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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

R. WAYNE KLEIN, as Receiver,

Plaintiff,

v.

DONALD REAY, an individual; REAY
LAW, PLLP a Utah limited liability company,

Defendants.

COMPLAINT

**(Ancillary to Case No. 2:15-cv-00828)
(General Order 19-003)**

Civil No. 2:19-cv-00856-DN

Judge David Nuffer

R. Wayne Klein, the Court-Appointed Receiver of RaPower-3, LLC (“RaPower”), International Automated Systems Inc. (“IAS”), LTB1 LLC, their subsidiaries and affiliates,¹ and the assets of Neldon Johnson (“Johnson”) and R. Gregory Shepard,² (the “Receiver” or

¹ Unless stated otherwise, RaPower, IAS, LTB1, and all subsidiaries and affiliated entities are collectively referred to herein as “Receivership Entities.” The subsidiaries and affiliated entities are: Solco I, LLC; XSun Energy, LLC; Cobblestone Centre, LC; LTB O&M, LLC; U-Check, Inc.; DCL16BLT, Inc.; DCL-16A, Inc.; N.P. Johnson Family Limited Partnership; Solstice Enterprises, Inc.; Black Night Enterprises, Inc.; Starlite Holdings, Inc.; Shepard Energy; and Shepard Global, Inc.

² RaPower, IAS, LTB1, Shepard, and Johnson are collectively referred to herein as “Receivership Defendants.”

“Plaintiff”) in the case styled as *United States v. RaPower-3, LLC et al.*, Case No. 2:15-cv-00828 (D. Utah) (Nuffer, J.) (the “Civil Enforcement Case”), hereby files this Complaint against Donald Reay and Reay Law, PLLP (“Reay Law”) (collectively, “Defendants”).

STATEMENT OF THE CASE

1. Receivership Defendants were operated as an abusive tax fraud.³ The United States alleged, and the Court found, among other things, that the Receivership Defendants operated a massive tax fraud.⁴ Under this fraudulent scheme, Defendants received \$31,658.33 from Receivership Entities. These transfers to Defendants were in furtherance of the massive tax fraud and without any legally recognized value for the transferred money. The Receiver seeks to recover, for the benefit of the Receivership Estate, the amounts improperly transferred to Defendants.

PARTIES, JURISDICTION AND VENUE

2. Pursuant to a Receivership Order entered on October 31, 2018 in the Civil Enforcement Case (the “Receivership Order”),⁵ Plaintiff is the duly-appointed Receiver for Receivership Entities.⁶

3. Upon information and belief, Donald Reay is a resident of or is domiciled in the State of Utah.

³ See Findings of Fact and Conclusions of Law, Civil Enforcement Case, [Docket No. 467](#), at 1 (“FFCL”), filed Oct. 4, 2018.

⁴ Amended and Restated Judgment, Civil Enforcement Case, [Docket No. 507](#), filed Nov. 13, 2018; see also FFCL. The Receivership Defendants have filed notices of appeal, which are pending.

⁵ Civil Enforcement Case, [Docket No. 490](#). A Corrected Receivership Order, which corrected formatting errors, was entered the next day, [Docket No. 491](#).

⁶ Civil Enforcement Case, [Docket No. 636](#). The assets of 12 of these affiliates had been frozen by the initial Receivership Order.

4. Upon information and belief, Reay Law is a Utah limited liability company that provides legal services, with its principal place of business in Provo, Utah. Upon information and belief, at the time of the transfers at issue in this lawsuit, Donald Reay was the managing member of Reay Law.

5. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1367 and 28 U.S.C. § 754.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 754 and 28 U.S.C. § 1391(b).

FACTS
The Abusive Tax Scheme

7. As the Court found in the Civil Enforcement Case: “For more than ten years, the Receivership Defendants promoted an abusive tax scheme centered on purported solar energy technology featuring ‘solar lenses’ to customers across the United States. But the solar lenses were only the cover story for what the Receivership Defendants were really selling: unlawful tax deductions and credits.”⁷

8. Receivership Defendants sold solar lenses emphasizing their purported tax benefits. Customers were told that they could “zero out” their federal income tax liability by buying enough solar lenses and claiming both a depreciation deduction and solar energy tax credit for the lenses.

9. The purported solar energy solar technology and solar lenses, however, did not work and could not generate energy.

⁷ *Memorandum Decision and Order on Receiver’s Motion to Include Affiliates and Subsidiaries in Receivership*, Civil Enforcement Case, [Docket No. 636](#) at 4, quoting FFCL at 1.

10. Specifically, the Court found that the “purported solar energy technology is not now, has never been, and never will be a commercial grade solar energy system that converts sunlight into electrical power or other useful energy” and “[t]he solar lenses do not, either on their own or in conjunction with other components, use solar energy to generate marketable electricity.”⁸

11. Notwithstanding the fact the solar lenses and technology never worked, Receivership Defendants continued to sell solar lenses to customers emphasizing that customers would qualify for depreciation deductions and/or the solar energy tax credit.

12. Between 45,205 and 49,415 solar lenses were sold to customers.⁹ Receivership Defendants’ own transaction documents and testimony at trial showed that the gross receipts received by Receivership Defendants were at least \$32,796,196 and possibly much more.¹⁰

13. These lens sales constituted a massive tax fraud.¹¹ None of these solar lenses ever met the necessary elements to qualify for depreciation deductions or the solar energy tax credit.

14. Indeed, “[h]undreds, if not thousands” of customer lenses were not even removed from the shipping pallets.¹²

15. Based on these facts and others, the Receivership Defendants were enjoined from promoting their abusive solar energy scheme, were ordered to disgorge their gross receipts, and

⁸ FFCL at 49.

⁹ *Id.* at 14.

¹⁰ *Id.* at 15.

¹¹ *Id.*

¹² *Id.* at 55-56.

were required to turn over their assets and business operations to the Receiver.¹³

16. The Court held that the “whole purpose of . . . the Receivership Entities . . . was to perpetrate a fraud to enable funding for Neldon Johnson. The same is true for other entities Johnson created, controls, and owns . . . including [Johnson-controlled affiliates]. Johnson has commingled funds between these entities, used their accounts to pay personal expenses, and transferred Receivership Property to and through them in an attempt to avoid creditors.”¹⁴

17. In its Receivership Order, the Court, among other things, terminated the authority and control of managers of the Receivership Defendants, gave the Receiver the authority to manage the assets of the Receivership Defendants, directed the Receiver to recover assets belonging to the Receivership Defendants, and set forth a process for the creditors of the Receivership Defendants to receive distributions of proceeds from the liquidation of the receivership estate.¹⁵

18. At all relevant times hereto, the Receivership Entities were insolvent:

a. IAS’s audited financial statements show that IAS never made any sales of any products, had not generated a profit since its 1986 inception, and had an accumulated deficit of more than \$40 million;

b. RaPower’s revenue came from the sale of solar lenses to customers and that RaPower had promised that those lens purchasers would receive more in revenue

¹³ *Memorandum Decision and Order on Receiver’s Motion to Include Affiliates and Subsidiaries in Receivership*, Civil Enforcement Case, [Docket No. 636](#) at 4, citing *Memorandum Decision and Order Freezing Assets and to Appoint a Receiver*, Civil Enforcement Case, [Docket No. 444](#), filed August 22, 2018.

¹⁴ *Id.* citing FFCL and *Receiver’s Report and Recommendation on Inclusion of Affiliates and Subsidiaries in Receivership Estate*, Civil Enforcement Case, [Docket No. 581](#).

¹⁵ Corrected Receivership Order, [Docket No. 491](#) at 42 – 46.

from electricity generated from those solar lenses than what purchasers had paid for the lenses. As a result, if those lenses never generated any revenue from the sales of electricity, RaPower would be liable to those lens purchasers for the amount the customers paid for the lenses and for bonuses promised by RaPower;

c. XSun's revenue came either as a result of agreements with other Receivership Entities or from third parties where XSun had liabilities to those third parties at least as great as the amount of revenues it received. XSun never earned any revenues from operations, other than transfers from affiliated entities in connection with the promotion of the abusive tax shelter; and

d. The vast majority, if not all, of Cobblestone's revenue came from Receivership Entities and were in connection with promotion of the abusive tax shelter. Upon information and belief, Cobblestone had no source of net revenues from third parties.

**Defendants' Involvement with Receivership Entities and Amounts
Transferred to Defendants**

19. From February 2016 to May 2017, Defendants received payments from RaPower totaling \$31,658.33. A document summarizing the payments is attached hereto as Exhibit A.

20. The payments were made for Defendants' representation of Greg Shepard and Roger Freeborn in the Civil Enforcement Case.

21. Defendants did not transfer anything of a reasonably equivalent value to RaPower for the payments.

22. The benefit of Defendants' legal services flowed to Greg Shepard and Roger Freeborn, but Defendants' fee was paid by RaPower.

FIRST CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Under Utah Code Ann. §§ 25-6-5(1)(a) and 25-6-8 or Utah Code Ann. §§ 25-6-202(1)(a) and 25-6-303)

23. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

24. The Receivership Entities were engaged in an enterprise with all of the characteristics of a fraud scheme.

25. At all relevant times hereto, each Receivership Entity that made payments to Defendants had at least one creditor.

26. At all relevant times hereto, each Receivership Entity that made payments to Defendants was insolvent.

27. The transfers were paid and any obligations to Defendants were incurred with actual intent to hinder, delay or defraud a creditor of the Receivership Entities.

28. Defendants did not provide reasonably equivalent value to any Receivership Entity.

29. Pursuant to Utah Code Ann. §§ 25-6-5(1)(a) and 25-6-8 or Utah Code Ann. §§ 25-6-202(1)(a) and 25-6-303, the Receiver may avoid and recover the transfers paid to Defendants.

SECOND CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Under Utah Code Ann. §§ 25-6-5(1)(b) and 25-6-8 or Utah Code Ann. §§ 25-6-202(1)(b) and 25-6-303)

30. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

31. The Receivership Entities were engaged in an enterprise that has all of the

characteristics of a fraud scheme.

32. At all relevant times hereto, each Receivership Entity making transfers to Defendants had at least one creditor.

33. At all relevant times hereto, each Receivership Entity that made payments to Defendants was insolvent.

34. The transfers were paid or the obligations to Defendants were incurred by the Receivership Entities without receiving a reasonably equivalent value in exchange for the transfers or obligations.

35. At the time the transfers were paid, the Receivership Entities (a) were engaged or were about to be engaged in a business or transaction for which the remaining assets of the Receivership Entities were unreasonably small in relation to the business or transaction; or (b) intended to incur, or believed or reasonably should have believed that they would incur, debts beyond their ability to pay as such debts became due.

36. Pursuant to Utah Code Ann. §§ 25-6-5(1)(b) and 25-6-8 or Utah Code Ann. §§ 25-6-202(1)(b) and 25-6-303, the Receiver may avoid and recover the transfers paid to Defendants.

THIRD CLAIM FOR RELIEF

(Avoidance of Fraudulent Transfers Under Utah Code Ann. §§ 25-6-6(1) and 25-6-8 or Utah Code Ann. §§ 25-6-203(1) and 25-6-303)

37. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

38. The Receivership Entities were engaged in a fraud scheme.

39. Each Receivership Entity had at least one creditor at the time that the transfers

were made or the obligation to Defendants were incurred.

40. The transfers were paid or the obligations to Defendants were incurred by the Receivership Entities without the Receivership Entities receiving a reasonably equivalent value in exchange for the transfers or obligation.

41. The Receivership Entities were each insolvent at the time the transfers were paid or the obligation was incurred, or became insolvent as a result of the transfers or the obligation incurred.

42. Pursuant to Utah Code Ann. §§ 25-6-6(1) and 25-6-8 or Utah Code Ann. §§ 25-6-203(1) and 25-6-303, the Receiver may avoid and recover the transfers to Defendants.

FOURTH CLAIM FOR RELIEF
(Unjust Enrichment)

43. The Receiver re-alleges and incorporates herein by reference each of the preceding allegations as if set forth completely herein.

44. The transfers to Defendants were comprised of property of Receivership Entities and were made by Receivership Entities in furtherance of the fraud scheme.

45. The transfers to Defendants conferred a benefit upon Defendants.

46. Defendants knowingly benefitted from the transfers.

47. Allowing Defendants to retain the transfers would unjustly enrich them and would be inequitable.

48. Absent return of the transfers, the Receivership Estate will be damaged by Defendants' unjust enrichment and may have no adequate remedy at law.

49. Defendants must disgorge the amount of the transfers.

PRAYER FOR RELIEF

WHEREFORE, the Receiver prays for Judgment against Defendants:

A. Pursuant to the Receiver's First Claim for Relief, judgment avoiding the transfers under Utah Code Ann. §§ 25-6-5(a)(1) and 25-6-8 or §§ 25-6-202(1)(a) and 25-6-303, and permitting Plaintiff's recovery of the value of the transfers in an amount no less than \$31,658.33.

B. Pursuant to the Receiver's Second Claim for Relief, judgment avoiding the transfers under Utah Code Ann. §§ 25-6-5(a)(2) and 25-6-8 or Utah Code Ann. §§ 25-6-202(1)(b) and 25-6-303, and permitting Plaintiff's recovery of the value of the transfers in an amount no less than \$31,658.33.

C. Pursuant to the Receiver's Third Claim for Relief, judgment avoiding the transfers under Utah Code Ann. §§ 25-6-6(1) and 25-6-8 or Utah Code Ann. §§ 25-6-203(1) and 25-6-303, and permitting Plaintiff's recovery of the value of the transfers in an amount no less than \$31,658.33.

D. Pursuant to the Receiver's Fourth Claim for Relief, judgment permitting Plaintiff's recovery of the value of the: (1) transfers in the total amount of \$31,658.33; (2) imposition a constructive trust for the benefit of the receivership estate on any and all transfers; and (3) disgorgement of the value of the transfers.

E. Judgment for pre-judgment interest, costs, and fees, including reasonable attorney's fees, as may be allowed by law.

F. For such other and further relief as the Court deems just and proper.

DATED this 31st day of October, 2019.

/s/ David C. Castleberry

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