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8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 In Re:) CASE NO.: SA09-18043 TA
11 T. MUTHU KUMAR,)
12 Debtors.) CHAPTER 7
13 _____)
14 LLOYD CHARTON, CHARTON FAMILY) COMPLAINT TO DETERMINE
TRUST) DISCHARGEABILITY OF DEBT AND TO
15 Plaintiffs,) DENY THE DISCHARGE
16 v.) Date: Set By Summons
17 T. MUTHU KUMAR,) Time:
18 Defendant.) Ctm:
19 _____)

20 Lloyd Charton ("Plaintiff") files his Complaint to Determine Dischargeability of Debt
21 pursuant to Sections 53(a)(2), (a)(4) and (a)(6), and to deny the Discharge pursuant to Sections
22 727(a)(2)(A) and (a)(4)(A) against T. Muthu Kumar ("Defendant") and alleges as follows:

23 I.

24 **STATEMENT OF JURISDICTION AND VENUE**

- 25 1. Plaintiff is, and at all times mentioned herein was, an individual residing in the
26 State of California, County of Orange.
27 2. Defendant is, and at all times mentioned herein was, an individual residing in the
28 State of California, County of Orange.

1 13. Defendant represented to Plaintiff that the balance of the loan proceeds would be
2 set aside in a bank account to "season" the money to better qualify Defendant in the future for an
3 institutional refinance of the first mortgage and Plaintiff's mortgage in the future.

4 14. The balance of the loan proceeds were not to be used for any other purpose.

5 15. Based upon Defendant's representations to Plaintiffs, Plaintiffs approved the loan
6 to Defendant and funded the entire loan to Defendant.

7 16. Plaintiffs are informed and believe, and thereon allege, that Defendant used the
8 balance of the loan proceeds and invested them in the stock market and other risky investments.

9 17. Plaintiffs are informed and believe, and thereon allege, that Defendant committed
10 larceny by using the loan proceeds for purposes other than the intended purposes, and also
11 converted Plaintiff's loan proceeds.

12 18. Plaintiffs are informed and believe, and thereon allege, that Defendant committed
13 actual fraud against Plaintiff.

14 19. Plaintiffs are informed and believe, and thereon allege, that Defendant committed
15 larceny by illegally taking the rental income generated from the Property, for Defendant's
16 personal use, in violation of the express terms of the Note and Deed. This rental income was not
17 paid to Defendant as required by the Deed of Trust.

18 20. At the Debtor and Defendant's 341(a) on September 16, 2009, Defendant
19 admitted that loan proceeds were used to invest in the stock market.

20 21. Defendant went over budget, with the remodel and refurbishing the Property, in
21 violation of the representations made by Defendant to Plaintiffs.

22 22. Plaintiffs are informed and believe, and thereon allege, that Defendant violated the
23 terms of the Note and Deed by collecting rents and not paying Plaintiff.

24 23. Plaintiffs are informed and believe, and thereon allege, that Defendant violated the
25 terms of the Note and Deed by collecting rents and converting them for his own personal use.

26 24. The Deed of Trust is in second position behind a Deed of Trust with Washington
27 Mutual Bank ("WAMU") for just under \$4,300,000.00.

28

1 25. Subsequent to the loan with Plaintiff, Defendant defaulted under the Washington
2 Mutual loan. This default occurred despite the fact that Defendant was collecting rental income
3 from the Property. WAMU recorded a Notice of Default in May, 2009, and thereafter recorded a
4 Notice of Trustee's Sale, with a sale set for August 19, 2009.

5 26. As a result of Defendant's default to WAMU, Plaintiffs declared a default under
6 the Note and Deed of Trust. Plaintiffs thereafter initiated foreclosure, however this Chapter 11
7 Petition was filed in the eve of Plaintiff's foreclosure sale.

8 27. When Defendant made these representations to Plaintiffs, Defendant knew them
9 to be false and made these representations with the intent to deceive and defraud Plaintiffs, and
10 to induce Plaintiffs to act in reliance on these representations in the manner herein alleged, or
11 with the expectation that the Plaintiffs would so act, with the intent that Defendant would obtain
12 money from Plaintiffs to use for Defendant's own purposes rather than for the stated intended
13 purposes.

14 28. Plaintiffs, at the time these representations were made by Defendant and at the
15 time Plaintiffs invested with Defendant, were unaware of the falsity of Defendant's
16 representations and believed them to be true. In reliance on these representations, Plaintiffs were
17 induced to and did make the loan to Defendant. Had Plaintiffs known the actual facts, they
18 would not have made the loan to Defendant. Plaintiffs' reliance on Defendant's representations
19 were justified because Defendant obtained Plaintiffs' confidence through Defendant's false
20 representations. Plaintiffs had no reason not to rely upon the representations of Defendant.

21 29. As a proximate result of Defendant's fraudulent, Plaintiffs were induced to invest
22 with Defendant, and as a result of Defendant's fraudulent actions, his willful and malicious
23 actions, and his conversion, Plaintiffs have been damaged according to proof at trial.

24 30. Defendant's conduct rises to the level of intentional misrepresentations, deceit,
25 and concealment of material facts known to Defendant with the intention by Defendant of
26 depriving Plaintiffs of property or legal rights or otherwise causing injury, so as to justify an
27 award of exemplary and punitive damages.

28 31. Defendant has accounts receivables not disclosed in Schedule "B".

1 32. Defendant has security deposits not disclosed in Schedule "B".

2 33. Defendant has an interest in at least two Limited Liability Companies not
3 disclosed in Schedule "B".

4 34. Plaintiffs are informed and believe, and thereon allege, that Defendant had
5 significantly more money in bank accounts on the date of the petition than.

6 35. Plaintiffs are informed and believe, and thereon allege, that Defendant has
7 additional gambling debts not disclosed in Schedule "F".

8 **III.**

9 **FIRST CAUSE OF ACTION**

10 **(11 U.S.C. SECTION 523(a)(2)**

11 36. Plaintiffs reallege and incorporate by reference Paragraphs 1 - 35 above as if set
12 forth herein.

13 37. Defendant intentionally misrepresented to Plaintiffs that he would retain the loan
14 proceeds to season them. Defendant did not disclose his true intention; to invest Plaintiffs'
15 money to generate a profit for Defendant, all at Plaintiffs' risk.

16 38. Defendant made these misrepresentations knowing they were false. Defendant
17 made these representations with the intent to deceive and defraud Plaintiffs. Plaintiffs reasonably
18 and justifiably relied upon these representations, and as a result of these intentionally false and
19 fraudulent representations, Plaintiffs have been damaged according to proof at trial.

20 39. 11 U.S.C. Section 523(a)(2)(A) provides that money, property or services
21 obtained by fraud or false pretenses is not dischargeable. Defendant obtained money and
22 property of Plaintiffs through fraud and false pretenses.

23 40. Based upon the above, the debt owed to Plaintiffs by Defendant should not be
24 discharged.

25 **IV.**

26 **SECOND CAUSE OF ACTION**

27 **(11 U.S.C. SECTION 523(a)(4)**

28 41. Plaintiffs reallege and incorporate by reference Paragraphs 1 - 40 above as if set

1 forth herein.

2 42. Pursuant to 11 U.S.C. Section 523(a)(4), the Court shall not discharge a debt “for
3 fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.”

4 43. Plaintiffs are informed and believe, and thereon allege, that Defendant is liable to
5 Plaintiffs for larceny and conversion of Plaintiffs’ money. Defendant obtained Plaintiffs’ money
6 and illegally converted the loan proceeds for Defendant’s own personal use.

7 44. Without Plaintiffs’ knowledge or consent, Defendant converted Plaintiff’s loan
8 proceeds and invested the loan proceeds in the stock market. As a result, Defendant committed
9 larceny of Plaintiffs’ loan proceeds.

10 45. At the Debtor and Defendant’s 341(a) on September 16, 2009, Defendant
11 admitted he used the loan proceeds to invest in the stock market. Defendant also stated he did
12 not remember if he gained or lost money in this stock market investment.

13 46. Plaintiffs are informed and believe, and thereon allege, that Defendant blatantly
14 lied at the 341(a) while under oath, as Defendant clearly knew if he gained or lost money in the
15 stock market while illegally investing with Plaintiffs’ loan proceeds.

16 47. Based upon the above, the debt owed to Plaintiffs by Defendant should not be
17 discharged.

18 V.

19 **THIRD CAUSE OF ACTION**

20 **(11 U.S.C. SECTION 523(a)(6))**

21 48. Plaintiffs reallege and incorporate by reference Paragraphs 1 - 47 above as if set
22 forth herein.

23 49. Pursuant to 11 U.S.C. Section 523(a)(6), the Court shall not discharge a debt “for
24 willful and malicious injury by the debtor to another entity, or to the property of another entity.”

25 50. Based upon the actions of Defendant as set forth above, Defendant committed
26 willful and malicious injury to Plaintiffs.

27 51. Defendant acted with malice and oppression against Plaintiffs in committing the
28 acts set forth above, in stealing Plaintiffs’ loan proceeds, and illegally investing in the stock

1 market in violation of every representation made by Defendant to Plaintiffs.

2 52. Defendant intended to commit those acts, and intended to willfully and
3 maliciously harm Plaintiffs with his multiple, intentional misrepresentations regarding investing
4 Plaintiffs' money.

5 53. Defendant in fact did willfully and maliciously harm and injure Plaintiffs. Based
6 upon the above, the debt owed to Plaintiffs by Defendant should not be discharged.

7 VI.

8 **FOURTH CAUSE OF ACTION**

9 **(11 U.S.C. SECTION 727(a)(2)(A))**

10 54. Plaintiffs reallege and incorporate by reference Paragraphs 1 - 53 above as if set
11 forth herein.

12 55. Section 727(a)(2)(a) states "The court shall grant the debtor a discharge, unless—
13 (1) the debtor is not an individual; (2) the debtor, with intent to hinder, delay, or defraud a
14 creditor or an officer of the estate charged with custody of property under this title, has
15 transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred,
16 removed, destroyed, mutilated, or concealed— (A) property of the debtor, within one year before
17 the date of the filing of the petition"

18 56. Plaintiffs are informed and believe, and thereon allege, that Defendant, with the
19 intent to hinder, delay and or defraud Plaintiffs, transferred, removed and or concealed property,
20 the loan proceeds and rental income, within one year of the filing of the instant Petition, and
21 further concealed this transfer or transfers from Plaintiffs, other creditors and the Trustee.

22 57. This transfer and or transfers, of the loan proceeds and rental income by
23 Defendants was not disclosed in the Schedules or Statement of Financial Affairs.

24 58. Based upon the above, Defendant's discharge should be denied.

25 VII.

26 **FIFTH CAUSE OF ACTION**

27 **(11 U.S.C. SECTION 727(a)(4)(A))**

28 59. Plaintiffs reallege and incorporate by reference Paragraphs 1 - 58 above as if set

1 forth herein.

2 60. 11 U.S.C. Section 727(a)(4)(A) provides that: "The court shall grant the debtor a
3 discharge, unless— (4) the debtor knowingly and fraudulently, in or in connection with the case-
4 (A) made a false oath or account".

5 61. Plaintiffs are informed and believe, and thereon allege, that Defendant knowingly
6 and fraudulently made multiple false oaths in his Schedules and Statement of Financial Affairs as
7 set forth above.

8 62. Based upon the above, Defendant's discharge should be denied.

9 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

10 1. That the debt owed by Defendant to Plaintiff not be discharged pursuant to
11 Section 523(a)(2).

12 2. That the debt owed by Defendant to Plaintiff not be discharged pursuant to
13 Section 523(a)(4).

14 3. That the debt owed by Defendant to Plaintiff not be discharged pursuant to
15 Section 523(a)(6).

16 4. That Defendant's discharge be denied pursuant to Section 727(a)(2)(A);

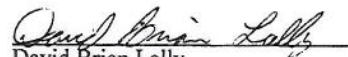
17 5. That Defendant's discharge be denied pursuant to Section 727(a)(4)(a);

18 6. For attorneys' fees and costs; and

19 7. For such other relief as the Court deems just and proper.

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21 Date: September 17, 2009

LAW OFFICE OF DAVID BRIAN LALLY

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24 David Brian Lally
25 Attorney for Plaintiffs

26 c:\Kumar.Complaint

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