

**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 Nos.: 01-33545
01-33546
01-33547

Debtors.

Brian F. Leonard, Trustee,

ADV Case No. 02-9117

Plaintiff,

vs.

**TRUSTEE'S VERIFIED REPLY TO DEFENDANTS'
OBJECTION TO TRUSTEE'S MOTION
FOR SUMMARY JUDGMENT**

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

Defendants.

The Plaintiff Brian F. Leonard, Trustee replies herein, as briefly as possible, to the Defendants' Objection to the Trustee's Motion for Summary Judgment. Even though the filings in this matter have been voluminous, the issues and evidence can be distilled to their essence fairly easily. The Defendants have failed to meet their burden of coming forth with evidence on which the Defendants bear the burden of proof at trial. The Defendants have failed to produce evidence which is significant, probative, and substantial to rebut the evidence submitted by Plaintiff. (See cases cited on page 2 of the Plaintiff's Memorandum.)

The mortgage granted to the Defendants was one of a series of three such transactions which gave special treatment to the Defendants, to Mr. Hagberg's law firm, and to Ms. Zeller, all to the detriment and prejudice of the Debtors' other creditors.

INSIDER STATUS

The Defendants argue that neither Ms. Strom nor Mr. Hagberg, as "Trustees" of the Defendant, were insiders.

The Trustee maintains that the totality of the relationship of Debtor and Ms. Zeller to Mr. Hagberg and Ms. Strom, including their business dealings and the social relationship, together with Mr. Hagberg's role as a long-time lawyer for the Debtors, Kathleen Zeller, and Summa Management, Inc., compel the conclusion that both Mr. Hagberg and Ms. Strom are insiders of the Debtors. The Defendants admit that Mr. Hagberg had been closely involved in all facets of the Debtors' business for many years. The Defendants further admit that both Mr. Hagberg and Ms. Strom were social friends with Kathleen Zeller (they even visited Ms. Zeller at her home in Andorra). The Defendants further admit that the loan made by the Strom Trust was made with no inquiry into the Debtors' ability to repay the loans (see Strom Deposition p. 23, Defendants Objection pgs. 12, 13). The Defendants further admit that the Strom Trust received its mortgage six to eight months after the loan was made. No other creditors received such favored treatment, other than Mr. Hagberg's own law firm and Kathleen Zeller herself (each of which also received mortgages to secured antecedent debts). In essence, Kathleen Zeller, with the participation of Mr. Hagberg and his law firm, conveyed to herself, the Strom Trust, and the Mahoney & Hagberg law firm, mortgages on the Debtors' real estate and thus gave those three favored recipients preferred treatment over the treatment given any other unsecured creditor. Mr. Hagberg's law firm drafted all three mortgages and was involved in all three transactions. As the Defendants point out at the top of page 9 of their Objection, it is important that the personal, business, and professional relationship between the foregoing parties allowed the Strom Trust to gain an advantage due to the relationship of Ms. Strom and Mr. Hagberg to the Debtors and Ms. Zeller.

A further illuminating fact is that the Debtors, inexplicably, did not have separate counsel or independent advice when it granted mortgages on all of its real estate to the Strom Trust, Mr. Hagberg's law firm, or to Kathleen Zeller herself. The Debtors' real estate comprised the vast majority of its assets, and granting mortgages thereon was obviously a very crucial management decision. The Debtors, through Kathleen Zeller, were clearly not exercising independent business judgment, because the Debtors received absolutely no consideration for the conveyance of any of the mortgages. (The Defendants admit that the Strom Trust mortgage was received only in consideration of a second, replacement promissory note because the Debtors could not pay the first note. However, that consideration is not recognized as new value under 11 U.S.C. § 547 (a)(2).)

The Defendants Amended Answer admits that Ms. Strom is a beneficiary of the Trust. The Defendants further admit Mr. Hagberg and Ms. Strom are co-trustees of the Strom Trust. The Law of Trusts states that transfers to a trust are deemed to be transfers to the trustees of the trust. In essence, Mr. Hagberg himself was the transferee of the mortgage, together with Ms. Strom. The very terms of the Strom Trust (Strom Depo. Ex. 3) identifies Jane L. Strom and Steven V. Hagberg collectively as the "Trustee." The fourth paragraph of the trust document further states that the trust estate is "transferred to the Trustee." By virtue of these express terms, Mr. Hagberg is equally with Ms. Strom a transferee and owner of the mortgage. It follows that no imputation of Mr. Hagberg's knowledge to Ms. Strom is necessary, because Mr. Hagberg is a recipient of the transfer. See Section 32, Bogart's Trust, Sixth Edition (also cited on p. 15 of Plaintiff's Memorandum). See also Minn. Stat. 507.421 (1), which expressly states that conveyances to a trust are deemed to be conveyances to the trustees thereof.

The case law on trusts further holds that information known to one trustee is deemed and imputed to all co-trustees. *Bisbee v. Mackey*, 102 N.E. 327 (Mass. 1913); *Scullin v. Clark*, 242

S.W.2d 542 (Mo. 1951).

It is clear that the totality of the entire relationship between the Debtors, Ms. Zeller, Mr. Hagberg, and Ms. Strom, compels the conclusion that the Defendants, including Mr. Hagberg, are insiders of the Debtor. The stark similarity of the three transactions which gave special treatment to the Defendants, Mr. Hagberg's law firm, and Ms. Zeller, to the detriment and prejudice of all the Debtors other creditors, compels the conclusion that both Mr. Hagberg, and Ms. Strom were insiders.

THE DEBTORS' INSOLVENCY.

The insolvency of the Debtors is established by the affidavits of Merle Sampson.

Mr. Sampson's affidavit demonstrates that he has the life-long experience and specialized knowledge which qualifies him to render an opinion on value which can properly be utilized by the Court to determine the issue of solvency. As will be argued below, Kathleen Zeller has no such experience or knowledge, and the Trustee objects to her affidavit opinion testimony as (a) being estopped under discovery rules and (b) as being unqualified under the following Rule of Evidence:

Rule 702-Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact and issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

The foregoing rule requires an expert to be qualified by knowledge, skill, experience, training, or education. Merle Sampson clearly has such qualifications, because he has spent an entire career, spanning more than two decades, working in the health care, nursing homes and assisted living business. He has been involved in the purchase and sale of over 30 health-care facilities. He is qualified, on the basis of his knowledge, skill, and experience, to render an opinion of value of the Debtors' assets as of January through March, 2001. See *Circle J. Dairy, Inc. v. A.O.*

Smith Harvestore Products, Inc., 795 F2d 700 (8th Cir.; 1986).

In contrast, Kathleen Zeller has no such knowledge, skill, or experience. Kathleen Zeller has no background, education, training, or skills in the assisted living business. She didn't have anything to do with the assisted living business until 1996, when her corporation, Summa Management, Inc. acquired a majority interest in the shares of the Debtors. Her affidavit does not reflect any methodology or standards of valuation, or any experience, knowledge, or skill that can properly qualify her to testify in an affidavit on the value of the Debtors' assets.

Kathleen Zeller does not refute the statements made by Merle Sampson in his affidavit to the effect that Kathleen Zeller misappropriated the assets of the Debtor. The Court can take judicial notice of the fact that the Trustee brought an action against Ms. Zeller in Adversary Proceeding No. 02-9109, to avoid the mortgage given to her with the help of Mr. Hagberg's law firm, within days of the Debtors' filing, and obtained a judgment against her, which remains unsatisfied, in the amount of \$134,518.72. Further, the fact that Ms. Zeller is a guarantor of the Debtor's obligations to the Defendants demonstrates that she has a financial stake in the outcome of this case.

Estoppel. The Defendants failed to timely identify Ms. Zeller as an expert witness. Attached to the Second Supplemental Affidavit of Brian F. Leonard is a letter dated August 13, 2004 to Mr. Mitchell, and the Defendants' Answer to Plaintiff's Interrogatories-Set I, dated February 5, 2003, both of which requested that the Defendants identify any expert witness, so the Trustee would have the ability to take the deposition of that witness in connection with the instant action. The Defendants failed to identify any expert witnesses, and by virtue thereof, the Defendants have forfeited the right to utilize any expert affidavit testimony in connection with the instant motion. (Several months ago, the Trustee identified Mr. Sampson as an expert witness for the benefit of Defendants.)

THE DEBTORS' LIABILITIES AND INSOLVENCY

If the Court accepts the affidavit valuation opinion testimony of Mr. Sampson, and rejects that of Ms. Zeller, the Court need not delve into the Defendants' arguments relative to the liabilities of the Debtors. The Defendants admit that the Debtors had liabilities of \$12.5 million dollars. (Defendants' Objection p. 20.) Mr. Sampson's affidavit reflects a value of the Debtors far less than that amount. The Court may determine insolvency on those foregoing facts alone.

Judicial Estoppel. The Mahoney and Hagberg Claim. The Defendants' argument that judicial estoppel exists is simply unfounded. The only significant claim to which that argument is made by the Defendants is the claim of Mahoney & Hagberg. The Trustee did file an objection to that claim, on various grounds, some of which were unrelated to the amounts owed the claimant. The objection was settled without trial. There was no adjudication as to the validity or invalidity of that claim. Accordingly, there is no res judicata or collateral estoppel effect to that settlement. Mr. Hagberg himself signed his firm's proofs of claim and also testified in his deposition that, as of January through March, 2001, the Debtors owed the Mahoney & Hagberg law firm \$1.5 million dollars (See Hagberg depo. pgs. 112, 113). Mr. Hagberg cannot now take the opposite position that such amount was not owed.

The Limited Partners Claim. The claim of the Limited Partners of Brainerd Manor should properly be counted as a liability, because the Debtors were, by the terms of the agreement, required to issue stock to such creditors having a value of \$3,275,000.00. That stock was never issued. The claim was simply subordinated by the settlement to the Trustee's objection, but nevertheless was a non-contingent liability of the Debtors as of March 17, 1998 and remained unpaid as of January-March, 2001.

The Zeller Affidavit Admits the Insolvency of the Debtors. The affidavit of Ms. Zeller attempts to incorporate, by reference, appraisals which pre-date the mortgage transfer in question by about three years, and which she admits were generated by third parties. This blatant attempt to sidestep the hearsay rule must fail, and the Plaintiff objects to the use of such old appraisals on hearsay grounds, and on the grounds that such dated appraisals have no probative value.

In her affidavit, Ms. Zeller offers Exhibit F on the issue of the Debtors' insolvency. It is very telling that those exhibits reflect that each of the Debtors had a **negative equity**, as reflected on Document Nos. 1468, 1545, and 1507 to said Exhibit F. Their aggregate negative equity was **\$3,896,956.92!** These exhibits actually reflect that the Debtors were insolvent on September 30, 2000, a mere four to six months before the mortgage transfer occurred. The Defendants have submitted no evidence that the Debtors somehow became solvent in the next few months. In fact, Ms. Zeller admits that the financial condition of the Debtors actually deteriorated during that time. Interestingly, the exhibits which Ms. Zeller 'adopts,' do not reflect any obligations owed to Linda Selbak (\$3,500,000.00), Mahoney & Hagberg (\$1,500,000.00), and the limited partners (\$3,275,000.00). If these liabilities had been incorporated into the financial statements, the negative equity of the Debtors would be even more severe!

Kathleen Zeller also attempts to farm in the Debtors' schedules, even though she admits she didn't sign the schedules and the schedules are inaccurate on their face because they omit the above-described liabilities. She cannot be allowed to simply "adopt" a document produced by somebody else.

Further, Kathleen Zeller attempts to testify as to the value of the Debtors as an "owner" of the assets in question. However, her ownership has not been demonstrated, and in fact, she is not the owner of the Debtors' assets. The Debtors are corporations, whose shares are owned, in turn, by

Summa Management, Inc. Kathleen Zeller is merely a shareholder of Summa Management, Inc. Therefore, she is not an owner of the Debtors, or the Debtors' assets, and is not qualified to give opinion testimony as to value by reason thereof.

Linda Selbak Claim. The Defendants make the surprising argument that this claim should not count as a liability. The Defendants work hard to obfuscate the facts surrounding this claim. The Affidavit of Cass Weil filed herein makes it clear that the claim was neither contingent nor satisfied and had been an obligation of the Debtors since 1998.

EARMARKING DOCTRINE.

The defense of "earmarking" fails as a matter of law. It fails because the loan from the Defendants made in August, 2000, was combined with loans from other sources in varying amounts and used only to cure a default in the mortgage of First Union National Bank. The Defendants admit that, at the time the loan was made, the parties did not intend or contemplate that the Debtors would grant a mortgage to the Defendants to secure the loan. The parties did not intend that the Strom Trust mortgage would replace the First Union Bank mortgage

.The Defendants further argue that the transaction did not diminish the Debtors' estate. However, the Defendants conveniently forget that the transfer in question is the subsequent mortgage given by the Debtors to the Strom Trust about five-seven months after the August, 2000 loan was made. The later mortgage was given only to induce the Strom Trust to rewrite the debt with a substitute promissory note, because the Debtors were unable to pay the original note. The mortgage, which was not intended or contemplated by the parties when the initial loan was made, was clearly a transfer of the Debtors' assets. Further, the obligation to First Union Bank was not fully paid by the loan made in August, 2000. For that reason, the Strom Trust cannot be said to "step into the shoes of First Union Bank" as required under the earmarking doctrine.

The Defendants cite *In re Heitkampff*, 137 F3d 1087 (8th Cir. 1998) as supporting their argument. In fact, the *Heitkampff* case is clearly distinguishable. First, *Heitkampff* requires a complete payment of a secured debt so as to effect a replacement of the paid off secured debt with the new secured debt. Obviously, the Defendants' \$50,000.00 loan applied to arrearages on a mortgage of about \$12 million dollars did not result in the replacement of the First Union Bank debt with the Strom Trust debt. Secondly, the earmarking doctrine contemplates that the asset being transferred not be the property of the Debtors. The Defendants forget that the transfer in question that is sought to be avoided is a mortgage given by the Debtors six to eight months after the loan was made. It is the transfer of the mortgage to secure an antecedent debt which is in question. The Debtor's interest in its own real estate was clearly an asset of the Debtor at the time of transfer. For all these reasons, the Defendants' earmarking argument must fail.

THE DEFENDANTS OBJECTIONS TO THE MERLE SAMPSON AFFIDAVIT

The Defendants object to Merle Sampson's affidavit. The objections are based on the argument that Merle Sampson is not a licensed real estate agent or appraiser. The Defendants objections are without merit under the Rules of Evidence.

Under Fed. R. of Evidence 702, an expert need not be certified or licensed as a prerequisite to render opinion testimony. See *Dickerson v. Cushman, Inc.*, 909 F. Supp. 1467 (M.D. Ala. 1995); *Plywood Property Associates v. National Flood Ins. Program*, 928 F. Supp. 500 (D.N.J. 1996); and *Peyton v. Abbott Labs, Inc.*, 780 F.2d 147 (1st Cir. 1985).

DEFENDANTS' OBJECTIONS TO BRIAN LEONARD AFFIDAVIT AND EXHIBITS

The Defendants' objections to the affidavit and exhibits of Brian Leonard, are without merit.

The Defendants' objections to the depositions submitted of Ms. Strom, Mr. Hagberg, and Mr. Mahoney are not, as the Defendants argues, hearsay. The depositions are transcripts of actual

testimony made under oath by said parties.

The Plaintiff is the duly appointed and acting Trustee in the Debtors' bankruptcy cases. As such, the Trustee is the custodian of all of the books and records of the Debtors. As custodian, the Trustee can identify and authenticate all the business records of the Debtors. The exhibits to the affidavits of Brian F. Leonard are part of the business records of the Debtors.

In addition, the liabilities identified in the two affidavits of Brian F. Leonard are grounded in documents already filed in this bankruptcy case. Each of the liabilities cited in Brian Leonard's affidavits, and the documents supporting the liabilities, are filed in support of the proofs of claim filed in these cases. As such, the documents are already part of the record and the court is fully empowered to review and be cognizant of the documents and pleadings filed in these cases.

The Defendants complain that the Trustee has misstated the testimony referred to in the depositions. The depositions submitted by the Trustee are accurate copies of the deposition transcripts, and the testimony of the witnesses is accurately reflected therein.

The documents, other than depositions, are referred to by the Plaintiff in his affidavits are already records and documents filed in these cases. The Defendants apparently take no issue with authenticity or substance of the documents.

CONCLUSION

The affidavit of Kathleen Zeller, on the issue of valuation, fails to meet the standards required under Federal Rule 702, and the Plaintiff's objection thereto should be sustained. Similarly, the Defendants have failed to bring forth the quality of evidence that is required under the cases cited in the Plaintiff's Memorandum to refute the Plaintiff's evidence on the issue of insider status and insolvency of the Debtor. Kathleen Zeller is simply not qualified to give opinion testimony on the value of the Debtors' assets. Accordingly, the Defendants have failed to meet their burden of

refuting the Plaintiff's evidence. Each of the elements of Section 547 (b) has been demonstrated in the affidavits of Brian F. Leonard and Merle Sampson. The Defendants, having the burden of proof thereon, have demonstrated no defense under Section 547(c), or any other defense. Accordingly, the Plaintiff respectfully requests that the Bankruptcy Court grant his motion for summary judgment.

**LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.**

Dated: October 18, 2004

/e/ Brian F. Leonard
By _____
Brian F. Leonard, #62236
Attorneys for Plaintiff
100 South Fifth Street
Suite 2500
Minneapolis, Minnesota 55402-1216
(612) 332-1030

VERIFICATION

I, Brian F. Leonard, the Plaintiff herein, declare under penalty of perjury that the facts contained in the foregoing pleading are true and correct, to the best of my knowledge, information and belief.

Dated: October 18, 2004

/e/ Brian F. Leonard

Brian F. Leonard

312927/WORD

**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 Nos.: 01-33545
01-33546
01-33547

Debtors.

Brian F. Leonard, Trustee,

ADV Case No. 02-9117

Plaintiff,

vs.

**AFFIDAVIT OF BRIAN F. LEONARD
IN RESPONSE TO DEFENDANTS'
OBJECTION TO TRUSTEE'S
MOTION FOR SUMMARY JUDGMENT**

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

Defendants.

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Brian F. Leonard, after being duly sworn on oath, states as follows:

1. I make this affidavit under oath and penalty of perjury.
2. Attached hereto as Exhibit A is a true and correct copy of the Defendants' Answers to Plaintiff's Interrogatories-Set I which are executed by Jane Strom and Ralph V. Mitchell, and are dated February 5, 2003. Attached hereto as Exhibit B is a true and correct copy of my correspondence to Mr. Mitchell dated August 13, 2004 relative to any expert witness of Defendant.
3. The Defendants have never identified any expert witness in response to the Plaintiff's request in Interrogatory No.4 on Exhibit A, and did not respond to the Plaintiff's follow-up correspondence of August 13, 2004.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated: October 18, 2004

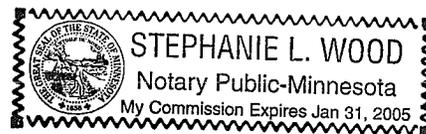


Brian F. Leonard

Subscribed and sworn to before me
this 18th day of October, 2004.



Notary Public



312949/WORD

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,

**DEFENDANTS' ANSWERS TO
PLAINTIFF'S INTERROGATORIES -
SET I**

vs.

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

Defendants.

TO: PLAINTIFF BRIAN F. LEONARD, TRUSTEE, AND HIS ATTORNEYS, BRIAN F. LEONARD, LEONARD, O'BRIEN, WILFORD, SPENCER & GALE, LTD., 100 SOUTH FIFTH STREET, SUITE 1200, MINNEAPOLIS, MN 55402.

GENERAL OBJECTIONS

Jane L. Strom, in her capacity as a trustee of the Jane L. Strom Revocable Trust, and Jane L. Strom, individually, ("Defendant") objects to each interrogatory to the extent it seeks information subject to the attorney/client privilege, work product doctrine, or otherwise seeks the disclosure of mental impressions, conclusions, opinions, or legal theories of an attorney or the representative of the Defendant in this litigation.

Ex. A

The answers provided herein are given with the understanding that by so doing, the Defendant does not waive her attorney/client privilege or work product protection and does not waive any other applicable objection or the right to file a motion for a protective order.

For her answers to Plaintiff's Interrogatories to Defendants – Set I, Defendant answers as follows:

Interrogatory No. 1

Identify all persons preparing or assisting in the preparation of the answers to these Interrogatories. Set forth the specific interrogatories for which the person assisted in your response.

Answer

Jane Strom, Steve Hagberg, assisted by counsel.

Interrogatory No. 2

Identify all persons who are known to you to have information related to the matters alleged in the parties' pleadings, including the knowledge held by such person(s) and also including the means or method by which such person(s) obtained such knowledge.

Answer

Kathleen L. Zeller (Officer, Director of Debtors and Summa Management, Inc., the management company for the Debtor facilities; Brian Leonard (Chapter 11 and 7 Trustee and is believed to have all books and records of Debtor entities and Summa Management, Inc.); Vern Zeller III (worked for Debtors or Summa Management, Inc.); unknown persons at Piper Jaffray who prepared check; unknown persons at Faegre & Benson who accepted, endorsed and forwarded the \$50,000 check; unknown persons at First Union Mortgage who received and credited the \$50,000 payment; William Howard, made loan at same time for same problem; Internet Financial personnel; Michael C. Mahoney (Attorney at Mahoney & Hagberg, A Professional Association, former counsel to Debtors; Jane L. Strom (Trustee of Jane L. Strom Revocable Trust U/A October 28, 1998; Steven V. Hagberg (Attorney at Mahoney & Hagberg, A Professional Association, former counsel to Debtors); Jane Weiss, bookkeeper for Summa Management, Inc., Debtor entities and Carefree Living of America (Minnetonka), Inc. Discovery is continuing.

Interrogatory No. 3

Identify all persons whom you intend to call as witnesses at the trial of this matter and for each such person state the subject matter of his or her expected testimony and the substance of the facts to which said witness is expected to testify.

Answer

Defendants have not yet identified who will be witnesses at trial. Defendants expect that the witnesses will be selected from the list provided with the answer to Interrogatory No. 2.

Interrogatory No. 4

Identify each person whom you expect to call as an expert witness at trial and for each such person state:

- (a) the subject matter of which said expert is expected to testify;
- (b) the substance of all facts and opinions to which said expert is expected to testify; and,
- (c) a summary of the grounds for each such opinion.
- (d) the qualifications, including educational background, for each expert identified.

Answer

Defendants have not yet identified any expert witnesses.

Interrogatory No. 5

Have you taken or received any statements, depositions, or recorded information relating to the matters alleged in the pleadings herein? If so, identify each person from whom you have such a statement, indicating whether the statement was oral, written, or by court reporter, tape recorder or otherwise preserved; state the date, time and location of each such statement; identify the person taking the statement and state whether the person from whom the statement was taken has provided a copy thereof.

Answer

None.

Interrogatory No. 6

State and describe, in chronological order, each and every communication, whether oral, written or otherwise, by and between Steve Hagberg and the Defendants concerning the Debtors, and/or Carefree Living of America (Minnetonka), Inc. and/or Kathleen Zeller.

Answer

All such communications are privileged under F.R.E. 501 and Minn. Stat. § 595.02 and will not be disclosed.

Interrogatory No. 7

State and describe each and every occasion in which the Defendants and Kathleen Zeller met, and/or communicated with each other, and/or attended the same event, gathering or meeting. For each such meeting, event and occasion, describe the date thereof, the persons present, and the subject and substance of all communications by and between the Defendants and Kathleen Zeller.

Answer

Defendant Jane Strom first met Kate Zeller sometime between 1986 and 1991. They became reacquainted at a party in late 1991. The following summer Jane Strom and her husband Steve Hagberg met socially with Kate and Vern Zeller. Thereafter, Jane, Kate, and sometimes Vern and Steve met socially on many occasions. These social meetings occurred both before and after the Zellers left Minnesota. Defendant Jane Strom cannot remember each and every occasion, nor can she remember with specificity the date, time, discussions, event, etc. Discovery is continuing.

Interrogatory No. 8

Describe, in detail and with particularity, all of the circumstances which preceded and led to (a) the Promissory Note in favor of the Defendants dated September 1, 2000, (b) the

Promissory note in favor of the Defendants dated January 15, 2001, and (c) the Mortgage in favor of Defendants filed on March 16, 2001.

Answer

The transaction came together in a very informal manner and over two days. Kate Zeller came to Minnesota sometime in late August, 2000. While here, she worked on curing the First Union mortgage default by the Debtor entities. Jane Strom, Kate Zeller and Steve Hagberg had their usual social gathering over dinner during this visit. During that dinner, Kate briefly stated that she was not quite able to raise all the money she needed to cure the mortgage default and that she was \$50,000 short. She indicated that Internet Financial, Bill Howard and herself were lending some, but not all, the money needed. Kate related that the existing commitments included a fee and interest and were short term. Kate did not solicit a loan or participation in any financing from either Jane Strom or Steve Hagberg at that time. The next day, Jane offered to lend \$50,000 from her trust. She believed it to be a good short term investment and an appropriate departure from the other investments in the trust. The trust had the available cash and more was expected. Steve Hagberg told Kate of Jane's willingness and the deal got done very quickly. First Union had demanded good funds so a check from the trust account would not suffice. Faegre & Benson agreed that a check from Piper would be acceptable. A check was delivered directly from Piper to Faegre & Benson. Kate signed and delivered the first note.

When the note came due in January, 2001, Jane was already aware that it would not be paid. Kate faxed a proposed payment schedule and offered to secure the balance due with mortgages. A new note was signed when Kate was next in Minnesota, about January 24, 2001, together with a new personal and corporate guaranty, and mortgage deeds covering the Debtors' properties and the Minnetonka property. Kate returned to Andorra. Shortly thereafter, Steve Hagberg realized that by securing the note with four separate mortgage deeds, it would require payment of four duplicate mortgage registration taxes. When Kate returned to Minnesota in March, a new single mortgage deed was executed covering all 4 properties and was recorded first in Hennepin County, and thereafter in the other 3 counties obviating the need for duplicate mortgage registration taxes.

Interrogatory No. 9

State and describe, in detail and with particularity, all of the circumstances which preceded and led up to the issuance of a check in the amount of \$50,000.00 to Faegre & Benson, which check purportedly represents the consideration for the Promissory Note dated September 1, 2000.

Answer

See answer to Interrogatory No. 8.

Interrogatory No. 10

With respect to the Promissory Note dated September 1, 2000, the Promissory Note dated January 15, 2001, and Mortgage signed on or about March 15, 2001, identify all persons who participated in the negotiating and setting of the terms thereof, and the drafting thereof.

Answer

See answer to Interrogatory No. 8.

Interrogatory No. 11

With respect to the Mortgage in favor of Defendants signed and notarized on March 15, 2001, state the names of all persons and/or entities which paid the filing fees and mortgage registration tax with respect to said Mortgage.

Answer

Defendants do not know who paid such fees at this time. Discovery is continuing.

Interrogatory No. 12

State and list by date and amount each and every payment received by the Defendants on the Promissory Notes dated September 1, 2000, and January 15, 2001, the source of such payments, and whether such payments were by cash, check, electronic transfer, or otherwise.

Answer

Checks:

9/21/00	\$833.33	No specific receipt indicating payor
10/16/00	\$833.33	Receipt from Piper shows Summa Mgt. as payor
11/13/00	\$833.33	Copy of check shows Summa Mgt. as payor
12/12/00	\$833.33	No specific receipt indicating payor

Carefree Living of America (Minnetonka), Inc. (Fed. Tax ID # 41-1813996) issued a form 1099 to Defendant Strom Trust for all of the interest portion of such payments.

Checks:

1/12/01	\$833.33	Receipt shows Summa Mgt Inc
2/15/01	\$4,139.61	No specific receipt indicating payor
3/15/01	\$4,084.61	No specific receipt indicating payor
4/23/01	\$4,029.61	No specific receipt indicating payor
5/21/01	\$3,974.61	No specific receipt indicating payor
6/25/01	\$3,934.61	No specific receipt indicating payor
7/17/01	\$3,809.61	Cashier's Check from Summa Mgt

Carefree Living of America (Minnetonka), Inc. (Fed. Tax ID # 41-1813996) issued a form 1099 to Defendant Strom Trust for interest in the amount of \$833.33. Summa Management Inc. issued a 1099 for interest paid in the amount of 8,346.48. These 1099's account for all the interest paid and each payment included interest.

Interrogatory No. 13

State and date of the commencement of the marriage of Jane L. Strom and Steven Hagberg.

Answer

Jane L. Strom and Steven Hagberg were married on December 28, 1990.

Interrogatory No. 14

To the extent you have not provided the same, state, with particularity and in detail, and describe all of the communications by and between Jane L. Strom, on the one hand, and any other person, on the other hand, relative to the Promissory Notes dated September 1, 2000, and January 15, 2001, and the Mortgage signed on March 15, 2001.

Answer

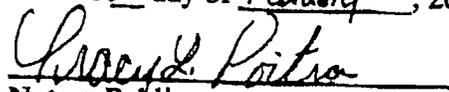
See response to Interrogatory No. 6 as to communications between Strom and Hagberg. See generally, response to Interrogatory No. 8. Discovery is continuing.

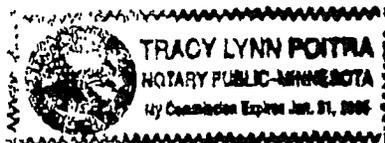
Jane Strom, being first duly sworn upon oath deposes and says that the foregoing answers to interrogatories are true and correct to the best of her present knowledge, information, and/or belief, subject to inadvertent error and/or omission, facts later recollected, found, or

learned, and subsequent discovery.


Jane Strom

Subscribed and sworn to before
me this 5th day of February, 2003.

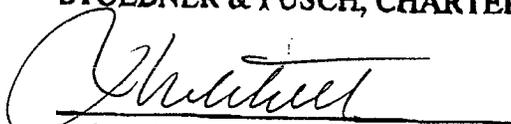

Notary Public



As to Objections:

Dated: February 5, 2003

LAPP, LIBRA, THOMSON,
STOEBNER & PUSCH, CHARTERED



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SPENCER, GALE & SAYRE

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□ Also admitted in Arizona
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‡ Qualified Neutral (Rule 114)
* Certified Real Property
Law Specialist
(Minnesota State Bar Association)
** Retired Status

August 13, 2004

Ralph V. Mitchell, Esq.
Lapp, Libra, Thomson,
Stoebner & Pusch
One Financial Plaza, Suite 2500
120 South Sixth Street
Minneapolis, MN 55402

Re: Brian F. Leonard, Trustee vs. Jane L. Strom Revocable Trust and Jane L. Strom, Trustee
Adv. No.: 02-9177

Dear Ralph:

In the Plaintiff's Interrogatories to Defendant-Set I, Interrogatory No. 4, which were served on January 6, 2003, the Defendant was requested to identify and provide information regarding any expert witnesses. In the Defendant's answers, dated February 5, 2003, the Defendant responded by indicating that "the Defendants have not yet identified any expert witnesses."

The Plaintiff's Interrogatories, and the Rules of Discovery, require you to supplement your answers on a timely basis. In as much as I have received no further information from you regarding any expert witnesses of the Defendant, I will assume, for all purposes, that the Defendant has no expert witnesses that it will utilize with respect to the Plaintiff's summary judgment motion now scheduled for hearing on October 20, 2004 at 9:30 o'clock a.m. If my assumption is incorrect, please advise immediately so that a deposition of any expert witnesses of the Defendants can be scheduled in September, 2004.

Ex. B

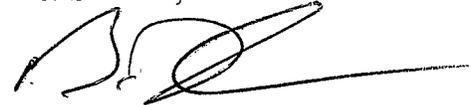
Mr. Mitchell
Page 2
August 12, 2004

Thank you.

Very truly yours,

LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.

By

A handwritten signature in black ink, appearing to read 'BFL', with a long horizontal line extending to the right.

Brian F. Leonard

E-Mail: bleonard@losgs.com

BFL/slw

@PFDesktop\.:ODMA/GRPWISE/GWDSTP.GWPOSTP.STPLIB1:309945.1

5. The Subordination and Standstill Agreement does not provide, in any respect, for a release or satisfaction of the indebtedness owed by the Debtors to Linda Selbak as reflected in the aforementioned Settlement Agreement and the Confession of Judgment. In fact, paragraph 6 of the Subordination and Standstill Agreement expressly provides that Linda Selbak is allowed to continue to receive and retain normal monthly payments from the Debtors in accordance with the terms of the Settlement Agreement, so long as no default existed in the Debtors' obligations owed to First Union Bank.

6. It is my understanding that, pursuant to and under the sale of the Debtors' real estate which occurred in August, 2002, the Debtors' indebtedness to First Union Bank has been fully paid and satisfied. Therefore, the Subordination and Standstill Agreement is terminated and has no further force and effect on the aforementioned obligations owed by the Debtors to Linda Selbak.

7. The obligation of Debtors to pay Linda Selbak is and has always remained absolute and unconditional. Linda Selbak agreed to accept performance from Summa as an *additional* obligor under an Amendment to the Settlement Agreement, but did not intend nor did she release the Debtors in any respect.

8. On information and belief, Summa is no longer in business, and, in any event, has not made any payments or performed any of the other obligations it assumed under the Amendment to the Settlement Agreement since the middle of 2001.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated: October 15, 2004



Cass Weil

Subscribed and sworn to before me
this 15th day of October, 2004.

Angela Mary Zmuda
Notary Public



312824/WORD

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 Case No. 02-9117

Plaintiff,

v.

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

Defendants.

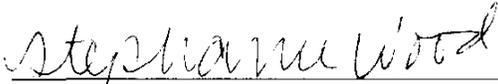
UNSWORN CERTIFICATE OF SERVICE

I, Stephanie Wood, declare under penalty of perjury that on the 18th day of October, 2004, I hand delivered a copy of the annexed *Trustee's Verified Reply to Defendants' Objection to Trustee's Motion for Summary Judgment and Affidavit of Brian F. Leonard in Response to Defendants' Objection to Trustee's Motion for Summary Judgment* on:

Ralph V. Mitchell, Esq.
Lapp, Libra, Thomson,
Stoebner & Pusch
One Financial Plaza, Suite 2500
120 South Sixth Street
Minneapolis, MN 55402

by handing to and leaving with Stephanie Smith, the receptionist.

Dated: October 18, 2004


Stephanie Wood
100 South Fifth Street, Suite 2500
Minneapolis, MN 55402
(612) 332-1030