


B104 (FORM 104) (08/07)

<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only)		
<b>PLAINTIFFS</b>  Brian A. Bash, Trustee for Fair Finance Company	<b>DEFENDANTS</b>  Greater Indianapolis Republican Finance Committee			
<b>ATTORNEYS (Firm Name, Address, and Telephone No.)</b>  David F. Proano, Esq. - Baker & Hostetler LLP 1900 E. 9th Street, Suite 3200 Cleveland, Ohio 44114	<b>ATTORNEYS (If Known)</b>  Michael J. Hebenstreit, Esq. - Whitham, Hebenstreit & Zubek, LLP Market Sq. Center, Ste 2000, 151 N. Delaware Street Indianapolis, IN 46204			
<b>PARTY (Check One Box Only)</b> <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input checked="" type="checkbox"/> Trustee	<b>PARTY (Check One Box Only)</b> <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee			
<b>CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)</b>  Fraudulent transfer under Ohio and/or Indiana law.				
<b>NATURE OF SUIT</b> (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border: none;"> <b>FRBP 7001(1) – Recovery of Money/Property</b>  <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property  <input type="checkbox"/> 12-Recovery of money/property - §547 preference  <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer  <input checked="" type="checkbox"/> 14-Recovery of money/property - other   <b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b>  <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property   <b>FRBP 7001(3) – Approval of Sale of Property</b>  <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)   <b>FRBP 7001(4) – Objection/Revocation of Discharge</b>  <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)   <b>FRBP 7001(5) – Revocation of Confirmation</b>  <input type="checkbox"/> 51-Revocation of confirmation   <b>FRBP 7001(6) – Dischargeability</b>  <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims  <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud  <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny   <div style="text-align: center;">(continued next column)</div> </td> <td style="width: 50%; 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<input checked="" type="checkbox"/> Check if this case involves a substantive issue of state law  <input type="checkbox"/> Check if a jury trial is demanded in complaint		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23  Demand \$ In excess of \$52,000.00		
Other Relief Sought      Recovery of attorney's fees.				



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BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Fair Finance Company		BANKRUPTCY CASE NO. 10-50494
DISTRICT IN WHICH CASE IS PENDING Northern District of Ohio	DIVISION OFFICE Akron	NAME OF JUDGE Shea-Stonum
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE 4/27/11		PRINT NAME OF ATTORNEY (OR PLAINTIFF) David F. Proano, Esq.

## INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re:	)	
	)	Case No. 10-50494
FAIR FINANCE COMPANY,	)	
	)	Chapter 7
Debtor.	)	
_____	)	Chief Judge Marilyn Shea-Stonum
	)	
BRIAN A. BASH, CHAPTER 7 TRUSTEE,	)	
	)	Adv. Pro. No.
Plaintiff,	)	
	)	
vs.	)	
	)	<b><u>COMPLAINT</u></b>
GREATER INDIANAPOLIS REPUBLICAN	)	
FINANCE COMMITTEE,	)	
	)	
Defendant.	)	

Plaintiff Brian A. Bash (the “**Trustee**”), the duly appointed Chapter 7 trustee for Fair Finance Company (“**Fair Finance**” or the “**Debtor**”) in the above-captioned case, hereby files this Complaint against Defendant Greater Indianapolis Republican Finance Committee (the “**Defendant**”). In support of the requested relief, the Trustee states as follows:

**PRELIMINARY STATEMENT**

1. Through this adversary proceeding, the Trustee seeks to recover certain political contributions made to the Defendant by Timothy Durham (“Durham”), James Cochran (“Cochran”) and Obsidian Enterprises, Inc. (“Obsidian”). Cochran and Durham used Fair Finance to perpetuate a Ponzi scheme of shocking proportions and consequences. In the course of that scheme, Durham, Cochran and Obsidian took millions of dollars from Fair Finance through purported loans. Durham, Cochran and Obsidian did not repay those loans. They did,

however, give away hundreds of thousands of dollars to various politicians and political organizations in the State of Indiana, including the Defendant in this adversary proceeding.

2. As set forth below, the Trustee is entitled to recover the political contributions as fraudulent transfers. At the time Durham, Cochran and Obsidian made their political contributions to Defendant, they owed millions of dollars to Fair Finance and its parent companies. Durham, Cochran and Obsidian made the payments to Defendant with actual intent to hinder, delay, or defraud Fair Finance and its parent companies. Further, the Defendant did not provide any value or consideration in exchange for those contributions, and Durham, Cochran and Obsidian were insolvent at the time they made these political contributions.

3. The Trustee has made two written requests to the Defendant for a return of contributions subject to fraudulent transfer law, first on June 10, 2010 and again on April 13, 2011. Attached to this Complaint as **Exhibit A** is a copy of the second demand letter sent to the Defendant by the Trustee. The Defendant, however, has not provided any indication to the Trustee that the Defendant intends to return the Durham, Cochran and Obsidian political contributions, forcing the Trustee to file this lawsuit seeking the return of the contributions.

#### **NATURE OF PROCEEDING**

4. This adversary proceeding is brought pursuant to Ohio's Uniform Fraudulent Transfer Act (ORC 1336.01, et seq.), Indiana's Uniform Fraudulent Transfer Act (Indiana Code 32-18-2-1, et seq.), and/or other applicable law, for among other things, the avoidance of fraudulent transfers of assets by Durham to Defendant.

#### **JURISDICTION AND VENUE**

5. The Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and Rule 7001 of the Federal Rules of Bankruptcy Procedure. This matter is a core

proceeding pursuant to 28 U.S.C. § 157(b). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

### **PROCEDURAL BACKGROUND**

6. On February 8, 2010 (the “**Petition Date**”), creditor-investors (the “**Petitioning Creditors**”) filed a petition for involuntary bankruptcy against the debtor in this case, Fair Finance.

7. On the Petition Date, the creditor-investors also filed an “Emergency Motion to Appoint Interim Trustee” (Dkt. No. 2) alleging that a trustee was needed to oversee the operations of the Debtor because (i) the Debtor had failed to make timely payments on its debts, including failing to redeem matured certificates and failing to pay interest on unmatured certificates; (ii) the Debtor and several affiliated companies had been raided by the Federal Bureau of Investigation in November of 2009; (iii) the Debtor had not been open to the public since the raid; and (iv) public records revealed that the Debtor had made “unusually large” loans to insiders.

8. On February 19, 2010, this Court entered an order directing the United States Trustee to appoint an interim trustee.

9. On February 24, 2010, the Debtor filed notice that it consented to the entry of an order for relief in the Bankruptcy Proceeding (Dkt. No. 35).

10. On March 2, 2010, the Court entered an Order granting the relief sought by the Petitioning Creditors nunc pro tunc as of February 24, 2010 (Dkt. No. 40).

11. On March 2, 2010, the United States Trustee filed the Notice of Appointment of Interim Chapter 7 Trustee nunc pro tunc effective February 24, 2010 (Dkt. No. 41).

12. By agreements executed as of June 13, 2010, the Debtor’s parent entities, Fair Holdings, Inc. (“**Fair Holdings**”) and DC Investments, LLC (“**DCI**”), each assigned to the

Trustee all of their respective right, title and interest in and to their respective property, including, among other things, all claims, accounts and notes receivable (the “**Assignments**”).

13. On June 16, 2010, this Court entered the Order Approving Compromise Among the Trustee, Fair Holdings and DCI (Dkt. No. 188), which, among other things, approved the Assignments (the “**Compromise Order**”).

14. As a result of the Assignments and the Compromise Order approving the Assignments, the Trustee has the right to enforce the claims of Fair Holdings and DCI, in addition to any claims of the Debtor, for the benefit of the Debtor’s estate and its creditors.

### **THE PARTIES**

15. Brian A. Bash is the duly appointed Chapter 7 Trustee for the Debtor in the above-captioned bankruptcy case.

16. Upon information and belief, defendant Greater Indianapolis Republican Finance Committee is a not-for-profit unincorporated association and an Indiana political action committee with its principal place of business at 47 South Pennsylvania Street, Suite 300, Indianapolis, Indiana 46204.

### **SIGNIFICANT NON-PARTIES**

17. Obsidian is a holding company founded by Durham and headquartered in Indianapolis, Indiana. Obsidian was controlled by Durham, who also owned and controlled the Debtor and its parent entities. Obsidian conducted no significant business other than to own subsidiaries, borrow money from the Debtor and its parent entities, and to lend those borrowed funds to its subsidiaries and privileged insiders.

18. The Debtor was founded in 1940 and operated by the Fair family until its purchase by Durham and Cochran in 2002. The Debtor was an Akron, Ohio-based factoring company, which borrowed by issuing “investment certificates” to local individuals, and used the

proceeds to purchase accounts receivable. The certificates were similar to bank certificates of deposit, except that they were not insured by the Federal Deposit Insurance Corporation. For simplicity, purchasers of investment certificates will be referred to as “investors,” however, they held only debt, not equity. After Durham and Cochran purchased Fair Finance in 2002, they shifted the company’s primary business to making loans to its parent companies, which would then make further loans to related parties, such as Durham, Cochran and Obsidian and many other failed or failing businesses owned or controlled by Durham. The FBI raided the Debtor on November 24, 2010, suspecting that the company operated as a Ponzi scheme.

19. Fair Holdings and DCI (collectively with the Debtor, the “**Fair Entities**”), the Debtor’s parent and grand-parent organizations, respectively, were incorporated by Durham and Cochran shortly before the purchase of the Debtor in January 2002. Fair Holdings and DCI primarily served as conduits for Durham to loan the Debtor’s money to himself, his friends, privileged insiders, and other entities.

20. Since Fair Holdings and DCI had no significant business other than to borrow money from the Debtor and re-lend that money, the Debtor’s economic position was almost precisely the same as if it had made Fair Holdings and DCI’s loans itself. This Complaint will honor substance over form and refer to all loans of the Debtor’s assets, including loans routed through Fair Holdings and DCI, as direct loans from the Debtor to the borrowing entity.

21. Durham is an individual residing in Indiana and awaiting a criminal trial in federal court arising from his participation of the Fair Finance Ponzi scheme, among other acts. Durham is an owner and CEO of the Debtor. He founded Obsidian, and served as its Chairman and CEO for effectively all of the company’s existence. He had interests in and controlled or



participated in management of dozens of entities, many of which had significant dealings with the Debtor, including Obsidian.

22. Cochran is an individual residing in Indiana and awaiting a criminal trial in federal court arising from his participation of the Fair Finance Ponzi scheme, among other acts. Cochran is an owner and Chairman of the Debtor. He had offices on the same floor as Obsidian in Indianapolis.

#### **THE PONZI SCHEME AND LOANS TO DURHAM, COCHRAN AND OBSIDIAN**

23. Durham purchased the Debtor in January 2002 to fund his failing businesses at Obsidian and to fund his personal investments. Durham had steered Obsidian into dire straits by the time he purchased the Debtor. According to Obsidian's own SEC filings, it lost \$5.8 million in the thirteen months before January 31, 2002. It never turned a profit thereafter. According to Obsidian's 2001 audit report, the auditors had "substantial doubt" about Obsidian's ability to survive 2002. Obsidian's current liabilities exceeded its current assets by over \$3 million as of October 31, 2001, rendering it cash-flow insolvent. That working capital deficit grew to over \$9 million as of January 31, 2002.

24. Obsidian's problems were not only in the short term. By January 2002, Obsidian was also balance-sheet insolvent, with liabilities exceeding assets by over \$300,000. According to the auditors, Obsidian was "out of compliance" with a number of rules imposed by its lenders, and had weighed itself down with a "significant amount of debt" (approximately \$44 million). In preparing the fiscal year 2001 audit report, Obsidian's auditors indicated that the company lacked the ability to get a big picture accounting of all its own businesses, and that the "significant number" of insider transactions were not properly documented, disclosed to the public, or accounted for. By October of 2003, Obsidian's auditors determined that the company's liabilities exceeded its assets on a consolidated basis by more than \$3 million.



25. Obsidian was able to pay for the unrelenting losses and its later acquisitions only because Durham, Obsidian's CEO, Chairman of the Board, and dominant shareholder, purchased the Debtor and looted the company for Obsidian's benefit. Within two days of purchasing the Debtor, Durham caused the Fair Entities to extend a \$3 million line of credit to Obsidian with no payments due for years. Within a year, Obsidian and its subsidiaries incurred approximately \$7.5 million in debts to the Debtor in addition to the significant purchases and cash investments detailed below. The insider and related-party loans as a whole grew to \$30 million within fifteen months and \$40 million within two years.

26. Despite these and other loans, Obsidian's 2002 and 2003 performance was terrible, and by the end of fiscal 2004 Obsidian's auditors had stated they had "substantial doubt" as to whether Obsidian and its subsidiaries were going concerns. The entities only survived because of the loans they received from the Debtor. Even though the Debtor was experiencing serious financial problems, the related-party loans did not slow down with time.

27. For example, over the course of four credit agreement amendments in just over two years, Obsidian's initial \$3 million credit limit would be increased fivefold, and the maturity date would be extended to January 2007. In December 2006, with the maturity date quickly approaching, Durham caused the Debtor not only to push the maturity date back another five years to January 2012, but to more than double Obsidian's credit limit to over \$35,000,000. Obsidian's CEO admitted in a sworn filing to the Ohio Division of Securities that the outstanding balance of the loan was \$29,861,710 as of September 30, 2009.

28. The Debtor was having its own problems by 2005. The Debtor's auditors, BGBC Partners, P.C. ("**BGBC**"), would not sign off on its financial statements after fiscal year 2002, and were fired in 2005 without having completed the 2003 or 2004 audits. Those audits were

issued in the summer of 2005 by a different auditor, Somerset CPAs (“**Somerset**”), which would not issue any further audit reports. Afterwards, Durham caused Fair Holdings and the Debtor to submit only to “reviews,” which relied on management’s assertions about the condition of the company.

29. In a February 2005 memorandum, BGBC expressed concerns to Obsidian management over whether Fair Holdings and the Debtor, on a consolidated basis, was a going concern.

30. On April 5, 2005, BGBC wrote a letter to Durham and Cochran explaining that the firm could not issue an unqualified audit report for the Debtor and Fair Holdings in 2003 or 2004, effectively because the Debtor’s conduct indicated it was not being run for its own benefit. The letter stated that the auditors were concerned that the “loans” to related parties such as Obsidian were so unlikely to be repaid that they were really “distributions to the shareholders.” The auditors also criticized “strong indicators of transactions that are not at arm’s length,” including loans with provisions for no payment until maturity, frequent changes in loan terms, insufficient or non-standard collateral, and a lack of ongoing credit monitoring of loan recipients.

31. During a peer review of BGBC’s audit work on Fair Finance in 2005, the reviewing auditor told BGBC to “get as far away from [Fair and Obsidian] as possible” because the entities were a train wreck waiting to happen. Indeed, Cochran expressed deep concern about the Debtor’s health and Durham’s use of the Debtor’s funds during the discussions with BGBC.

32. After BGBC was fired, Somerset did issue the audit reports for 2003 and 2004, despite BGBC strenuously recommending that they not even take on the engagement because of the Debtor’s serious problems. However, by 2006 even Somerset had serious reservations. In

May 2006, Somerset drafted an incomplete audit opinion reaching the conclusion that Fair Holdings and the Debtor were not a going concern.

33. Indeed, by the end of 2005, at the latest, the Debtor had become a Ponzi scheme, and was insolvent by at least \$50 million. By that point if not significantly earlier, the Debtor did not have the money to pay its investment certificate holders except by taking proceeds from new investors. Somerset seems to have recognized this, as a handwritten note on forecasts provided to the auditors concluded that it “appears [the Debtor] would not be able to pay [investment certificate interest and debt] from cash inflow on dealer [receivables without] relying on draws on 3<sup>rd</sup> party lines of credit.”

34. Despite these serious problems with both entities, the related-party loans did not slow down with time, even as Obsidian’s and the Debtor’s financial conditions deteriorated. For example, starting in 2002, the Debtor loaned millions of dollars to Durham to fund his other businesses, to finance his own speculation in stocks, and to prop up Durham’s lavish lifestyle. Durham repeatedly ordered the transfer of significant sums of money from the Debtor to himself. For instance, at least forty requests to wire money from the Debtor to a related party or insider in 2008 or 2009 state that they were authorized by Durham. Furthermore, Durham took millions of dollars in personal, assumed, and guaranteed loans, even though he was behind on his house payments and defaulted on at least one guarantee in early 2009 because he was “illiquid.” The outstanding balance of the various loans made by the Debtor to Durham since 2002 is in excess of \$30,000,000.

35. Meanwhile, Cochran, Fair Finance’s co-owner, repeatedly requested Durham’s permission to use Fair Finance to pay for his country club membership, golfing expenses, mortgages, pool maintenance, yard work and housekeepers. In this way, Cochran took in excess

of \$10,000,000 in effectively unsecured loans from the Debtor, and Durham allowed the Debtor to pay Cochran's personal expenses – such as mortgages Cochran could not afford. The outstanding balance of the various loans made by the Debtor to Cochran since 2002 is in excess of \$10,000,000.

**THE POLITICAL CONTRIBUTIONS TO THE GREATER INDIANAPOLIS  
REPUBLICAN FINANCE COMMITTEE**

36. Since 2006, Durham, Cochran, and Obsidian have contributed hundreds of thousands of dollars to politicians and political committees in Indiana, including contributions totaling at least **\$52,943.00** to the Defendant listed on **Exhibit B** to this Complaint (the “Contributions” or “Transfers”).<sup>1</sup>

37. The Defendant did not furnish any consideration or value whatsoever to Durham, Cochran or Obsidian in exchange for the Contributions.

**COUNT I – ACTUAL FRAUDULENT TRANSFERS UNDER  
OHIO REVISED CODE § 1336.04 AND/OR INDIANA CODE § 32-18-2-14**

38. The Trustee restates the allegations of all preceding paragraphs as if fully set forth herein.

39. The Fair Entities are creditors with one of more claims against Durham, Cochran and Obsidian by virtue of the loans and other transfers described above. The Fair Entities were creditors of Durham, Cochran and Obsidian before 2006 and the Fair Entities have remained creditors up through to the present.

40. The claims of the Fair Entities arose both before and after the Transfers were made by Durham, Cochran and Obsidian.

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<sup>1</sup> Due to the presentation of information in Indiana's publicly-available campaign finance records, the Durham contributions included in this amount may be duplicates. The Trustee will revise the amount demanded if discovery reveals that the contributions were counted more than once for purpose of the Trustee's claims.

41. Durham, Cochran and Obsidian made the Transfers with actual intent to hinder, delay, or defraud the Fair Entities.

42. Durham, Cochran and Obsidian made the Transfers without receiving a reasonably equivalent value in exchange for the Transfers.

43. At the time of the Transfers, Durham, Cochran and Obsidian were engaged or were about to engage in a business or transaction for which their remaining assets were unreasonably small in relation to the business or transaction.

44. At the time of the Transfers, Durham, Cochran and Obsidian intended to incur, or believed or reasonably should have believed that they would incur, debts beyond their ability to pay as they became due.

45. The Transfers were made in the four-year period preceding the Petition Date.

46. Accordingly, the Transfers made by Durham, Cochran and Obsidian are fraudulent transfers under Section 1336.04 of the Ohio Uniform Fraudulent Transfer Act and/or Section 32-18-2-14 of the Indiana Uniform Fraudulent Transfer Act, and the Trustee is entitled to judgment avoiding the Transfers and recovering the Transfers, or the value thereof, from the Defendant for benefit of the estate.

**COUNT II – CONSTRUCTIVE FRAUDULENT TRANSFERS UNDER  
OHIO REVISED CODE § 1336.05 AND/OR INDIANA CODE § 32-18-2-15**

47. The Trustee restates the allegations of all preceding paragraphs as if fully set forth herein.

48. The Fair Entities are creditors with one of more claims against Durham, Cochran and Obsidian by virtue of the loans and other transfers described above. The Fair Entities were creditors of Durham, Cochran and Obsidian before 2006 and the Fair Entities have remained creditors up through to the present.

49. The claims of the Fair Entities arose before the Transfers were made by Durham, Cochran and Obsidian.

50. Durham, Cochran and Obsidian made the Transfers without receiving a reasonably equivalent value in exchange for the Transfers.

51. Durham, Cochran and Obsidian were insolvent at the time of the Transfers, or became insolvent as a result of the Transfer. Durham, Cochran and Obsidian were insolvent, or became insolvent, because (1) the sum of their debts exceeded their assets at a fair valuation, and (2) they were unable to pay their debts as they became due.

52. The Transfers were made in the four-year period preceding the Petition Date.

53. Accordingly, the Transfers made by Durham, Cochran and Obsidian are fraudulent transfers under Section 1336.05 of the Ohio Uniform Fraudulent Transfer Act and/or Section 32-18-2-15 of the Indiana Uniform Fraudulent Transfer Act, and the Trustee is entitled to judgment avoiding the Transfers and recovering the Transfers, or the value thereof, from the Defendant.

WHEREFORE, in accordance with Section 1336.07 of the Ohio Uniform Fraudulent Transfer Act and/or Section 32-18-2-17 of the Indiana Uniform Fraudulent Transfer Act, the Trustee respectfully requests that this Court enter judgment in favor of the Trustee and against the Defendant as follows:

(a) Avoidance and/or recovery of the foregoing transfers of money or the value thereof to the extent necessary to satisfy the claims of the Fair Entities;

(b) Attachment or garnishment of the assets transferred or other property of the Defendant in accordance with applicable state law;

(c) Injunctive relief against further disposition by the Defendant herein of the assets transferred and other property;

(d) Awarding the Trustee all applicable interests, costs, and disbursements of this action, including attorney's fees; and

(e) Granting such other and further relief as this Court deems just, proper, and equitable.

Dated: April 27, 2011

Respectfully submitted,

/s/ David F. Proaño

Brian A. Bash (0000134)  
Kelly S. Burgan (0073649)  
David F. Proaño (0078838)  
Joseph M. Esmont (0084322)  
Baker & Hostetler LLP  
PNC Center  
1900 East Ninth Street, Suite 3200  
Cleveland, Ohio 44114-3482  
Telephone: 216.621.0200  
Facsimile: 216.696.0740

*Counsel for the Trustee*



# **EXHIBIT A**

## **THE TRUSTEE'S SECOND DEMAND LETTER**

Baker & Hostetler LLP

PNC Center  
1900 East 9th Street, Suite 3200  
Cleveland, OH 44114-3482

T 216.621.0200  
F 216.696.0740  
www.bakerlaw.com

April 13, 2011

Greater Indianapolis Republican Finance Committee  
c/o Paul Okeson, Treasurer  
47 South Pennsylvania Street, Suite 300  
Indianapolis, Indiana 46204

David F. Proaño  
direct dial: 216.861.7834  
DProano@bakerlaw.com

Re: *Political Contributions of Timothy Durham, Obsidian Enterprises and James Cochran*

Dear Mr. Okeson:

Baker & Hostetler LLP is counsel to Brian Bash, the Chapter 7 Trustee for Fair Finance Company ("Fair Finance"). Through a letter dated June 10, 2010, the Trustee demanded that you return certain political contributions made to your organization by Timothy Durham ("Durham"), Obsidian Enterprises, Inc. ("Obsidian"), and James Cochran ("Cochran"). As you probably know, Durham and Cochran were recently indicted on criminal charges related to the Fair Finance Ponzi scheme. The demand was made by the Trustee as part of his efforts to recover as many assets as possible for the benefit of the victims of that Ponzi scheme.

Unfortunately, as of this date we have not received a response from you to our initial demand letter. I have attached a copy of the Complaint the Trustee intends to file against you in federal Bankruptcy Court for the Northern District of Ohio. As you will see from the Complaint, the Trustee is entitled to recover the contributions from Durham, Obsidian and Cochran as fraudulent transfers under Ohio and/or Indiana law by asserting the claims of Fair Finance and its parent companies. Under state fraudulent transfer law, the Trustee may avoid "[a] transfer made . . . with actual intent to hinder, delay, or defraud any creditor." It is well-settled law that transfers from a Ponzi scheme are made with actual intent to hinder, delay or defraud creditors. The independent investigations of the Trustee, the Securities and Exchange Commission and the Department of Justice all have concluded that Fair Finance operated as, or in the nature of, a Ponzi scheme. Further, the applicable fraudulent transfer statutes also permit the Trustee to avoid any "transfer made . . . by a debtor . . . without receiving a reasonably equivalent value in exchange" if the debtor was "insolvent at the time," or "intended to incur, or believed, or reasonably should have believed" that it would incur debts beyond its ability to repay. Durham, Obsidian and Cochran did not receive anything of value in exchange for their political contributions to you, and at all relevant times, Durham, Obsidian and Cochran were insolvent because of the debts they owed to Fair Finance and its investors.

Chicago Cincinnati Cleveland Columbus Costa Mesa  
Denver Houston Los Angeles New York Orlando Washington, DC

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Accordingly, the Trustee hereby reiterates his demand for the return of the political contributions received by you in order to give you an opportunity to resolve this matter without litigation. As you can see from the draft Complaint, the Trustee is seeking to recover at least **\$52,943.00** from you representing the political contributions you received from Durham, Obsidian and Cochran in the four years preceding the bankruptcy of Fair Finance. If you wish to discuss the resolution of this matter, please contact me to arrange for settlement discussions. Alternatively, if you wish to resolve these claims without further discussion, you may do so by mailing a check in the amount of **\$52,943.00**, payable to "Brian A. Bash, chapter 7 trustee for Fair Finance Company" within seven (7) days of the date of this letter to the following address:

Brian A. Bash, Trustee Fair Finance  
Baker & Hostetler LLP  
PNC Center  
1900 East Ninth Street, Suite 3200  
Cleveland, OH 44114

If you do not contact me or pay the amount demanded on or before April 25, 2011, the Trustee intends to file a Complaint against you to recover the political contributions in substantially the same form as the attached Complaint. The Trustee reserves all of his rights with respect to the claims asserted in the draft Complaint, and the Trustee further reserves his rights to assert additional claims and pursue the recovery of additional transfers.

Sincerely,

A handwritten signature in black ink, appearing to read 'D F Proaño', with a stylized flourish at the end.

David F. Proaño

cc: Kelly Burgan, Esq.

# **Exhibit B**

## **POLITICAL CONTRIBUTIONS TO THE GREATER INDIANAPOLIS REPUBLICAN FINANCE COMMITTEE**

### **Schedule of Political Contributions from Timothy Durham\*\***

<b>Date</b>	<b>Amount</b>
10/24/2007	\$25,000.00
10/24/2007	\$25,000.00
<b>Total</b>	<b>\$50,000.00</b>

### **Schedule of Political Contributions from Obsidian Enterprises, Inc.**

<b>Date</b>	<b>Amount</b>
08/05/2008	\$1,918.00
<b>Total</b>	<b>\$1,918.00</b>

### **Schedule of Political Contributions from James Cochran**

<b>Date</b>	<b>Amount</b>
11/13/2008	\$125.00
11/13/2008	\$150.00
11/13/2008	\$250.00
11/13/2008	\$125.00
11/13/2008	\$125.00
11/13/2008	\$250.00
<b>Total</b>	<b>\$1,025.00</b>

**\*\*THE DURHAM CONTRIBUTIONS MAY BE DUPLICATES. THE AMOUNT SOUGHT BY THE TRUSTEE WILL BE AMENDED IF DISCOVERY REVEALS DUPLICATE CONTRIBUTIONS.**