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Attorney for Plaintiff
JOSEPH W. HUSTER

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF HAWAII

In re PETER C. HSIEH)	Case No. 11-03019
)	(Chapter 7)
)	
)	
)	
)	
Debtor.)	
)	
_____)	
JOSEPH W. HUSTER,)	Adv. No. _____
)	
Plaintiff,)	COMPLAINT FOR DETERMINATION OF
)	NONDISCHARGEABILITY OF
vs.)	DEBTOR PETER C. HSIEH'S
)	INDEBTEDNESS TO PLAINTIFF:
)	SUMMONS
PETER C. HSIEH)	
)	
Defendant.)	
_____)	

COMPLAINT FOR DETERMINATION OF NONDISCHARGEABILITY
OF DEBTOR PETER C. HSIEH'S INDEBTEDNESS TO PLAINTIFF

1. PETER C. HSIEH, the debtor in the bankruptcy proceeding who is the

defendant in this adversary proceeding ("Defendant"), filed a petition commencing his bankruptcy case under chapter 7 of the Bankruptcy Code on November 18, 2011.

2. The Section 341 meeting of creditors in the bankruptcy case was held on January 4, 2012, at which Defendant was present.

3. This Court has jurisdiction over this action under 28 U.S.C. § 1334 and 28 U.S.C. § 157(b)(1) because this adversary proceeding is a case arising in or related to a case under Title 11 of the United States Code and is a core proceeding under 11 U.S.C. § 157(b)(2)(I) and (J).

4. Plaintiff Joseph W. Huster ("Plaintiff") is a creditor of Defendant.

FACTUAL BACKGROUND

5. On August 6, 2007, Plaintiff and Defendant executed an Independent Contractor's Agreement ("Agreement").

6. Pursuant to the Agreement, Plaintiff agreed to provide legal services to Defendant's law firm at a rate of \$60.00 per hour. Plaintiff's services involved performing standard legal work on cases in which Defendant represented clients in litigation matters.

7. Pursuant to the Agreement, Plaintiff provided legal services for two types of clients: (1) clients that agreed to pay Defendant an hourly fee ("hourly cases"); and (2) clients that Defendant represented on a contingency fee basis ("contingency cases").

8. Pursuant to the Agreement, Plaintiff agreed to the following compensation scheme:

(A) Defendant would pay Plaintiff a minimum advance of \$3000.00 per month on all amounts owed pursuant to Plaintiff's performance under the Agreement.

(B) Defendant would pay Plaintiff for services rendered on Defendant's hourly cases, minus any advance previously paid to Plaintiff, when Defendant received payment from said hourly clients.

(C) Defendant would pay Plaintiff for services rendered on Defendant's contingency cases, minus any advance previously paid to plaintiff, when Defendant received his fees in those cases.

9. Plaintiff performed legal work for Defendant pursuant to the Agreement from August 6, 2007 until April 30, 2008.

10. On March 31, 2011, Defendant terminated the Agreement in writing, effective April 30, 2008, citing the need to lower his firm's overhead.

11. In his termination letter, Defendant invited Plaintiff to remain with the firm pursuant to a revised compensation scheme in which recovery of Plaintiff's fees (at the same \$60.00 per hour rate) would be entirely contingent upon Defendant's recovery from his clients, be they hourly or contingency cases.

12. Plaintiff agreed to this arrangement and continued to provide legal services to Defendant's firm until September 30, 2008, when Plaintiff and Defendant mutually agreed to terminate the Agreement.

13. Between October 1, 2008, and February 23, 2009. Plaintiff performed additional legal work for Defendant's firm as requested, for which Plaintiff was fully compensated.

HOURS WORKED AND PAYMENTS MADE

14. On information and belief, between August 7, 2007, and April 30, 2008,

Plaintiff provided 597.6 hours of legal services to Defendant's hourly cases.¹ 597.6 hours @ \$60.00 per hour, equals \$38,856.

15. Between August 7, 2007 and September 30, 2008, Defendant paid Plaintiff advances on Defendant's hourly cases in the total amount of \$25,000.00

16. On information and belief, as of September 30, 2008, Plaintiff owed Defendant \$10,856.00 for work performed on Defendant's hourly cases between August 7, 2007, and April 30, 2008.

17. On information and belief, in addition to other contingency case work for which Plaintiff was fully paid, Plaintiff performed work on the following contingency cases between August 7, 2007, and June 24, 2008²:

Doyle v. Hawaiian Cement:	83.8 Hours
Watson v. Federal Bureau of Prisons:	126.6 Hours
Hu v. University of Hawaii, et. al.:	134.3 Hours
Shiotsugu v. Hawaiian Commercial and Sugar:	302 Hours

¹ Plaintiff cannot state the exact number of hours he worked on Defendant's hourly cases because two of the hourly cases (*Kauai v. As Sam*, and *Valerio v. Turner*) do not appear in Defendant's timekeeping records, despite the fact that Plaintiff entered the hours worked on these cases into Defendant's timekeeping program. The figure cited in this complaint is based on a conservative estimate of 30 hours per case for both cases.

² Plaintiff only possesses Defendant's timekeeping records for Plaintiff's work up to June 24, 2008. Plaintiff printed a complete record of his hours shortly before terminating the Agreement with Defendant, but several pages became detached from the back of the document during an office move and Plaintiff no longer possesses a record for his hours from June 25, 2008, through September 30, 2008.

Ke-a v. Longhi's Bar, et. al.:	93.2 Hours
Maki v. Department of Public Safety	54.6 Hours
<hr/>	
Total Contingency Hours:	794.5

18. The total value of the work performed by Plaintiff on Defendant's contingency cases during the period from August 7, 2007, through June 24, 2008 was \$47,670.00.

19. Plaintiff continued to perform work on Defendant's contingency cases (full time) during the period from June 25, 2008, through September 30, 2008.

20. The total value of the work performed by Plaintiff on Defendant's contingency cases during the period from June 25, 2008, through September 30, 2008, is unknown by Plaintiff at this time.

21. On information and belief, Defendant settled each of these contingency cases and received his contingency fees.

AGREEMENT TO DEFER PAYMENT

22. On or about November of 2009, Plaintiff met with Defendant to discuss Defendant's outstanding obligation to Plaintiff ("November 2009 Meeting").

23. During the November 2009 Meeting, Defendant and Plaintiff reached the following verbal agreement:

(A) Plaintiff agreed, without receiving any consideration, to forgive Defendant's outstanding obligation of \$10,856.00 for worked performed on Defendant's hourly cases between August 7, 2007, and April 30, 2008.

(B) Plaintiff agreed, without receiving any consideration, to discount the \$5,028.00 that Defendant owed Plaintiff for work performed on *Doyle v. Hawaiian Cement* to

\$2,000.00, based on Defendant's assertion that his recovery from *Doyle v. Hawaiian Cement* was small.

(C) Plaintiff agreed, without receiving any consideration, to defer payment on the following cases - *Doyle v. Hawaiian Cement*, *Watson v. Federal Bureau of Prisons*, *Hu v. University of Hawaii*, *Ke-a v. Longhi's Bar*, et. al., and *Maki v. Department of Public Safety*, until Defendant received payment for his contingency fee in *Shiotsugu v. Hawaiian Commercial and Sugar*.

(D) Defendant promised to segregate all fees belonging to Plaintiff, based on the figures cited in paragraphs 16, 18 and 20 of this complaint, minus the forgiven and discounted amounts described in subsections A and B of this paragraph, upon receiving his contingency fee for *Shiotsugu v. Hawaiian Commercial and Sugar*, and then forward them to Plaintiff.

24. On information and belief, Defendant knew, or should have known, that his outstanding business obligations far exceeded the fees he would receive from *Shiotsugu v. Hawaiian Commercial and Sugar*, when he made his promise to Plaintiff.

PARTIAL PAYMENT AND DELAY

25. Defendant received payment for his contingency fee for *Shiotsugu v. Hawaiian Commercial and Sugar* on October 11, 2010.

26. On October 19, 2010, Defendant sent Plaintiff a check for \$27,000.00. In a transmittal memo sent with said check, Defendant declared that the \$27,000.00 constituted "full and final payment of the legal services you rendered me as an independent contractor."

27. On or about October 25, 2010, Plaintiff called Defendant and told him that Defendant's payment of \$27,000.00 was far short of his total obligation. Plaintiff asked

Defendant to immediately review his timekeeping records on this matter. Defendant promised Plaintiff that he would do so.

28. Approximately two weeks after October 25, 2010, and having not heard back from Defendant, Plaintiff telephoned Defendant and asked for a face to face meeting to discuss the matter. Defendant agreed to meet with Plaintiff.

29. On November 23, 2010, Plaintiff sent Defendant a letter. Said letter provided a detailed explanation of why payment in the amount of \$27,000.00 was inadequate. Said letter requested, in lieu of an immediate face to face meeting, that Defendant review the claims and figures stated in the letter prior to a face to face meeting. During a follow up telephone call made shortly after Plaintiff sent said letter, Defendant agreed to review the letter and then meet face to face.

30. On several occasions in 2011, Plaintiff traveled to Defendant's office to discuss this matter. Each time Plaintiff spoke with Defendant, Defendant insisted that he had yet to review said letter. Finally, in a visit to Defendant's office in the early Summer of 2011, Defendant told Plaintiff that he lacked sufficient funds to pay any further obligation to Plaintiff, even if Plaintiff's claim was legitimate.

31. On information and belief, Defendant received far in excess of the amount required to forward Plaintiff the full measure of his fees as described in Paragraph 23, Subparagraph D, of this complaint, when he obtained his contingency fees for *Shiotsugu v. Hawaiian Commercial and Sugar*.

COUNT I

Nondischargeability of Debt Owed to Plaintiff

32. Plaintiff repeats, realleges, and incorporates by reference the facts and allegations contained in paragraphs 1 through 31 of this Complaint as if restated in this Count.

33. Upon receiving his contingency fee in *Shiotsugu v. Hawaiian Commercial and Sugar*, Defendant incurred a fiduciary obligation to preserve Plaintiff's fees and separate them from his own funds.

34. Defendant failed and/or refused to preserve Plaintiff's fees and separate them from his own funds, despite being timely and effectively warned that he was still in possession of a large portion of Plaintiff's fees after his initial \$27,000.00 payment to Plaintiff.

35. Defendant instead stole and/or fraudulently transferred Plaintiff's fees to himself and/or converted them to his own use.

36. Defendant continued to assure Plaintiff that he would review Plaintiff's claims throughout the first half of 2011 when he knew, or should have known, that he was in the process of converting Plaintiff's fees to his own use.

37. Upon information and belief, Defendant's failure to separate Plaintiff's fees from his own monies, and/or his conversion and/or fraudulent transfer and/or theft of Plaintiff's fees for his own use, continued into the summer of 2011.

38. Plaintiff's actions, as described in this complaint, constitute: (1) fraudulent transfer pursuant to Haw. R. Stat. §651(a); (2) theft; (3) conversion; (4) fraud; and (5) breach of fiduciary duty.

39. The actions described above were taken intentionally or in reckless

disregard of the truth, without any reasonable grounds, and within less than a single year before filing his Petition for Bankruptcy

40. As a result of Defendant's actions, Plaintiff has suffered significant damages.

41. Defendant's indebtedness to Plaintiff is, therefore, non-dischargeable under 11 U.S.C. § 523(a)(2)(A) and/or 11 U.S.C. § 523(a)(4).

42. Plaintiff Joseph W. Huster is, therefore, entitled to a judgment against Defendant Peter C. Hsieh for such amounts as are shown at trial, plus an award of interest, costs and attorney's fees.

WHEREFORE, the Plaintiff prays that this Court enter an Order and Judgment:

- A. declaring the indebtedness of Defendant Peter C. Hsieh owed to Plaintiff Joseph W. Huster to be non-dischargeable in this bankruptcy case and awarding him such damages as are proven at trial;
- B. awarding to Plaintiff his costs and expenses incurred in this proceeding, including reasonable attorney's fees; and
- C. awarding to Plaintiff such other relief as this Court determines to be appropriate.

Dated: Honolulu, Hawaii, February 21, 2011.

_____/S/ Joseph W. Huster

JOSEPH W. HUSTER
Attorney for Plaintiff

Bankruptcy Case No. 11-03019: In re [name] and [name]: ADVERSARY PROCEEDING NO. __-_____:
JOSEPH W. HUSTER v. PETER C. HSIEH: COMPLAINT FOR DETERMINATION OF
NONDISCHARGEABILITY OF DEBTOR PETER C. HSIEH'S INDEBTEDNESS TO PLAINTIFF JOSEPH W.
HUSTER.

UNITED STATES BANKRUPTCY COURT FOR THE
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In re PETER C. HSIEH)	Case No. 11-03019
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JOSEPH W. HUSTER,)	Adv. No. _____
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Plaintiff,)	SUMMONS
)	
vs.)	
)	
PETER C. HSIEH)	
)	
Defendant.)	
_____)	

SUMMONS

TO: TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this

Court and serve upon PLAINTIFF'S ATTORNEY:

Joseph W. Huster 8348
Seven Waterfront, Suite 400
500 Ala Moana Blvd.
Honolulu, HI 96813

an answer to the complaint which is herewith served upon you, within **20 days** after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on

the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK OF THE ABOVE TITLED COURT

DATE