

**UNITED STATES BANKRUPTCY COURT
FOR SOUTHERN DISTRICT OF ILLINOIS**

In re:	)	In Proceedings Under
	)	Chapter 7
TIMOTHY EDWARD MORTHLAND,	)	
	)	
Debtor.	)	Bk. No. 18-40673
	)	
KEVIN KOTH, M.D., and THE KATHY	)	
A YOUNG REVOCABLE TRUST,	)	
	)	
Plaintiffs,	)	
	)	Adv. No. _____
vs.	)	
	)	
TIMOTHY EDWARD MORTHLAND,	)	
	)	
Defendant.	)	

**COMPLAINT TO DETERMINE DISCHARGABILITY OF DEBT
AND OBJECTION TO DISCHARGE**

KEVIN KOTH, M.D. (“Kevin”), and the KATHY A. YOUNG REVOCABLE TRUST (the “Trust”) (collectively, the “Creditors”), by and through their undersigned attorneys, states as follows:

Allegations Common to All Counts

1. The Debtor filed his voluntary case under Chapter 7 of the United States Bankruptcy Code on July 24, 2018.
2. Creditors are creditors and parties in interest in this Chapter 7 case.
3. The Court has jurisdiction over this Complaint and the relief requested herein pursuant to 28 U.S.C. §1334(b) and 11 U.S.C. §§105, 523 and 727.

4. This is a “core” proceeding within the contemplation of 28 U.S.C. §157(b)(2).

5. Plaintiffs consent to entry of a final order and judgment by the United States Bankruptcy Court for the Southern District of Illinois.

6. Prior to commencing his Chapter 7 case, the Debtor formed or played a principal role in the formation of a limited liability company called Da Vinci Beverages, LLC (“Da Vinci”) for the purpose of developing and manufacturing energy drinks. Da Vinci was formed as an Illinois limited liability company on May 29, 2015.

7. At its inception and thereafter Da Vinci developed and owned formulas for energy drinks. At some point, Da Vinci began manufacturing and test-marketing those energy drinks at various retail establishments.

8. In addition, at the time he commenced his Chapter 7 case, the Debtor had an interest in a number of other businesses, including, without limitation, Morthland College Health Services LLC, Morthland Institution of Higher Learning, Morthland Business Enterprises LLC, Dunlap and Webb LLC, Morthland Foundation, Morthland Healthcare Foundation, UMWA Hospital, Morthland College Specialty Physician, and Da Vinci Manufacturing and Distribution (collectively, the “Non-Da Vinci Interests”).

9. The Debtor had exclusive or virtually exclusive control over Da Vinci and the Non-Da Vinci Interests. In addition, the Debtor had exclusive or virtually exclusive control over the finances and assets of Da Vinci and the Non-Da Vinci Interests.

10. In order to fund the startup and related costs for Da Vinci, the Debtor solicited advances of funds from various lenders and investors, including the Creditors.

11. Specifically, the Debtor requested that the Trust advance funds in the approximate amount of \$800,000.00. In order to induce the Trust to advance those funds, the Debtor made certain representations concerning Da Vinci and its products, and further represented the funds advanced would be used solely for the purpose of funding the operations of Da Vinci.

12. In addition, the Debtor induced Kevin to become employed with the Debtor's medical practice. In return, the Debtor represented that a portion of Kevin's compensation would be made in the form of advances to Da Vinci. That advance of compensation would grant to Kevin an interest in Da Vinci.

13. Based upon the Debtor's representations concerning the business of Da Vinci and the application of the funds to be advanced, the Trust advanced the sum of \$800,000.00 to the Debtor for the use and benefit of Da Vinci.

14. Based upon the Debtor's representations concerning the business of Da Vinci and the application of the funds to be advanced, Kevin accepted employment with the Debtor's medical practice and did so on the basis and with the assurance that a portion of his compensation would grant him a claim against and/or interest in Da Vinci.

COUNT I-NON-DISCHARGEABILITY UNDER 11 U.S.C. §523(a)(2)(A)

15. Creditors repeat and reallege paragraphs 1 through 14 of this Complaint as though fully set forth in this Count I.

16. The obligation of the Debtor to Creditors is for money obtained by false pretenses, a false representation, or actual fraud, all within the contemplation of a 11 U.S.C. § 523(a)(2)(A).

17. By making representations to Creditors concerning the use of the funds, the Debtor induced them to advance the funds to him for the use and benefit of Da Vinci.

18. The Debtor knew when he requested the advance of funds from Creditors, he did not intend to use the funds to prosecute the business of Da Vinci, but, instead, intended to use those funds either for himself or to support the non-Da Vinci interests.

19. The Debtor knew that by discussing the business of and products to be produced by Da Vinci, and by way of his representations concerning the use of the funds to be advanced, that Creditors would be induced to part with the funds.

20. The Debtor intended that Creditors be deceived by his representations concerning the use of the funds and the business prospects for Da Vinci.

21. The Debtor intended that his representations induce Creditors to make the advances described above.

22. Creditors reasonably relied on the Debtor and his representations in making advances of funds to the Debtor.

23. Based upon the foregoing, the debts of the Debtor, the obligation of the Debtor to Creditors are non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

WHEREFORE, KEVIN KOTH, M.D. and THE KATHY A. YOUNG REVOCABLE TRUST, respectfully request and pray that the Court enter its Order finding and determining that the Debtors obligations to Creditors are non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

COUNT II - OBJECTION TO DISCHARGE

24. Creditors repeat and restate the allegations of Paragraphs 1 - 23 of this Complaint as though fully set forth in this Count II.

25. Creditors have attempted to determine the disposition of funds they advanced to the Debtor but have been unable to do so.

26. In addition, documents the Debtors provided have not revealed the disposition of funds the Creditors advanced the Debtor.

27. Upon information and belief, the Debtor, with the intent to hinder, delay, or defraud Creditors has transferred, removed, or concealed his property within one year before the filing of his petition under Chapter 7.

28. In addition, the Debtor has failed to explain satisfactorily, before determination of the denial of discharge, any loss of assets or deficiency of assets to satisfy his liabilities.

29. Based upon the foregoing, the Debtor is not entitled to a discharge under Chapter 7 as contemplated in 11 U.S.C. § 727(a).

WHEREFORE, KEVIN KOTH, M.D. and THE KATHY A. YOUNG REVOCABLE TRUST, respectfully request and pray that the Court enter its Order denying the Debtor's discharge pursuant to applicable provisions of § 727 of the United States Bankruptcy Code, and Creditors pray for such other additional relief as the Court deems appropriate.

HEPLERBROOM, LLC

/s/ Steven M. Wallace

By:

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*Counsel to Kevin Koth, M.D. and The Kathy A.
Young Revocable Trust*

Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing was served electronically this 28th day of June, 2019, on all persons on the Court's CM/ECF notice list.

/s/ Steven M. Wallace
