

LAWRENCE LIFSCHULTZ, CREDITOR

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In re:

LIFSCHULTZ ESTATE MANAGEMENT LLC.

Chapter 11

Case No. 16-23144 (RDD)

Debtor

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**AFFIDAVIT OF LAWRENCE LIFSCHULTZ STATING OBJECTIONS TO THE DEBTOR'S DISCLOSURE STATEMENT PURSUANT TO 11 U.S.C. §1125**

STATE OF NEW YORK )

)

COUNTY OF WESTCHESTER )

Lawrence S. Lifschultz, being duly sworn, deposes and says:

1. I wish to thank the Court for the extension granted to my request for additional time to file objections to the Debtor's "Disclosure Statement" following a serious automobile accident on January 7, 2017. My objections would be more detailed and well versed had I been able to work without impediment or restrictions that still exist.
2. I do intend to be present at the hearing on February 7, 2017. It will be my first trip outside Connecticut since I was hit head-on by a large truck that crossed into my lane and totaled the vehicle I was driving.
3. My hope had been to be represented by counsel by this point in time but I have been unable to travel to New York in order to meet the attorney I hope to retain. It is my goal to remedy this situation in the near future in order to cure the limitations which *pro se* representation clearly entails.
4. The Debtor (Lifschultz Estate Management LLC) in this bankruptcy proceeding is the alter ego of David Lifschultz and Bruce Abbott which prior to the transfer took the form of their interest in the Estate of Sidney B. Lifschultz. Their interest in any equity of the LLC should be subordinated to the Creditors of the Estate because in reality there is an identity between the LLC and the Estate. The transfer was a form of theft.

5. After more than a decade of asset stripping, the only significant asset of the Estate and the only asset of the LLC are one and the same. Just as they should not take anything from the Estate for their misconduct, they should receive nothing here in the bankruptcy proceeding as equity holders in the Debtor.
6. David Lifschultz and Bruce Abbott should not be allowed to make use of this proceeding to perpetuate their fraud. While their immediate object in transferring the asset from the Estate to the LLC may have been to stay an imminent foreclosure sale, their ultimate objective is to achieve another objective in this proceeding by using the bankruptcy court as a tool to accomplish their fraud.
7. The proper outcome of the Bankruptcy Proceeding is for their interest to be subordinated to secure creditors who can convincingly establish their claims.

#### **THE STANDING OF THE LSF9 MASTER PARTICIPATION TRUST**

8. It is my understanding that a creditor is permitted under the Bankruptcy Code to challenge the claim of another creditor if its claim is of questionable legitimacy. It is our contention that the claim of the LSF9 Master Participation Trust as a "secured claim" which the Debtor has calmly, almost warmly, acquiesced to and granted "Class 1 - Secured Claim" in its reorganization plan is neither verifiable nor lawful. The Debtor states that this claim is the "approximate amount" of \$10,161,208. We will present evidence disputing LSF9's claim at an appropriate stage of this proceeding.
9. The Debtor accepts uncritically this claim even though it notes that in August 2009 First Republic's foreclosure action "had an obligation to fund the Lifschultz Estate for its maintenance and upkeep expenses and failed to so, thereby breaching the terms of the mortgage and leading to the premature foreclosure action."
10. Much more was involved. The Bank itself breached its own contract that actually funded the monthly mortgage payment while the Executors of the Estate were supposed to be making every effort to sell the property. I was co-executor at the time and sought to oppose the foreclosure on the basis of this breach of contract.
11. Counsel for the Debtor fails to note in his Disclosure Statement that David Lifschultz who had left for Dubai categorically refused to file an Answer to the Bank's foreclosure motion. Executors are required to act by majority. Since there were only two executors they were required to act in unison. Since David Lifschultz refused to authorize the Estate to serve and file an answer, I was without authority to answer the complaint until I obtained court permission to proceed.

12. My legal team approached Judge Alan Scheinkman, Chief Administrative Judge for the 9<sup>th</sup> Judicial District and his staff, requesting their assistance in persuading the Surrogate Judge Anthony Scarpino to appoint a Third Co-Executor as we had requested, in order that we could file an Answer to the foreclosure and thus protect this important asset of my father's Estate. (See Exhibit A)
13. By an Order dated June 22, 2010, the Surrogate's Court appointed Charles Goldberger of the White Plains firm of McCullough, Goldberger & Staudt, as a third executor to the Last Will and Testament of Sidney B. Lifschultz, with the specific purpose of resolving the pending real estate issues.
14. Charles Goldberger and I immediately authorized an Answer to the foreclosure motion which was filed on August 9, 2010 by my attorney, Eric Sussman. (**Exhibit A**) David Lifschultz sitting in Dubai refused to give his authorization to Answer the Foreclosure.
15. Merrill Lynch and First Republic Bank were taken over by Bank of America on the same weekend in September 2008 when Lehman Brothers declared bankruptcy. However, First Republic severed its relationship with Merrill Lynch and BoA a year later in October 2009 and in the process transferred the Lifschultz mortgage to Merrill Lynch/BoA. All action on the foreclosure froze for the next five years.
16. In 2010 Mr. Goldberger and I were actively involved in marketing the property for sale and in repairing various sections of the seawall and the historic 120-year old Gazebo overlooking Larchmont Harbor. As part of my due diligence in actively working toward the sale of the property certain information related to the mortgage came to my attention.
17. Existing research regarding the non-transparency of the LSF9 Master Participation Trust raises serious questions as to the identity of investors in this opaque vehicle. Although Lone Star Funds, a private equity firm, owns Caliber Home Loans, a mortgage servicer, that services LSF9's assets it remains unclear how LSF9 operates as a "participation agent".
18. There are important unanswered questions here including whether the management of the Debtor or linked associates may be investors in an opaque structure that grants them the status of a Class 1 Secured Creditor without questions being asked. Are associates of the Debtor or equity holders in the Debtor also hidden investors in LSF9? This is to be determined.

19. However, an equally significant question is whether LSF9 has the legal status and is possession of the instruments that entitle it to be regarded as a Secured Creditor in the first place.
20. If LSF9 cannot prove that it has standing as a Secure Creditor, then the sale of the real property (220 Hommocks Road) should be distributed to the remaining creditors.

### **THE MORTGAGE**

21. A key issue to comprehend is that issue of mortgage was a question that should have never arisen. In 2006 it was proposed by the accountant for the Estate, Samuel Keller of the accounting firm Weiser Inc., that a mortgage be obtained to pay Federal and State Estate Taxes. A mortgage for six million dollars was secured from Hudson Valley Bank.
22. After submitting the IRS 706 form it was expected that Beaumere (220 Hommocks Road, Larchmont, NY) would be sold in less than a year. A contract with Sotheby's International was signed. My brother, David, informed me that he had informed Sotheby's that I was co-executor and I did not need to contact them. I asked if I needed to sign the contract with Sotheby's and he told me it was not necessary since he had informed them of my status.
23. I would be told a year later by Sotheby's staff that they "never knew" I existed. In 2006, a prospective buyer, Marco Sonnenberg, made an offer through Sotheby's of \$17.5 million dollars in cash for the property. No mortgage was required by the buyer. My brother rejected the offer. I was never informed because I had never been listed as co-executor. **[Exhibit B]**
24. A member of Sotheby's staff told me in 2009 that Mr. Sonnenberg was prepared to offer upto \$18.5 to \$19 million dollars for the property due to its unique location but my brother refused to make a counter-offer or to negotiate. The appraised value of the property was \$14.5 million but Mr. Sonnenberg felt the location, privacy and peninsula feature of the property merited a significant premium
25. Documents turned over to me by Stephen Schwartz, an attorney, who worked with Samuel Keller, and referred to himself as the "Attorney for the Estate", shows documents my brother signed with Sotheby's listing himself as the sole executor. My brother committed fraud in his representations to Sotheby's. **(Exhibit C)** He deliberately failed to list my name because he and my nephew were intent on never selling the house in defiance of my father's Will giving him an option of buying the house within a set time limit.

26. Had the house been sold in 2006 the new mortgage could have been immediately be paid off. My nephew, Bruce Abbott, in March 2007 told a family friend, Jeri Berman, "David and I will never sell Beaumere. We grew up here and will never sell this house." This is the man now in charge of Lifschultz Estate Management LLC. This view is confirmed in Sarah Louis Affidavit. **(Exhibit D)**
27. There were multiple interested buyers in subsequent years but in each instance David Lifschultz blocked the sale.

### **HISTORY OF THE DEBTOR'S MANAGEMENT**

28. Counsel for Lifschultz Estate Management LLC is proposing through its reorganization plan that Bruce Abbott and David Lifschultz be given authority to sell the property. Nothing could be more ironic. Or, perhaps, the appropriate word would be cynical.
29. For over a decade both these individuals obstructed the sale of Beaumere and lived at the property using this Estate asset without paying rent despite repeated demands that they do so.
30. They refused to move out or to allow the property to be rented. They only left briefly for a period in 2009/2010 after a Third Executor was appointed.
31. The rental value of the property on an annual basis was evaluated by local real estate agents as \$25,000 per month or \$300,000 per year. They have occupied the property for most of the past 15 years since Sidney Lifschultz's death. The rent due at this stage exceeds \$4,000,000 million dollars. (Exhibit E)
32. Attached to this document are two Exhibits that were filed in Westchester Surrogates Court. The first is a "Statement of Issues" filed on June 15, 2010. (Exhibit F). The second is a Verified Petition filed on May 4, 2012. (Exhibit G) Both these documents chronicle David Lifschultz's breaches of his fiduciary duty as an Executor.
33. An Executor's duty to an Estate is to marshal the assets, pay the debts and taxes and to expeditiously distribute the proceeds to the beneficiaries designated in the decedent's will. In David Lifschultz's case, he and Bruce Abbot wasted the assets, increased the Estate's debts and blocked the distribution of assets to the designated beneficiaries.
34. David Lifschultz submitted a court ordered judicial accounting in 2010. Based on this document a forensic accounting by Henry Lievre, President and Founder of the Independent Wealth Advisory Group Inc. estimated that

David Lifschultz, along with Bruce Abbott, damaged the Estate of Sidney Lifschultz in the amount of \$15.43 million dollars as of 2010. (Exhibit H1) (All referenced Exhibits to Henry Lievre's forensic analysis are referenced under the letter "H" i.e. H1, H2 and H3)

35. Mr. Lievre has updated his estimate recently to \$17,084,469 and this calculation can be found in the Proof of Claim filed in this proceeding on behalf of the Estate of Sidney Lifschultz. This includes not only the embezzlement and theft of funds by David Lifschultz but also his blocking of the sale of assets such as Beaumere (220 Hommocks Road, Larchmont, New York) the only asset held by the Debtor in Possession.
36. The forensic accounting also extended to the 8<sup>th</sup> Trust u/w/o Charlotte Lifschultz. Here Mr. Lievre estimated that the Damages as of 2010 equaled \$3,019,319. Mr. Lievre recently updated his calculations for the 8<sup>th</sup> Trust to \$3,415,187 as of the end of 2016. This updated calculation of \$3,415,187 is reflected in the recently filed Proof of Claim in this proceeding on behalf of the 8<sup>th</sup> Trust. (Exhibit H1) Mr. Lievre calculations are attached as Exhibits to this document. (Exhibits H2 and H3)

#### **SWISS BANK ACCOUNTS & TRANSFER OF FUNDS OFFSHORE**

37. In investigating these matters we received specific reports that David Lifschultz and Bruce Abbott were moving cash assets, jewelry, gold bars and coins to off shore accounts. Contemporaneously with a disclosure by David Berman, a family accountant working for the Estate, that hundreds of thousands of dollars were being embezzled from Estate accounts,
38. Bruce Abbott traveled to Zurich, Switzerland to open bank accounts and secure bank lockers/safe deposit boxes at a number of Swiss banks including Credit Suisse. This was described in detail in an Affidavit by Sarah Louis, the former fiancé of Bruce Abbott, who accompanied him to Zurich on a special trip to open such accounts. Ms Louis, a German national, and the mother of Bruce Abbott's son, Phineas, has provided an Affidavit. Sarah Louis Affidavit is attached as an Exhibit. (Exhibit I)
39. Furthermore, I was contacted anonymously by employees at Wells Fargo Advisors who were disturbed by large sums of money being wired from accounts linked to the Estate and the 8<sup>th</sup> Trust.
40. A Wells Fargo employee sent me a copy of an email sent by Maryann Lyons, a Senior Client Administrator at Wells Fargo Advisors dated, September 10, 2009. It was addressed to David Lifschultz and stated: "We received you fax this morning. Wells Fargo is adamant about the reason we are sending this money. I cannot be vague. I need an explanation." This email is attached to this document as an Exhibit. (Exhibit J)

41. Discovery demands made to David Lifschultz resulted in his refusal to provide copies of his faxes and communications with Wells Fargo advisors and other banking institutions. In both our Surrogate Proceeding and in Supreme Court Case, David Lifschultz refused to turn over documents demanded.
42. Despite two directives by Judge J. Lefkowitz of Supreme Court of New York (Westchester) that he appear for his deposition in the United States so that he could be questioned about financial transfers and related matters he refused to return to the United States or to turn over documents which were demanded. Ultimately, this case (Index No. 52414/12) was dismissed due to the Plaintiff's (David Lifschultz) failure to appear for his deposition and for his failure to turn over documents. Judge Lefkowitz's "Decision & Order" dated July 1, 2013 is attached as an Exhibit. (Exhibit K)
43. In a current proceeding before the Surrogates Court for the Removal of David Lifschultz as sole Executor of the Estate and his replacement by Charles Goldberger for multiple breaches (by David) of his fiduciary duties. David Lifschultz has also failed to appear for his deposition to be questioned about financial transfers from the Estate and 8<sup>th</sup> Trust. He also refused to turn over financial documents demanded under discovery orders. He remains in exile, outside of Banja Luka in the Serb Republic of Bosnia.

### **CONCLUSION**

44. In his Disclosure Statement counsel for the Debtor claims that my father's Will gave Bruce Abbott two out of four shares of the Estate. This is completely false. At the age of 89 my father's will was revised while I was out of the country as a Fulbright Scholar based in Islamabad, Pakistan. When I came home, my father explained to me that there had been a concern that my sister (Bruce Abbott's mother) who was emotionally disabled might live a long life and as result there might not be a fair distribution left for Bruce. An accommodation had been made for this possibility.
45. However, when I read the will I discovered that my father had been misled. In fact, at the time my sister, Marsha, was dying of lung cancer. I had with my father's cooperation brought her to Connecticut so my wife and I could look after her. Under these circumstances Marsha's share of the Estate would amply satisfy the condition where each sibling and their progeny would receive an a one third share of the Estate. (My father was a firm believer in equality of distribution among siblings.) I explained to my father that his view was not what was written in the revised Will.
46. He and I went over this carefully and he was very disturbed that he had been misled. He told me he would speak to his lawyer and have this corrected.

This was in late August 2002. However, my father fell ill in September and passed away in early October 2002. Nevertheless, my attorneys and my nephew's attorney at McCarthy Fingar discussed this matter and Bruce relinquished any claim to 50% of the Estate. Upon information and belief he signed a release.

47. Counsel for the Debtor also claims that my "interest in the property was assigned to David Lifschutz pursuant to a Decision and Order" by the Surrogate's Court. This is also untrue. David failed to comply with numerous terms of the Settlement Agreement. Furthermore, David's Financial Disclosure Statement upon investigation and scrutiny has proven to be fraudulent.
48. In the proceeding we will demonstrate that David committed fraud in his Financial Disclosure. A fraud committed in procuring a Judgment is void ab initio. A Settlement is a Judgment and this Settlement was obtained by fraud. We will be elaborating on this in greater detail in an adversary proceeding.
49. In my view the management of the Debtor should not be permitted to proceed with its organizational plan to sell the property. The moral and ethical character of the Management of the Debtor does not pass muster. Should we appoint thieves to guard a bank vault?
50. I believe through an 1104 Motion or a conversion to Chapter 7 an independent Trustee should be put charge of any sale of the asset of the Debtor. I am hoping to obtain counsel in the near future where we will make an appropriate motion.

Dated: Branford, CT.  
February 3, 2017

By: s/ Lawrence Lifschultz, Creditor



## **EXHIBITS**

**EXHIBIT A -**