IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

IN RE: JON DARRELL SEAWRIGHT, Debtor. ALYSSON MILLS, IN HER CAPACITY AS RECEIVER FOR ARTHUR LAMAR ADAMS AND MADISON TIMBER, LLC, Plaintiff, v. JON DARRELL SEAWRIGHT, Defendant.	CASE NO. 19-03921 Chapter 7 ADV. NO. _____

ADVERSARY COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT PURSUANT TO 11 U.S.C. § 523

Alysson Mills, in her capacity as the court-appointed receiver for the estates of Arthur Lamar Adams and Madison Timber Properties, LLC (the "Receiver"), through undersigned counsel, files this Adversary Complaint to Determine Dischargeability of Debt Pursuant to 11 U.S.C. § 523 (the "Adversary Complaint") against Jon Darrell Seawright ("Seawright" or "Debtor"), stating as follows:

INTRODUCTION

For more than ten years, Arthur Lamar Adams ("Adams"), through his companies Madison Timber Company, LLC and Madison Timber Properties, LLC ("Madison Timber"), operated a Ponzi scheme that defrauded hundreds of investors. Investors believed that Madison Timber used

investors' money to purchase timber from Mississippi landowners; that Madison Timber sold the timber to Mississippi lumber mills at a higher price; and that Madison Timber repaid investors their principal plus interest with the proceeds of those sales. Investors received timber deeds that purported to secure their investments—but the deeds were fake. There was no timber and no proceeds from sales of timber. The money used to repay existing investors came solely from new investors.

Madison Timber had to continuously grow to repay existing and new investors, and continuously grow it did. In 2011, Madison Timber took in approximately $10 million from investors. By 2018, that number had grown by a factor of 16. In the one-year period prior to April 19, 2018, the date Adams surrendered to federal authorities and confessed to the Ponzi scheme, Madison Timber took in approximately $164.5 million. As of April 19, 2018, Madison Timber had 501 outstanding promissory notes, reflecting debts to investors of more than $85 million.[1]

Adams misused Madison Timber to sustain a singular fraud over many years, and Seawright and his law firm, Baker Donelson, assisted him. Madison Timber would not have grown without Seawright's encouragement. Seawright lent his influence, his professional expertise, and even his clients to Adams. Seawright validated Adams and helped him attract new investors.

Because Seawright contributed to the success of the Madison Timber Ponzi scheme, he is liable for the debts of the Receivership Estate to investors.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action and its parties pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. § 1408.

[1] The evidence at Adams's sentencing established that of the $164.5 million that Madison Timber received in its last year of operation, it paid back approximately $79.5 million, leaving an $85 million difference. The outstanding principal and interest owed to investors is necessarily higher.

PARTIES

2. The Receiver is a creditor and party-in-interest in this bankruptcy. The Receiver stands in Madison Timber's shoes for the express purpose of maximizing assets available to Adams's victims. The Receiver also pursues claims against Seawright as the holder of assignments executed by investors.

3. Defendant Jon Seawright is an individual debtor in this bankruptcy case.

PROCEDURAL HISTORY

The S.E.C.'s enforcement action

4. On April 20, 2018, the Securities and Exchange Commission instituted certain litigation against Arthur Lamar Adams and Madison Timber Company, LLC styled *Securities and Exchange Commission v. Arthur Lamar Adams, et al.*, Case No. 3:18-cv-00252-CWR-FKB. In that civil action, the Securities & Exchange Commission ("S.E.C.") alleges that "[b]eginning in approximately 2004," Adams, through Madison Timber, "committed securities fraud by operating a Ponzi scheme" in violation of the Securities Act of 1933 and the Securities & Exchange Act of 1934.[2]

5. The S.E.C. requested that the Court appoint a receiver for the estates of Adams and Madison Timber.[3] The Court granted the S.E.C.'s request and appointed the Receiver on June 22, 2018.[4]

The Receiver's ancillary action

6. The district court's order of appointment vests in the Receiver the power to, among

[2] Doc. 3, Securities & Exchange Commission vs. Adams, et al., No. 3:18-cv-00252 (S.D. Miss).

[3] Docs. 11, 21, Securities & Exchange Commission vs. Adams, et al., No. 3:18-cv-00252 (S.D. Miss).

[4] Doc. 33, Securities & Exchange Commission vs. Adams, et al., No. 3:18-cv-00252 (S.D. Miss).

other things:

> investigate and . . . bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging her duties as Receiver.[5]

7. On December 19, 2018, the Receiver filed suit against, *inter alia*, Jon Seawright and his company, Alexander Seawright, LLC; and his law firm, Baker Donelson, pursuant to the powers vested in her by the district court's orders and applicable law.[6] The Receiver's complaint includes counts against Seawright for civil conspiracy; aiding and abetting; recklessness, gross negligence, and at a minimum negligence; violations of Mississippi's Fraudulent Transfer Act; violations of Mississippi's Racketeer Influenced and Corrupt Organization Act; and joint venture liability.

8. Certain investors have assigned their claims against, *inter alia*, Jon Seawright and his company, Alexander Seawright, LLC; and his law firm, Baker Donelson, to the Receiver, whose purpose is to maximize assets for investors' benefit. The Receiver therefore also has standing to pursue claims against Seawright as the holder of assignments executed by investors.

9. By filing a Chapter 7 petition for bankruptcy, Seawright availed himself of the automatic stay of litigation provided to petitioners for bankruptcy pursuant to 11 U.S.C. § 362.

10. Although stayed as to Seawright, the ancillary matter has otherwise proceeded before the district court. The matter is currently at the pleadings stage and no judgments have been rendered.

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[5] Doc. 33, Securities & Exchange Commission vs. Adams, et al., No. 3:18-cv-00252 (S.D. Miss). By order dated August 22, 2018, the Court eliminated the requirement that the Receiver obtain "prior approval of this Court upon ex parte request" before bringing any legal action. Doc. 38, Securities & Exchange Commission vs. Adams, et al., No. 3:18-cv-00252 (S.D. Miss).

[6] Doc. 1, Alysson Mills v. Butler Snow, et al. (S.D. Miss.). The Receiver filed an amended complaint on November 22, 2019. Doc. 57.

ADAMS AND MADISON TIMBER

11. For more than ten years, Adams, through Madison Timber, operated a Ponzi scheme that purported to purchase timber from Mississippi landowners and resell it to Mississippi lumber mills at higher prices.

12. Investors in Madison Timber delivered to Madison Timber large sums of money, typically in excess of $100,000 dollars, in reliance on the promise that Madison Timber would repay them their principal plus interest of 13% per year. The promised interest invariably far exceeded the interest any investor might receive on any other asset-backed investment.

13. Investors believed that Madison Timber would use their money to acquire timber deeds and cutting agreements from Mississippi landowners; that Madison Timber would then sell the timber to Mississippi lumber mills at a higher price; and that with the proceeds of those sales Madison Timber would repay investors their principal and promised interest.

14. In exchange for their investments, investors in the Madison Timber Ponzi scheme received a promissory note in the amount of their investment, payable in twelve monthly installments together with the promised interest; twelve pre-dated checks, each in the amount of the installment due under the promissory note; a timber deed and cutting agreement by which a named landowner purported to grant to Madison Timber the rights to harvest timber on the land described in the deed; and a timber deed and cutting agreement by which Madison Timber purported to grant its own rights to the investor.

15. In fact, the timber deeds and cutting agreements were fake. Madison Timber had no rights to harvest timber and no timber to cut and sell. Because Madison Timber had no revenues whatsoever, investors were being repaid with new investors' money.

16. Each month, Madison Timber required more and more new investors to repay existing investors. Like any Ponzi scheme, Madison Timber had to continuously grow. To grow Madison Timber, Adams relied on recruiters, including Seawright, to attract new investors.

17. In 2011, Madison Timber took in approximately $10 million from investors. By 2018 that number had grown by a factor of 16.

18. In April 19, 2018, on the heels of investigations of him by the F.B.I. and the U.S. Attorney's Office for the Southern District of Mississippi, Adams turned himself in. In the one-year period prior to April 19, 2018, Madison Timber took in approximately $164.5 million. As of April 19, 2018, Madison Timber had 501 outstanding promissory notes, reflecting debts to investors of more than $85 million.[7]

19. Adams pleaded guilty to the federal crime of wire fraud and "admit[ted] to all of the conduct of the entire scheme and artifice to defraud."[8] On October 30, 2018, he was sentenced to a term of imprisonment of 235 months.[9]

20. The S.E.C. separately charged Adams with violations of the Securities Act of 1933 and Securities & Exchange Act of 1934, alleging in its complaint that "[b]eginning in approximately 2004," Adams, through Madison Timber, "committed securities fraud by operating a Ponzi scheme."[10]

21. The promissory notes sold by Madison Timber to investors were "securities," as that term is defined under 15 U.S.C.A. §78(c)(A)(10) and Miss. Code Ann. § 75-71-102(28).

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[7] The evidence at Adams's sentencing established that of the $164.5 million that Madison Timber received in its last year of operation, it paid back approximately $79.5 million, leaving an $85 million difference. The outstanding principal and interest owed to investors is necessarily higher.

[8] Doc. 11, United States v. Adams, No. 3:18-cr-00088 (S.D. Miss).

[9] Doc. 21, United States v. Adams, No. 3:18-cr-00088 (S.D. Miss).

[10] Doc. 3, Securities & Exchange Commission vs. Adams, et al., No. 3:18-cv-00252 (S.D. Miss).

22. As alleged in the complaint in the action *Securities and Exchange Commission v. Arthur Lamar Adams et al*., No. 3:18-cv-252 (S.D. Miss.), and in the bill of information filed against Adams in *U.S. v. Arthur Lamar Adams*, No. 3:18-c-188 (S.D. Miss.), Adams, Madison Timber, and their affiliates, including Seawright, facilitated sales of promissory notes to investors through material misstatements and omissions; employed a device, scheme, or artifice to defraud; and engaged in acts, practices, or courses of business that operated or would operate as a fraud or deceit, all in violation of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(A); Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder; as well as the Mississippi Securities Act, Miss. Code Ann. § 75-71-501.

23. The sales furthermore violated the Securities Act of 1933 and the Mississippi Securities Act because there were no registration statements for the promissory notes, *see* Section 5 of the Securities Act of 1933, 15 U.S.C § 77e, and Miss. Code Ann. § 75-71-301; and the promissory notes were not exempt from registration, *see* Section 5 of the Securities Act of 1933, 15 U.S.C § 77e, and Miss. Code Ann. §§ 75-71-201 through 75-71-203.

SEAWRIGHT AND BAKER DONELSON

24. Adams and Madison Timber's relationship with Seawright and Baker Donelson began in 2011 and continued until Adams turned himself in on April 19, 2018.

A joint venture

25. In 2011, Jon Seawright and his partner, Brent Alexander, a lawyer and lobbyist at the Baker Donelson law firm in Jackson, were looking to start a new investment fund.

26. Seawright and Alexander made acquaintances with Adams and a partnership quickly formed. Seawright and Alexander would create an LLC that would pool other people's

money to invest in Madison Timber, and Adams would share the returns with Seawright and Alexander. From Seawright's perspective, it was "a virtually risk free deal":

> I feel pretty good about this . . . Please explain to me why this is not a virtually risk free deal. There is no pricing risk – everything is tied down on the front end. The only risk I see is (i) mill defaults, but you still own the land, (ii) Lamar is a fraud, but no evidence of that, or (iii) such a fundamental collapse of the timber industry that mill defaults and uncut timber is less than purchase price, but investor is oversecured almost 2:1, so there would have to be catastrophic collapse. Jds

27. Seawright and Alexander saw a big opportunity in Madison Timber, but to raise "significant capital" for Adams, they needed to do some "smaller investments to prove out the income earning potential." They pitched the first investment to a client of Baker Donelson. Seawright told the client that Seawright and Alexander would be responsible for everything:

> We would be responsible for papering everything, liaison with Lamar, monitoring process of sale of timber, acquisition of timber rights, proper recording of documents, etc., distribution of loan repayments and otherwise managing the investment.

Seawright told the client that "[r]unning funds through us or BD [Baker Donelson] escrow is not a problem," and all "legal and other admin expenses" would "come out of our share."

28. Seawright and Alexander's "share" would include a portion of each investment's return, what Adams called a "birddog fee." Adams told Seawright and Alexander that he could ensure a 14% "profit" with a 2% "birddog fee" built-in, but Seawright and Alexander could decide "how you guys want the split done."

29. Seawright proposed instead that each investment's promissory note bear 13% interest, of which investors would receive 10% and Seawright and Alexander would keep 3%. Separately, Seawright and Alexander negotiated an additional 3% commission for themselves. As a result, Seawright and Alexander's "share" of each investment's return included the 3% they disclosed to investors, plus an extra undisclosed 3% that Adams paid them directly.

30. Seawright drafted subscription agreements and accompanying documents for the sales of units in what was then called Alewright Investments, LLC, later renamed Alexander Seawright Timber Fund I, LLC. From 2011 until April 2018, Seawright and Alexander used their fund to invest other people's money in Madison Timber and split the "profits" with Adams.

The pitch

31. Throughout this time period Seawright and Alexander pitched their fund to potential investors, including Baker Donelson clients, as an exclusive "friends and family" fund. Alexander often used the phrase "simple, elegant and profitable" to describe the fund. He told investors that "we are in it"—a lie; neither Seawright nor Alexander invested their own money in the fund—"our neighbors, lots of physicians, many of the attorneys at Baker Donelson and other firms, a United States Senator etc."

32. Seawright and Alexander specifically targeted individuals who had recently sold assets because they knew those individuals had money to invest. Such individuals included clients for whom Baker Donelson had recently closed transactions.

Easy money

33. Investors were led to believe that they could rely on Seawright and Alexander to evaluate each investment using their professional expertise and judgment, which was backed by Baker Donelson's reputation. In fact, Seawright and Alexander undertook no meaningful evaluation of the investments they pushed on unwitting persons, including Baker Donelson's clients. At the beginning of their partnership with Adams, Seawright asked questions such as "Who bears the loss with respect to the destruction of timber? For example, if there is fire, beetles, hurricane, whatever, who is on the hook? Is it an insured risk?" But he accepted Adams's answers to his questions without follow-up. Adams told Seawright that Madison Timber had "umbrella

[insurance] on all tracts" (he added, "Expensive, don't need it but have it"). Seawright never asked to inspect the insurance, which did not exist.

34. Investors were led to believe that Seawright and Alexander personally inspected the timber underlying each investment. Of course they did not. Seawright and Alexander lied to investors. Seawright and Alexander gave investors "Equity Term Sheets" that described each upcoming investment opportunity. An "Equity Term Sheet" dated March 5, 2017, for instance, explained that for the "minimum investment" of $25,000, an investor would share in the "cutting rights on tracts of land in various counties (the 'Timber Rights')." Like all of Seawright and Alexander's "Equity Term Sheets," the "Equity Term Sheet" dated March 5, 2017, expressly represented that Seawright and Alexander would personally inspect the property in question:

> Company [Seawright and Alexander] will inspect the property related to the Timber Rights, must receive the original, executed Note and timber deed and will inspect the executed agreement(s) with the timber mill(s).

Seawright and Alexander could not and did not inspect the property in question—nor "the executed agreement(s) with the timber mill(s)"—because such did not exist. These representations were patently false.

35. Seawright and Alexander even devised a "Timber Rights Investment Closing Checklist" that included among its list of things to do "Review Mill Contract" and "Review Land re Timber." Seawright and Alexander could not and did not review any "Mill Contract" or "Land re Timber" because there was no "Mill Contract" or "Land re Timber" to review.

36. On information and belief, Seawright and Alexander "inspected" a purported timber tract only once or twice, at the very inception of their partnership with Adams. The "inspection" was hardly professional. Email traffic indicates "inspection" meant "[grab] a cooler of beer and make a loop."

37. Between 2011 and April 2018, Seawright and Alexander withdrew over $980,000 from the Alexander Seawright Timber Fund I, representing their "shares" of investors' returns. In addition Adams separately paid them over $600,000 representing undisclosed "birddog fees."

38. On information and belief, Adams also sometimes paid Seawright and Alexander bonuses, including Christmas bonuses in cash that he had delivered to Seawright and Alexander at their Baker Donelson office.

39. For all this time, Seawright and Alexander acted as unlicensed brokers, in violation of federal and state law. A broker is "any person engaged in the business of effecting transactions in securities for the account of others." *See* Section 3(4) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c. The S.E.C.'s public website states that the receipt of transaction-related commissions is a key indicator that a broker must be registered.[11] A recent search using the Financial Industry Regulatory Authority's public online BrokerCheck confirms that neither Seawright nor Alexander have ever registered with the S.E.C.

40. Investors might fairly question what Seawright and Alexander did to investigate the investment. The reality is not much. In October 2017, Alexander bragged to a potential investor that "to our surprise, we have now financed the purchase of about $60 million in timber . . . It has worked so well that we simply send out an email on the 15th of each month and some hours later have collected the investment we need for the next round."

41. Neither Seawright nor Alexander conducted an even cursory inspection of Madison Timber's operations. If they had, they would have realized what should have been obvious—that the money was too good to be true because Madison Timber was nothing more than a Ponzi

[11] *Guide to Broker-Dealer* Registration, U.S. SECURITIES & EXCHANGE COMMISSION https://www.sec.gov/reportspubs/investor-publications/divisionsmarketregbdguidehtm.html.

scheme. Instead, they aided and abetted Madison Timber's growth, providing Adams and Madison Timber their influence and their clients.

Red flags

42. Not only did Seawright and Alexander fail to independently confirm that the timber and rights in question were real, they recklessly ignored numerous red flags.

43. The timber deeds and cutting agreements between landowners and Madison Timber were fake. The landowners' signatures, forged by Adams, often looked the same. A call to any one of the hundreds of purported landowners, or a simple check of the title for any one of the hundreds of purported tracts of land, would have confirmed the truth. Neither Seawright nor Alexander, nor anyone at Baker Donelson, ever called a landowner or checked a tract's title.

44. Madison Timber also had no real contracts with any mills. A call to any one of the mills for which Madison Timber purported to have contracts would have confirmed the truth. Neither Seawright nor Alexander, nor anyone at Baker Donelson, ever called a mill.

45. Adams required that an investor agree that he or she would not record the deed by which Madison Timber purported to grant its own rights to the investor unless and until Madison Timber failed to make a payment due under the promissory note. Seawright quipped that "I have been clear that I am no timber expert"—but he is unquestionably a lawyer to whom his clients and investors looked to evaluate the investment's risks. Incredibly, notwithstanding the suspicious "agreement not to record," neither Seawright nor Alexander, nor anyone at Baker Donelson, questioned this requirement.

46. The "profit" that Adams promised was 300% to 400% better than that payable by any other fully asset-backed investment and was uniform and consistent. This fact should have been a glaring warning sign but Alexander, who Baker Donelson presents as a qualified and

experienced advisor, turned this warning sign into a selling point. Alexander bragged about a "six year perfect track record" of consistent uniform returns under a "beautiful, albeit simple, financial model."

47. Adams purported to have identified mills with an insatiable demand for timber at uniform prices. The market price for timber is readily available from multiple sources, and any one of those sources would have confirmed that the market price for timber actually rises and falls, sometimes dramatically, over short periods of time. Neither Seawright nor Alexander, nor anyone at Baker Donelson, ever evaluated the investment in light of such information. To the contrary, Seawright gloated that "[Adams] has stated that volume is not problem and indicates there are enough opportunities for him to soak up as much capital as we can raise."

48. In 2014, Adams decided that he did not want to have to manage Madison Timber during the month of December. He told his "bird dogs," including Seawright and Alexander, that Madison Timber would not issue checks in December going forward; what had been a 12-month payoff would become a 13-month payoff, skipping the last month of the year. Seawright blindly passed on to investors the dubious explanation that mills shut down in December for OSHA inspections:

> In December 2014, we were notified that the mills intended to shut down operations in December to allow a break for the holidays and complete OSHA required inspections. With their operations down, they requested that no payment be made in December. The broker we worked with agreed to this, but on the condition that the interest rate is increased by 1%, which they agreed to. This increase is passed on to investors, so now all rounds pay out in 12 payments over 13 months, with a total interest of 13%. The result is the annual effective interest rate increased to 10.15%, so while the payments are stretched out by a month, the interest rate is better.

Neither Seawright nor Alexander, nor anyone at Baker Donelson, did anything to verify this false information.

Alexander Seawright Timber Fund II

49. In 2015, Seawright and Alexander had an idea. They had been making monthly investments with Adams of between $100,000 and $500,000 using other people's money. Alexander proposed that "[we] systemize this a little and take it to the next level." Over the next two years Seawright and Alexander would brainstorm a new model that could make Seawright and Alexander rich. Alexander estimated that if a fund put $1 million in Madison Timber and then reinvested the principal and interest each month for ten years it would make $17 to $18 million. What if the fund put $10 million in?

50. The idea consumed Alexander. He texted Seawright, "Woke at [sic] at 2 thinking about the structure of the timber pool. We pull this off, we get rich." Using Baker Donelson's conference rooms and resources, he hosted meetings with and made presentations to accountants, investors, and advisors to push his idea and debate the merits of a five-year versus ten-year model. He reported the models gave people "much more level headed" than he "an orgasm as to its potential." Fearing that "now that they have seen up our skirts" people will "try to cut us out," he had prospective partners execute a non-disclosure agreement that Seawright drafted.

51. Seawright and Alexander gave their new model a new company and named it Alexander Seawright Timber Fund II, LLC. They made a pitchbook for prospective investors. As always, in it they emphasized their affiliation with Baker Donelson:

> Brent Alexander is a senior public policy advisor at Baker, Donelson, Bearman, Caldwell and Berkowitz ("Baker Donelson") one of the nation's largest law firms. He provides strategic business consulting for the firm's clients and serves as a national recognized lobbyist both regionally and federally. . . .
>
> Jon Seawright is a senior shareholder at Baker Donelson and a member of the firm's Board of Directors. Seawright has been deemed by peer-reviewed *Super Lawyers* as a Rising Star, as well as one of the nation's top attorneys, and represents a range of national and regional clients, specializing in complex business transactions, mergers and acquisitions and taxation. . . .

52. The 15-page pitchbook extolled the "elegant, simple and highly profitable" model by which Seawright and Alexander had already "invest[ed] more than $20 million to facilitate the purchase of over $50 million in timber." The pitchbook falsely represented that an investment would be "over-secured" and the timber would be "insured." The pitchbook called the opportunity to compound both principal and interest in the new fund "a nice trick indeed":

> Similar in almost all respects in operation to Alexander Seawright Timber Fund I, Alexander Seawright Timber Fund II will use a pool of dedicated funds to allow Alexander Seawright, not individual investors, the authority to systematically control the reinvestment of all of the returned principal and interest in each subsequent round of the fund. This will dramatically increase returns without increasing risk.
>
> On a fully secured investment.
>
> This is a nice trick indeed.

53. The feedback was not all good. One prospective investor observed that Seawright and Alexander could count "the respect we have for Baker" "to the good"—but the investment presented at least ten concrete concerns, the first of which he called the "John Grisham novel problem":

> To the concerning . . .
>
> 1. The structure seems very difficult – bordering on uninvestable in its current form – for institutional managers, which is to say those managing money for others. Were this to go bad in any way, there's a beginning to a John Grisham novel problem here: two lawyers drove up from Jackson, MS, to Memphis, TN, to pitch yield hungry investors on a double digit, nearly riskless opportunity. The opportunity was unaudited, and the lawyers did the tax work. . . .

But Alexander brushed off the criticism. ("I'm not sure he is a particularly artful or cogent writer," he told Seawright.)

54. The same prospective investor questioned why Seawright and Alexander themselves were not invested in their own fund. "Your interest in the incentive is noteworthy, but,

it is derived from sweat, not money you stand to lose," he wrote. Alexander replied, "We do have skin in the game, at least in the way we characterize it":

> We do have skin in the game, at least in the way we characterize it, in that we have fronted the expenses for the design, implementation, operation and management of Alexander Timber Fund I, with little direct compensation because we knew that if we were successful in building a track record, the opportunity to create a larger fund would follow. . . . [O]ur incentives under this model are perfectly aligned with our investors. If they don't make money, we really don't make money. That's about the best we can do.

What Alexander's reply did not acknowledge was the obvious: Investors stood to lose their own money, but Seawright and Alexander did not.

55. The same prospective investor pressed Seawright and Alexander on the question of "margin"—that is, how did their broker (Adams) guarantee such uniform and consistent profits? He asked "what are we missing to understand here that a broker exists which [sic] such large spreads/ margins?":

> Gents – in doing some research on this strategy, I spoke to a friend who is more familiar with timber. I described the model this opportunity works under, which was foreign to him. What he is used to seeing is the forester working as an agent of the landowner, where the forester is incented by receiving (if they are really good) 5-10% of the sales price. In this model, the forester markets the timber directly to the mills and, in some cases, literally opens the bids up in front of everyone. Both the concept of a broker and the 30ish % margins discussed seemed unfamiliar (and this is a very experienced guy).

Notwithstanding this meaningful input, neither Seawright nor Alexander, nor anyone at Baker Donelson, did anything to slow things down, nor even made a cursory analysis of their and Adams's business.

56. Instead Seawright and Alexander speeded things up with more forceful presentations. They now argued Alexander Seawright Timber Fund II, LLC was for investors "with brains and balls." Meanwhile they continued to invest other people's money in Alexander Seawright Timber Fund I, LLC.

57. In late 2017, Seawright and Alexander finally secured a "key investor" to "seed" Alexander Seawright Timber Fund II, LLC with $6 million. Alexander wanted $12 million to start but figured he would raise the remaining $6 million by "bootstrapping." Eventually he hoped "to raise an additional $36 [million] over the life of the fund and let it roll for ten years."

58. The "key investor" was a Baker Donelson client who would fund his investment with the proceeds from the sale of a major asset. Seawright represented him in the sale. Alexander told him, "I think you know us well enough to trust us, and if anything were ever go wrong, the fund would simply unwind, at a profit." He continued:

> As you know, we are extremely confident in the model which is why we are investing and reinvesting our earnings along with you under the same conditions. Every deal has risk, but the only way that the numbers would be affected would be if we for some reason could not close the rounds on a monthly basis (and I am very confident we will). . . .
>
> The purchase from the timber owner and the sale to the mill are executed simultaneously Remember on the sale, we are over-secured by 50 percent. We put up half the money, but have rights to the entire tract of timber. So, that gives us a lot of margin to sell to someone else should there be a default. We have never experienced a default, but we have a lot of wiggle room should one occur.

59. Anticipating their launch, Seawright and Alexander opened a new bank account for Alexander Seawright Timber Fund II, LLC. Alexander wrote Adams to advise that starting May 1, 2018, they would "start deploying at $1 million a month beginning May 1":

> [W]e have a signed commitment for $6 million that we plan to start deploying at $1 million a month beginning May 1. . . . [I]t is safe to assume that we will invest $1 million an month increasing to $1.5 million a month. . . . Also, this investment, which will be made under Alexander Seawright Timber Fund II, will be in addition to the on-going investment in Alexander Seawright Timber Fund I, so plan on an average of about $350,000 -$500,000 per month in Alexander Seawright Timber Fund I. We are excited about the opportunity to provide a regular, consistent and predictable volume of capital to your company and look forward to growing in cooperation with you over the next 5 years.

60. Just days before Seawright and Alexander would have deployed their "key investor" and client's money, Adams turned himself in. As news spread, the investor sought information from Alexander. Alexander told the investor that Seawright and Alexander were victims:

> Investor: How did you get hooked with him?
> Alexander: My clients are hanging with me. They know I am a victim.
> Investor: To think I was almost out of my entire life earnings makes me shiver
> Alexander: Everyone knew him. Country club fixture.
> Alexander: Would not let you lose your savings.
> Investor: Man it was close . . . a day or two . . .
>
> * * *
>
> Alexander: To be clear, Jon and I were the victims of fraud.

CAUSES OF ACTION

61. Under the Bankruptcy Code, not every debtor is afforded a fresh start; that opportunity is limited to the "honest but unfortunate debtor." *Grogan v. Garner*, 498 U.S. 279, 287 (1991) (quoting *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934)). In allowing for the dischargeability of debt, Congress did not intend to favor "the interest in giving perpetrators of fraud a fresh start over the interest in protecting victims of fraud." *Id.* The Bankruptcy Code therefore excepts certain debts from discharge in Section 523(a).

COUNT I
NON-DISCHARGEABILITY UNDER SECTION 523(a)(2)(A)
FOR DEBTS OBTAINED BY FALSE PRETENSES, FALSE REPRESENTATIONS, AND/OR ACTUAL FRAUD

62. The Receiver re-alleges each of the foregoing paragraphs as though stated fully herein.

63. Section 523(a)(2)(A) of the Bankruptcy Code creates a rule of nondischargeability

for any debt for money to the extent that it was obtained "by false pretenses, a false representation, or actual fraud." 11 U.S.C. § 523(a)(2)(A).

64. Seawright agreed to assist Adams in growing Madison Timber. Seawright pitched Madison Timber to potential investors, including his clients; consummated sales of Madison Timber to investors; and received commissions from Adams for his assistance in growing Madison Timber's business.

65. Madison Timber was a Ponzi scheme; therefore Seawright and Adams's purpose was unlawful.

66. In addition, Seawright acted unlawfully. Seawright was an unlicensed broker of securities, in violation of federal and state law. The securities that Seawright sold were not exempt from registration but were unregistered, in violation of federal and state law. Seawright made material misstatements in the sales of securities, in violation of federal and state law.

67. Seawright knew his conduct was unlawful. He knew his unlicensed sales of unregistered securities violated federal and state law. He knew he made false representations of fact to encourage investments in Madison Timber.

68. Seawright and his law firm, Baker Donelson, were essential to the growth of the Madison Timber Ponzi scheme. But for their encouragement and assistance, Madison Timber would not have continuously grown—it would have failed before ensnaring hundreds of new unwitting investors.

69. Seawright received "commissions," fees, and other such payments paid by Adams or Madison Timber for his assistance in growing Madison Timber's business. Because Madison Timber was a Ponzi scheme, the funds that Madison Timber transferred to Seawright were made with the actual intent to hinder, delay, or defraud Madison Timber's creditors. The Receiver is

entitled to avoid all "commissions," fees, and other such payments paid by Adams or Madison Timber to Seawright.[12]

70. The Receiver has alleged claims against Seawright for civil conspiracy; aiding and abetting; recklessness, gross negligence, and at a minimum negligence; violations of Mississippi's Fraudulent Transfer Act; violations of Mississippi's Racketeer Influenced and Corrupt Organization Act; and joint venture liability.[13]

71. Madison Timber's debts are now the Receivership Estate's. Seawright contributed to Madison Timber's success over time, and therefore to the Receivership Estate's liabilities today. Seawright's actions are a proximate cause of the debts of the Receivership Estate. Seawright is therefore jointly and severally liable with other defendants for the debts of the Receivership Estate.[14] Because Seawright acted with reckless disregard of the wellbeing of others, and in specific instances described in the Amended Complaint committed actual fraud, punitive damages are appropriate.

72. Seawright's indebtedness to the Receivership Estate, because it arises from Seawright's false pretenses, false representations, and/or actual fraud, is exempt from Seawright's Chapter 7 bankruptcy discharge.

[12] *See* Amended Complaint, Exhibit A, at ¶¶ 159–163, Doc. 57, Alysson Mills v. Butler Snow, et al., 3:18-cv-866 (S.D. Miss.).

[13] *See generally* Amended Complaint, Exhibit A, Doc. 57, Alysson Mills v. Butler Snow, et al., 3:18-cv-866 (S.D. Miss.).

[14] *See* Amended Complaint, Exhibit A, at ¶¶ 123–136, 137–147, 173–178, Doc. 57, Alysson Mills v. Butler Snow, et al., 3:18-cv-866 (S.D. Miss.).

COUNT II

NON-DISCHARGEABILITY UNDER SECTION 523(a)(4)

FOR FRAUD OR DEFALCATION WHILE ACTING IN A FIDUCIARY CAPACITY

73. The Receiver re-alleges each of the foregoing paragraphs as though stated fully herein.

74. Section 523(a)(4) of the Bankruptcy Code creates a rule of nondischargeability for any debt "for fraud or defalcation while acting in a fiduciary capacity." 11 U.S.C. § 523(a)(4).

75. Seawright aided and abetted Adams in committing breaches of duties owed by Adams to Madison Timber and in other tortious conduct alleged in this complaint and the amended complaint in the ancillary action filed by the Receiver.

76. Seawright knew that Adams was manager of Madison Timber therefore Seawright knew that Adams owed Madison Timber fiduciary duties of care. Mississippi law requires the manager of a limited liability company to discharge his duties in good faith and with fair dealing, with prudence, and in a manner that he reasonably believed was in the best interests of the company.[15] Nevertheless, Adams misused Madison Timber to sustain a singular fraud over many years, and Seawright assisted him.[16] *See Matter of Cowin*, 864 F.3d 344, 350 (5th Cir. 2017) ("[T]he intent and actions of [the debtor's] co-conspirators is sufficient to support nondischargeability under § 523(a)(4).").

77. Seawright and his company, Alexander Seawright, LLC, formed a joint venture with Adams and Madison Timber. Seawright therefore owed a statutory duty to Adams and Madison Timber to refrain from "engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law." MISS. CODE ANN. § 79-13-404(c).

[15] MISS. CODE ANN. § 79-29-123(6)(a).

[16] *See* Amended Complaint, Exhibit A, at ¶¶ 137–147, Doc. 57, Alysson Mills v. Butler Snow, et al., 3:18-cv-866 (S.D. Miss.).

78. Seawright owed fiduciary duties to investors of Madison Timber. Seawright specifically targeted individuals who had recently sold assets because Seawright knew those individuals had money to invest. Such individuals included clients for whom Baker Donelson had recently closed transactions. The Receiver is the assignee of many of these investors' claims.

79. The Receiver has asserted claims against Seawright for civil conspiracy; aiding and abetting; recklessness, gross negligence, and at a minimum negligence; violations of Mississippi's Fraudulent Transfer Act; violations of Mississippi's Racketeer Influenced and Corrupt Organization Act; and joint venture liability.[17]

80. Madison Timber's debts are now the Receivership Estate's. Seawright contributed to Madison Timber's success over time, and therefore to the Receivership Estate's liabilities today. Seawright's substantial assistance and encouragement is a proximate cause of the debts of the Receivership Estate. Seawright is jointly and severally liable for the debts of the Receivership Estate, which his substantial assistance and encouragement proximately caused. Because Seawright acted with reckless disregard of the wellbeing of others, and in specific instances described in this complaint committed actual fraud, punitive damages are appropriate.

81. Seawright's indebtedness to the Receivership Estate, because it arises from Seawright's fraud or defalcation while acting in a fiduciary capacity, is exempt from Seawright's Chapter 7 bankruptcy discharge.

[17] *See generally* Amended Complaint, Exhibit A, Doc. 57, Alysson Mills v. Butler Snow, et al., 3:18-cv-866 (S.D. Miss.).

COUNT III
NON-DISCHARGEABILITY UNDER SECTION 523(a)(6)
FOR WILLFUL AND MALICIOUS INJURY
BY THE DEBTOR TO ANOTHER ENTITY OR ITS PROPERTY

82. The Receiver re-alleges each of the foregoing paragraphs as though stated fully herein.

83. Section 523(a)(6) of the Bankruptcy Code creates a rule of nondischargeability for any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6).

84. An injury is "willful and malicious" when the court finds "either an objective substantial certainty of harm or [the debtor's] subjective motive to cause harm." *Berry v. Vollbracht (In re Vollbracht)*, 276 F. App'x 360, 361 (5th Cir. 2007).

85. Adams misused Madison Timber to sustain a singular fraud over many years, and Seawright assisted him by recruiting new investors to Madison Timber.

86. Numerous red flags notwithstanding,[18] Seawright lent his influence, his professional expertise, and even his clients to Adams. Seawright knew or should have known that Madison Timber was a fraud. He lured innocent investors to Madison Timber anyway, collecting commissions for each dollar of each investment he brought in.

87. The fraudulent scheme perpetrated by Adams, with Seawright's assistance, created "an objective substantial certainty of harm" to the Receivership Estate and the defrauded investors of Madison Timber, who now hold claims against the Receivership Estate.

88. Madison Timber would not have grown without Seawright's encouragement. Seawright's assistance to Adams in perpetuating the Madison Timber Ponzi scheme demonstrates

[18] *See* Amended Complaint, Exhibit A, at ¶¶ 101–107, Doc. 57, Alysson Mills v. Butler Snow, et al., 3:18-cv-866 (S.D. Miss.).

a "subjective motive to cause harm" to the Receivership Estate and to the defrauded investors of Madison Timber.

89. Madison Timber's debts are now the Receivership Estate's. Seawright contributed to Madison Timber's success over time, and therefore to the Receivership Estate's liabilities today. Seawright's substantial assistance and encouragement is a proximate cause of the debts of the Receivership Estate. Seawright is jointly and severally liable for the debts of the Receivership Estate, which his substantial assistance and encouragement proximately caused. Because Seawright acted with reckless disregard of the wellbeing of others, and in specific instances described in this complaint committed actual fraud, punitive damages are appropriate.

90. Seawright's indebtedness to the Receivership Estate, because it arises from Seawright's willful and malicious injury to another, is exempt from Seawright's Chapter 7 bankruptcy discharge.

WHEREFORE, the Receiver respectfully requests that the Court:

1. determine that Seawright's debt to the Receivership Estate is not dischargeable pursuant to 11 U.S.C. § 523;

2. award any and all attorney's fees, costs, and interest allowed by contract or law; and

3. awarding any and all other relief as may be just and equitable.

February 7, 2020

Respectfully submitted,

/s/ Lilli Evans Bass

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