

IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED

FEB 18 1999

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA, TULSA COUNTY

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
Administrator,)

Plaintiff,)

v.)

Case No. 98-04212

Universal Factoring Company, Inc., an)
Oklahoma corporation, Newco-HC, Inc.,)
an Oklahoma corporation, James)
Ray Eckhart, an individual, Keli D.)
Eckhart, an individual,)
Diamond J Agribusiness, Inc., an)
Oklahoma corporation,)
Diamond J Management Corporation,)
an Oklahoma corporation,)
Diamond J Farms Consulting, L.P., an)
Oklahoma limited partnership,)
Universal Trade Finance, Inc.,)
an Oklahoma corporation,)
Oklahoma Receivables Factoring)
Company, Inc., an Oklahoma)
corporation, Randy Guest, an individual,)
and as trustee of the James Dawson)
Sydne Marie Eckhart Trust,)
D&S Ventures, L.L.C., an Oklahoma)
limited liability corporation,)
James Ray Eckhart Revocable Trust,)
James Dawson Sydne Marie Eckhart)
Trust, Keli Dawn Eckhart Revocable)
Trust, Linda Holman, trustee for the)
James Dawson Sydne Marie Eckhart)
Trust, and Valve & Controls, Inc.,)
an Oklahoma corporation,)

Defendants.)

AMENDED PETITION FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF

Plaintiff, Oklahoma Department of Securities ex rel. Irving L. Fought ("Department"), for its claims against the above named Defendants (hereinafter collectively referred to as "Defendants"), alleges and states as follows:

1. The Department, pursuant to Section 406.1 of the Oklahoma Securities Act ("Act"), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (1991 & Supp. 1998), is the proper party to bring this action against Defendants.

2. The Defendants have engaged and are engaging in acts and practices in violation of the Act. Unless enjoined, they will continue to engage in the acts and practices set forth herein and acts and practices of similar purport and object. Moreover, in connection with such violations, Defendants have received an unknown amount of funds from the sale of securities to a number of investors.

3. Pursuant to Sections 2 and 413 of the Act, Defendants, in connection with their issuance, offer, and sale of the securities, are all subject to the provisions of the Act. By virtue of their transaction of business by contract and otherwise and commission of other acts in this state, Defendants are subject to the jurisdiction of this Court and to service of summons within or outside of this state.

4. Defendant Universal Factoring Company, Inc. ("UFC") was incorporated under the laws of the state of Oklahoma on January 1, 1991, and has operated and is continuing to operate from offices in Tulsa, Oklahoma. UFC's authority to do business as a corporation in the state of Oklahoma was suspended for failure to pay franchise taxes on March 6, 1995, and the suspension is still in effect.

5. Defendant Newco-HC, Inc. ("Newco-HC") was incorporated under the laws of the state of Oklahoma on February 21, 1992. Newco-HC, a holding company owned and controlled by Defendant James Ray Eckhart ("Eckhart"), owns and controls UFC.

6. Eckhart was at all times material hereto the sole officer and director of both UFC and Newco-HC. Eckhart owns and controls Newco-HC. At all times relevant hereto, UFC acted

under the dominion and control of Eckhart and Newco-HC. Eckhart has materially and actively participated in offers and sales of securities directly to investors.

7. Defendant Keli Dawn Eckhart ("Keli Eckhart") is an individual who at all times relevant hereto operated and controlled various of the other Defendants as described below.

8. Defendant Diamond J Agribusiness, Inc. ("Diamond J Agribusiness") was incorporated under the laws of the state of Oklahoma on September 9, 1991. Diamond J Agribusiness acted under the dominion and control of Eckhart and Keli Eckhart.

9. Defendant Diamond J Management Corporation ("Diamond J Management") was incorporated under the laws of the state of Oklahoma on January 19, 1994. Diamond J Management acted under the dominion and control of Eckhart and Keli Eckhart.

10. Defendant Diamond J Farms Consulting, L.P. ("Diamond J Farms Consulting") was formed as a domestic limited partnership under the laws of the state of Oklahoma on April 21, 1992. Diamond J Farms Consulting acted under the dominion and control of Eckhart. Diamond J Farms Consulting was dissolved on January 14, 1997.

11. Defendant Universal Trade Finance, Inc. ("Universal Trade Finance") was incorporated under the laws of the state of Oklahoma on January 9, 1997. Universal Trade Finance acted under the dominion and control of Eckhart. Universal Trade Finance's authority to do business as a corporation in the state of Oklahoma was suspended for failure to pay franchise taxes on July 10, 1998, and the suspension is still in effect.

12. Defendant D&S Ventures, L.L.C. ("D&S Ventures") was incorporated under the laws of the state of Oklahoma as a limited liability corporation on February 15, 1995. D&S Ventures acted under the dominion and control of Eckhart.

13. Defendant Randy Guest ("Guest") is an individual who at all times relevant hereto materially and actively participated in offers and sales of securities directly to investors and served as trustee for the James Dawson Sydne Marie Eckhart Trust.

14. Defendant Oklahoma Receivables Factoring Company, Inc. ("Oklahoma Receivables") was incorporated under the laws of the state of Oklahoma on January 6, 1988.

Oklahoma Receivables acted under the dominion and control of Eckhart. Oklahoma Receivables' authority to do business as a corporation in the state of Oklahoma was suspended for failure to pay franchise taxes on May 23, 1997, and the suspension is still in effect.

15. Defendants James Ray Eckhart Revocable Trust, Keli Dawn Eckhart Revocable Trust, James Dawson Sydne Marie Eckhart Trust (hereinafter collectively referred to as "Eckhart Trusts") are trusts formed and administered by and for the benefit of Eckhart, Keli Eckhart and their children.

16. Defendant Linda Holman ("Holman") is an individual who at all times relevant hereto served as trustee for at least one of the Eckhart Trusts.

17. Defendant Valve & Controls, Inc., f/k/a Performance Valve and Controls, Inc. ("PVC"), was incorporated under the laws of the state of Oklahoma on January 16, 1980. PVC, during a period of time relevant to this action, was under the dominion and control of Eckhart.

FIRST CAUSE OF ACTION

(Violation of Section 301 of the Act:

Offer and Sale of Unregistered Securities)

18. The Department realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 17 above.

19. From at least January, 1995, and continuing to the present, Defendants UFC, Newco-HC, Eckhart and Guest offered and sold securities to the public ("investors") in the nature of promissory notes issued by UFC.

20. The securities that the Defendants UFC, Newco-HC, Eckhart and Guest offered and sold were not registered with the Department as required by Section 301 of the Act nor offered and sold pursuant to an exemption from registration pursuant to Section 401 of the Act. (See attached Exhibit A.)

21. Defendants Diamond J Agribusiness and Keli Eckhart, acting singly and in concert, directly and indirectly, materially participated or aided Defendants Eckhart, UFC, Newco-HC and Guest in the offer and sale of unregistered securities in violation of Section 301.

22. Defendants Diamond J Agribusiness and Keli Eckhart, directly or indirectly controlled Defendants Eckhart, UFC, Newco-HC and Guest in the offer and sale of unregistered securities in violation of Section 301.

SECOND CAUSE OF ACTION

(Violation of Section 201 of the Act:

Failure to Register as Broker-Dealers or Agents)

23. The Department realleges and incorporates by reference each and every allegation contained in the first cause of action.

24. UFC is the issuer of the securities. Newco-HC, Eckhart and Guest, by virtue of their efforts and activities in effecting and attempting to effect sales of the securities, are agents of the Defendant issuer within the purview of Section 2 of the Act. None of the Defendants Newco-HC, Eckhart and Guest is nor have been registered under the Act as broker-dealers or agents for the offer and sale of securities as required by Section 201 of the Act. By virtue of the offers and sales of the securities, Defendants Newco-HC, Eckhart and Guest have violated Section 201 of the Act. (See attached Affidavit Exhibit B.)

THIRD CAUSE OF ACTION

(Violation of Section 101(1) of the Act:

Scheme to Defraud In Connection With Offer And Sale Of Securities)

25. The Department realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

26. Defendants UFC, Newco-HC, Eckhart, Guest, Diamond J Agribusiness, Keli Eckhart, Diamond J Management, Diamond J Farms, Universal Trade Finance, Oklahoma Receivables, D&S Ventures, the Eckhart Trusts, Holman and PVC, acting singly and in concert, directly and indirectly, employed a device, scheme or artifice to defraud investors, in violation of Section 101 of the Act.

27. As part of and in furtherance of their scheme to defraud investors, Defendants UFC, Newco-HC, Eckhart, Guest, Diamond J Agribusiness and Keli Eckhart offered investments in a program purportedly to purchase accounts receivable at a discount and make a profit on the collection of those receivables. Defendants UFC, Newco-HC, Eckhart, Guest, Diamond J Agribusiness and Keli Eckhart intended to use the proceeds of the offering to pay off previous investors who had received substantially similar representations. As a result, investors returns were contingent almost entirely on the ability of Defendants UFC, Newco-HC, Eckhart, Guest, Diamond J Agribusiness and Keli Eckhart to solicit additional investors. The scheme is similar to, and will be referred to hereinafter as, a "Ponzi Scheme".

28. In addition to employing a Ponzi Scheme, Defendants UFC, Newco-HC, Eckhart, Guest, Diamond J Agribusiness and Keli Eckhart favored certain investors by ensuring that their principal was returned with interest while failing to pay other investors whose notes were due pursuant to the terms of their investment agreements.

29. Defendants Diamond J Agribusiness, Keli Eckhart, Diamond J Management, Diamond J Farms, Universal Trade Finance, Oklahoma Receivables, D&S Ventures, the Eckhart Trusts, Holman and PVC, acting singly and in concert, directly and indirectly, employed the Ponzi Scheme to defraud investors by accepting and hiding the ill-gotten funds and aided and abetted the other defendants in perpetrating the fraud.

FOURTH CAUSE OF ACTION

(Violation of Section 101(2) of the Act:

**Making Untrue Statements of Material Fact and Omission of Material Facts
In Connection With The Offer And Sale Of Securities)**

30. The Department realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

31. Defendants UFC, Newco-HC, Eckhart, Guest, Diamond J Agribusiness, Keli Eckhart, Diamond J Management, Diamond J Farms, Universal Trade Finance, Oklahoma Receivables, D&S Ventures, the Eckhart Trusts, Holman and PVC, acting singly and in concert, directly and indirectly, made untrue statements of material facts and omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading in connection with the offer and sale of the securities, in violation of Section 101 of the Act.

32. As a part of and in furtherance of the referenced activities, Defendants UFC, Newco-HC, Eckhart and Guest made untrue statements of material facts to investors in the securities during oral solicitation including, but not limited to:

- a. that investors would be paid principal plus interest at the time agreed in the promissory notes;
- b. that no investors had ever failed to receive the principal and interest on promissory notes as they came due; and
- c. that investors were investing in accounts receivable when in fact they were contributing to a Ponzi Scheme.

33. As a part of and in furtherance of the referenced activities, Defendants UFC, Newco-HC, Eckhart and Guest failed to disclose material facts to investors in the securities during oral solicitation including, but not limited to:

- a. the prior business history, proposed plan of operation, knowledge and experience of Defendants UFC, Newco-HC, Eckhart and Guest;
- b. compensation to management and affiliates;
- c. actual financial information for UFC or any of the principals of the company;
- d. the financial ability of Defendants UFC and Eckhart to perform and complete the purchase and collection of accounts receivable on behalf of the investors;
- e. any risk factors or speculative factors involved in an investment with Defendants UFC and Eckhart;
- f. that certain investors might receive preferential treatment in the repayment of their notes.
- g. that UFC was solely owned by Newco-HC, and Newco-HC was solely owned and controlled by Eckhart;
- h. that investors were investing in a Ponzi Scheme;
- i. that investments might not be used to purchase accounts receivable; and
- j. that UFC lacked authority to do business in the state of Oklahoma as a corporation.

34. Defendants Diamond J Agribusiness, Keli Eckhart, Diamond J Management, Diamond J Farms, Universal Trade Finance, Oklahoma Receivables, D&S Ventures, the Eckhart Trusts, Holman and PVC, acting singly and in concert, directly and indirectly, materially participated or aided Defendants Eckhart, UFC, Newco-HC and Guest in the making of untrue statements of material facts and omitting to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading in connection with the offer and sale of the securities as alleged above.

35. Defendants Diamond J Agribusiness and Keli Eckhart, directly or indirectly controlled Defendants Eckhart, UFC, Newco-HC and Guest in the making of untrue statements

of material facts and omitting to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading in connection with the offer and sale of the securities, as alleged above.

FIFTH CAUSE OF ACTION

(Violation of Section 101(3) of the Act:

Engaged In An Act, Practice Or Course Of Business

Which Operates or Would Operate As A Fraud Or Deceit)

36. The Department realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

37. Defendants UFC, Newco-HC, Eckhart, Guest, Diamond J Agribusiness, Keli Eckhart, Diamond J Management, Diamond J Farms, Universal Trade Finance, Oklahoma Receivables, D&S Ventures, the Eckhart Trusts, Holman and PVC, acting singly and in concert, directly and indirectly, engaged in an act, practice, or course of business which operates or would operate as a fraud or deceit on over two hundred persons, in violation of Section 101 of the Act.

38. As part of and in furtherance of their act, practice or course of business to defraud investors, Defendants UFC, Newco-HC, Eckhart, Guest, Diamond J Agribusiness, Keli Eckhart, Diamond J Management, Diamond J Farms, Universal Trade Finance, Oklahoma Receivables, D&S Ventures, the Eckhart Trusts, Holman and PVC, engaged in the Ponzi Scheme.

39. Defendants Diamond J Agribusiness, Keli Eckhart, Diamond J Management, Diamond J Farms, Universal Trade Finance, Oklahoma Receivables, D&S Ventures, the Eckhart Trusts, Holman and PVC, acting singly and in concert, directly and indirectly, materially participated or aided Defendants Eckhart, UFC, Newco-HC and Guest in the fraudulent course of business by accepting and hiding the ill-gotten funds.

40. Defendants Diamond J Agribusiness and Keli Eckhart, directly or indirectly, controlled Defendants Eckhart, UFC, Newco-HC and Guest in the fraudulent course of business by accepting and hiding the ill-gotten funds.

SIXTH CAUSE OF ACTION

(Civil Conspiracy)

41. The Department realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

42. Defendants Eckhart, UFC, Newco-HC, Guest, Diamond J Agribusiness, Keli Eckhart, Diamond J Management, Diamond J Farms, Guest, Universal Trade Finance, Oklahoma Receivables, D&S Ventures, the Eckhart Trusts, Holman and PVC, entered into an agreement, both express and implied, to perpetrate the fraud alleged in the above causes of action.

43. Each Defendant committed at least one overt act in furtherance of the common plan and scheme to defraud the investors.

44. As a result of this agreement and conspiracy to perpetrate the fraud, numerous investors have been injured.

SEVENTH CAUSE OF ACTION

(Relief Defendants)

45. The Department realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

46. Defendants Diamond J Agribusiness, Keli Eckhart, Diamond J Management, Diamond J Farms, Guest, Universal Trade Finance, Oklahoma Receivables, D&S Ventures, the Eckhart Trusts, Holman and PVC (hereinafter referred to collectively as "Relief Defendants") received funds from UFC that were fraudulently obtained by UFC and for which the Relief

Defendants gave little or no consideration and to which the Relief Defendants have no legitimate claim.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing, and pursuant to the authority specifically granted by Section 406.1 of the Act, the Department prays for relief as follows:

1. A temporary restraining order to issue instanter, restraining and enjoining the Defendants, their agents, servants, employees, assigns, attorneys, and those persons in active concert or participation with them who receive actual notice of the temporary restraining order, directly or indirectly, and each of them from:

a. the offer and sale of securities in or from this state unless and until such securities are registered under the Act or Defendants offer or sell such securities pursuant to an exemption from registration provided by the Act;

b. acting as broker-dealers or agents, or from employing broker-dealers or agents, in connection with the offer and sale of securities in or from this state unless Defendants or the employed broker-dealers or agents, are registered as broker-dealers or agents pursuant to the Act;

c. employing any device, scheme or artifice to defraud;

d. making any untrue statements of material fact or omitting to state material facts necessary to make statements made, in light of the circumstances under which they were made, not misleading, in connection with the offer, sale, and/or purchase of securities from or in this state;

e. engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person;

f. directly or indirectly dissipating, concealing or disposing of any assets, real property, or other property of any of the Defendants located in this state;

g. directly or indirectly, dissipating, concealing or disposing of any funds which are in the custody, possession or control of any of the Defendants;

2. A permanent injunction forever enjoining and restraining Defendants, and each of them, from the offer or sale of securities in or from this state and from directing other natural persons, corporations or other business entities acting on their behalf to offer or sell securities in or from this state unless: a) the securities are registered pursuant to the Act; or b) the securities are exempt from registration pursuant to Section 401 of the Act;

3. A permanent injunction forever enjoining and restraining Defendants from acting as broker-dealers or agents, or from employing broker-dealers or agents, in connection with the offer or sale of securities in or from this state unless Defendants or the employed broker-dealers or agents are registered as broker-dealers or agents pursuant to the Act;

4. A permanent injunction forever enjoining and restraining Defendants, and each of them from, directly or indirectly, employing any device, scheme, or artifice to defraud;

5. A permanent injunction forever enjoining and restraining Defendants, and each of them from, directly or indirectly, making any untrue statements of material fact or omitting to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading in connection with the offer, sale, and/or purchase of securities;

6. A permanent injunction forever enjoining and restraining Defendants, and each of them from, directly or indirectly, engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person;

7. An order requiring the Defendants to produce for review all books and records, both corporate and individual, as are necessary to obtain an accounting of the amount, source and disposition of funds promoted or otherwise received from the investing public and from revenues received from sales of securities by the Defendants;

8. An order requiring Defendants to make restitution to any and all investors who purchased securities from Defendants;

9. An order requiring Defendants to disgorge any and all profits received by them from UFC;

10. An order holding the Relief Defendants liable for an amount equal to all monies received by them from UFC that were fraudulently obtained by UFC and for which the Relief Defendants gave little or no consideration and to which the Relief Defendants have no legitimate claim; and

11. Such other legal and equitable relief as the Court may deem necessary, just and proper in connection with the enforcement of the Act.

Respectfully submitted,

OKLAHOMA DEPARTMENT OF SECURITIES
Irving L. Faught, Administrator

By:



Gerri L. Stuckey #16132

Enforcement Attorney

Mark Edmondson #11823

Enforcement Attorney

Oklahoma Department of Securities

120 North Robinson, Suite 860

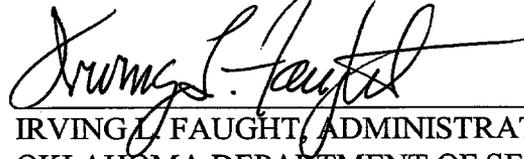
Oklahoma City, Oklahoma 73102

(405) 280-7700

STATE OF OKLAHOMA)
)
COUNTY OF OKLAHOMA) SS.

Irving L. Faught, of lawful age, being first duly sworn deposes and says: that he is the Administrator of the Oklahoma Department of Securities, that he has read the foregoing Petition and knows the contents thereof, and that the matters and things stated therein have been provided to him by staff members of the Department under his authority and direction, and are true and correct to the best of his knowledge, information and belief.

(SEAL)



IRVING L. FAUGHT, ADMINISTRATOR OF THE
OKLAHOMA DEPARTMENT OF SECURITIES
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
(405) 280-7700

Subscribed and sworn to before me this 25th day of January 1998.

(NOTARIAL SEAL)



Notary Public

My Commission Expires:

August 26, 2001