted.
6. Prior to the filing of this petition in bankruptcy, Defendant Max Ogle had an ebay store where he bought and sold equipment. Regian Tool had recently terminated a franchise agreement with a tool company and had a large inventory of tools. King Regian, the owner of Regian's Tool, was recuperating from an illness and was not able to actively sell the inventory himself. As a representative of Regian Tool, he entered into an oral agreement with Max Ogle wherein Max would sell the inventory on Ogle's ebay store. In addition, King Regian, on behalf of his company and Max Ogle agreed that they would evenly split any profit over and above the cost of the product.
7. Although Max Ogle's duty was to sell excess inventory that Regian Tool had in stock, Max Ogle stated that he could also sell new equipment and product. The parties agreed that Regian Tool would buy the new equipment and/or product, Max Ogle would sell the new equipment/product on his ebay store, and the parties would equally divide any profit over and above the cost of the equipment/product and the cost of shipping. Further, Max Ogle was to submit an accounting of the sales. Unbeknown to Regian Tool, Max Ogle was selling the equipment/product at a price lower than what Regian Tool was paying for it. Further, it was later determined that Max Ogle was also keeping all the money from the sale of the equipment and tools and not properly submitting any of the money to Regian Tool.
8. Once the theft was discovered, Max Ogle agreed to repay the company for the money he had embezzled. The parties determined that the amount of the theft was approximately \$40,000. Max Ogle did agree to repay the money to Regian Tool, but failed to do so.
9. Max Ogle did not pay the money as agreed.
10. 11 U.S.C. §523 states that a debtor will not receive a discharge from debt

- (2) for money, property, or services ... to the extent obtained by
 - (A) false pretenses, a false representation or actual fraud.....
- (4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement or larceny...
- (5) for willful and malicious injury by the debtor.....

11. Regian Tool would show the Court that Debtor willfully, maliciously and intentionally defrauded Regian Tool of property owned by Regain Tool and of monies owed to Regian Tool in a value of no less than \$40,000. Further, Max Ogle made false representations to Regian Tool and its representative regarding the sale of product and the collection of monies. Further, Max Ogle committed actual fraud in that he obtained and kept monies that belonged to Regian Tool and failed and refused to tender them to Regian Tool and its representatives. Further, as a fiduciary, Max Ogle owed a duty to Regian Tool to collect, account and disburse monies in accordance with their agreement. Even though Max Ogle acknowledged his wrongdoing in that he sold product/equipment without proper accounting to Regian Tool and kept all the monies from the sale, he did not pay Regain Tool the monies he embezzled as he had agreed to do.
12. Regain Tool would request that the Court enter judgment against Debtor for this sum or a sum as determined by this Court and further find that said judgment is non dischargeable in bankruptcy. Further, Regian Tool would show the Court that it was required to retain counsel to file these proceedings. Regian Tool would further request that this Court award reasonable attorney fees and all costs in favor of Regian Tool and further find that this award is also non dischargeable. .
Wherefore, Plaintiff requests that after a trial on the merits, this Court enter a judgment in favor of Plaintiff in the sum of \$40,000 or a sum as determined by this Court plus reasonable attorney fees and costs and further find that said judgment is non

dischargeable in bankruptcy and and for any other relief to which Regian Tool may be justly entitled.

Respectfully Submitted,

LAW OFFICE OF JOHN A. MONTEZ
523 Herring Ave.
WACO, TX 76708
254-759-8600
254-759-870

BY: _____/s/_____
JOHN A. MONTEZ