

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division
www.flsb.uscourts.gov

In re:

CASE NO. 08-29769-PGH

GINN-LA ST. LUCIE LTD., LLLP, *et al.*,

All Cases Jointly Administered

Debtors.

Chapter 7

_____ /

(4 Cases Substantively Consolidated Under
Lead Case No. 08-29769-PGH)^{1/}

In re:

GINN-LA QUAIL WEST LTD., LLLP, *et al.*,

(3 Cases Substantively Consolidated Under
Lead Case No. 08-29774-PGH)^{2/}

Debtors.

_____ /

DREW M DILLWORTH, Chapter 7 Trustee,

ADV. PRO. NO. _____

Plaintiff,

vs.

QUAIL WEST FOUNDATION, INC.;

Defendant.

_____ /

COMPLAINT TO AVOID AND RECOVER FRAUDULENT TRANSFERS

Plaintiff, DREW M. DILLWORTH (“**Trustee Dillworth**”), in his capacity as Chapter 7
Trustee for the above-styled jointly administered bankruptcy estates of GINN – LA ST. LUCIE

^{1/}The “**Tesoro Debtors’ Estates**” (Nos. 08-29769-PGH, 08-29770-PGH, 08-29772-PGH, and 08-29773-PGH) are substantively consolidated into Lead Case No. 08-29769-PGH. *See* Order [ECF No. 308/309]. The “**Tesoro Debtors**,” and the last four digits of their respective tax identification numbers, are: (i) Ginn-LA St. Lucie Ltd., LLLP – 5632; (ii) Ginn-St Lucie GP, LLC – 0983; (iii) Tesoro Golf Club Condo., LLC – 4385; and (iv) The Tesoro Club, LLC – 1917. *See* 11 U.S.C. § 342(c)(1).

^{2/}The “**Quail West Debtors’ Estates**” (Nos. 08-29774-PGH, 08-29775-PGH, and 08-29776-PGH) are substantively consolidated into Lead Case No. 08-29774-PGH. *See* Order [ECF No. 34]. The “**Quail West Debtors**,” and the last four digits of their respective tax identification numbers, are: (i) Ginn-LA Quail West Ltd., LLLP – 2397; (ii) Ginn-Quail West Beach, LLC – 9142; and (iii) Ginn-Quail West GP, LLC – 6313. *See* 11 U.S.C. § 342(c)(1).

Case No. 08-29769-PGH
(Jointly Administered)
Adv. No. _____

LTD., LLLP; GINN – ST. LUCIE GP, LLC; THE TESORO CLUB, LLC; and TESORO GOLF CLUB CONDOMINIUM, LLC (**collectively “Tesoro Debtors”**), sues the Defendant, QUAIL WEST FOUNDATION, INC. (**“Foundation”**), and alleges as follows:

JURISDICTION AND VENUE

1. This adversary proceeding arises under the above-captioned jointly administered Chapter 7 cases.

2. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157, 1334, and 11 U.S.C. §§ 548 and 550. This is a core proceeding under 28 U.S. § 157(b)(2)(A) and (H). Venue is proper in this district pursuant to 28 U.S.C. § 1409.

THE PARTIES

3. The Plaintiff is Drew M. Dillworth, in his capacity as the duly appointed, qualified, and acting Chapter 7 Trustee for the Tesoro Debtors’ Estates.

4. The Defendant is the Quail West Foundation, Inc., a not-for-profit corporation with its principal place of business in Naples, Collier County, Florida.

BACKGROUND

5. On December 23, 2008 (**“Petition Date”**), each of the Tesoro Debtors filed a voluntary petition with this Court under chapter 7 of the Bankruptcy Code.

6. On the Petition Date, the U.S. Trustee’s Office appointed Trustee Dillworth as the interim Chapter 7 Trustee of the Debtors’ estates. [ECF No. 4]. No trustee was elected at the § 341

Case No. 08-29769-PGH
(Jointly Administered)
Adv. No. _____

Meeting of Creditors held and conducted on January 30, 2009 in these jointly administered cases. Accordingly, pursuant to § 702 of the Bankruptcy Code, Trustee Dillworth is the duly appointed, qualified and acting Chapter 7 Trustee for the Debtors' estates.

7. On December 29, 2008, the Court entered an Order authorizing the joint administration of these cases for procedural purposes. [ECF No. 20].

8. On August 12, 2009, the Court entered an Order [ECF Nos. 308/309] substantively consolidating the four Tesoro Debtors' estates into the lead case of Ginn-La St. Lucie, Ltd. LLLP (Case No. 08-29769-PGH) ("**Tesoro Lead Case**"); and the three Quail West Debtors' Estates into the lead case of Ginn-LA Quail West Ltd., LLLP (Case No. 08-29774-PGH) ("**Quail West Lead Case**"). Notwithstanding the substantive consolidation, the Court continues to jointly administer all seven cases with a single case docket and court file maintained under the Tesoro Lead Case.

B. Relationship of the Parties

9. Prior to the Petition Date, the Tesoro Debtors were primarily involved in the development of a high-end luxury golf and country club master plan residential community consisting of approximately 1,200 acres in Port St. Lucie, Florida, commonly known as "Tesoro."

10. The Foundation is a not-for profit residential community property owner's foundation established to operate and maintain a club at a high-end luxury golf and country club residential community located in Naples, Florida, commonly known as "Quail West." Upon information and belief, the Foundation also owns certain Property (as defined in that certain Amended and Restated

Case No. 08-29769-PGH
(Jointly Administered)
Adv. No. _____

Declaration and General Protective Covenants for Quail West, as amended), which includes the golf course club facility at Quail West.

11. On March 2, 2010, Trustee Dillworth sent a letter to the Foundation requesting additional information to try and resolve amicably the matters which are the subject of this Complaint.

THE AVOIDABLE TRANSFERS AT ISSUE

12. On or about December 10, 2008, the Debtor, The Tesoro Club, LLC, transferred the sum of \$203,000.00 to the Foundation, via wire transfer.

13. On or about December 11, 2008, the Debtor, The Tesoro Club, LLC, transferred the sum of \$203,000.00 to the Foundation, via wire transfer.

14. On or about December 12, 2008, the Debtor, The Tesoro Club, LLC, transferred the sum of \$52,255.00 to the Foundation, via wire transfer.

15. The wire transfers described above are in the aggregate amount of \$458,255.00 **(collectively, “Transfers”)**.

16. With respect to the Transfers for which avoidance and recovery is sought in this adversary proceeding, the Foundation was an initial transferee or entity for whose benefit the Transfers were made within the meaning of 11 U.S.C. § 550(a)(1).

COUNT I

**Avoidance and Recovery of Transfers Pursuant to
11 U.S.C. § § 548(a)(1)(B)(i) and (ii)(I) and (II) and 550**

Trustee Dillworth sues the Foundation to avoid and recover the Transfers pursuant to 11 U.S.C. §§ 548(a)(1)(B)(i) and (ii)(I) and (II) and 550, and alleges as follows:

17. The allegations contained in paragraphs 1 through 16 above are incorporated by reference as if fully set forth herein.

18. The Debtor, The Tesoro Club, LLC, made the Transfers to or for the benefit of the Foundation within two (2) years prior to the Petition Date.

19. The Tesoro Debtors had an interest in the property (*i.e.*, money) that was the subject of the Transfers.

20. The Tesoro Debtors received less than a reasonably equivalent value in exchange for the Transfers.

21. At the time the Debtor, The Tesoro Club, LLC, made the Transfers, each and all of the Tesoro Debtors were insolvent.

22. At the time of such Transfers, each and all of the Tesoro Debtors were engaged in business or a transaction or were about to engage in business or a transaction for which each and all of the Tesoro Debtors' remaining property represented unreasonably small capital.

Case No. 08-29769-PGH
(Jointly Administered)
Adv. No. _____

23. The Transfers may be avoided under 11 U.S.C. § 548(a)(1)(B)(i) and (ii)(I) and (II), and recovered for the benefit of the Debtors' bankruptcy estates as provided in 11 U.S.C. § 550.

WHEREFORE, Trustee Dillworth respectfully requests that this Honorable Court enter a judgment granting the following relief:

A. Adjudicating the Transfers to be fraudulent transfers, plus any other fraudulent transfers revealed through discovery or otherwise, pursuant to 11 U.S.C. § 548(a)(1)(B)(i) and (ii)(I) and (II);

B. Avoiding the Transfers, plus any other fraudulent transfers revealed through discovery or otherwise;

C. Adjudicating the Foundation to be the initial transferee and/or the entity for whose benefit the Transfers were made;

D. Awarding damages in favor of Trustee Dillworth and against the Foundation in the amount of the Transfers, plus pre- and post-petition judgment interest, attorneys' fees and costs; and

E. Granting such other relief as this Honorable Court deems to be just and proper.

Case No. 08-29769-PGH
(Jointly Administered)
Adv. No. _____

Dated: December 21, 2010.

Respectfully submitted,

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