FILED APR 04 '02 09:24 USBCRI

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

In re:

THE NEWPORT CREAMERY, INC.
Debtor

BK-01-13196
CHAPTER 7

ANDREW S. RICHARDSON, Trustee
Plaintiff

vs.

AP No.

JOHN T. SHEEHAN, JR., Executor of the Estate of John O'Brien,
JAMES T. CONNELL, and
RHUMBLINE PARTNERS, LLC
Defendants

AP 021025

COMPLAINT

1. This Complaint is filed to declare a loan transaction to be usurious and void pursuant to the state usury statute, R.I.G.L. §6-26-2, and to recover all payments made on the loan, to recover fraudulent conveyances made by the debtor, The Newport Creamery, Inc., pursuant to the Uniform Fraudulent Transfer Act, R.I.G.L. §6-16-1, *et seq* and to recover damages for violations of the Racketeer Influenced and Corrupt Organizations Act, R.I.G.L. §7-15-1, *et seq*.

2. This Court has jurisdiction of this adversary proceeding pursuant to 28 U.S.C. §157 and 11 U.S.C. §544.

3. Andrew S. Richardson is the duly appointed, qualified and acting Chapter 7 trustee of The Newport Creamery, Inc.

4. John T. Sheehan, Jr., is the Executor of the Estate of John O'Brien.

5. James T. Connell is a beneficiary of the Estate of John O'Brien.

6. Rhumbline Partners, LLC is a Rhode Island limited liability company whose resident agent is John T. Sheehan, Jr. and whose manager is James T. Connell.

7. On or about March 5, 1999, defendant Sheehan, in his capacity as Executor of the Estate of John O'Brien, lent the sum of One Hundred Thousand ($100,000.00) Dollars to Robert Swain and Swain Development Corporation. A copy of the Promissory Note evidencing said transaction is attached as Exhibit A.

8. The One Hundred Thousand ($100,000.00) Dollars was transferred to Robert Swain from the Estate of John O'Brien by means of a wire transfer on March 8, 1999. A copy of the wire transfer verification is attached as Exhibit B.

9. The amount stated to be due under the Promissory Note referred to in paragraph 7 above is One Hundred Fifty Thousand ($150,000.00) Dollars.

10. The additional sum of Fifty Thousand ($50,000.00) Dollars stated in the note was interest charged for the loan.

11. A partial repayment of the loan in the amount of Fifty Thousand ($50,000.00) Dollars was made by the debtor, The Newport Creamery, Inc., on or about September 27, 1999. A copy of the check evidencing that payment is attached as Exhibit C.

12. Upon information and belief, the funds paid by The Newport Creamery, Inc. to the Estate of John O'Brien were turned over to James T. Connell.

13. Upon information and belief, on or about August 23, 2000 the balance of payment on the note in the amount of One Hundred Thousand ($100,000.00) Dollars was paid by the debtor, The

Newport Creamery, Inc., using funds or credits from the sale of real estate it owned located on Browns Lane in Middletown, Rhode Island.

COUNT I
USURY

14. At the time Robert Swain entered into the loan transaction referred to in paragraph 7 above, he intended and knew that the loan from the Estate of John O'Brien would be repaid with funds from The Newport Creamery, Inc.

15. At the time Robert Swain entered into the loan transaction referred to in paragraph 7 above, he knew that the real party in interest in the loan transaction was neither he nor Swain Development Corporation but rather The Newport Creamery, Inc.

16. The rate of interest on the loan referred to above exceeds that allowed by R.I.G.L. §6-26-2(a).

17. As a result, the loan referred to above is usurious and void pursuant to the provisions of R.I.G.L. §6-26-4(a).

WHEREFORE, pursuant to R.I.G.L. §§6-26-4(a) and (c) plaintiff demands judgment against defendants in the sum of One Hundred Fifty Thousand ($150,000.00) Dollars plus interest and costs.

COUNT II
FRAUDULENT CONVEYANCE

18. Plaintiff incorporates by reference and realleges paragraphs 1 through 17 above.

19. The Newport Creamery, Inc. paid the sum of One Hundred Fifty Thousand ($150,000.00) Dollars to the defendants with the actual intent to hinder, delay or defraud creditors.

WHEREFORE pursuant to R.I.G.L. §6-16-7(a)(1), plaintiff demands judgment against the defendants in the sum of One Hundred Fifty Thousand ($150,000.00) Dollars plus interest and costs.

COUNT III
FRAUDULENT CONVEYANCE

20. Plaintiff incorporates by reference and realleges paragraphs 1 through 19 above.

21. The Newport Creamery, Inc. paid the sum of One Hundred Fifty Thousand ($150,000.00) Dollars to the defendants without receiving a reasonably equivalent value in exchange for the transfer, and the debtor was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to its business.

22. The Newport Creamery, Inc. paid the sum of One Hundred Fifty Thousand ($150,000.00) Dollars to the defendants without receiving a reasonably equivalent value in exchange for the transfer, and the debtor intended to incur or believed or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

WHEREFORE, pursuant to R.I.G.L. §6-16-7(a)(1), plaintiff demands judgment against the defendants in the sum of One Hundred Fifty Thousand ($150,000.00) Dollars plus interest and costs.

COUNT IV
RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

23. Plaintiff incorporates by reference and realleges paragraphs 1 through 22 above.

24. The loan referred to above is an "unlawful debt" as that term is defined in R.I.G.L. §7-15-1(d) since it was unenforceable under state law because of the law relating to usury.

25. The Estate of John O'Brien which was opened for probate in the Town of Bristol, Rhode Island is an "enterprise" as that term is defined in R.I.G.L. §7-15-1(a).

26. Upon information and belief, the defendant Sheehan used the funds referred to in paragraph 11 above in the operation of the enterprise known as the Estate of John O'Brien in violation of R.I.G.L. §7-15-2(a).

27. Rhumbline Partners, LLC is an "enterprise" as that term is defined in R.I.G.L. §7-15-1(a).

28. Upon information and belief, the defendants Connell and Sheehan used the funds referred to in paragraph 13 above in the operation of the enterprise known as Rhumbline Partners, LLC in violation of R.I.G.L. §7-15-2(a).

29. Newport Creamery, Inc. was injured in its business and property because of the repayment of the unlawful debt.

WHEREFORE, pursuant to R.I.G.L. §7-15-4(c), plaintiff demands judgment against defendants in the sum of Four Hundred Fifty Thousand ($450,000.00) Dollars plus reasonable attorney's fees, interest and costs.

ANDREW S. RICHARDSON, Trustee

By his Attorney,

John Boyajian
Boyajian, Harrington & Richardson
182 Waterman Street
Providence, RI 02906
Tel: (401) 273-9600
Fax: (401) 273-9605

PROMISSORY NOTE

$150,000.00

March 5 2, 1999
Newport, R.I.

. **FOR VALUE RECEIVED,** the undersigned, **SWAIN DEVELOPMENT CORPORATION,** and **ROBERT SWAIN,** personally, with offices located at 125 Park Street, Clearwater, Florida 33756, hereinafter jointly referred to as the "Maker", promise to pay to **JOHN T. SHEEHAN, JR., Executor of the Estate of John T. O'Brien,** 34 Bayside Avenue, Newport, Rhode Island 02840, hereinafter referred to as the 'Holder", or order, the sum of One Hundred Fifty Thousand ($150,000.00) Dollars, with no interest due thereon if paid pursuant to the terms hereof. The sum of Seventy Five Thousand ($75,000.00) Dollars is due fourteen (14) days from the date of this Note and the balance of Seventy Five Thousand ($75,000.00) Dollars is due ninety days (90) from the date of this Note.

In the event Maker fails to make payment upon holder's demand, this Note shall be deemed to be in default and the undersigned agrees to pay to the holder hereof, in addition to any amounts due on this note, the reasonable costs and expenses incurred in collecting the same, including attorney's fees.

The provisions hereof shall be binding upon and inure to the benefit of the Maker and the holder, and their respective heirs and assigns.

The Maker of this note hereby waives demand, protest, presentation and notice of dishonor.

Witness:

SWAIN DEVELOPMENT CORPORATION

By: _____
ROBERT SWAIN, President

_____
ROBERT SWAIN

Beneficiary: ROBERT E SWAIN
Originator: ESTATE OF JOHN T O'BRIEN

Message Text:

User ID:JBALLOU
Message StCOMPLETE
Value Date03/08/1999
Date:03/08/1999
Time:10:48:53
Amount:100000.00
URC:
Test Key:0
Branch Cod001BR999
Fee:16.00
Pin:
ExtRef:
Skpcllbck:N
Skiphost:N
Tkprefix:
Trancode:

Version:0
Sender ABA011500120
Sender NamCitizens Bank
Receiver A044000024
Receiver NHUNT COL
Message Ty10
Message Su00
Product CoCTR
Amount:100000.00
Reference:19990308104852JB
ORG Idcode
ORG Id:
ORG:ESTATE OF JOHN T O'BRIEN
ORG Addres34 BAYSIDE AVE
ORG AddresNEWPORT, RI 02840-
ORG Addres
OGB Idcode
OGB Id:
OGB:
OGB Addres
OGB Addres
OGB Addres
INS Idcode
INS Id:
INS:
INS Addres
INS Addres
INS_Addr2:
IBK Idcode
IBK Id:
IBK:
IBK Addres
IBK Addres
IBK Addres

BBK Idcode
BBK Id:
BBK:F/Y CLEARWATER BEACH FL
BBK Addres
BBK Addres
BBK Addres
BNF IdcodeAC
BNF Id:02111167173
BNF:ROBERT E SWAIN
BNF Addres1055 BAY ESPLANDE
BNF AddresCLEARWATER BEACH FL 33767
BNF Addres
RFB:
OBI:
BBI:
As of reas
As of date//
Reference
IMAD:19990308A1Q024AC000080
OMAD:
Charges:
CrAcctyp:
Free text1
Free text2

56840

THE NEWPORT CREAMERY, INC.
208 WEST MAIN ROAD
MIDDLETOWN, RI 02842
(401) 847-0390

NEWPORT FEDERAL SAVINGS BANK
NEWPORT, RI 02840

57-159/115

CHECK NO. 56840

***Fifty Thousand & No/100 Dollars

DATE 09/27/99

AMOUNT **50,000.00

PAY TO THE ORDER OF

Estate of John O'Brien
Principle re-payment,

020225801 10 5209 5224 092999

Peter W Rector

AUTHORIZED SIGNATURE MP

⑈056840⑈ ⑆011501598⑆ 01 5021886⑈ ⑈0005000000⑈

BB

0110-0001-5
020225801 0110-0001-5
020225801 09-29-99

SE '99 28

CITIZENS BANK OF RHODE ISLAND
CITIZENS DRIVE
RIVERSIDE, RI

0115
00120

PROCESSED CCCC 09/29/1999