

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:18-cv-02205-CMA-SKC

WINTHROP INTELLIGENCE, LLC, and
ROBERT SCOTT BROOKS,

Plaintiffs,

v.

HARVARD CIDER COMPANY, LLC,
CHASE BROOKS, and
MARK FINNEGAN, JR.

Defendants.

SAMUEL C. COPELAND,

Intervenor.

**INTERVENOR SAMUEL C. COPELAND’S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION**

Pursuant to Federal Rule of Civil Procedure 12(b)(1), Intervenor Samuel C. Copeland (“S. Copeland”) hereby moves for dismissal of this action for lack of subject matter jurisdiction.¹ This action should be dismissed because there is no ‘case’ or ‘controversy’ among plaintiffs and defendants and no adversity of interest as required by Article III of the Constitution. Rather, this is a collusive lawsuit in which plaintiffs and defendants conspire to secure a fraudulent multi-million dollar judgment from this Court. And this case is but one recent example of the racketeering

¹ Certification Pursuant to D.C.COLO.LCivR 7.1: Undersigned counsel attempted to confer with counsel for represented parties Harvard Cider Company, LLC (“Harvard”) and Winthrop Intelligence, LLC (“Winthrop”), as well as *pro se* parties Robert Scott Brooks (“S. Brooks”) and Chase Brooks (“C. Brooks”), regarding the relief requested herein. They did not respond.

activity that is being conducted through the Federal Courts by *pro se* plaintiff S. Brooks², Winthrop, its principals, Benjamin Moore (“B. Moore”) and Drue Moore (“D. Moore”), with the knowing assistance of Colorado counsel, Michael Davis. The overarching purpose of the scheme is to obtain enormous (but baseless) judgments from the Court, by consent of the parties, which judgments are then used to generate losses to offset gains in order to “manage the wealth” of the various business holdings of S. Brooks, Winthrop, B. Moore and D. Moore, a matter which would presumably be of interest to the Internal Revenue Service, among others. In this action, defendants are knowing participants in the scheme as Harvard Cider Company (“Harvard Cider”) is admittedly controlled by Winthrop and Chase Brooks (“C. Brooks”), son of S. Brooks, has been filing papers with this Court drafted by his father, *see* Transcript of the Proceedings of May 15, 2020 before S. Kato Crews, U.S. Magistrate Judge, Exhibit 2 hereto, p. 12, lines 12-15, and then filed by Attorney Jeremy Bombard, counsel to Harvard Cider. The Colorado Courts have been used, unwittingly, as the instrumentalities of the fraud and, if past is prologue, the perpetrators will continue the scheme until they are stopped. This action should be dismissed.

S. Copeland was permitted to intervene in this action, pursuant to Rule 24(a) for the limited purpose of arguing for the dismissal of this action and presenting the bases for the dismissal to the Court. Should the Court order the dismissal of this action, S. Copeland respectfully requests that this Court retain jurisdiction to hear his Motion to Recover Attorneys’ Fees and for Sanctions.

² Plaintiff S. Brooks was convicted of FDIC fraud, 18 U.S.C. §1007, in the Federal District Court of New Hampshire on or about October 4, 2004. He served a one year prison sentence commencing on November 5, 2004 and was the subject to a four year term of supervision. *See Exhibit 1*, a true and accurate copy of records obtained from the U.S. Department of Justice, Federal Bureau of Prisons.

Introduction

This is a fraudulent and collusive lawsuit in which plaintiffs and defendants are acting in concert to attempt to secure a baseless multi-million dollar judgment. The pleadings alone in this action reveal the fraud. Plaintiffs Winthrop and its alleged CIO/CFO and assignee, S. Brooks, assert claims for breach of fiduciary duty, negligent misrepresentation, fraud, and breach of contract against Harvard Cider and two of its three founders, C. Brooks and Mark Finnegan, Jr. (“M. Finnegan”). ECF No. 27 (Second Amended Complaint (SAC)).³ The Answers filed by these three defendants are identical and admit every allegation in the complaint, *see* ECF Nos. 29-31. Defendants admit fabricated allegations of an agreement between Winthrop and Harvard Cider (which never had annual revenue of more than \$550,000.00), the claimed “Western Region Licensing Deal,” allegedly worth \$7,390,000.00. *Id.* While both the SAC and the Answers point the finger at S. Copeland, the third founder, as the allegedly culpable actor, he was not named as a party and was never notified of the lawsuit.

But there is much more: as detailed below and in the Affidavit of Amy Moore (“Aff. A. Moore”), Exhibit 3 hereto, S. Copeland has received the transcription of an audio recording of S. Brooks, B. Moore and M. Davis, dated July 18, 2018, detailing the plot to file this action and how the “judgment payment scheme” will be implemented to “manage the wealth” of the participants and affiliated entities. *See* Aff. A. Moore, ¶¶12-15 and Exhibit 4, Transcription of Audio Recording by Patterson Transcription Company.⁴

³ Plaintiffs now assert that C. Brooks and M. Finnegan have assigned their membership interests to them.

⁴ The Court’s review of documents outside the four corners of the pleadings need not convert this Motion to Dismiss Pursuant to Rule 12(b)(1) to one for summary judgment. *See Sizova v. Nat. Inst. Of Standards & Tech.*, 282 F.3d 1320, 1324 (10th Cir. 2002)(“A court has wide discretion to allow affidavits, other documents, and a limited evidentiary hearing to resolve disputed jurisdictional facts under Rule 12(b)(1). *Holt v. United States*, 46 F.3d 1000, 1003 (10th Cir. 1995)(citations omitted). Reliance on evidence outside the pleadings in addressing . . . a

On June 4, 2019, the night before the third Court-ordered deposition of C. Brooks in pending litigation in the Massachusetts State Court, Winthrop filed an Involuntary Bankruptcy Petition under Chapter 11 against Harvard Cider in the Colorado Bankruptcy Court, identifying its claim against Harvard Cider as a “settlement” of \$6.2 million. That settlement has never been disclosed or documented and it disappeared from Winthrop’s subsequent filings in the Colorado Bankruptcy Court.

After the parties were ordered to confer with counsel for S. Copeland in the preparation of the Proposed Amended Scheduling Order and after the revised Proposed Order was filed with this Court on May 12, 2020 in which S. Copeland laid out some of the evidence of the fraudulent scheme that is being perpetrated upon the Court, counsel for M. Finnegan appeared for the first time on his behalf, stating that “Answers and other documents in this action had been prepared by the attorneys for other parties who asked him to sign them” and that he intended to move to file an Amended Answer. ECF No. 111. That same day, Winthrop and S. Brooks moved to dismiss all claims against M. Finnegan in this action with prejudice. ECF No. 112. At the Scheduling Conference on May 15, 2020, in response to the Court’s questions as to who drafted the Answer filed by M. Finnegan, plaintiff S. Brooks stated that it was a “joint effort” and that he did some typing and made some suggestions. Exhibit 2, p. 12, ll. 12-15.

But this action is just one example of the scheme that is being perpetrated through the Federal Courts. On February 13, 2017, the Colorado Federal District Court entered a Consent Judgment of \$5,489,770.00 in the action of *Benjamin E. Moore v. 58FilBuildWY LLC, 58FilCapitalWY LLC, 50FilBuildWY LLC, 50 FilCapitalWY LLC, Wi Ventures LLC, Winthrop Capital Trust, Teton Global Ventures LLC*, D. Colorado Civ. No. 1:16-cv-03167-NYW (“SFRE

[12(b)(1)] motion does not, as a general rule, convert the motion to one for summary judgment under Fed. R. Civ. P. 56.”).

Action”) just seven weeks after the action was commenced on December 23, 2016. Plaintiff B. Moore was represented by attorney Davis in the SFRE Action and the six defendant LLC entities were all formed in Wyoming just a few months before the SFRE Action was filed. All of the defendant entities are shells, owned or controlled by D. Moore (and, indeed, Wi Ventures LLC is a dba for Winthrop, *see* SFRE Action, ECF No. 21-2, pp. 1 and 6). The land at issue in the SFRE Action was purchased by B. Moore (and, as to one lot, A. Moore) for a total of \$1,162,500 just a few months before the SFRE Action was filed. Exhibit 3, Aff. A. Moore ¶¶2 and 3. S. Brooks was the mastermind of the scheme and true and accurate copies of his notes of November 16, 2016, and those of B. Moore of the same date, detailing how the scheme will be implemented, are attached hereto as Exhibits 5 and 6 respectively. *See* Aff. A. Moore, ¶¶7-11. Similarly, Exhibit 7 hereto is a true and accurate copy of a “flow chart,” mainly in the handwriting of S. Brooks, setting out how the proceeds from the anticipated Consent Judgment will be used and distributed. Aff. A. Moore, ¶¶12-13.

Procedural History and Related Judicial Proceedings

First-Filed Massachusetts Action

On June 7, 2018, prior to any of this Colorado litigation, S. Copeland and his father, William Copeland (“W. Copeland”), (collectively, the “Copelands”) filed suit in the Commonwealth of Massachusetts against M. Finnegan, C. Brooks and Harvard Cider (the “MA Action”). *See Exhibit 8* (Docket for *Samuel C. Copeland, et al. v. Mark Finnegan, Jr., et al.*, 1884CV01760 (Mass. Supp. filed June 7, 2018))⁵. The Copelands’ claims stemmed from M.

⁵ The Court may take judicial notice of the public filings in the Massachusetts state court action, public filings in the Colorado Federal Courts and other public documents so long as the facts reflected therein are not subject to reasonable dispute. *See United States v. Smalls*, 605 F.3d 765, 768 n.2 (10th Cir. 2010) (recognizing a court may take judicial notice of docket information from another court); *Estate of McMorris v. C.I.R.*, 243 F.3d 1254, 1258 n.8 (10th Cir. 2001) (same).

Finnegan and C. Brooks freezing out S. Copeland from the management of Harvard Cider and the company's default on loans from each of the Copelands.

On November 6, 2018, the Copelands amended their complaint in the MA Action. *See* First Amended Complaint ("MA FAC"), ECF No. 56-2. The MA FAC names the plaintiffs in this case, Winthrop and S. Brooks, as defendants and adds claims for, *inter alia*, aiding and abetting the breach of fiduciary duty and conspiracy to defraud. *See id.*

Colorado Federal Action ("CO Action")

On August 27, 2018,⁶ Winthrop and S. Brooks filed this case against Harvard Cider, C. Brooks and M. Finnegan. ECF No. 1. Plaintiffs have since amended their Complaint twice, and the operative pleading is the SAC, which was filed on November 20, 2018. ECF No. 27. S. Copeland was granted intervention as a matter of right in this action on April 3, 2019. ECF No. 52.⁷ Specifically, S. Copeland was allowed to intervene in the CO Action for the limited purpose of arguing for a dismissal or stay of this action, *i.e.*, filing this Motion. *See id.*

S. Copeland filed his Motion to Dismiss and Motion to Stay on April 24, 2019. ECF Nos. 56 and 58. In the Motion to Dismiss, S. Copeland argued that the CO Action should be dismissed because it is sham litigation in which the parties are conspiring to obtain a groundless judgment. On May 22, 2019, Winthrop filed its Response to the Motion to Dismiss. ECF No. 68.

⁶ Winthrop and S. Brooks first filed suit, bringing the same claims, against Harvard Cider, C. Brooks and M. Finnegan in the Colorado District Court a month earlier on July 27, 2018, Docket No. 1:18-cv-01910. That action was dismissed *sua sponte* by the Court, Krieger, J., on August 20, 2018, for the plaintiffs' failure to identify the members of Harvard Cider and their state of citizenship, thus preventing the Court from determining whether it had federal diversity subject matter jurisdiction in the action.

⁷ Magistrate Judge Wang recused herself from the CO Action on February 4, 2019. ECF No. 42.

**Winthrop’s Involuntary Chapter 11 Bankruptcy Petition
Against Harvard Cider in the Colorado Bankruptcy Court, Case No. 19-14834-EEB**

On June 4, 2019, at 5:47 MT, Winthrop filed an Involuntary Chapter 11 Bankruptcy Petition against Harvard Cider in the Colorado Bankruptcy Court. Case 19-14834, ECF No. 1. In the Bankruptcy Petition, Winthrop identified its claim against Harvard Cider as a settlement in the amount of \$6,200,000.00. *Id.* p. 3.⁸

On June 10, 2019, Winthrop, S. Brooks and Harvard Cider filed a Stipulation of Dismissal of all Claims Against Harvard Cider with Prejudice in this CO Action. ECF No. 74. On June 20, 2019, this Court declined to honor the Stipulation of Dismissal in light of the Bankruptcy stay. ECF No. 81.

On November 18, 2019, Winthrop filed an “Amended Voluntary Petition” for the Chapter 11 Bankruptcy of Harvard Cider. CO Bankruptcy Docket No. 19-14834, ECF No. 49. In its Statement of Creditors with Unsecured Claims, Winthrop removed its alleged \$6.2 million settlement with Harvard Cider as a claim. *Id.* ECF No. 51, p. 8.

On November 19, 2019, Winthrop filed a Motion to Convert the Case from Chapter 11 to Chapter 7 or to Dismiss. CO Bankruptcy Docket No. 19-14834, ECF No. 56.

The Involuntary Bankruptcy proceeding was dismissed on December 17, 2019. CO Bankruptcy Docket No. 19-14834, ECF No. 68.

Post-Bankruptcy Proceedings in this CO Action

The Court lifted the Bankruptcy stay in this action on April 6, 2020. ECF No. 101.

⁸ Winthrop filed the Involuntary Bankruptcy Petition following the Massachusetts Court’s entry of an Order in the MA Action on June 4, 2019 compelling C. Brooks to appear for his deposition on June 5, 2019 at 9:30 am at the offices of counsel in Boston. *See Exhibit 8*, docket entry of June 4, 2019. This was the third order by the Massachusetts Court in the MA Action compelling C. Brooks to appear at his deposition.

On April 27, 2020, Winthrop filed the “Second Amended Scheduling Order,” purportedly bearing the signature of all parties, save S. Copeland, with the Court. ECF No. 104. On April 29, 2020, the Court ordered all parties to confer regarding the Scheduling Order and ordered that a new Scheduling Order including the position of S. Copeland be filed. ECF No. 106. The Proposed Second Amended Scheduling Order, in which S. Copeland detailed some of the evidence of the fraudulent scheme, was filed with the Court on May 12, 2020. ECF No. 108. It was not signed by M. Finnegan. On May 14, 2020, counsel for M. Finnegan appeared for the first time, stating that M. Finnegan would not sign on to the Scheduling Order, that his “previously-filed Answers (and other documents) had been prepared by the attorneys for other parties who asked him to sign them” and that he would be filing an Amended Answer. ECF No. 111. That same day, Winthrop and S. Brooks filed their Motion to Dismiss M. Finnegan with prejudice as a defendant in the action. ECF No. 112. The Court allowed the Motion to Dismiss on May 15, 2020. Document ECF No. 113. At the Scheduling Conference, S. Brooks stated that the parties had drafted the Answers together: “My recollection is that it was joint work by (inaudible). I don’t know who typed it at one point in time. I know I did some and I made suggestions.” Exhibit 2, p. 12, ll. 12-15.⁹ At the Scheduling Conference, S. Brooks further made plain his intention to file another Involuntary Bankruptcy Petition against Harvard Cider, this time in Wyoming: “Juliet Davison is aware that she objected to the bankruptcy in Colorado, so now we have to go to Wyoming.” Exhibit 2, p. 10, ll. 20-21. Following the Scheduling Conference on May 15, 2020, the Court ordered S. Copeland

⁹ S. Brooks also informed the Court that he had been late to the May 15th Scheduling Conference because he had “two judges wanting me at two places.” Exhibit 2, p. 20, ll. 7-8, and that the other matter was the U.S. Bankruptcy matter he was then “negotiating.” *Id.* ll. 9-19. But the docket from the Liquid Collective Bankruptcy Petition reflects that there were no hearings or Court deadlines on May 15, 2020. *See Exhibit 9* hereto, a true and accurate copy of the docket from the Liquid Collective Bankruptcy proceedings. *In re Liquid Collective, LLC*, CO Bankruptcy Petition #20-13146-KHT.

to file his Motion to Dismiss and Motion to Stay by May 20, 2020 and entered an expedited briefing schedule. ECF No. 116.

Facts

In January 2015, S. Copeland, M. Finnegan, and C. Brooks founded Harvard Cider to manufacture and distribute hard cider. MA FAC, ECF No. 56-2, ¶11. Harvard Cider is a Massachusetts LLC with a principal place of business of 173B Norfolk Ave., Boston, Massachusetts 02119. SAC ¶3. The founders all reside in Massachusetts. SAC ¶¶3 and 4; all ECF filings by *pro se* defendants in this action.

Winthrop was incorporated as a Delaware LLC with a principal place of business in North Carolina on March 9, 2009. As alleged in the SAC, Winthrop's sole members are Ben Moore ("B. Moore") and Drue Moore ("D. Moore"). SAC ¶1.¹⁰ On July 25, 2017, Winthrop filed Articles of Domestication with the State of Wyoming. *See* Proposed Second Amended Scheduling Order, ECF No. 108, Statement of Undisputed Facts of plaintiffs and defendants, ¶1, pp. 5-6.

In or around June 2017, Winthrop began lending money to Harvard Cider. SAC, ¶53 Effective October 31, 2017, the founders signed a Memorandum of Understanding ("MOU") to secure a line credit from Winthrop. *See* ECF No. 47-6 (the MOU). The MOU provides that Winthrop will lend up to \$140,000.00 to Harvard Cider and that, in the event of default, Winthrop may "clawback" 1% of equity for every \$15,000.00 of funds in default. *Id.*

Winthrop alleges to have made \$461,501.00 in unsecured loans to Harvard Cider. *See* Colorado Bankruptcy Docket 19-14834, "Schedule D: Creditors Who Have Unsecured Claims" filed in Winthrop's Involuntary Chapter 11 Bankruptcy Petition Against Harvard Cider (D. Colo.

¹⁰ In the Proposed Second Amended Scheduling Order, Winthrop states that B. Moore and D. Moore have transferred their membership interests in Winthrop to trusts. ECF No. 108, pp.5-6, ¶1.

June 4, 2019), Document #51, p. 8. Therefore, under the MOU, Winthrop had rights to “clawback” 30.78% of the Harvard Cider equity.

Winthrop claims to control Harvard Cider because defendants C. Brooks and M. Finnegan have allegedly assigned their membership interests in Harvard Cider to Winthrop. Winthrop further alleges to own 100% of Harvard Cider. *See* Colorado Bankruptcy Docket 19-14834, “Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy,” filed in Winthrop’s Involuntary Chapter 11 Bankruptcy Petition Against Harvard Cider (D. Colo. June 4, 2019), Document #52, p. 7.

S. Brooks purports to act as Winthrop’s assignee in this action. SAC ¶7.

Therefore, in suing Harvard Cider in this action, Winthrop and S. Brooks are suing themselves and there is no adversity of interest among the parties.

In the pleadings in this action, plaintiffs and defendants have agreed that they entered into a claimed “Western Region Licensing Deal” valued at \$7,390,000, *see* ¶¶18-22, *supra*. In its Initial Disclosures, Winthrop claims damages with an upper limit in excess of \$40 million. *See Exhibit 10*, Winthrop’s Initial Disclosures in this action, at 3-7.

In 2018, Harvard Cider’s sales were \$586,218.00; in the first five months of 2019 (prior to Winthrop’s filing of the Involuntary Bankruptcy Petition on June 4, 2019), Harvard Cider’s revenues were \$167,500.00. *See* Colorado Bankruptcy Docket 19-14834, Document #52, p. 1.

On July 18, 2018, S. Brooks plotted with Attorney Michael Davis and B. Moore about filing the complaint in this action to recover millions of dollars from a company that has never made money and how the judgment proceeds would be used and distributed. B. Moore recorded this conversation. *Exhibit 3*, Aff. A. Moore, ¶¶14-17; *see also* Transcription of AudioTape by Patterson Transcription Company, attached hereto as *Exhibit 4*. Set forth below

are several excerpts from the audiotape:

Ex. 4: p. 3, ll. 1-7:

Mr. Brooks: Because it's just f***ing so blatant what your business (inaudible). Capital company like us, we have losses and gains and VC losses, I mean, flying all the time, so **it just fits into the game**, for them to have a \$5 million loss in a company that has never made money. So that's why I get into -- I can take it over -- there is a million ways I can handle that (inaudible) hole later.

Ex. 4: p. 5, ll. 5-18:

Mr. Brooks: Well, but judgments don't trump in a P&L

Mr. Davis: Yeah.

Mr. Brooks: You know, so you manage the **judgment payment scheme**, goes back to how we collect the judgments.

Mr. Davis: Yeah.

Mr. Brooks: Some (inaudible) going, our best method is to put up a block for him, UCC, plus judgment.

Mr. Davis: Okay.

Mr. Brooks: Okay, Juliet, how are you doing, how is your day?

Mr. Davis: Right.

Mr. Brooks: **And then use that to manage wealth. Yeah, and then use to manage wealth.**

Ex. 4: p. 6, ll. 1-8:

Mr. Brooks: They're going to just fine. And then we will, with the boys create, you know, to the degree – they're new to this , so the degree they have any fear, they now have a friendly creditor in their personal life where she is going scary, scary, scary, again after her, and then we'll put the releases in the company and take care of it and say, you're fine, because there is joint and several creditors, we can do it in one.

The South Fillmore Real Estate Action

On February 13, 2017, this Court entered a “Consent Judgment” in the amount of \$5,489,770.00 in favor of B. Moore in the case of *Benjamin E. Moore v. 58FilBuildWY LLC, 58FilCapitalWY LLC, 50FilBuildWY LLC, 50 FilCapitalWY LLC, Wi Ventures LLC, Winthrop Capital Trust, Teton Global Ventures LLC*, D. Colorado Civ. No. 1:16-cv-03167-NYW (“SFRE Action”), ECF No. 26.

B. Moore filed the SFRE Action seven weeks earlier on December 23, 2016. SFRE Action, ECF No. 1. Attorney Davis was counsel to B. Moore in the SFRE Action and signed the

complaint. The seven defendant Wyoming entities are owned and/or controlled by D. Moore. *See* Assent to Entry of Judgment Order dated January 25, 2017, SFRE Action, ECF No. 21-2. The six Wyoming defendant LLC entities were all formed in August of 2016 by Attorney D. Scott Robinson, who is licensed in Colorado and Wyoming. Defendants in the SFRE Action were represented by Colorado attorney David Ball.

On November 16, 2016, S. Brooks and B. Moore met to plot the filing of the SFRE Action and how the proceeds of the forthcoming Consent Judgment would be distributed and/or used to benefit Winthrop, S. Brooks, B. Moore and D. Moore. Their contemporaneous notes document their conversation in detail. Exhibit 3, Aff. A. Moore, ¶¶7-11 and Exhibits 5 (S. Brooks) and 6 (B. Moore). The first page of the two sets of notes is virtually identical. Item A states: “Wi ‘pays’ to Ben (MFO)[Moore Family Office] as partial on judgment +\$1M”. After describing several other “payoffs” and “loans” among the participants, item E states: “Now Go Round & Round”. S. Brooks further notes: “get the story line going with MJ [bookkeeper] provides our cover”. Exhibit 5.

S. Brooks prepared a flow chart demonstrating how the proceeds from the Consent Judgment would be used and distributed, internationally. Exhibit 3, Aff. A. Moore, ¶¶12-13 and Exhibit 7.

In the complaint in the SFRE Action, B. Moore alleged, in substance, that defendants had breached a contract with him in failing to obtain permitting from FEMA to build on land he had purchased on South Fillmore Street in Denver on September 22, 2016, just three months earlier. The complaint alleged damages “in excess of \$2.8 million”. SFRE Action, ECF No. 1.

Defendants in the SFRE Action never filed Answers. Rather, on January 25, 2017, just one month after the complaint was filed, the parties filed a “Joint Motion to Enter Judgment Order Pursuant to Assent to Entry of Judgment Order,” informing the Court that they had “resolved their

differences” and assented to a judgment in the amount of \$5,489,770.00. SFRE Action, ECF No. 21. In the Motion and the Assent, the parties agreed, in the event of default, to an “adjusted judgment” equal to three times the judgment amount plus 8% interest and collection costs and fees. SFRE Action, ECF Nos. 21 and 21-2.

On February 7, 2017, the parties filed a Joint Motion to Enter Consent Judgment in the amount of \$5,489,770.00. SFRE Action, ECF No. 25.

Other Bankruptcy Filings by Winthrop and S. Brooks

The S. Brooks Chapter 7 Involuntary Bankruptcy Petition Filed Against B. Moore on January 22, 2020, CO Bkrpty Docket No. 20-10479

On January 22, 2020,¹¹ S. Brooks, represented by Colorado attorney Aaron Garber, filed an Involuntary Bankruptcy Petition under Chapter 7 Against B. Moore in the Colorado Bankruptcy Court. Docket No. 20-10479.

On March 12, 2020,¹² S. Brooks and B. Moore filed a Notice of Stipulation of Dismissal of Involuntary Petition. *Id.*, ECF No. #14.

On April 9, 2020, the Bankruptcy Court ordered petitioning creditor S. Brooks and purported Debtor B. Moore to file a copy of all agreements between himself and B. Moore concerning the filing of the Involuntary Petition and the Stipulation of Dismissal of the Involuntary Petition and further ordered a hearing on the Stipulation and Response. *Id.*, ECF No. 24. This matter is proceeding to a hearing on May 21, 2020.

The Winthrop Chapter 7 Involuntary Bankruptcy Petition Filed Against B. Moore on October 22, 2019, CO Bkrpty Docket No. 19-19114

On October 22, 2019,¹³ Winthrop filed an Involuntary Bankruptcy Petition against B.

¹¹ Shortly before a scheduled contempt hearing in Denver District Court against B. Moore.

¹² The day after an appearance on the Contempt proceeding in Denver District Court.

¹³ The day after an October 21, 2019 Temporary Orders hearing in the Denver District Court, Colorado divorce action confirmed that B. Moore was receiving at least \$67,500.00 a month from

Moore in the Colorado Bankruptcy Court. Docket No. 19-19114, ECF No. 1.

On November 22, 2019, B. Moore (represented by Attorney Davis) and Winthrop (represented by attorney Garber) filed a Stipulation for Dismissal of Involuntary Petition. *Id.*, ECF No. 6.¹⁴

Argument

There is No Case or Controversy and Therefore No Subject Matter Jurisdiction.

“Article III of the Constitution limits federal-court jurisdiction to ‘cases’ and ‘controversies.’” *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663, 669 (2016), *as revised* (Feb. 9, 2016). “To qualify as a case fit for federal-court adjudication, ‘an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.’” *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997) (citation omitted). The pleadings alone (the SAC and Answers) reflects the lack of adversity among plaintiffs and defendants and the conspiracy to obtain a sham judgment. *See Aetna Life Ins. Co. of Hartford, Conn. v. Haworth*, 300 U.S. 227, 240–41 (1937) (“The controversy must be definite and concrete, touching the legal relations of parties having *adverse* legal interests.”) (emphasis added) (citation omitted); *see also Lord v. Veazie*, 49 U.S. 251, 255 (1850) (“there must be an actual controversy, and adverse interests.”); Wright & Miller, § 3530 Adversary, Feigned, And Collusive Cases, 13 Fed. Prac. & Proc. Juris. § 3530 (3d ed.) (“The principle remains today that if both parties affirmatively desire the same result, no justiciable case is presented.”). Additionally, as set forth in detail above, the information

his various business entities. Of note., M. Davis was representing B. Moore in the Divorce Action until he was disqualified.

¹⁴ S. Brooks also filed three Voluntary Chapter 11 Bankruptcy Petitions in the Massachusetts Bankruptcy Court in 2009 and 2010: (1) Docket No. 09-16564, filed on July 13, 2009 and dismissed on July 28, 2009; (2) Docket No. 09-17435, filed on August 3, 2009 and dismissed on May 19, 2010; and (3) Docket No. 10-19341, filed on August 30, 2010 and terminated on September 14, 2010.

and evidence obtained over the course of the past year demonstrates irrefutably the parties' collusion to obtain a fraudulent judgment in this action and the larger scheme to use the Colorado Federal Courts as the vehicle to commit fraud.

S. Copeland respectfully submits that the foregoing conclusively establishes that the parties do not have adverse interests and are instead conspiring to obtain a fraudulent judgment from this Court, as plaintiffs did in the SFRE Action. Accordingly, S. Copeland asks that the Court dismiss this action pursuant to Rule 12(b)(1) because no case or controversy is presented for adjudication and the Court lacks subject matter jurisdiction.

S. Copeland intervened in this action for the limited purpose, ECF No. 52, of arguing for dismissal and apprising the Court of the fraudulent scheme that is being perpetrated by the parties through the Federal Courts. Accordingly, following the Court's final ruling on the Motion to Dismiss, the purpose of S. Copeland's limited intervention will be satisfied. In the event that the Motion to Dismiss is granted, S. Copeland respectfully requests that the Court retain jurisdiction of this action for the purpose of allowing him to present his Motion for Sanctions and Recovery of Attorneys' Fees to the Court.

Conclusion

For all of the foregoing reasons, S. Copeland respectfully requests that the Court dismiss this action with prejudice pursuant to Rule 12(b)(1). S. Copeland further requests that, upon dismissal, the Court retain jurisdiction of this action for the purpose of allowing him to present his Motion for Recovery of Attorneys' Fees and Sanctions to the Court.

Dated: May 20, 2020

s/ Juliet A. Davison

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May, 2020 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record in this case.

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