

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE WESTERN DISTRICT OF OKLAHOMA**

IN RE:)	
)	
MARVIN LEE WILCOX and)	
PAMELA JEAN WILCOX,)	Case No. 07-10610-RLB
)	Chapter 7
Debtors.)	
)	
OKLAHOMA DEPARTMENT OF SECURITIES,)	
Ex Rel. IRVING L. FAUGHT,)	
)	
Plaintiff,)	
)	
vs.)	Adversary No.
)	
MARVIN LEE WILCOX and,)	
PAMELA JEAN WILCOX,)	
)	
Defendant.)	

COMPLAINT OBJECTING TO DISCHARGE UNDER 11 U.S.C § 727(a)(5)
SEEKING TO DETERMINE DISCHARGEABILITY OF DEBT UNDER
11 USC § 523(a)(2), (7) and (19) AND SEEKING IMPOSITION OF AN
EQUITABLE LIEN ON CERTAIN PROPERTY

The Oklahoma Department of Securities (Department), a creditor in this Chapter 7 Bankruptcy Case, respectfully alleges:

1. This is an adversary proceeding objecting to the discharge of the Debtor pursuant to Bankruptcy Rules 4004(d) and 7001(4), seeking to determine the dischargeability of a debt pursuant to Bankruptcy Rules 4007 and 7001(6), and seeking imposition of an equitable lien on certain real and personal property.
2. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 157.
3. Pursuant to Bankruptcy Rule 7008, the Department states that this proceeding is core.

4. On March 2, 2007, the above named debtors, defendants herein, filed a petition for relief under chapter 7 of title 11, United States Code.

OJBECTION TO DISCHARGE

5. Although Debtors have appeared at their meeting of creditors and Debtor Marvin Wilcox submitted to a 2004 examination, Debtors have failed to explain satisfactorily a deficiency of assets in the sum of \$509,505.00 at the time of filing of the petition herein, to meet the Debtors' liabilities pursuant to 11 U.S.C. § 727(a)(5).

OBJECTION TO DISCHARGEABILITY OF DEBT

6. Debtors are indebted to Department in the sum of Five Hundred Nine Thousand Five Hundred Five Dollars (\$509,505.00) and said debt is founded upon a claim that is excepted from a discharge in bankruptcy. *See* Judgment attached as Exhibit A.
7. The debt arose as follows:
 - (a) Beginning in or around January of 2000, through or around October 14, 2004, Marsha Schubert, individually and doing business as Schubert and Associates, (collectively, "Schubert"), orchestrated a securities fraud in and from Crescent, Oklahoma. Schubert, promising large financial returns, accepted funds in excess of Two Hundred Million Dollars (\$200,000,000) for purported investment (the "Purported Investment

Program”). Approximately 100 persons lost in excess of Nine Million Dollars (\$9,000,000) in the Purported Investment Program.

(b) The securities fraud had two basic components: a) a “Ponzi” scheme in which most of the money entrusted to Schubert by participants in the Purported Investment Program was not invested in a legitimate venture, but instead, was paid out as purported returns to other participants in the Purported Investment Program; and b) a check exchange scheme. The check exchange scheme involved a consistent movement of funds primarily between the accounts of three individuals, one of which was Debtor Marvin Wilcox, and bank accounts controlled by Schubert. The scheme created a “float” that Schubert utilized to pay purported investment returns.

(c) Each month, Debtor Marvin Wilcox gave Schubert physical control of multiple checks from his personal bank account that were blank except for his signature. Schubert then determined the amount of each disbursement from the account, and filled out the blank checks previously signed by Debtor Marvin Wilcox, in the amounts she determined, for deposit into her bank accounts.

(d) In exchange for each of Debtor Marvin Wilcox’s checks, Schubert wrote checks on her bank accounts, in most cases for a greater dollar amount, that were deposited in Debtor Marvin Wilcox’s bank account.

(e) Between December 12, 2002 and October 6, 2004, there were over six hundred fifty (650) transactions between Schubert and Debtor Marvin

Wilcox. The deposits to Schubert from Debtor Marvin Wilcox totaled in excess of Seventy-Seven Million Dollars (\$77,000,000). Disbursements from Schubert to Debtor Marvin Wilcox totaled in excess of Seventy-Eight Million Dollars (\$78,000,000).

(f) Although these transactions were purportedly for “day trading”, options trading, or other investments in securities, Debtors received no brokerage account statements or confirmations concerning the purchase and sale of securities on their behalf.

(g) Debtor Marvin Wilcox on some occasions picked up bundles of checks prepared by Schubert, including the checks made payable to himself and the other two individuals involved in the check exchange scheme and the checks from Debtor Marvin Wilcox and those two individuals made payable to Schubert, and ferried them to the respective banks for deposit.

(h) On October 14, 2004, the Oklahoma Department of Securities (Department) filed suit against Schubert in the District Court of Logan County, State of Oklahoma, for violations of the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003), and the Oklahoma Securities Act (Predecessor Act), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (1991 & Supp. 2003).

(i) On October 14, 2004, the Logan County Court issued a temporary restraining order, froze Schubert’s assets and appointed Douglas L. Jackson as Receiver for Schubert’s assets.

(j) On November 15, 2004, upon the stipulation and consent of Schubert, the Logan County District Court entered a permanent injunction against Schubert that included an order of restitution, the amount to be determined at the conclusion of the receivership. *Oklahoma Department of Securities ex rel. Irving L. Faught, Administrator v. Marsha Schubert, et al.*, CJ 2004-256.

(k) On May 5, 2005, Schubert entered a plea of guilty in the United States District Court for the Western District of Oklahoma to one count of money laundering in connection with the Purported Investment Program. Schubert was sentenced to 10 years in prison and ordered to pay restitution in the amount of Nine Million One Hundred Fourteen Thousand Seven Hundred Forty-Four Dollars (\$9,114,744.00). *United States of America v. Marsha Kay Schubert*, CR 05-078.

(l) On September 9, 2005, Schubert entered a plea of guilty in the District Court of Logan County, State of Oklahoma, to fourteen (14) counts of obtaining money by false pretenses in connection with the Purported Investment Program. Schubert was sentenced to 25 years in prison and ordered to pay restitution in the amount of Nine Million One Hundred Fourteen Thousand Seven Hundred Forty-Four Dollars (\$9,114,744.00). *State of Oklahoma v. Marsha Kay Schubert*, No. CF-2004-391. Marsha Schubert stated as the factual basis for her plea that she obtained money in a "Ponzi" scheme in which she promised that the funds

would be invested but instead, used the funds to pay prior investors involved in the Purported Investment Program.

(m) On May 11, 2005, the Department sued Debtors and 157 other defendants (“Relief Defendants”) who received cash and/or other property from Schubert that were the proceeds of Schubert’s unlawful activity and for which the Relief Defendants gave inadequate or no consideration. Debtor was ordered by the court to disgorge Five Hundred Nine Thousand Five Hundred Five Dollars (\$509,505.00).

(n) Debtor Marvin Wilcox materially aided the fraudulent securities scheme.

(o) Debtor Pamela Wilcox had check writing authority on the account used to aid the fraudulent scheme, wrote checks on that account and personally benefitted from the proceeds received from the fraudulent scheme.

(p) Debtors used a substantial portion of the money they received in connection with Debtor Marvin Wilcox’s aid of the fraudulent scheme to purchase real property and personal property or pay off loans on such property. Upon information and belief, the real property Debtors claimed as their Homestead was purchased, in whole or in part, with proceeds of the fraudulent scheme.

(q) The debt at issue is for money obtained by false pretenses, a false representation, or actual fraud and is therefore not dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

(r) The debt at issue is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss and is therefore not dischargeable pursuant to 11 U.S.C. § 523(a)(7).

(s) The debt at issue is for the violation of state securities laws and/or common law fraud, deceit or manipulation in connection with the purchase or sale of a security and results from a judgment, order, consent decree, or decree entered in Federal and State judicial proceedings and is therefore not dischargeable pursuant to 11 U.S.C. § 523(a)(19).

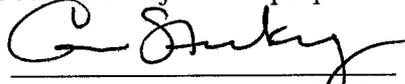
8. Pursuant to sections 523(a)(2)(A), (a)(7) and (a)(19) of title 11, the discharge of the Debtors does not release the Debtors from the aforesaid debt in the amount of \$509,505.00.
9. Pursuant to the circumstances of this case, general considerations of right and justice, and to avoid Debtors' unjust enrichment, an equitable lien should be imposed upon Debtors' Homestead and any other real or personal property purchased with proceeds of the fraudulent scheme.

Wherefore, the plaintiff Department respectfully requests this Court for an order

- (1) denying the Debtors' discharge;
- (2) determining that Department's claim against Debtors is non-dischargeable under 11 U.S.C. § 523(a)(2)(A), (a)(7) and (a)(19);
- (3) granting an equitable lien on all real and personal property that was purchased with proceeds of the fraudulent scheme, in favor of the Department, or the

Department's designee, to the exclusion of Debtors and all other creditors and that such property be foreclosed; and

- (4) granting such other relief as the Court deems just and proper.



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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October, 2007, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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