

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE:

JORGE DROZ YAPUR

DEBTOR

NOREEN WISCOVITCH RENTAS, ESQ.
CHAPTER 7 TRUSTEE

PLAINTIFF

VS.

JORGE DROZ YAPUR; BRENDA
BERMUDEZ PLAZA; WILFREDO MATOS
RIVERA; E.F. ASSOCIATES REAL
ESTATE PSC; BIAGGI & BIAGGI, P.S.C.;
ALEXANDRA M. SERRACANTE
CADILLA; THE TITLE SECURITY
GROUP, LLC; PR DEPARTMENT OF
TREASURY; ENCANTADA
HOMEOWNER'S ASSOCIATION;
ORIENTAL BANK

DEFENDANTS

CASE NO. 19-02999 MCF

CHAPTER 7

ADVERSARY PROC. NO. _____

AVOIDANCE OF POST PETITION
TRANSACTION 11 U.S.C. §549;
TURNOVER OF PROPERTY OF THE
ESTATE; OBJECTION TO ENTRY OF
DISCHARGE INJUNCTION 11 U.S.C. §727

COMPLAINT

TO THE HONORABLE COURT:

COMES NOW, CHAPTER 7 TRUSTEE, Noreen Wiscovitch Rentas, Esq.,
represented by the undersigned counsel and before this Court most respectfully states and
prays:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction to entertain the instant matter, which arises under the

Bankruptcy Code and concerns property of the bankruptcy estate, pursuant to 28 U.S.C. §157(b)(2)(A) & (E) and 28 U.S.C. §1334.

2. The instant complaint is a core proceeding, within the Bankruptcy Court's core jurisdiction pursuant to 28 U.S.C. §157 (b)(2) (A), (E), (F) and (O), and 11 U.S.C. §324 and 549.

3. Venue is proper in this Court pursuant to 28 U.S.C. §§1408 and 1409(a).

4. This adversary proceeding relates to avoidable transfers of bankruptcy estate assets made by Debtor, with the assistance of Co-Defendants, while the he was a Chapter 7 debtor under case number 19-02999.

II. PARTIES

5. Plaintiff, NOREEN WISCOVITCH RENTAS, is the Chapter 7 Trustee, (from hereinafter referred to as "Trustee"), duly appointed for the administration of the instant case as per Appointment Notice of Trustee entered, upon the conversion of the case from a Chapter 13 to a Chapter 7, on October 3, 2019. See main case docket no. 26.

6. Defendant, JORGE DROZ YAPUR, (from hereinafter referred to as "Debtor"), is of legal age, married to Brenda Bermudez Plaza, owner and resident of Trujillo Alto, Puerto Rico.

7. Defendant, BRENDA BERMUDEZ PLAZA, (from hereinafter referred to as "Spouse"), is of legal age, married to Jorge Droz Yapur, owner and resident of Trujillo Alto, Puerto Rico

8. Defendant, WILFREDO MATOS RIVERA, (from hereinafter referred to as "Buyer"), is of legal age, married to Amanda Leigh Borrero Kirmeier, owner and resident of Trujillo Alto, Puerto Rico.

9. Defendant, E.F. & ASSOCIATES REAL ESTATE PSC, (from hereinafter referred

to as “EF & Associates”), is a professional services corporation, duly organized and existing under the laws of the Commonwealth of Puerto Rico with principal offices at Aguas Buenas Ave. No. 1629, Bayamon, Puerto Rico and postal address at Ave. Aguas Buenas, No. 1629, Bayamon, PR 00959. The resident agent and president of the corporation is Edwin Francisco Rivera Marrero. Among the corporate activities of EF & Associates is providing real estate broker services to third parties thru its president, real estate broker, Edwin Francisco Rivera Marrero, and other brokers employed by the corporation.

10. Defendant, BIAGGI & BIAGGI P.S.C., (from hereinafter referred to as “Biaggi”), is a professional services corporation, duly organized and existing under the laws of the Commonwealth of Puerto Rico, with principal office at Mendez Vigo St. No. 2 Oeste, Suite 1-D, Mayaguez, Puerto Rico and postal address at PO Box 1356, Mayaguez, PR 00681. The resident agent and president of the corporation is attorney Jose M. Biaggi Junquera with street address at Nelson Ramirez No. 280, Ensanche Ramirez, Mayaguez, PR 00680. Among the corporate activities of Biaggi is providing legal and notarial services to third parties thru attorneys and notaries employed by the corporation.

11. Defendant, ALEXANDRA M. SERRACANTE CADILLA, (from hereinafter referred to as “Serracante Cadilla”) is an attorney and notary public, residing and working in Guaynabo, Puerto Rico. Upon information and belief Defendant, Serracante Cadilla, is an employee of and provides her legal and notarial services thru the professional services corporation, Biaggi & Biaggi, PSC.

12. Defendant, THE TITLE SECURITY GROUP, LLC, (from hereinafter referred to as “Title Security”) is a limited liability corporation duly organized and existing under the laws of

the Commonwealth of Puerto Rico with principal offices and postal address at Resolución St. No. 33 Suite 302, San Juan, Puerto Rico 00920-2727. The resident agent and president of the corporation is Jose C. Chipi Millares.

13. Defendant, PUERTO RICO DEPARTMENT OF TREASURY, (from hereinafter referred to as “Hacienda”) is an agency, department and/or instrumentality of the Commonwealth of Puerto Rico. Hacienda filed an unsecured claim number 25 in main case no. 19-02999 for the total amount of \$9,397.27 of which \$8,651.27 is claimed as a priority.

14. Defendant, ENCANTADA HOMEOWNER’S ASSOCIATION INC., (from hereinafter referred to as “Encantada”) is a corporation duly organized and existing under the laws of the Commonwealth of Puerto Rico with principal and postal address at Via Encantada Final, Edif. Sport Center, Trujillo Alto, Puerto Rico 00977. The resident agent and president of the corporation is Edison O. Matos Ojeda with postal address at PO Box 815, Trujillo Alto, PR 00977.

15. Defendant, ORIENTAL BANK, (from hereinafter referred to as “Oriental”), is a corporation duly organized and existing under the laws of the Commonwealth of Puerto Rico with principal offices at 254 Muñoz Rivera Ave., San Juan, Puerto Rico 00918 and postal offices at PO Box 195115 San Juan, PR 00919-5115 whose President is Mr. José R. Fernández. Oriental filed a secured claim number 6 in main case number 19-02999 for the total amount of \$247,251.09 filed on September 5, 2019 thru its servicing agent, Banco Popular de Puerto Rico.

III. FACTS

16. Defendant, Jorge Droz Yapur, is a Chapter 7 Debtor who filed a voluntary Chapter 13 petition for relief on May 29, 2019 under case number 19-02999 MCF. Case was converted to a Chapter 7 on October 3, 2019. See main case docket nos.1 and 26.

17. Trustee was appointed for the administration of the bankruptcy estate on October 3, 2019. See main case docket no. 26.

18. Time to object debtor's discharge was extended until April 7, 2020. See main case docket no. 62.

19. As of the time of Debtor's filing for relief, defendants, Debtor and Brenda Bermudez Plaza, were of legal age, married and residents at BH-24, Plaza 16, Urb. Bosque del Lago, Trujillo Alto, Puerto Rico 00976.

20. On July 1, 2019 Debtor filed amended Schedule A/B, signed under penalty of perjury, and listed real property at Urb. Bosque del Lago, Trujillo Alto, Puerto Rico with a value of \$255,000.00. See main case docket no. 15.

21. As of the time of the conversion to Chapter 7, Debtor and Brenda Bermudez Plaza were registered owners of real property at BH-24, Plaza 16, Urb. Bosque del Lago, Trujillo Alto, Puerto Rico 00976 (from here on referred to as the "real property"). The real property is described at the Property Registry in the Spanish language, as follows:

"RUSTICA: Parcela de terreno identificada como solar BH del Bloque veinticuatro (24) de la Urbanización Bosque del Lago, radicada en el Barrio Dos Bocas del término municipal de Trujillo Alto, Puerto Rico, con una cabida de 367.21 metros cuadrados y en lindes por el Norte en 21.97 metros con el solar número 25; por el Sur en 23.00 metros con el solar número 23; por el Este en 16.00 metros, con el solar número 19; y por el Oeste en una distancia en arco de 2.75 metros y 13.53 metros con Court número 16. En dicho solar enclava una casa de concreto diseñada para una familia.

Finca número 24,828 inscrita al folio 111 del tomo 462 de Trujillo Alto, Registro de la Propiedad de Puerto Rico, Sección IV de San Juan.”

22. As of the time of the filing for relief and the conversion to Chapter 7, the real property was encumbered in favor of Oriental with a first mortgage lien as per proof of claim number 6 in the amount of \$247,251.09. See main case 19-02999 claims register proof of claim number 6.

23. The real property is part of the bankruptcy estate subject to the administration of Trustee pursuant to 11 U.S.C. §541(a)(2).

24. On October 29, 2019 the Debtor filed a “Motion Requesting Entry of Order for Authorization to Ratify the Sale of Debtor’s Real Property”. In Debtor’s motion Trustee first learned that the real property was sold by Debtor and his Spouse, in favor of Buyer, Wilfredo Matos Rivera, thru deed of sale number four hundred and fifty-three (453) signed on October 15, 2019 authorized by notary public, Alexandra M. Serracante Cadilla for the amount of \$269,000.00. See main case docket no. 34.

25. As a product of the sale of the real property the following Co-Defendants, creditors and professionals received unauthorized post-petition payment and compensation from the sale of property of the bankruptcy estate:

a) Payment to secured creditor, Oriental Bank:	\$247,386.48
b) Payment to real estate broker, EF & Associates Real Estate:	\$8,407.80
c) Payment to Encantada Homeowner’s Association Inc.:	\$3,000.00
d) Payment to PR Department of Treasury:	\$6,783.05
e) Payment to the Title Security Group LLC:	\$500.00
f) Payment to Biaggi & Biaggi PSC:	\$5,520.31

26. The sale of the real property was not authorized by the Bankruptcy Code nor by Plaintiff, Chapter 7 Trustee, who is the exclusive representative of the bankruptcy estate. Trustee was not a party to the sale of the real property nor was judicial consent sought prior to the sale of the real property, pursuant to 11 U.S.C. §363.

27. The payments to creditors, Oriental Bank, Hacienda and Encantada, from funds of sale of the real property were not authorized by the Bankruptcy Court.

28. The sale of the real property was fraudulently completed by Debtor, Spouse and Buyer with the assistance of professionals, EF & Associates, Title Security, Biaggi and Serracante Cadilla.

29. Co-Defendants, EF & Associates, Title Security, Biaggi and Serracante Cadilla, are not authorized professionals pursuant to the provisions of the Bankruptcy Code to provide services to the bankruptcy estate or receive compensation from the sale of real property. The payment to professionals, EF & Associates, Title Security, Biaggi and Serracante Cadilla, from funds of sale of the real property were not authorized by the Bankruptcy Court. Thus, these professionals and professional corporations are not entitled to compensation from proceeds of the sale of the real property.

30. Notary public, Alexandra M. Serracante Cadilla, authorized deed of sale number 453 and did not disclose the existence of a Chapter 7 proceeding and a Chapter 7 Trustee, the existence of an order authorizing the sale of the real property nor did she provide any legal warning as to the nullity of a deed of sale not authorized by the Chapter 7 Trustee or the Bankruptcy Court.

31. The sale of the real property by Debtor and Spouse in favor of Buyer, Wilfredo Matos Plaza, constitutes an avoidable post-petition transaction pursuant to section 549 of the

Bankruptcy Code.

32. The payment to professionals and professional corporations, EF & Associates, Title Security, Biaggi and Serracante Cadilla, constitute avoidable transfers of property of the estate pursuant to 11 U.S.C. §549. All of these professionals and professional corporations failed to comply with the provisions of 11 U.S.C. §327, 328, Federal Rule of Bankruptcy Procedure 2016 and Local Bankruptcy Rules, prior to receiving payment and compensation.

33. Secured creditor Oriental Bank and general unsecured creditor Puerto Rico Department of Treasury had knowledge of the bankruptcy proceedings initiated by the Debtor as they had appeared before the Bankruptcy Court and filed proofs of claim. These creditors received disbursements from proceeds of a post-petition unauthorized transaction of real property belonging to the bankruptcy estate.

34. The sale of the real property is null and void pursuant to the provisions of the Civil Code of Puerto Rico and the Notarial Law of Puerto Rico as Debtor and Spouse had no authority to transfer real property in favor of Buyer, Wilfredo Matos Rivera.

35. Debtor had knowledge of the bankruptcy proceedings and of the administration of Plaintiff-Trustee in this case and transferred real property hindering Trustee's administration of the estate and distribution to creditors.

36. Pursuant to 11 U.S.C. §521(a)(3) and (a)(4) Debtor has the duty to cooperate with the trustee and to surrender to trustee all property of the estate, including real property object of this complaint.

37. The Debtor failed to deliver or surrender real property of the bankruptcy estate to

the Trustee and fraudulently transferred it without authorization of the Court or of Trustee. Thus, hindering the interests of the bankruptcy estate.

38. Sale of real property and unauthorized payments to creditors and unauthorized professionals, constitute avoidable transfers made by the Debtor-Defendant with the intent to defraud, hinder and hinder Trustee's administration of the bankruptcy estate.

IV. FIRST CAUSE OF ACTION

AVOIDANCE OF POST-PETITION TRANSFER OF REAL PROPERTY

39. Plaintiff-Trustee hereby affirmatively states and re-alleges allegations made in this complaint from paragraph 5 to paragraph 38.

40. The real property and the proceeds of its sale are part of the bankruptcy estate under the administration of the Chapter 7 Trustee pursuant to 11 U.S.C. §541(a)(2) and (6).

41. At the time of the authorization of deed of sale number 453 signed on October 15, 2019 the real property and its proceeds were part of the bankruptcy estate and had not been subject to an abandonment by the Chapter 7 Trustee.

42. This Court did not issue an order authorizing the sale of real property or payment of its proceeds to creditors or professionals.

43. Section 549 of the Bankruptcy Code, 11 U.S.C. §549 grants the trustee the power to avoid post-petition transfers of estate property which are not authorized under the Code or by the Court.

44. The sale of the real property and the distribution of the funds to creditors, Oriental Bank, PR Department of Treasury and Encantada Homeowner's Associations Inc., and

unauthorized professionals, EF & Associates, Title Security, Biaggi and Serracante Cadilla, constitute avoidable transfers under section 549 of the Bankruptcy Code.

45. The sale of the real property in favor of Buyer and the distribution of its proceeds to creditors and professionals constitute post-petition avoidable transactions over property of the bankruptcy estate without Court approval and subject to trustee's strong arm statutes and to avoidance pursuant to section 549 of the Bankruptcy Code.

46. Trustee prays for judgment declaring real property and its proceeds part of the bankruptcy estate pursuant to 11 U.S.C. §541 and directing Debtor, Spouse and Buyer to turnover real property to Chapter 7 Trustee.

47. Trustee further prays that this Court enter judgment avoiding the post-petition sale of the real property in favor of Buyer and the avoidance of the unauthorized payments to professionals, EF & Associates Real Estate PSC, Title Security, Biaggi & Biaggi PSC and Alexandra M. Serracante Cadilla. Therefore, Trustee prays for judgment directing the following Co-Defendants to immediately surrender the following amounts to Trustee:

- a) Oriental Bank turnover to Trustee \$247,386.48;
- b) EF & Associates Real Estate turnover to Trustee \$8,407.80;
- c) Encantada Homeowner's Association Inc. turnover to Trustee \$3,000.00;
- d) PR Department of Treasury turnover to Trustee \$6,783.05;
- e) Title Security Group LLC turnover to Trustee \$500.00;
- f) Biaggi & Biaggi PSC turnover to Trustee \$5,520.31.

48. Trustee also prays that this Court enter judgment declaring deed of sale Number 543 executed on October 15, 2019, before notary public, Alexandra M. Serracante Cadilla, void and null; and issue order directing the Registry of Property for the IV of San Juan to cancel any

inscription in favor of Buyer, Wilfredo Matos Rivera, the inscription of any mortgage lien presented after October 15, 2019 and reinstate the inscription of the property as prior to October 15, 2019.

V. SECOND CAUSE OF ACTION

OBJECTION TO DEBTOR'S DISCHARGE PURSUANT TO 11 U.S.C. §727(a)(2), (a)(3) AND (a)(4)

49. Plaintiff-Trustee hereby affirmatively states and re-alleges allegations made in this complaint from paragraph 5 to paragraph 48.

50. Defendant's, Jorge Droz Yapur, actions as described in paragraphs 5 thru 48 of this complaint constitute fraudulent conduct on behalf of the Debtor with the intent to hinder, delay and obstruct Trustee's administration of estate assets and avoid Trustee's administration and liquidation of the Real Property and distribution to creditors.

51. Defendant, Jorge Droz Yapur, unlawfully and fraudulently transferred the real property of the bankruptcy estate and unlawfully distributed the funds of the sale, while he was represented by an attorney, in his bankruptcy proceedings, and despite having knowledge of the bankruptcy proceedings, the conversion of the case to a Chapter 7 and Trustee's administration of estate assets.

52. Debtor knowingly and fraudulently gave, offered and transferred real property of the bankruptcy estate in favor of Buyer, Wilfredo Matos Rivera, which transfer hindered the bankruptcy estate and Trustee's administration of estate assets.

53. Debtor had no authority to transfer real property of the bankruptcy estate in favor of Buyer and failed to surrender real property of the bankruptcy estate to the Trustee.

54. Debtor's actions as described in paragraphs 5 thru 52 of this complaint constitute fraudulent conduct on behalf of the Debtor with the intent to hinder, obstruct and delay Trustee's administration of estate assets.

55. In view of Debtor's – Defendant's actions as alleged herein, Trustee requests that this Court enter judgment denying discharge injunction in favor of Debtor.

WHEREFORE, Plaintiff-Trustee respectfully requests that this Honorable Court grant judgment in her favor in the following manner:

- a) Enter judgment pursuant to 11 U.S.C. §727(a) denying discharge injunction to Debtor, Jorge Droz Yapur;
- b) Enter judgment for the avoidance of the transfer of real property in favor of Buyer, Wilfredo Matos Rivera;
- c) Enter judgment declaring deed of sale Number 543 executed on October 15, 2019, before notary public, Alexandra M. Serracante Cadilla, void and null; and issue order directing the Registry of Property for the IV of San Juan to cancel any inscription in favor of Buyer, Wilfredo Matos Rivera, the inscription of any mortgage lien presented after the said date and reinstate the inscription of the property as prior to October 15, 2019;
- d) Enter judgment against the following Co-Defendants directing them to immediately turnover to Trustee the following amounts:
 - Oriental Bank to pay Trustee the amount of \$247,386.48;
 - EF & Associates Real Estate PSC to pay Trustee the amount of \$8,407.80;
 - Encantada Homeowner's Association Inc. to pay Trustee the amount of

\$3,000.00;

- Puerto Rico Department of Treasury to pay Trustee the amount of \$6,783.05;
- Title Security Group LLC to pay Trustee the amount of \$500.00;
- Biaggi & Biaggi PSC to pay Trustee the amount of \$5,520.31;

together with interest accrued at a rate of 5.25% since October 15, 2019 until full payment of amount to Trustee, plus Plaintiff's costs, expenses and attorney's fees in the amount of \$1,000.00 per Co-Defendant.

- e) Enter judgment against Jorge Droz Yapur, Brenda Bermudez Plaza and Wilfredo Matos Rivera to immediately turnover real property to Trustee;
- f) Award any further relief as this Court may deem just and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico on March 10, 2020.

LANDRAU RIVERA & ASSOC.

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