

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

IN RE:)
) Case No. 13-15554-ABC
TODD BURKE)
Debtor.) Chapter 7
_____)
HEPBURN INGHAM,)
)
Plaintiff,)
)
v.)
) Adv. Proc. No. 13-01382-ABC
TODD BURKE,)
)
Defendant.)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into as of this 15th day of August, 2014 by and between Plaintiff Hepburn Ingham (“Ingham”) and Debtor and Defendant Todd Burke (“Burke”). Ingham and Burke are referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

A. Burke filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on April 8, 2013 (“Petition Date”). John Smiley was duly appointed as the Chapter 7 Trustee.

B. Burke was the President and Chief Executive Officer of globalTowers, Inc., a California corporation (“GTI” or “Company”).

C. On or about February 21, 2001, Ingham purchased 75,000 shares of GTI stock Burke represented he owned personally for \$150,000 (the “February 2001 Investment”). Burke represented the February 2001 Investment would be invested with GTI to expand its operations. Burke deposited the \$150,000 into his personal bank account and never provided Ingham with GTI stock certificates.

D. On or about March 30, 2002 and December 30, 2002, respectively, Ingham wired \$100,000 and \$65,000 to a bank account controlled by Burke (the “2002 Investments”). Burke represented the funds provided by Ingham would be used to further GTI’s business operations and expansion plans. The \$165,000 paid by Ingham was never invested with GTI.

E. On April 20, 2004, Ingham filed a verified complaint against Burke in Boulder County District Court (the “Boulder County District Court Complaint”), alleging claims for fraud,

fraudulent conveyance, breach of fiduciary duty, securities fraud, civil theft, and violations of the Colorado Consumer Protection Act.

F. On September 15, 2004, the Boulder County District Court entered a Default Judgment in favor of Ingham and against Burke in the principal amount of \$692,973.60, plus interest accruing from the date of entry of the judgment at the statutory rate of 8% per annum, compounded annually (the "Default Judgment"). Burke failed to pay any amounts due to Ingham under the Default Judgment.

G. Ingham filed the above-captioned adversary proceeding against Burke on July 15, 2013, asserting that the Default Judgment should be excepted from discharge pursuant to 11 U.S.C. §§ 523(a)(2), (a)(4), and (a)(19) (the "Adversary Complaint"). Trial has been scheduled to commence on September 16, 2014.

H. The Adversary Complaint alleges that, in connection with the offer, sale, or purchase of securities, Burke directly or indirectly: (a) employed a device, scheme, or artifice to defraud Ingham; (b) made untrue statements of material fact and omitted to state material facts to Ingham necessary to make the statements not misleading under the circumstances in which they were made; and/or (c) engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit upon Ingham, in violation of the Colorado Securities Act, C.R.S. § 11-51-501, *et seq.*

I. The Adversary Complaint further alleges that Burke made false representations of material fact and omitted to state material facts to Ingham in connection with the February 2001 and 2002 Investments. Burke knew or reasonably should have known these misrepresentations and omissions of material fact were false, untrue, and materially misleading when Burke made them to Ingham and made these misrepresentations and omissions of material fact in order to deceive Ingham and to induce Ingham to invest in GTI and to transfer funds to Burke personally. Had Ingham known the true facts, and had Ingham known the material facts concealed and omitted by Burke, Ingham would have never transferred funds to Burke.

J. Burke denies the allegations set forth in the Adversary Complaint.

K. The Parties wish to compromise and settle the Adversary Proceeding without further litigation and without the need to proceed to trial pursuant to the terms and conditions set forth below.

AGREEMENT AND RELEASE

Consistent with the Parties' agreements and in consideration of the foregoing Recitals and the promises, covenants, and the payments provided for in this Agreement, the Parties, subject to approval by the Bankruptcy Court, stipulate and agree as follows:

1. Confession of Judgment and Exception from Discharge. Burke hereby stipulates and agrees to entry of the Stipulated Judgment, attached hereto as Exhibit A, whereby Burke: (a) confesses judgment in favor of Ingham and against Burke in the principal amount of \$315,000; and (b)

confesses and agrees that the \$315,000 stipulated judgment in favor of Ingham shall be non-dischargeable and excepted from Burke's Chapter 7 discharge in his bankruptcy proceedings, Case No. 13-15554-ABC, pursuant to 11 U.S.C. § 523(a) ("Stipulated Judgment").

2. Payment Terms and Covenant Not to Sue. As part of the Parties' settlement agreement, Ingham agrees not to execute upon the Stipulated Judgment provided that, beginning on October 1, 2014, and on the first day of each month thereafter until the Stipulated Judgment is paid in full, Burke shall pay Ingham 25% of Burke's Net Disposable Income or \$250.00, whichever is greater. Payments shall be due on the first day of each calendar month. Burke shall be in material breach of this Agreement if a monthly payment is not received by Ingham on or before the 5th calendar day of each month. Disposable Net Income shall be determined by subtracting Burke's gross monthly income from (a) reasonable monthly cost of living expenses as set forth and disclosed by Burke in his periodic reports to the Boulder County District Attorney with respect to Case No. 2013CR000482 ("Boulder DA Reports"); and (b) payment of restitution presently in the amount of \$1,000 per month to the Boulder County District Attorney in connection with Case No. 2013CR000482 ("Criminal Restitution Payment"). The Parties acknowledge and agree the Criminal Restitution Payment may be increased or decreased from time to time in accordance with the judgment against Burke obtained by the Boulder County District Attorney or otherwise ordered by a court having jurisdiction over the matter. Burke shall provide to Ingham and his counsel copies of his Boulder County DA Reports and related financial records simultaneously with providing the same to the Boulder County District Attorney. The Parties agree that, during April, July, October, and December of each year, Burke shall provide to Ingham and his counsel the earnings statements, bank records, and other documents necessary to calculate Burke's Net Disposable Income for the prior three (3) month period. Burke at such time shall within five (5) business days make additional payments to Ingham in the event his Net Disposable Income for the prior three-month period exceeded the \$250 monthly payment set forth above. Burke shall be entitled to a 20% discount if all remaining principal due and owing with respect to the Stipulated Judgment is paid in full on or before September 1, 2019. Burke shall be entitled to two (2) seven (7) day cure periods per year to allow for unexpected or unavoidable delays. Any further defaults shall allow Ingham to proceed with collections on the entire balance of the Stipulated Judgment that remains due and payable on the date of default.

3. Payment Address and Notifications. Monthly payments pursuant to paragraph 2 above shall be tendered by automated electronic funds transfer or similar means of electronic transfer of said funds to an account maintained by Hepburn Ingham at Elevations Credit Union, Routing No. 307074580 and Account No. 1008000280100. The address for Elevations Credit Union is PO Box 9004, Boulder, Colorado 80301. Notifications to Ingham shall be delivered to the address above with a copy to Robert J. Shilliday III, 730 17th Street, Suite 500, Denver, CO 80202-3580, rjs@shillidaylaw.com.

4. No Pre-Payment Penalty. Burke at any time may pre-pay without penalty the entire balance due with respect to the Stipulated Judgment, and if the Stipulated Judgment is paid in full on or before September 1, 2019, Burke shall be entitled to a 20% discount of the principal due pursuant to paragraph 2 above.

5. Time is of the Essence. If Burke fails to satisfy his obligations as described in this Agreement, Ingham shall have the right to execute upon all remaining unpaid amounts due with respect to the Stipulated Judgment immediately and without further notice to Burke.

6. Representations and Warranties. The Parties represent and warrant that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this Agreement, and the Parties have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action released or referred to in this Agreement. Each Party represents and warrants it has full capacity and authority to settle, compromise, and release its claims as provided for in this Agreement and no other person or entity has or will in the future acquire or have any right to assert against any person or entity released by this Agreement any portion of that Party's released claims. All individuals executing this Agreement specifically represent and warrant they have the authority to execute this Agreement on behalf of their respective Party, to release the Parties and claims released herein and to bind their respective Party to the terms of this Agreement. Burke represents and warrants he has read this Agreement in its entirety and understands the terms, conditions, and consequences of this Agreement. Burke represents and warrants he has the right to consult an attorney concerning this Agreement and the consequences thereof but has elected to enter into this Agreement without the assistance of an attorney. Burke represents, warrants, and acknowledges neither Ingham nor his attorney compelled, coerced, or otherwise engaged in improper conduct in connection with the negotiation and execution of this Agreement.

7. Entire Agreement and Successors in Interest. The Agreement contains the entire agreement between the Parties, and may not be modified in any manner except in a writing signed by the Parties. This Agreement shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, devisees, agents, employees, officers, directors, trustees, conservators, guardians, beneficiaries, heirs, successors and assigns of each Party.

8. Severability. In the event that an arbitrator or court of competent jurisdiction enters an award or judgment declaring that any material provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect, and the remaining provisions shall be deemed modified to the extent necessary to comply with the award or judgment.

9. Real Party in Interest and No Third-Party Beneficiaries. The Parties warrant and represent that no claim or other manner of right created, performed or released by this Agreement has been assigned, transferred or conveyed, in whole or in part, to any person or entity not bound to this Agreement. This Agreement is not intended to and does not benefit any person or entity not a party to this Agreement.

10. Governing Law. Litigation. Attorney Fees. Venue. This Agreement shall be governed by and construed in accordance with the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.* and the laws of the State of Colorado without reference to choice of law provisions and related statutes and case law. In the event litigation is commenced by any Party hereto against any other Party for the alleged failure or refusal of any Party to perform its obligations under this Agreement, then the court presiding over such litigation shall award costs and attorney fees to the prevailing party. The Parties

consent and submit to the continuing jurisdiction of the United States Bankruptcy Court for the District of Colorado and the Boulder County District Court for purposes of any litigation relating to this Agreement or enforcement of the Stipulated Judgment.

11. Waiver of Attorney Fees. Except as otherwise provided herein, the Parties shall bear their own attorney fees and costs incurred as of the date of execution of this Agreement.

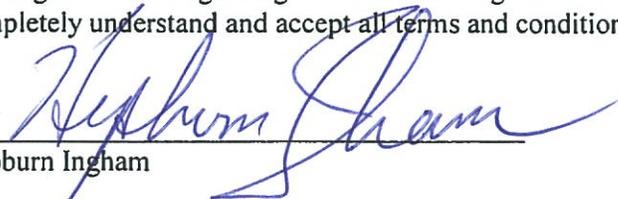
12. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original and all of which, taken together, shall constitute one and the same agreement. Facsimile and electronic signatures shall carry the same force and effect as an original signature.

13. No Construction Against Drafter. All Parties have cooperated in the drafting and preparation of this Agreement. Hence, no construction of this Agreement shall be construed against any party.

14. Effective Date. The effective date of this Agreement shall be the date on which the Bankruptcy Court approves this Agreement and the Stipulated Judgment.

15. Necessary and Further Documents. The Parties agree to execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Agreement.

16. Miscellaneous. The Parties represent that they have had an opportunity to consult with their own legal counsel regarding this settlement agreement. The Parties represent that they fully and completely understand and accept all terms and conditions set forth herein.



Hepburn Ingham

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

Subscribed and sworn to before me on this ___ day of August, 2014 by Hepburn Ingham.

Witness my hand and official seal.

My commission expires: _____

[SEAL]



Notary Public, State of Colorado

EXHIBIT A

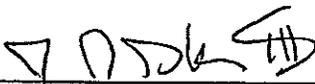
UNITED STATES BANKRUPTCY COURT
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TODD BURKE)
Debtor.) Chapter 7
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HEPBURN INGHAM.)
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Plaintiff.)
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v.)
) Adv. Proc. No. 13-01382-ABC
TODD BURKE.)
)
Defendant.)

STIPULATED JUDGMENT

The Parties hereby stipulate to the Entry of Judgment in this action in favor of Plaintiff Hepburn Ingham and against Debtor and Defendant Todd Burke in the amount of \$315,000.00, and further stipulate that, subject to the terms of the Parties' Settlement Agreement, this debt is non-dischargeable in accordance with 11 U.S.C. § 523(a). The Parties thus request the Court enter Judgment and Order accordingly.

Dated this 15th day of August, 2014.



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E-mail: rjs@shillidaylaw.com

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E-mail: Toddburke67@gmail.com

Pro Se

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT
CIVIL CODE § 1189

State of California

County of Contra Costa }

On Aug. 15th, 2014 before me, Jason C. Thomas, A Notary Public,
 Date Here Insert Name and Title of the Officer

personally appeared Hepburn Ingham
 Name(s) of Signer(s)



Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~ ~~she~~ ~~they~~ executed the same in ~~his~~ ~~her~~ ~~their~~ authorized capacity(ies), and that by ~~his~~ ~~her~~ ~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: [Signature]
 Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Bankruptcy Settlement Agreement Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Partner — Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Partner — Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer Is Representing: _____

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