

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
CHATTANOOGA DIVISION**

In re:)	
)	
LUIS H. RIVAS d/b/a The Forex Project,)	No. 08-12333
)	
Debtor.)	Chapter 7 (Involuntary)
)	
W. GREY STEED, TRUSTEE,)	
)	
Plaintiff)	
)	
v.)	Adv. Proceeding No. _____
)	
PAMELA MORGAN a/k/a)	
PAMELA GREEN,)	
)	
Defendant.)	

**COMPLAINT TO AVOID AND RECOVER FRAUDULENT AND POST-
PETITION TRANSFERS AND FOR TURNOVER**

Comes now W. Grey Steed, Trustee of the above-named Debtor, and files this action against the Defendant to avoid fraudulent conveyances, post-petition transfers, for turnover of property of the estate and to recover assets and funds fraudulently conveyed to Defendant Pamela Morgan (“Defendant Morgan”) by Debtor. For his cause of action, the Trustee states as follows:

PARTIES

1. An involuntary petition was filed against Luis Rivas d/b/a The Forex Group on May 15, 2008 and an Order for Relief was entered on June 10, 2008.
2. The Plaintiff, W. Grey Steed, Trustee (“Trustee”) was appointed as Interim Trustee on June 6, 2008 and is currently serving as Trustee for the bankruptcy estate.

3. Defendant Pamela Morgan (“Morgan”) is a resident of Hamilton County, Tennessee and currently resides at 6809 Pine Drive, Chattanooga, Tennessee 37421.

JURISDICTION

4. This is an adversary proceeding brought primarily pursuant to 11 U.S.C. §§ 542, 544, 548, 549 and 550. This action seeks to avoid actual and constructive fraudulent conveyances, post-petition transfers, for turnover of property of the estate and to recover assets and funds fraudulently conveyed to Defendant.

5. The Court has jurisdiction over the subject matter for this Complaint pursuant to 28 U.S.C. §§1334 and 157. Venue is proper in this district and division pursuant to 28 U.S.C. §1409.

FACTS

6. In late 2006 or early 2007 through May of 2008, Debtor engaged in a business whereby he would obtain funds from individuals or other legal entities for the purported purpose of trading the funds on a foreign currency exchange in an effort to accumulate profits.

7. Debtor’s operation involved receiving or obtaining funds from individuals or other legal entities, and the execution by Debtor of promissory notes made payable to the investor promising from 5% to 10% monthly return to the investor, depending on the investor.

8. During the period in which Debtor received investor funds, Debtor did not generate sufficient profits from which to repay the interest and other payment obligations to investors.

9. During the period in which Debtor was receiving investor funds, Debtor continued to obtain money from the investors with the knowledge that he would not be able to repay these amounts from his business operations.

10. During the period in which Debtor received investor funds, Debtor was operating a “Ponzi” scheme, whereby he would use the funds he obtained from one investor to repay portions of interest, principal or commissions to prior investors.

11. During the period in which Debtor was receiving investor funds, a majority of the funds received were not “invested” or traded on the foreign currency exchange; instead the funds were deposited into one of several bank accounts maintained by Debtor, and used to repay prior loans, to pay the interest payments on the investors’ loans, to pay for living expenses, to pay for lavish trips, to pay for lavish gifts to employees and acquaintances and to make charitable donations.

12. During the period in which Debtor was receiving investor funds, the Debtor had very little, if any, actual earned income; the sole source of cash flow was from new loans from investors.

13. During the period in which Debtor was receiving investor funds, the Debtor operated his Ponzi scheme, with no ability to ever repay the obligations.

14. During the period in which Debtor was receiving investor funds, the Debtor was insolvent at all times, unable to pay his debts as they came due.

15. On May 19, 2008, after the filing of the involuntary bankruptcy petition, Defendant Morgan received a cashier’s check written off the account of Debtor by Angela Jefferson, Defendant Morgan’s mother, in the amount of \$225,000.00. (**Exhibit**

A). Defendant Morgan used the funds to her post-petition to purchase a house at 6809 Pine Drive, Chattanooga, Tennessee for \$213,000.00 on June 10, 2008.

16. In or around late December 2007, Debtor purchased for Defendant Morgan a 2008 Volkswagen Toureg for approximately \$82,000.00.

17. On June 11, 2008, after the filing of Debtor's bankruptcy petition and the appointment of the Trustee, Defendant Morgan traded the Volkswagen Toureg for a 2007 Mazda RX8. In June 2008, Defendant Morgan wrecked the Mazda and received an insurance check in the amount of \$22,000.00.

18. In addition, from July 2007 through April 2008, Defendant Morgan periodically received payroll checks from Debtor. In addition all living expenses for Defendant Morgan were paid for by Debtor.

19. In addition to the above, Defendant Morgan received a fur coat, jewelry and furniture from Debtor.

20. At the time of all payments received by Defendant Morgan from the accounts of Debtor and at the time the 2008 Volkswagen Toureg and other items were given by Debtor to Defendant, the Debtor was insolvent.

21. Upon information and belief, Defendant Morgan was a managing agent of The Forex Project and therefore is an insider pursuant to 11 U.S.C. §101(31).

22. Upon information and belief, Debtor received no consideration or value in exchange for the payments, vehicle and other items given to Defendant.

23. Debtor d/b/a The Forex Project was actually losing money and not earning sufficient income to pay his debts at the time the payments were made and vehicle and other items was given to Defendant.

24. At all times during which the payments were made and vehicle given by Debtor to Defendant, the Debtor was engaged in a Ponzi scheme whereby all payments made by Debtor to Defendant, and any other payments made by Debtor, and all “gifts” of vehicles, furs, jewelry, and other items, were funded by money obtained by the Debtor by investors in the Debtor’s operation.

COUNT I

Avoidance Under 11 U.S.C. §549

25. The Plaintiff restates and incorporates by reference all allegations made in Paragraphs 1 through 24 above.

26. The Defendant received a payment totaling \$225,000.00 out of Debtor’s bank account subsequent to the filing of the involuntary petition. (See **Exhibit A**).

27. Such payment is a post-petition transfer under 11 U.S.C. §549, subject to being recovered by the Trustee under 11 U.S.C. §550.

COUNT II

Avoidance Under 11 U.S.C. §544(b)

28. The Plaintiff restates and incorporates by reference all allegations made in Paragraphs 1 through 27 above.

29. At all times prior to the filing of the petition, there were actual creditors of the Debtor in existence, who held and still hold unsecured claims allowable under 11 U.S.C. §502, such that the Trustee can assert state avoidance rights pursuant to T.C.A. §66-3-101, et seq. and 11 U.S.C. §544(b).

COUNT III

Avoidance Under 11 U.S.C. §548(a)(1)(A)

30. The Plaintiff restates and incorporates by reference all allegations made in Paragraphs 1 through 29 above.

31. Because the Debtor was operating a Ponzi scheme at the time of the payments made and vehicle given to the Defendant, actual intent to hinder, delay or defraud creditors may be inferred, and the payments are and transfer of the vehicle is avoidable under 11 U.S.C. §548(a)(1)(A) and T.C.A. §66-3-305.

COUNT IV

Avoidance Under 11 U.S.C. §548(a)(1)(B)

32. The Plaintiff restates and incorporates by reference all allegations made in Paragraphs 1 through 31 above.

33. Because the Debtor received no value in exchange for the payments made and vehicle and other items given to Defendant, and was insolvent on the date that each such payment was made, all payments and the transfer of the vehicle made prior to the petition date are avoidable under 11 U.S.C. §548(a)(1)(B) and T.C.A. §66-3-305.

COUNT V

Turnover of Property Under 11 U.S.C. §542

34. The Plaintiff restates and incorporates by reference all allegations made in Paragraphs 1 through 33 above.

35. The 2008 Volkswagen Toureg and other gifts given to Defendant by Debtor were property of the estate and are still in the possession of Defendant and should

therefore be turned over to the Trustee pursuant to 11 U.S.C. §542. The vehicle and gifts are recoverable under 11 U.S.C. §550.

COUNT VI

Recovery Under 11 U.S.C. §550

36. The Plaintiff restates and incorporates by reference all allegations made in Paragraphs 1 through 35 above.

37. Because the Defendant is the initial transferee of the payments, the vehicle and gifts which are avoidable as stated above, and/or the vehicle and gifts are property of the estate, the Trustee may recover, for the benefit of the estate, the property transferred or the value of such property.

WHEREFORE, the Trustee requests the following relief:

a. For an order avoiding the payment of approximately \$225,000.00 and the transfer of the vehicle and other items from the Debtor to Defendant.

b. For an order requiring Defendant to turn over to the Trustee the insurance proceeds from the Mazda vehicle and all other items given by Debtor to Defendant.

c. For an order allowing recovery by the Trustee from the Defendant, for the benefit of the estate, of \$225,000.00, insurance proceeds from the Mazda vehicle, the value of the 2008 Volkswagen Toureg, and the other gifts or the value thereof.

d. For a judgment in the amount of \$225,000.00 plus the insurance proceeds from the Mazda vehicle, the value of the 2008 Volkswagen Toureg and other gifts in favor of the Trustee against the Defendant, for which execution may issue.

e. For an equitable lien to be impressed upon the real property located at 6809 Pine Drive, Chattanooga, Tennessee 37421 in the amount of \$225,000.00.

f. For such other relief as the Court deems just and proper.

Respectfully submitted,

**PATRICK, BEARD, SCHULMAN &
JACOWAY, P.C.**

By: /s/ Cara J. Alday

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