

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Chapter 7

Carefree Living of America (Burnsville), Inc.
Carefree Living of America (St. Cloud), Inc.
Carefree Living of America (Brainerd), Inc.

Case No. 01-33545
01-33546
01-33547

Debtors.

Brian F. Leonard, Trustee,

ADV. No. 02-9117

Plaintiff,

ANSWER TO AMENDED COMPLAINT

v.

Jane L. Strom Revocable Trust,
Jane L. Strom, Trustee,

Defendants.

Jane L. Strom Revocable Trust and Jane L. Strom, in her capacity as a trustee of the Jane L. Strom Revocable Trust, and Jane L. Strom, individually, provides this answer to the complaint of the trustee. Except as expressly admitted, qualified or explained herein, Defendants deny each and every allegation, matter and thing in Plaintiff's complaint.

1. Answering numbered paragraph 1 of the Complaint, Defendants admit the allegations on information and belief.

2. Answering numbered paragraph 2 of the Complaint, Defendants admit the allegations on information and belief.

3. Answering numbered paragraph 3 of the Complaint, Defendants admit that the Strom Trust is a trust created under Minnesota law; admits that Defendant Strom is a settlor and

beneficiary of said trust; admits that Defendant Strom is married to Steven Hagberg; admits that Hagberg was a principal in the law firm Mahoney & Hagberg (“M&H”); admits that Hagberg is a trustee of the Strom Trust; lacks knowledge and information sufficient to form a belief as to the legal representation, if any, M&H provided to the referenced entities; and denies that “by virtue thereof” or otherwise Defendants were “insiders” of the Debtors, as that term is defined in 11 U.S.C. § 101(31) or otherwise.

4. Answering numbered paragraph 4, Defendants admit that the Strom Trust loaned the Debtors \$50,000 and affirmatively assert that the loan was to be repaid from the proceeds of a refinancing then in process.

5. Answering numbered paragraph 5, Defendants admit the allegations except deny any adverse inference intended by the Trustee in his use of quotation marks and bold-faced type.

6. Answering numbered paragraph 6, Defendants admit that in consideration for forbearance and renewal of Note 1, Debtors made, executed and delivered to the Strom Trust Note 2 on or about January 24, 2001 and contemporaneously therewith executed and delivered four mortgages to Defendants covering the three facilities of the Debtors and on owned by a non-Debtor affiliate; admit that the Debtors executed and delivered to the Strom Trust the original of the Mortgage, as that term is defined in the Complaint admit that the Mortgage was recorded against real property of Debtor Carefree Living of America (St. Cloud), Inc. in Benton County as alleged; deny that the Mortgage was recorded against any property of the Debtors in Hennepin County; affirmatively assert in connection therewith that the Mortgage was also recorded against real property of Debtor Carefree Living of America (Burnsville), Inc. in Dakota County on April 5, 2001, and against real property of Debtor Carefree Living of America (Brainerd), Inc. in Crow Wing County on March 28, 2001; admit that the Mortgage was drafted by M&H.

7. Answering numbered paragraph 7, Defendants admit that the Strom Trust filed a proof of claim on January 8, 2002, in the amount of \$41,160.35 as a secured claim.

8. Answering numbered paragraph 8, Defendants deny the allegation.

9. Answering numbered paragraph 9, Defendants assert that they lack knowledge or information sufficient to form a belief as to the solvency of the Debtors during the year prior to the filing and therefore deny the allegations.

10. Answering numbered paragraph 10, Defendants deny the allegations.

11. Answering numbered paragraph 11, Defendants deny the allegations.

12. Answering numbered paragraph 12, Defendants deny the allegations.

13. Answering numbered paragraph 14 [there is no paragraph 13] Defendants deny the allegations.

AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim upon which relief may be granted.

2. Defendants are not insiders within the meaning of 11 U.S.C. § 101(31).

3. Note 2 and the Mortgage was made executed and delivered to the Strom Trust upon the maturity of Note 1 and was given in consideration for forbearance of the Strom Trust exercising its legal remedies at maturity and in renewal of Note 1. Note 2 was made, executed and delivered by the Debtors to the Strom Trust in exchange for the use by the Debtors of the balance then due for an additional approximately 10 months and as such was intended to be and in fact was a contemporaneous exchange for new value within the meaning of 11 U.S.C. § 547(c)(1).

4. At all relevant times, the aggregate fair value of the real property described in the Mortgage exceeded the aggregate amount of debt secured by such real property, including the debt owed to the Strom Trust.

5. At all relevant times, the Debtors were not insolvent.

6. Plaintiff's claims are barred by the earmarking doctrine.

WHEREFORE, Defendants request that Plaintiff take nothing under his pretended complaint and that Defendants be awarded their costs and disbursements and such other and further relief as the court may deem just and equitable.

LAPP, LIBRA, THOMSON,
STOEBNER & PUSCH, CHARTERED

/s/ Ralph V. Mitchell

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ATTORNEYS FOR DEFENDANTS

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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Debtors.

Brian F. Leonard, Trustee,
Plaintiff,

ADV No.: 02-9117

v.

Jane L. Strom Revocable Trust,
Jane L. Strom, Trustee, and

Defendants.

UNSWORN CERTIFICATE OF SERVICE

I, Sarah L. Fortin, declare under penalty of perjury that on September 30, 2004, I served a copy of the **Answer to Amended Complaint** in the above adversary proceeding by facsimile and first-class mail, postage prepaid, to the attorney named below at the fax number and address stated below for said attorney:

Mr. Brian F. Leonard
Leonard, O'Brien, Wilford, Spencer &
Gale, Ltd.
100 South Fifth Street, Suite 2500
Minneapolis, MN 55402

FACSIMILE NO. 612-332-2740

Attorney for Plaintiff

Executed on: September 30, 2004

/e/ Sarah L. Fortin
Sarah L. Fortin, Legal Secretary
Lapp, Libra, Thomson, Stuebner &
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