


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, Chapter 7 Trustee for Fair Finance Co.	<b>DEFENDANTS</b> Mark Ruh	
<b>ATTORNEYS (Firm Name, Address, and Telephone No.)</b> <small>Kenneth Prubucki Baker &amp; Hostetler LLP PNC Center, 1900 E. 9th Street, Suite 3200 Cleveland, Ohio 44114-3462 216.621.0200</small>	<b>ATTORNEYS (If Known)</b>	
<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> Complaint to Recover Fraudulent Transfer		
<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.)		
<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 checked="" type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input 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  (continued next column)	<b>FRBP 7001(6) – Dischargeability (continued)</b> <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other  <b>FRBP 7001(7) – Injunctive Relief</b> <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other  <b>FRBP 7001(8) Subordination of Claim or Interest</b> <input type="checkbox"/> 81-Subordination of claim or interest  <b>FRBP 7001(9) Declaratory Judgment</b> <input type="checkbox"/> 91-Declaratory judgment  <b>FRBP 7001(10) Determination of Removed Action</b> <input type="checkbox"/> 01-Determination of removed claim or cause  <b>Other</b> <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et. seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$	
Other Relief Sought		



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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	DIVISION OFFICE Akron	NAME OF JUDGE Marilyn 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 January 3, 2014	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Kenneth Prabucki	

**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.



(“**Obsidian**”), Diamond Investments LLC (“**Diamond**”), and a number of officers and directors of those companies, including James Cochran (“**Cochran**”) and Daniel Laikin, among others.

3. On June 20, 2012, a jury in the United States District Court for the Southern District of Indiana, Case 1:11-cr-00042-JMS-KPF, found Durham guilty on ten (10) counts of wire fraud, one (1) count of securities fraud, and one (1) count of conspiracy to commit wire fraud and securities fraud. The same jury found Cochran guilty on six (6) counts of wire fraud, one (1) count of securities fraud, and one (1) count of conspiracy to commit wire fraud and securities fraud. In addition, the jury found Ricky Snow guilty on three (3) counts of wire fraud, one (1) count of securities fraud, and one (1) count of conspiracy to commit wire fraud and securities fraud. On November 30, 2012, Durham, Cochran and Ricky Snow were sentenced following their criminal convictions. Durham received a sentence of 50 years, Cochran received a sentence of 25 years, and Ricky Snow received a sentence of 10 years.

4. Durham transferred at least \$75,000.00 to the within Defendant. This action is brought to avoid and recover that transfer for the benefit of the Debtor’s estate.

### **JURISDICTION AND VENUE**

5. This is an adversary proceeding commenced before the same Court in which the Fair Finance bankruptcy case, N.D. Bankr. Case No. 10-50494, is pending. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157(b) and 1334 and Rule 7001 of the Federal Rules of Bankruptcy Procedure.

6. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

7. Venue in this Court is proper pursuant to 28 U.S.C. § 1409.

### **PARTIES**

8. Brian A. Bash is the duly appointed and acting Chapter 7 trustee for Fair Finance.

9. Upon information and belief, Defendant is an Indiana resident with an address of 250 North Shadeland Avenue, Indianapolis, IN 46219.

### **PROCEDURAL BACKGROUND**

10. 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.

11. 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.

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

13. 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).

14. 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).

15. 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).

16. By agreements executed as of June 13, 2010, the Debtor’s parent entities, Fair Holdings and DCI, each assigned to the Trustee all of their respective rights, title and interest in

and to their respective property, including, among other things, all accounts and notes receivable (the “**Assignments**”).

17. 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**”).

### **SIGNIFICANT NON-PARTIES**

18. Obsidian Enterprises, Inc. (“**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.

19. The Debtor was founded in 1934 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. For simplicity, purchasers of investment certificates will be referred to as “investors,” however, they held only debt, not equity.

20. After Durham and Cochran purchased Fair Finance in 2002, they shifted the company’s primary business to making loans to Fair Holdings and DCI, the Debtor’s parent and grand-parent organizations, respectively, which would then loan Fair Finance’s funds to related parties such as Durham, Cochran, Obsidian and many other failed or failing businesses owned or controlled by Durham.

21. Fair Holdings and DCI 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.

### **THE FAIR FINANCE PONZI SCHEME**

22. Durham purchased Fair Finance in January 2002 to fund Durham's failing businesses at Obsidian and to fund his personal investments. Durham had steered Obsidian into dire straits by the time he purchased Fair Finance. According to Obsidian's SEC filings, it lost \$5.8 million in the thirteen months before January 31, 2002. It never turned a profit thereafter.

23. Obsidian was able to pay for its unrelenting losses and its later acquisitions only because Durham, Obsidian's CEO, Chairman of the Board, and dominant shareholder, purchased Fair Finance and looted the company for Obsidian's benefit. Within two days of purchasing Fair Finance, 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 Fair Finance. These loans as a whole grew to \$30 million within fifteen months and \$40 million within two years.

24. Starting in 2002, Fair Finance also loaned millions of dollars to Durham to fund his other businesses, to finance his own speculation in stocks, and to fund Durham's lavish lifestyle. Durham repeatedly ordered the transfer of significant sums of money from Fair Finance to himself. For instance, at least forty requests to wire money from Fair Finance 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 Fair Finance to Durham since 2002 is in excess of \$30,000,000.

25. According to a consolidated audit report drafted, but never issued, for fiscal year 2002, the Fair consolidated entities lost money even in Durham's first year in charge of Fair Finance. No later than 2003, FHI was in breach of its loan covenants with its major lender, including for failing to provide timely audits, taking on unapproved debt, and purchasing stock in related parties. The Debtor's auditors, BGBC Partners, P.C. ("**BGBC**"), would not sign off on Debtor's 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 FHI and Fair Finance to submit only to "reviews," which relied on management's assertions about the condition of the company.

26. By 2004, at the latest, Fair Finance had become a Ponzi scheme, and was insolvent. By that point, if not earlier, Fair Finance did not have the money to pay its investment certificate holders except by taking proceeds from new investors.

27. Despite these serious problems with both entities, the related-party loans did not slow down with time, even as Obsidian's and Fair Finance's financial conditions deteriorated. Even after it became clear that Fair Finance was doomed, Durham did not liquidate the company when creditors could have realized a significant recovery. Instead, Durham continued to operate Fair Finance as a Ponzi scheme, which enabled Durham and others to continue stealing money from innocent investors. Durham admitted to the Debtor's attorney in 2008 that between 89% and 93% of new money brought in from investors was "used to repay" debts to other investors.

28. The FBI raided the Debtor on November 24, 2009, suspecting that the company operated as a Ponzi scheme. By the time the Trustee was appointed, Fair Finance only had about one-tenth of a cent in liquid assets for every dollar of unsecured debt.



29. On August 29, 2013, the District Court for the Northern District of Ohio entered default judgment against FHI and DCI. *Bash v. Fair Holdings, Inc., et al.*, No. 5:12-cv-00990-PAG (N.D. Ohio August 29, 2013). As reflected in the entry of default, FHI owes Fair Finance at least \$53,094,576.90, and DCI owes Fair Finance at least \$88,021,727.98.

30. In addition, as a result of transfers of money and related-party loans, Obsidian owes Fair Finance at least \$29,861,710, and Diamond owes Fair Finance at least \$9,369,733.

31. On May 28, 2013, the District Court for the Northern District of Ohio entered default judgment against Durham. *Bash v. Durham*, No. 5:12-cv-00991-PAG (N.D. Ohio May 28, 2013). As reflected in the entry of default, Obsidian executed a number of notes in favor of FHI (the “**Obsidian Notes**”). The Obsidian Notes were guaranteed by Durham, and subsequently assigned to Fair Finance in July 2007. As a result, Fair Finance was a creditor of Durham prior to Durham’s Transfer to Defendant.

32. On August 29, 2013, the District Court for the Northern District of Ohio entered default judgment against DCI and FHI in the amounts of \$88,021,727.98 and \$53,094,576.90, respectively. *Bash v. Fair Holdings, Inc. et al.*, No. 5:12-cv-00990-PAG (N.D. Ohio Aug. 28, 2013).

### **THE TRANSFER TO DEFENDANT**

33. Durham made a transfer totaling at least \$75,000.00 to Defendant as listed on **Exhibit A** to this Complaint (the “**Transfer**”).

34. Upon information and belief, Defendant did not furnish consideration or reasonably equivalent value to Durham in exchange for the Transfer.

35. On October 8, 2013, counsel for the Trustee issued a letter to Defendant requesting that Defendant provide an explanation for the Transfer or, in the alternative, return the Transfer to the Trustee. That same day, counsel for the Trustee served upon the Defendant a

Rule 2004 subpoena that required the Defendant to produce certain relevant documents on or before October 22, 2013.

36. Defendant did not produce documents as required by the Rule 2004 subpoena or otherwise respond to either the subpoena or the October 8, 2013 letter.

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

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

38. At all times relevant to the Transfer, Fair Finance was a creditor with one of more claims against Durham by virtue of the loans and other transfers described above. Fair Finance was a creditor of Durham prior to the Transfer and has remained a creditor up through to the present.

39. The claims of Fair Finance arose both before and after the Transfer was made by Durham.

40. Durham made the Transfer with actual intent to hinder, delay, or defraud Fair Finance.

41. Durham made the Transfer without receiving a reasonably equivalent value in exchange for the Transfer.

42. At the time of the Transfer, Durham was engaged or was about to engage in a business or transaction for which his remaining assets were unreasonably small in relation to the business or transaction.

43. At the time of the Transfer, Durham intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

44. The Transfer was made in the four-year period preceding the filing of this litigation.

45. Accordingly, the Transfer made by Durham is a fraudulent transfer 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 Transfer and recovering the Transfer, or the value thereof, from Defendant for the benefit of the estate pursuant to Section 1336.07 of the Ohio Uniform Fraudulent Transfer Act and/or Section 32-18-2-17 of the Indiana Uniform Fraudulent Transfer Act.

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

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

47. At all times relevant to the Transfer, Fair Finance was a creditor with one of more claims against Durham by virtue of the loans and other transfers described above. Fair Finance was a creditor of Durham prior to the Transfer and has remained a creditor up through to the present.

48. The claims of Fair Finance arose before the Transfer was made by Durham.

49. Durham made the Transfer without receiving a reasonably equivalent value in exchange for the Transfer.

50. Durham was insolvent at the time of the Transfer, or became insolvent as a result of the Transfer. Durham was insolvent, or became insolvent, because (1) the sum of his debts exceeded his assets at a fair valuation, and (2) he was unable to pay his debts as they became due.

51. The Transfer was made in the four-year period preceding the filing of this litigation.

52. Accordingly, the Transfer made by Durham is a fraudulent transfer 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 Transfer and recovering the Transfer, or the value thereof, from Defendant pursuant to Section 1336.07 of the Ohio Uniform Fraudulent Transfer Act and/or Section 32-18-2-17 of the Indiana Uniform Fraudulent Transfer Act.

WHEREFORE, the Trustee respectfully requests the entry of an order:

(a) Avoiding and/or recovering the foregoing transfer of money or the value thereof to the extent necessary to satisfy the claims of Fair Finance;

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

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

(d) Awarding the Trustee the costs and expenses of this action, including attorney's fees; and

(e) Granting such other and further relief as is appropriate under the circumstances.

Dated: January 3, 2014

Respectfully submitted,

/s/ Kenneth G. Prabucki

David F. Proaño (0078838)

Kenneth G. Prabucki (0086889)

Baker & Hostetler LLP

PNC Center

1900 East Ninth Street, Suite 3200

Cleveland, Ohio 44114-3482

Telephone: 216.621.0200

Facsimile: 216.696.0740

dproano@bakerlaw.com

kprabucki@bakerlaw.com

*Counsel for the Trustee*

**EXHIBIT A**

**THE TRANSFER TO DEFENDANT**

<b>ENTITY</b>	<b>DATE</b>	<b>AMOUNT</b>
Timothy Durham	1/05/2010	75,000.00
<b>Timothy Durham Total</b>		75,000.00
<b>TOTAL</b>		75,000.00