

SILVERMAN ACAMPORA LLP

Attorneys for Kenneth P. Silverman, Esq.,
The Chapter 7 Trustee
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300
Justin S. Krell, Esq.
Anthony C. Acampora, Esq.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 7

LIBERTY BRIDGE CAPITAL MANAGEMENT
GP, LLC, *et al.*,

Case No. 20-10009 (SCC)

(Jointly Administered)

Debtors.

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KENNETH P. SILVERMAN, chapter 7 Trustee
of LIBERTY BRIDGE CAPITAL MANAGEMENT,
GP, LLC, *et al.*

Adv. Pro. No.: 20-_____ (SCC)

Plaintiff,

-against-

JAESON BIRNBAUM,

Defendant.

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TRUSTEE'S COMPLAINT

Kenneth P. Silverman, Esq., the chapter 7 trustee (the “**Trustee**”) for the jointly administered bankruptcy estates of Liberty Bridge Capital Management GP, LLC, *et al.* (collectively, the “**Debtors**”)¹, by his attorneys, SilvermanAcampora LLP, for his complaint against Defendant Jaeson Birnbaum (“**Defendant**”), alleges as follows:

¹ The Debtors in these cases, along with the last four digits of their federal tax identification numbers are (i) Liberty Bridge Capital Management GP, LLC (9236) (Case No. 20-10009); (ii) Cash4Cases, Inc. (8244)(Case No. 20-10010); (iii) Liberty Bridge Capital Management IM, LLC (2955)(Case No. 20-10011); (iv) Liberty Bridge Settlement Clearing, LLC (8144)(Case No. 20-10012); (v) Liberty Bridge Finco LLC (5215)(Case No. 20-10013); (vi) Liberty Bridge Capital Management, L.P. (6434)(Case No. 20-10014); (vii) Diversified Pre-Settlement Portfolio I, a Series of Liberty Bridge Capital Management, L.P. (1925)(Case No. 20-10015); and (viii) Diversified Pre-Settlement Portfolio II, a Series of Liberty Bridge Capital Management, L.P. (1660)(Case No. 20-10016).

Nature of Adversary Proceeding

1. This complaint is brought pursuant to §§105, 544, 548, 550 and 551 of title 11 of the United States Code (the “**Bankruptcy Code**”), New York Debtor & Creditor Law §§273, 274, 275, and 276, and New York common law to set aside and recover the estate’s interest in certain transfers made by the Debtors to or for the benefit of Defendant.

Jurisdiction and Venue

2. This Court has jurisdiction over this adversary proceeding under 28 U.S.C. §§157(a), 157(b) and the “Standing Order of Referral of cases to Bankruptcy Judges of the United States District Court for the Southern District of New York.”

3. This is a core proceeding pursuant to 28 U.S.C. §§157(b)(2)(A), (E), (H) and (O), and with respect to any claims that may hereafter be determined to be non-core, the Trustee consents to the entry of final orders and judgments by the Bankruptcy Court.

4. Venue is proper in this Court pursuant to 28 U.S.C. §1409.

Parties and Procedural Background

5. On January 3, 2020, (the “**Filing Date**”) the Debtors filed voluntary petitions in accordance with chapter 7 of the Bankruptcy Code in this Court.

6. On January 3, 2020, Kenneth P. Silverman, Esq., was appointed the interim chapter 7 trustee of the Debtors’ estates.

7. On January 10, 2020, the Court approved the joint administration of the Debtors’ cases, captioning the jointly administered cases as referenced above.

8. On February 4, 2020, the initial section 341 First Meeting of Creditors was held and the Trustee duly qualified and has become the permanent Trustee.

9. At all relevant times mentioned herein, plaintiff Kenneth P. Silverman was and is the chapter 7 trustee of the Debtors' estates, and maintains an office at c/o SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York.

10. Upon information and belief, Defendant is an individual and as of the Filing Date resided at 9 Cameron Road Saddle River, NJ 07458.

11. Upon information and belief, Defendant was or is the president and sole shareholder of all of the Debtors and/or any and all subsidiaries of the Debtors.

12. Accordingly, Defendant was and is an insider of the Debtors under Bankruptcy Code §101(31).

Allegations Common to All Claims for Relief

13. On or about January 28, 2019, Defendant acquired 137 Shares of 61 Lexington Owners Corporation, which shares are appurtenant and allocated to Apartment 6F in the building known as 61 Lexington Avenue, New York, New York (the "**Apartment**").

14. The purchase price for the Apartment was Eight Hundred and Thirty Thousand (\$830,000.) Dollars (the "**Purchase Price**")

15. Defendant was represented by the law firm of Chaves Perlowitz Luftig LLP (the "**Chaves Firm**") with regard to the purchase of the Apartment.

16. On or about October 29, 2018, the Debtors, at the direction of Defendant, made or caused to be made a wire transfer to the Chaves Firm in the amount of Eighty Three Thousand (\$83,000) Dollars (the "**October Transfer**").

17. On or about January 24, 2019, the Debtors, at the direction of Defendant, made or caused to be made a transfer to the Chaves Firm in the amount of Seven Hundred and Fifty Seven Thousand (\$757,000) Dollars (the "**January Transfer**" and, together with the October Transfer ,the

“Fraudulent Transfers”).

18. Upon information and belief, Defendant used the Fraudulent Transfers to purchase the Apartment.

19. The Debtors did not receive fair consideration or reasonably equivalent value for the Fraudulent Transfers.

20. At the time of the Fraudulent Transfers the Debtors were insolvent, or were rendered insolvent thereby, because the Debtors could not pay their debts as they came due and their liabilities exceeded their assets.

21. Upon a review of the Debtors’ books and records, Prism Alt Income Fund, Inc. (“**Prism**”) had a claim against the Debtors for money by the Debtors to Prism as of October, 2018. The debt to Prism was still outstanding on the date of the Fraudulent Transfers, was unpaid on the Filing Date, and remains unpaid.

First Claim for Relief
(incorporating all previous allegations)

22. The Fraudulent Transfers were transfers of the Debtors’ interest in property.

23. The Debtors did not receive fair consideration for the Fraudulent Transfers.

24. At the time of the Fraudulent Transfers, there existed unsecured creditors of the Debtors who remained creditors as of the Filing Date.

25. The Debtors were either insolvent when the Fraudulent Transfers were made or were rendered insolvent as a result of the Fraudulent Transfers.

26. The Fraudulent Transfers constitute fraudulent conveyances in violation of New York Debtor & Creditor Law §273.

27. By reason of the foregoing, under Bankruptcy Code § 544(b), the Trustee is entitled to a judgment avoiding the Fraudulent Transfers pursuant to New York Debtor & Creditor Law §273 in an

amount to be determined at trial but in no event less than \$840,000, together with appropriate interest thereon.

Second Claim for Relief
(incorporating all previous allegations)

28. At the time of the Fraudulent Transfers, the Debtors were engaged or about to engage in a business or transactions for which the property remaining in their possession after the conveyances constituted unreasonably small capital.

29. The Fraudulent Transfers constitute fraudulent conveyances in violation of New York Debtor & Creditor Law §274.

30. By reason of the foregoing, under Bankruptcy Code §544(b), the Trustee is entitled to a judgment avoiding the Fraudulent Transfers pursuant to New York Debtor & Creditor Law §274 in an amount to be determined at trial but in no event less than \$840,000, together with appropriate interest thereon.

Third Claim for Relief
(incorporating all previous allegations)

31. At the time of the Fraudulent Transfers, the Debtors had incurred, were intending to incur, or believed that they would incur debts beyond the Debtors' ability to pay them as they matured.

32. The Fraudulent Transfers constitute fraudulent conveyances in violation of New York Debtor & Creditor Law §275.

33. By reason of the foregoing, under Bankruptcy Code §544(b), the Trustee is entitled to a judgment avoiding the Fraudulent Transfers pursuant to New York Debtor & Creditor Law §275 in an amount to be determined at trial but in no event less than \$840,000, together with appropriate interest thereon.

Fourth Claim for Relief
(incorporating all previous allegations)

34. The Fraudulent Transfers were made with the actual intent to hinder, delay or defraud the Debtors' creditors.

35. The Fraudulent Transfers constitute fraudulent conveyances in violation of New York Debtor & Creditor Law §276.

36. By reason of the foregoing, under Bankruptcy Code §544(b), the Trustee (a) is entitled to a judgment avoiding the Fraudulent Transfers pursuant to New York Debtor & Creditor Law §276 in an amount to be determined at trial but in no event less than \$840,000 together with appropriate interest thereon and reasonable attorneys' fees under New York Debtor & Creditor Law §276-a.

Fifth Claim for Relief
(incorporating all previous allegations)

37. The Fraudulent Transfers were made within two (2) years of the Filing Date.

38. The Fraudulent Transfers were made with actual intent to hinder, delay or defraud the Debtors' creditors under Bankruptcy Code §548(a)(1)(A).

39. The Fraudulent Transfers constitute avoidable transfers pursuant to Bankruptcy Code §548(a)(1)(A).

40. Based upon the foregoing, the Trustee is entitled to a judgment avoiding the Fraudulent Transfers in an amount to be determined at trial but in no event less than \$840,000 together with appropriate interest thereon.

Sixth Claim for Relief
(incorporating all previous allegations)

41. The Debtors received less than reasonably equivalent value in exchange for the Fraudulent Transfers under Bankruptcy Code §548(a)(1)(B).

42. The Debtors (i) were insolvent on the date that the Fraudulent Transfers were made or

became insolvent as a result of the Fraudulent Transfers, (ii) were engaged in business or a transaction or were about to engage in business or a transaction, for which any property remaining with the Debtors was unreasonably small capital, or (iii) intended to incur, or believed that they would incur, debts that would be beyond the Debtors' ability to pay as they matured.

43. The Fraudulent Transfers constitute avoidable transfers pursuant to Bankruptcy Code §548(a)(1)(B).

44. Based upon the foregoing, the Trustee is entitled to a judgment avoiding the Fraudulent Transfers in an amount to be determined at trial but in no event less than \$840,000 together with appropriate interest thereon.

Seventh Claim for Relief
(incorporating all previous allegations)

45. Defendant has improperly received and/or taken money from the Debtors that was previously property of the Debtors, without consideration therefor.

46. As a result thereof, Defendant would be unjustly enriched if he retained those moneys because the Debtors did not receive reasonably equivalent value therefor.

47. As a result, Defendant has been unjustly enriched and may not in equity and good conscience retain the monies and/ or the Apartment he received or took from the Debtors.

48. By reason of the foregoing, Defendant is liable for unjust enrichment in an amount to be determined at trial, but in no event less than \$840,000.

Eighth Claim for Relief
(incorporating all previous allegations)

49. Upon information and belief, Defendant took possession of the Debtors' property and utilized the funds from the Fraudulent Transfers to purchase the Apartment.

50. Defendant was or is the president and sole shareholder of all of the Debtors and/or any

and all subsidiaries of the Debtors and, therefore, had a fiduciary relationship with the Debtors.

51. Defendant has been unjustly enriched and may not in equity and good conscience retain the monies and/or the Apartment he received or took from the Debtors as a result of the Fraudulent Transfers.

52. Absent Defendant's turnover of the Apartment to the Trustee, the Debtors' estates' have no adequate remedy at law.

53. By reason of the foregoing, the Debtors' estates' hold an equitable ownership interest in and to the Apartment and Defendant is liable for unjust enrichment in an amount to be determined at trial, but in no event less than \$840,000, and a constructive trust or resulting trust in Trustee's favor should be imposed upon the Apartment.

WHEREFORE, the Trustee respectfully requests that this Court enter judgment against Defendant as follows:

- a. on the first claim for relief pursuant to New York State Debtor & Creditor Law §273 and Bankruptcy Code §§544(b), 550(a) and 551 in an amount to be determined at trial but in no event less than \$840,000, together with appropriate interest thereupon;
- b. on the second claim for relief pursuant to New York State Debtor & Creditor Law §274 and Bankruptcy Code §§544(b), 550(a) and 551 in an amount to be determined at trial but in no event less than \$840,000, together with appropriate interest thereupon;
- c. on the third claim for relief pursuant to New York State Debtor & Creditor Law §275, and Bankruptcy Code §§544(b), 550(a) and 551 in an amount to be determined at trial but in no event less than \$840,000, together with appropriate interest thereupon;
- d. on the fourth claim for relief pursuant to New York State Debtor & Creditor Law §§276 and 276-a, and Bankruptcy Code §§544(b), 550(a) and 551 in an amount to be determined at trial but in no event less than \$840,000, together with appropriate interest thereupon and reasonable attorneys' fee under New York State Debtor & Creditor Law §276-a;
- e. on the fifth claim for relief pursuant to Bankruptcy Code §548(a)(1)(A), in an amount to be determined at trial but in no event less than \$840,000, together with appropriate interest thereupon;

- f. on the sixth claim for relief pursuant to Bankruptcy Code §548(a)(1)(B) in an amount to be determined at trial but in no event less than \$840,000, together with appropriate interest thereupon;
- g. on the seventh claim for relief for unjust enrichment under New York common law in an amount to be determined at trial but in no event less than \$840,000, together with appropriate interest thereupon;
- h. on the eighth claim for relief for the imposition of a constructive or resulting trust upon the Apartment in an amount to be determined at trial but in no event less than \$840,000, together with appropriate interest thereupon;
- i. for the costs and disbursements of this adversary proceeding; and
- j. for such other relief as the Court deems proper.

Dated: Jericho, New York
April 16, 2020

SILVERMANACAMPORA LLP
Attorneys for Kenneth Silverman,
the Chapter 7 Trustee

By: /s/ Justin S. Krell
Justin S. Krell
A Member of the Firm
100 Jericho Quadrangle - Suite 300
Jericho, New York 11753
(516) 479-6300