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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

Peter S. Davis, as Receiver of DenSco
Investment Corporation, an Arizona
corporation,

Plaintiff,

v.

U.S. Bank, NA, a national banking
organization; Hilda H. Chavez and John
Doe Chavez, a married couple; JP Morgan
Chase Bank, N.A., a national banking
organization; Samantha Nelson f/k/a
Samantha Kumbalek and Kristofer
Nelson, a married couple; and Vikram
Dadlani and Jane Doe Dadlani, a married
couple,

Defendants

No. CV2019-011499

**PLAINTIFF'S RESPONSES TO
DEFENDANT JPMORGAN CHASE
BANK, N.A.'S FIRST SET OF
REQUESTS FOR ADMISSIONS**

(Assigned to the Honorable
Daniel Martin)

Plaintiff responds to JPMorgan Chase Bank's first set of requests for admissions
as follows:

REQUEST FOR ADMISSION NO. 1:

Admit that Denny Chittick discovered that Menaged's businesses were
fraudulently obtaining loans from DenSco by no later than November 2013.

RESPONSE:

Plaintiff admits that Denny Chittick discovered that Menaged was taking monies from DenSco without obtaining a first lien in late November 2013. The Receiver refers to this period as the First Fraud, when Menaged was obtaining two loans on properties, one from DenSco and one from another hard money lender.

REQUEST FOR ADMISSION NO. 2:

Admit that prior to November 2013, DenSco funded loans directly to Menaged's businesses for purposes of purchasing foreclosed homes at trustee's sales.

RESPONSE:

Plaintiff admits.

REQUEST FOR ADMISSION NO. 3:

Admit that after November 2013, DenSco funded loans directly to Menaged's businesses for purposes of purchasing foreclosed homes at trustee's sales.

RESPONSE:

Plaintiff admits.

REQUEST FOR ADMISSION NO. 4:

Admit that Denny Chittick acknowledged that he was aware that fraud by Menaged's businesses continued after November 2013.

RESPONSE:

Based upon discovery in the Clark Hill case, deny. Plaintiff admits that Chittick was aware of what Menaged told him about the cousin's first fraud, but denies that he was aware of the second fraud. Plaintiff uses the terms first fraud and second fraud as they are used in the Receiver's reports to the Court, and as used by the forensic accounting expert Fenix Financial in their report in the Clark Hill case and this case.

REQUEST FOR ADMISSION NO. 5:

Admit that Denny Chittick, by entering into the Forbearance Agreement and continuing to fund loans directly to Menaged after Chittick's discovery of fraudulent

1 conduct in or before November 2013, assisted Menaged's businesses in additional acts of
2 fraud.

3 **RESPONSE:**

4 Plaintiff objects to the Request as "assisted" is vague. If Chase is asking if Chittick
5 aided and abetted Menaged's second fraud, denies. If Chase is asking whether the direct
6 payment of loan monies to Menaged by Chittick provided an opportunity for Menaged to
7 commit a second fraud, admits.

8 **REQUEST FOR ADMISSION NO. 6:**

9 Admit that Denny Chittick stated in writing that he was aware that he was an
10 accomplice to Menaged's fraud by no later than December 2014.

11 **RESPONSE:**

12 Plaintiff objects to the Request as not identifying any particular writing that Chase
13 is referring to, and objects that "accomplice" is not defined and is vague. Otherwise,
14 admits that Chittick was aware of the First Fraud as defined by the Receiver in his reports
15 to the Court when Menaged told Chittick about his cousin; and denies he was aware of
16 the Second Fraud as defined by the Receiver in his reports to the Court.

17 Plaintiff admits that Chittick's discovery of the second fraud was the precipitating
18 event to his suicide in July 2016. Plaintiff admits that Chittick wrote in the days before
19 his suicide a draft letter to the investors and a draft letter to his sister, which, in part,
20 discuss his discovery of Menaged's Second Fraud.

21 **REQUEST FOR ADMISSION NO. 7:**

22 Admit that Menaged misrepresented in emails to the Chase Defendants requesting
23 cashier's checks that Menaged intended to use the Chase cashier's checks to bid on
24 properties at trustee's sales.

25 **RESPONSE:**

26 Admits in part and denies in part. Admits that all certified checks issued by Chase
27 at the request of Menaged contained an address for a property which was the purpose of
28 the loan. Admits that each one of the cashier's checks was prepared by Chase to be re-

1 deposited and was re-deposited as not used for intended purposes. Admits that Chase
2 prepared the cashier's checks knowing that they would not be used for their intended
3 purpose. Otherwise, denies.

4 **REQUEST FOR ADMISSION NO. 8:**

5 Admit that DenSco became insolvent as of December 31, 2012, and remained
6 insolvent thereafter.

7 **RESPONSE:**

8 Admits that the Receiver calculated insolvency in his Reports to the Court as being
9 on or about December 31, 2012. Admits that Fenix Financial also formed opinions as to
10 when insolvency occurred in their expert reports in the Clark Hill case.

11 **REQUEST FOR ADMISSION NO. 9:**

12 Admit that by no later than January 2014, Denny Chittick was aware that
13 Menaged's businesses had fraudulently obtained from DenSco as many as 125 loans.

14 **RESPONSE:**

15 Based upon discovery in the Clark Hill case, admits that Chittick met with attorney
16 David Beauchamp in early January 2014, and that the number of loans in which DenSco
17 may not have had a first position in was 125, more or less.

18 **REQUEST FOR ADMISSION NO. 10:**

19 Admit that after January 2014, DenSco made 2,712 new loans to Menaged's
20 businesses in the remainder of 2014 and 2015.

21 **RESPONSE:**

22 Admits that DenSco continued to make loans to Menaged after January 2014.
23 Admits that the exact number of those loans in 2014 and 2015 is set out in the Receiver's
24 Reports and in the report of Fenix Financial in the Clark Hill case and in this case.

25 **REQUEST FOR ADMISSION NO. 11:**

26 Admit that from December 2012 through May 2016, Menaged regularly emailed
27 DenSco lists of properties that were in foreclosure proceedings, and that Menaged
28

1 intentionally misrepresented that Menaged was the winning bidder to purchase the
2 properties.

3 **RESPONSE:**

4 Admits in part and denies in part. Denies that from December 2012 through
5 December 2013 Menaged misrepresented that Menaged was the winning bidder. During
6 this period of time, Menaged would double lien a property with a lien from two different
7 lenders. DenSco was one of the lenders (the first fraud). Admits that beginning in January
8 2014, Menaged fabricated documents to DenSco that he had purchased properties,
9 implying that he was the winning bidder to purchase the properties (the second fraud).

10 **REQUEST FOR ADMISSION NO. 12:**

11 Admit that Denny Chittick did not take any action to confirm the truth of
12 Menaged's story that Menaged's cousin was responsible for what the Receiver alleges to
13 be the "First Fraud" (as described in Paragraphs 28 and 29 of the TAC).

14 **RESPONSE:**

15 After reasonable inquiry, Plaintiff is not able to admit the Request that Denny
16 Chittick did not take any action to confirm the trust of Menaged's story, as Denny Chittick
17 may have taken actions that were not evident from the records and other information that
18 Plaintiff has obtained. Based upon discovery in the Clark Hill case, Plaintiff admits that
19 he is not aware of any actions Denny Chittick took to confirm Menaged's story about his
20 cousin other than believing Menaged.

21 **REQUEST FOR ADMISSION NO. 13:**

22 Admit that Denny Chittick did not take any action to recover any of the funds
23 allegedly taken by Menaged's cousin as part of what the Receiver alleges to be the "First
24 Fraud" (as described in Paragraphs 28 and 29 of the TAC).

25 **RESPONSE:**

26 Plaintiff objects to the Request as "action to recover" any funds is vague. The
27 forbearance agreement was intended to be an action to recover funds. Denies.
28

1 **REQUEST FOR ADMISSION NO. 14:**

2 Admit that at any time between November 2013 and April 2014, Denny Chittick
3 could have conducted an investigation, involving a search on publicly available search
4 engines that would have produced records showing that for each of the properties at issue
5 in the so-called “First Fraud,” it was Menaged—and not Menaged’s cousin—who had
6 signed both a DenSco mortgage and another lender’s deed of trust before a notary.

7 **RESPONSE:**

8 Plaintiff objects to the Request on the grounds that it does not call for Plaintiff to
9 admit a single fact and instead calls for the admission or denial of multiple facts. Plaintiff
10 further objects on the grounds that the Request does not identify any particular document.
11 Plaintiff does not have information or knowledge as to whether Menaged in fact signed
12 each and every encumbrance for both lenders on each property, and, therefore, denies any
13 such blanket statement. Plaintiff admits that if Chittick had done a title search on a
14 property during the period of time that Menaged was committing the first fraud, he would
15 have found on the properties that were purchased both an encumbrance by DenSco and
16 an encumbrance by another lender; and he would have found encumbrances purportedly
17 signed by Menaged.

18 **REQUEST FOR ADMISSION NO. 15:**

19 Admit that Denny Chittick attended a home foreclosure auction in June 2014 to
20 see if Menaged’s businesses were using DenSco funds to purchase homes.

21 **RESPONSE:**

22 Plaintiff objects to the Request on the grounds that it does not call for Plaintiff to
23 admit a single fact and instead calls for the admission or denial of multiple facts. Without
24 waiving that objection, Plaintiff admits that a June 10, 2014 entry in what is believed to
25 be Denny Chittick’s corporate journal states, in part, “I went to the auction today to see
26 if I could see louie buy some,” and on the basis of that statement Plaintiff admits that
27 Denny Chittick attended a home foreclosure auction in June 2014. After reasonable
28 inquiry, Plaintiff is not able to admit or deny the balance of the Request.

REQUEST FOR ADMISSION NO. 16:

Admit that for each property DenSco lent funds to Menaged's businesses to purchase, the following information was available to the public through the County Recorder's Office: (1) whether and when the property foreclosed; (2) the winning bidder, if any, at the foreclosure; and (3) the existence, priority, and owner of any perfected liens against the property.

RESPONSE:

Admits in part and denies in part. Admits that publicly available information from the Recorder's Office includes property transferring by foreclosure, the purchaser of property and recorded encumbrances. Denies that the Recorder's Office lists information as to the priority of encumbrances, but that the information it has can be the basis for a legal argument or conclusion regarding priority.

REQUEST FOR ADMISSION NO. 17:

Admit that Denny Chittick breached his duties to DenSco and its investors by concealing, prior to his death, the alleged "First Fraud" from DenSco's investors.

RESPONSE:

Plaintiff admits.

REQUEST FOR ADMISSION NO. 18:

Admit that Denny Chittick breached his duties to DenSco and its investors by concealing how, prior to his death, Chittick's own failures allowed the alleged "First Fraud" to occur.

RESPONSE:

Plaintiff objects to this Request as to his "own failures" is vague. Plaintiff admits that Chittick breached his duties to DenSco and its investors by concealing how his lending practices did not conform to the then current version of the Private Offering Memorandum.

REQUEST FOR ADMISSION NO. 19:

Admit that Denny Chittick agreed to a workout plan (the “Forbearance Agreement”) with Menaged in response to the “First Fraud” that was not in the best interests of DenSco and/or its investors.

RESPONSE:

Plaintiff admits.

REQUEST FOR ADMISSION NO. 20:

Admit that DenSco’s president, Denny Chittick, believed Menaged intended to repay DenSco for losses caused by Menaged’s fraud with assets hidden from a bankruptcy court at a company called Auction.com.


RESPONSE:

Plaintiff objects to the Request on the grounds that it does not call for Plaintiff to admit a single fact and instead calls for the admission or denial of multiple facts. Plaintiff objects to this Request as Plaintiff lacks information or knowledge as to what Chittick “believed.” Therefore, denies.

DATED this 12th day of January 2022.

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By


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