

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THOMAS BRAZIEL, as Receiver of
Fund.com Inc.,

Plaintiff,

- against -

THORSDALE FIDUCIARY AND
GUARANTY COMPANY LTD. and
DISTRIBUTED FINANCE CORPORATION,
Defendants.

Index No. _____/2017

SUMMONS

To: The above-named Defendants

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the Complaint of Plaintiff herein and to serve a copy of your answer on Plaintiff at the address indicated below within 20 days after service of this Summons (not counting the date of service) or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

PLEASE TAKE NOTICE that should you fail to answer, a judgment will be entered against you by default for the relief demanded in the Complaint.

Dated: March 10, 2017
New York, New York

STORCH AMINI PC

/s/ Jeffrey Chubak
Jeffrey Chubak
140 East 45th Street, 25th Floor
New York, New York 10017
(212) 490-4100

Attorneys for Plaintiff

PARTIES

4. Plaintiff is the duly appointed Receiver of the Company, a Delaware corporation, pursuant to the order attached hereto as Exhibit 1.

5. Defendant Thorsdale is a Nevada corporation. According to its operating agreement, Thorsdale was formed as a “family trust company” for “members of the Berger family and its Family Affiliates.” Galanis’s father-in-law (Ralph Berger) and Lucas Mann (“Mann”) are listed as Thorsdale’s sole officers/managers on the Nevada Secretary of State’s website. Galanis controlled Thorsdale, as described below.

6. Defendant DFC is a Hawaiian corporation headquartered in New York. Historically, DFC (f/k/a Fund Alliance Corporation) was a shell formed by Galanis for the purpose of monetizing the URL (hence its name). In 2014, NorthStar Asset Management Group Inc. purchased a 50% ownership interest in DFC in exchange for \$4 million. In January 2016, NorthStar invested an additional \$1 million in DFC in the form of convertible debt. DFC is presently a FinTech company that is developing a crowdfunding platform designed to provide non-accredited investors with access to alternative investments.

BACKGROUND

I. THE COMPANY; LUCAS MANN

7. The Company’s SEC filings state it was founded by Mann in September 2007 as a private Delaware corporation.

8. In January 2008, the Company consummated a reverse merger into Eastern Services Holdings, Inc., a public shell corporation which then changed its name to that of the Company.

9. Mann served as the Company’s Director and Chief Marketing Officer until his resignation.

10. The post-merger Company had two common stock share classes: Class A and B. Pursuant to the Company's charter, Class A shares have one vote per share, while Class B shares have ten. The Class A shares traded, and continue to trade, publicly under ticker symbol FNDM.

11. Galanis controlled the Company through his indirect ownership of all of the Class B shares. Galanis used that control to perpetrate a pump-and-dump scheme on Class A shareholders. He did this by causing the Company to issue fraudulent SEC filings stating that the Company owned fictitious assets, most notably a \$20 million CD held at an offshore bank.

12. In September 2009, the Company announced that it entered into a separation agreement with Mann.

13. In November and December 2010, the Company announced the value of the CD had to be written down and its financials had to be restated. The Company never restated its financials or made any subsequent SEC disclosures.

14. As noted above, although the Company was a vehicle for fraud, it was capitalized with real assets, including the URL, which the Company represented it purchased in October 2007 for \$10 million.

II. GEROVA

15. After the pump-and-dump scheme ran its course and the Company ceased complying with SEC disclosure requirements, the SEC commenced an investigation into the Company.

16. That investigation spawned a second SEC investigation into another pump-and-dump scheme perpetrated by Galanis, this one involving the stock of Gerova Financial Group, Ltd., a NYSE-listed public company also included in the Russell 2000 Index.

17. That investigation resulted in the commencement of civil and criminal actions against Galanis in September 2015. *SEC v. Galanis*, No. 15-cv-7547 (S.D.N.Y.); *USA v. Galanis*, No. 15-cr-643 (S.D.N.Y.).

18. Galanis was sentenced in February 2017 to eleven years in prison for his role in the Gerova fraud. He was also ordered to forfeit \$38 million and his interests in properties in New York and Los Angeles.

III. TRIBAL BOND FRAUD; HUGH DUNKERLEY

19. Galanis also perpetrated a fraud whereby he caused registered investment advisors to buy \$60 million in sham bonds issued by the Wakpamni Lake Community Corporation, a Native American tribal corporation affiliated with the Oglala Sioux Nation, and diverted the proceeds to himself and his associates.

20. This fraud also resulted in the commencement of civil and criminal actions against Galanis and his associates. *SEC v. Archer*, 16-cv-3505 (S.D.N.Y.); *USA v. Galanis*, 16-cr-371 (S.D.N.Y.).

21. According to the SEC's Complaint, Galanis misappropriated the tribal bond proceeds through Thorsdale.

22. As noted above, Thorsdale was nominally co-managed by Galanis's father-in-law and Mann, but controlled by Galanis. The Complaint also alleged that Galanis had signing authority over its bank account, held its debit card, and directed wire transfers that it sent. It also stated Galanis caused Thorsdale to pay his mortgage lender and maintenance on his Los Angeles estate and make wire transfers to his criminal defense attorneys in the Gerova action and to his mother, wife, and father-in-law.

23. Hugh Dunkerley (“Dunkerley”) served as Managing Director of Burnham Securities Inc., a Galanis-controlled entity which served as placement agent for the tribal bonds. Dunkerley also served as Sole Director and President of Wealth Assurance Private Client Corporation, another Galanis-controlled entity through which Galanis misappropriated tribal bond proceeds. Dunkerley was paid by Thorsdale for his “services.”

24. In January 2017 Galanis pled guilty to securities fraud and conspiracy charges, and agreed to forfeit \$43 million.

25. Dunkerley has been charged with securities fraud and conspiracy charges, and is at liberty on a \$1 million bond, the conditions of which require that he remain on home detention with location monitoring.

IV. THE URL TRANSFER

26. Prior to February 21, 2014, Galanis caused the Company to transfer the URL to Thorsdale in order to monetize the same for his personal benefit.

27. The Company received no consideration for the foregoing transfer.

28. Thorsdale, in turn, “sold” the URL to DFC pursuant to an Asset Purchase Agreement between Thorsdale and DFC, dated February 21, 2014 (the “APA”), attached hereto as Exhibit 2, and an Intellectual Property Assignment, dated February 20, 2014 (“IP Assignment”), attached hereto as Exhibit 3. The APA and IP Assignment were signed by Mann, on behalf of Thorsdale, and Dunkerley, on behalf of DFC.

29. Under the APA, DFC agreed to pay \$1 million on signing and \$.5 million following a debt or equity raise.

30. The former amount was paid with funds DFC borrowed from a tech entrepreneur pursuant to a Note Purchase Agreement, dated February 20, 2014, attached hereto as Exhibit 4. On February 21, 2014, \$999,000 of the \$1 million was transferred to Ballybunion Caplain UK Focus Growth Fund Ltd. (“Ballybunion”), in accordance with the payment direction letter and wire transfer instructions attached hereto as Exhibit 5 and Exhibit 6.

31. Ballybunion is managed by Matthew Nordgren, an individual with extensive ties to Galanis.

32. The \$500,000 payment due under the APA was paid from \$4 million in equity financing raised from NorthStar, which received a 50% ownership interest in DFC in exchange for the same.

33. Upon information and belief, the \$500,000 payment was also made to Ballybunion.

COUNT 1

**Actual Fraudulent Conveyance (§§ 276, 276-a)
(Against Both Defendants)**

34. The allegations in the preceding paragraphs are hereby incorporated by reference.

35. The transfer of the URL by the Company to Thorsdale and then to DFC constitute a conveyance under Debt. & Cred. Law § 270.

36. Both conveyances were made with actual intent to hinder, delay, or defraud the Company’s present and future creditors, including Plaintiff.

37. Plaintiff is entitled to a judgment against Defendants, jointly and severally, setting aside or disregarding the foregoing conveyances and directing the return to Plaintiff the URL or its stated value (\$10 million), and awarding Plaintiff attorneys’ fees pursuant to Debt. & Cred. Law § 276-a.

COUNT 2
Constructive Fraudulent Conveyance (§ 273)
(Against Both Defendants)

38. The allegations in the preceding paragraphs are hereby incorporated by reference.

39. The transfer of the URL by the Company to Thorsdale and then to DFC constitute a conveyance under Debt. & Cred. Law § 270.

40. The Company did not receive fair consideration for the URL under Debt. & Cred. Law § 272.

41. The Company was insolvent at the time it conveyed the URL or was rendered insolvent as a result of such transfer.

42. Plaintiff is entitled to a judgment against Defendants, jointly and severally, setting aside or disregarding both conveyances and directing the return to Plaintiff of the URL or its stated value.

COUNT 3
Constructive Fraudulent Conveyance (§ 274)
(Against Both Defendants)

43. The allegations in the preceding paragraphs are hereby incorporated by reference.

44. The transfer of the URL by the Company to Thorsdale and then to DFC constitute a conveyance under Debt. & Cred. Law § 270.

45. The Company did not receive fair consideration for the URL under Debt. & Cred. Law § 272.

46. At the time the Company made the conveyance, the Company was engaged or was about to engage in a business or transaction for which the property remaining in its hands after the conveyance was an unreasonably small capital.

47. Plaintiff is entitled to a judgment against Defendants, jointly and severally, setting aside or disregarding both conveyances and directing the return to Plaintiff of the URL or its stated value.

COUNT 4
Constructive Fraudulent Conveyance (§ 275)
(Against Both Defendants)

48. The allegations in the preceding paragraphs are hereby incorporated by reference.

49. The transfer of the URL by the Company to Thorsdale and then to DFC constitute a conveyance under Debt. & Cred. Law § 270.

50. At the time the Company made the conveyance, the Company had incurred, was intending to incur, or believed that it would incur debts beyond its ability to pay them as the debts matured.

51. Plaintiff is entitled to a judgment against Defendants, jointly and severally, setting aside or disregarding both conveyances and directing the return to Plaintiff of the URL or its stated value.

WHEREFORE, Plaintiff requests judgment against both Defendants, jointly and severally, setting aside or disregarding the conveyance of the URL by the Company to Thorsdale and then to DFC and directing the return to Plaintiff of the URL or its stated value pursuant to Debt. & Cred. Law §§ 273-76, awarding Plaintiff attorneys' fees pursuant to Debt. & Cred. Law § 276-a, and granting Plaintiff such other and further relief as this Court deems just and proper.

Dated: March 10, 2017
New York, New York

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