

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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| <p>In re:</p> <p>RCS CAPITAL CORPORATION, <i>et al.</i>,</p> <p style="text-align: right;">Debtors.¹</p> | <p>Chapter 11</p> <p>Case No. 16-10223 (MFW)</p> <p>(Jointly Administered)</p> |
| <p>RCS Creditor Trust,</p> <p style="text-align: right;">Plaintiff,</p> <p>vs.</p> <p>William Francis Galvin, in his official capacity as Secretary of the Commonwealth of Massachusetts, Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts; and the Commonwealth of Massachusetts,</p> <p style="text-align: right;">Defendants.</p> | <p>Adv. No. Refer to Summons</p> |

**COMPLAINT TO AVOID AND RECOVER TRANSFERS PURSUANT TO 11 U.S.C. §§
547, 548 AND 550 AND TO DISALLOW CLAIMS PURSUANT TO 11 U.S.C. § 502**

The RCS Creditor Trust (the “Plaintiff” or “Creditor Trust”), by and through the Creditor Trust Administrator, and through the undersigned counsel, files this complaint (the “Complaint”) to avoid and recover transfers against William Francis Galvin, in his official capacity as Secretary of the Commonwealth of Massachusetts, Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts, and the Commonwealth of Massachusetts (collectively, the “Defendants”) and to disallow any claims held by Defendants. In support of this Complaint, Plaintiff alleges upon information and belief that:

¹ The “Debtors” in these chapter 11 cases, along with the last four digits of their respective federal tax identification numbers, are: RCS Capital Corporation (4716); American National Stock Transfer, LLC (3206); Braves Acquisition, LLC (6437); DirectVest, LLC (9461); J.P. Turner & Company Capital Management, LLC (7535); RCS Advisory Services, LLC (4319); RCS Capital Holdings, LLC (9238); Realty Capital Securities, LLC (0821); SBSI Insurance Agency of Texas Inc. (9203); SK Research LLC (4613); Trupoly, LLC (5836); and We R Crowdfunding, LLC (9785). The Debtors' corporate headquarters and mailing address is located at 245 Parle Avenue, 39th Floor, New York, NY 10167.

NATURE OF THE CASE

1. Plaintiff brings this action to recover millions of dollars in payments made by the Debtors to the Commonwealth of Massachusetts made on the eve of bankruptcy and outside the ordinary course of business. After a prepetition investigation by the Commonwealth of Massachusetts into potential proxy solicitation fraud at Debtor Realty Capital Securities caused by certain former officers, directors and/or controlling shareholders of the Debtors, the parties entered into a consent order with the Commonwealth of Massachusetts which imposed a \$3 million fine on the Debtors, among other things. Under the terms of that Consent Order, \$1 million of the fine was due within 10 business days of the execution of the order and the remaining \$2 million was not due until February 1, 2016. Nevertheless, the Debtors paid the entire \$3 million – with \$2 million of that amount paid on the last business day before the commencement of the Chapter 11 Cases by the Debtors.

2. Accordingly, Plaintiff seeks to avoid and recover from Defendants, or from any other person or entity for whose benefit the transfers were made, all preferential transfers of property that occurred during the ninety (90) day period prior to the commencement of the bankruptcy proceedings of RCS Capital Corporation and its affiliated debtors and debtors in possession (collectively, the “Debtors”)² pursuant to sections 547 and 550 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Subject to proof, Plaintiff also seeks to avoid and recover from Defendants or any other person or entity for whose benefit transfers were made pursuant to sections 548 and 550 of the Bankruptcy Code any transfers that may have been fraudulent conveyances.

² There are additional debtors in this jointly administered case which have a different petition date and are subject to a different plan (the “Cetera Debtors”). This complaint relates solely to the specific Debtors listed in footnote 1.

3. In addition, Plaintiff seeks to disallow, pursuant to sections 502(d) and (j) of the Bankruptcy Code, any claim that Defendants have filed or asserted against the Debtors or that has been scheduled for Defendant. Plaintiff does not waive but hereby reserves all of its rights and the rights of the Debtors to object to any such claim for any reason, including, but not limited to, any reason set forth in sections 502(a) through (j) of the Bankruptcy Code.

JURISDICTION AND VENUE

4. This court has subject matter jurisdiction over this adversary proceeding, which arises under title 11, arises in, and relates to cases under title 11, in the United States Bankruptcy Court for the District of Delaware (the “Court”), captioned *In re RCS Capital Corporation, et al.*, Case No. 16-10223 (MFW), pursuant to 28 U.S.C. §§ 157 and 1334(b).

5. The statutory and legal predicates for the relief sought herein are sections 502, 547, 548, and 550 of the Bankruptcy Code and Rules 3007 and 7001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

6. This adversary proceeding is a “core” proceeding to be heard and determined by the Court pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter final orders for matters contained herein.

7. Venue is proper in the District of Delaware pursuant to 28 U.S.C. § 1409.

8. Pursuant to Local Bankruptcy Rule 7008-1, Plaintiff states that it consents to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

PROCEDURAL BACKGROUND

9. On January 31, 2016 (the “Petition Date”), each of the Debtors commenced a case by filing a voluntary petition for relief in this Court under chapter 11 of the Bankruptcy Code. Subsequently, on March 26, 2016, the Cetera Debtors commenced voluntary cases under chapter 11 of the Bankruptcy Code.

10. On February 2, 2016, the Court entered an order authorizing the joint administration of the Debtors’ chapter 11 cases for procedural purposes pursuant to Bankruptcy Rule 1015(b) [D.I. 56].³ The Cetera cases were added to this joint administration on March 29, 2016. [D.I. 415].

11. On May 19, 2016, the Court entered an order confirming the *Fourth Amended Joint Plan of Reorganization For RCS Capital Corporation and its Affiliated Debtors Under Chapter 11 of the Bankruptcy Code* (the “Confirmation Order” and “Plan,” respectively). [Confirmation Order, D.I. 769; Plan, D.I. 769-1].

12. The effective date of the Plan (the “Effective Date”) occurred on May 23, 2016. [D.I. 782]. In accordance with the Plan and Confirmation Order, the RCS Creditor Trust (the “Trust”) was established effective on the Effective Date of the Plan, and the Debtors, the Delaware Trustee, and the Creditor Trustees entered into that certain Creditor Trust Agreement. [See D.I. 703-13 and 735-1].

13. Pursuant to Section 4.5 of the Plan, General Unsecured Claims comprise an impaired class of creditors and are not expected to be paid in full.

THE PARTIES

14. Pursuant to Section 5.17 of the Plan, on the Effective Date, the Creditor Trust

³ All docket items referenced are from Case No. 16-10223, under which the Debtors’ bankruptcy cases are jointly administered.

Assets and Litigation Assets,⁴ including Avoidance Actions under Sections 544-550 and 553 of the Bankruptcy Code, were transferred to the Creditor Trust. [D.I. 769-1]. Additionally, pursuant to the Plan and Confirmation Order, the Administrator was appointed as Administrator of the Trust. The Creditor Trust was authorized, upon the direction of the Creditor Trust Board of the Trust and through the Creditor Trust Administrator, and has standing, among other things, to maintain, prosecute, settle, dismiss, abandon, or otherwise dispose of actions under chapter 5 of the Bankruptcy Code, including this avoidance action.

15. Defendant William Francis Galvin is the secretary of the Commonwealth of Massachusetts, which is a sovereign state within the United States of America. Upon further information and belief, the subdivision of Defendant's office subject to this action is the Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth. At all relevant times, Defendant's principal place of business is located at: Secretary of the Commonwealth, Massachusetts Securities Division, McCormack Building, One Ashburton Place, 17th Floor, Boston, MA, 02108.

FACTUAL BACKGROUND

16. As more fully discussed in the *Declaration of David Orlofsky Chief Restructuring Officer of RCS Capital Corporation in Support of Chapter 11 Petitions and First Day Motions*⁵ and the *Disclosure Statement With Respect to Second Amended Joint Plan of Reorganization for RCS Capital Corporation and its Affiliated Debtors Under Chapter 11 of the Bankruptcy Code* (the "Disclosure Statement"),⁶ as of the Petition Date, RCS Capital Corporation ("RCAP"), together with the other Debtors and RCAP's direct and indirect non-debtor subsidiaries

⁴ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan, the Confirmation Order, and the Creditor Trust Agreement.

⁵ D.I. 17.

⁶ D.I. 381-1.

(collectively, the “Company”) were providers of integrated financial services, principally to retail investors. RCAP was the ultimate parent company to each of the other Debtors, as well as the non-debtor subsidiaries.

17. As referenced *supra*, Defendants filed an administrative complaint (the “Administrative Complaint”) against Debtor Realty Capital Securities, LLC (“RCS”) on November 12, 2015, alleging it violated the Massachusetts Uniform Securities Act by fraudulently casting shareholder proxy votes in connection with the operations of its wholesale distribution business.⁷ The relief requested in the Administrative Complaint included, among other things: 1) revocation of RCS’s broker-dealer registration in the Commonwealth; 2) requiring RCS to cease and desist from further conduct alleged to be in violation of the laws and regulations of the Commonwealth; 3) the censure of RCS; and 4) imposing an administrative fine upon RCS. RCS took several actions in response to the Administrative Complaint and the demand for relief requested therein.

18. On December 2, 2015, RCS entered into a consent order (the “Consent Order”) with the Defendant concerning the Administrative Complaint. In the Consent Order RCS, among other things, agreed to be censured and to pay a \$3,000,000.00 fine. The Consent Order provided that in the event RCS did not comply with the provisions of the order, Defendant could re-institute actions and investigations against RCS. On December 4, 2015, RCS withdrew from doing business in the Commonwealth of Massachusetts. The administrative proceeding was also closed on December 4, 2015.

⁷ Additional details concerning the Administrative Complaint and events after the Administrative Complaint was filed can be found in the Disclosure Statement [Bankr. D.I. 381-1] and the actual Administrative Complaint, which is publicly available online at: <http://www.sec.state.ma.us/sct/current/sctrealtycapital/Realty-Capital-Complaint-11-12-15.pdf>. Both of these documents are incorporated herein by reference.

19. Pursuant to the Consent Order, RCS:

agree[d] to pay an administrative fine of \$3,000,000.00 (USD) payable as follows: (i) \$1,000,000.00 (USD) payable within ten (10) business days following the date the Order is executed pursuant to this Offer and (ii) \$2,000,000.00 (USD) payable on or before February 1, 2016.

Consent Order VIII.C.

20. On December 14, 2015, RCS sent a wire transfer payment of \$1,000,000.00 to the Commonwealth of Massachusetts.

21. On January 29, 2016, three days prior to the date on which the payment was due and the last business day before the commencement of the Bankruptcy Cases, RCS sent a wire transfer payment of \$2,000,000.00 to the Commonwealth of Massachusetts. Two days later, on January 31, 2016, the Debtors initiated the Bankruptcy Cases.

22. As of the Petition Date, the Debtors utilized a cash management system (the “Cash Management System”) for the collection, concentration, management, and disbursement of funds in the Debtors’ business. As of the Petition Date, the Cash Management System consisted of several bank accounts types, including: operating accounts, payroll accounts, and depository accounts, all of which were maintained at Bank of America, N.A. (“BofA”). [See D.I. No. 13]. While the Cash Management System also included bank accounts of certain non-debtor entities, each Debtor with its own operating account received its customer payments through its operating account and made disbursements to its own vendors through this same account (the “Operating Accounts”). These accounts include an Operating Account at BoA held by RCS with an account number ending 0178.

23. The Debtors drew upon the Operating Accounts to pay for their operational costs, including to pay their vendors, suppliers, distributors, and other creditors, including Defendant.

24. During the ninety (90) days before the Petition Date, that is between November 2, 2015, and January 31, 2016 (the “Preference Period”), the Debtors continued to operate their business affairs, including the transfer of property, either by checks, cashier checks, wire transfers, ACH transfers, direct deposits or otherwise to various entities.

25. In response to the Administrative Complaint, RCS agreed in the Consent Order to pay \$3,000,000.00 in satisfaction of the fine requested in the Administrative Complaint. Each payment was due and owing at the time it was made. The details of each of the payments made pursuant to the Consent Order are set forth on the Statement of Account, which is attached hereto and incorporated by reference as Exhibit A.

26. In accordance with the Consent Order, Defendants held a debt owed by RCS.

27. Plaintiff has completed an analysis of all readily available information of the Debtors and is seeking to avoid all of the transfers of an interest of the Debtors’ property made by RCS (or any other Debtors) to Defendants within the Preference Period.

28. Plaintiff has determined that RCS made transfer(s) of an interest of the Debtors’ property to or for the benefit of Defendants during the Preference Period through payments aggregating to an amount not less than \$3,000,000.00 (the “Transfers”). The details of each Transfer are set forth on Exhibit A attached hereto and incorporated by reference. Such details include “Check Number,” “Check Amount,” “Check Clear Date,” and “Debtor Transferor(s).”

29. During the course of this proceeding, Plaintiff may learn (through discovery or otherwise) of additional transfers made to Defendants during the Preference Period. It is Plaintiff’s intention to avoid and recover all transfers made by the Debtors of an interest of the Debtors in property and to or for the benefit of Defendants or any other transferee. Plaintiff reserves its right to amend this original Complaint to include: (i) further information regarding

the Transfer(s), (ii) additional transfers, (iii) modifications of and/or revisions to Defendants' names, (iv) additional defendants, and/or (v) additional causes of action authorized by the Plan, if applicable (collectively, the "Amendments"), that may become known to Plaintiff at any time during this adversary proceeding, through formal discovery or otherwise, and for the Amendments to relate back to this original Complaint.

CLAIMS FOR RELIEF

COUNT I

(Avoidance of Preference Period Transfers – 11 U.S.C. § 547)

30. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

31. As more particularly described on Exhibit A attached hereto and incorporated herein, during the Preference Period, RCS made Transfers to or for the benefit of Defendants in an aggregate amount not less than \$3,000,000.00.

32. Each Transfer was made from one or more of the Operating Accounts described *supra*, and constituted transfers of an interest in property of RCS.

33. Defendants were creditors at the time of the Transfer by virtue of the payment amount reached in the Consent Order, which created an obligation for RCS to pay in accordance with the Consent Order, or by virtue of otherwise holding a debt owed by one or more of the Debtors.

34. Each Transfer was to or for the benefit of a creditor within the meaning of 11 U.S.C. § 547(b)(1), because each Transfer either reduced or fully satisfied a debt or debts then owed by RCS.

35. Each Transfer was made for, or on account of, antecedent debts owed by RCS to Defendants before such Transfers were made, as asserted by Defendants and memorialized in the

Consent Order, each of which constituted a “debt” or “claim” (as those terms are defined in the Bankruptcy Code) of Defendants prior to being paid by RCS as set forth on Exhibit A hereto.

36. Each Transfer was made while the Debtors were insolvent. Plaintiff is entitled to the presumption of insolvency for each Transfer made during the Preference Period pursuant to 11 U.S.C. § 547(f).

37. Each Transfer was made during the Preference Period, as set forth on Exhibit A.

38. As a result of each Transfer, Defendants received more than Defendants would have received if: (i) the Debtors’ cases were under chapter 7 of the Bankruptcy Code; (ii) the Transfers had not been made; and (iii) Defendants received payments of its debts under the provisions of the Bankruptcy Code. As evidenced by the Debtors’ schedules filed in the underlying bankruptcy case as well as the proofs of claim that have been received to date, the Debtors’ liabilities exceed their assets to the point that unsecured creditors will not receive a full payout of their claims from the Debtors’ bankruptcy estates.

39. In accordance with the foregoing, each Transfer is avoidable pursuant to 11 U.S.C. § 547(b).

COUNT II
(Avoidance of Fraudulent Conveyances – 11 U.S.C. § 548(a)(1)(B))

40. Plaintiff hereby incorporates all previous allegations as though fully set forth herein.

41. To the extent one or more of the Transfers identified on Exhibit A was not made on account of an antecedent debt, was a prepayment for goods and/or services subsequently received, or was a transfer made by one Debtor without a corresponding transfer into the payment account by the Debtor incurring the debt, Plaintiff pleads in the alternative that RCS did not

receive reasonably equivalent value in exchange for such transfer(s) (the “Potentially Fraudulent Transfers”); and

- A. The Debtors were insolvent as of the date of the Transfer(s), or became insolvent as a result of the Transfer(s); or
- B. The Debtors were engaged, or about to engage, in business or a transaction for which any property remaining with the Debtors or for whose benefit the Transfer(s) was made was an unreasonably small capital; or
- C. The Debtors intended to incur, or believed they would incur, debts beyond their ability to pay upon maturity.

42. Based upon the foregoing, the Potentially Fraudulent Transfers are avoidable pursuant to 11 U.S.C. § 548(a)(1)(B).

COUNT III
(Recovery of Avoided Transfers – 11 U.S.C. § 550)

43. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein, to the extent they are not inconsistent with allegations contained in this Count.

44. Plaintiff is entitled to avoid the Transfer(s) pursuant to 11 U.S.C. § 547(b), and/or any Potentially Fraudulent Transfers pursuant to 11 U.S.C. § 548 (collectively, the “Avoidable Transfers”).

45. Defendants were the initial transferee of the Avoidable Transfer(s) or the immediate or mediate transferee of such initial transferee or the person for whose benefit the Avoidable Transfer(s) were made.

46. Pursuant to 11 U.S.C. § 550(a), Plaintiff is entitled to recover from Defendants the Avoidable Transfer(s), plus interest thereon to the date of payment and the costs of this action.

COUNT IV

(Disallowance of all Claims – 11 U.S.C. § 502(d) and (j))

47. Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

48. Defendants are transferees of transfers avoidable under sections 547 and/or 548 of the Bankruptcy Code, which property is recoverable under section 550 of the Bankruptcy Code.

49. Defendants have not paid the amount of the Avoidable Transfer(s), or turned over such property, for which Defendants are liable under 11 U.S.C. § 550.

50. Pursuant to 11 U.S.C. § 502(d), any and all Claims of Defendants and/or their assignee, against the Debtors' chapter 11 estates or Plaintiff must be disallowed until such time as Defendants pay to Plaintiff an amount equal to the aggregate amount of the Avoidable Transfer(s), plus interest thereon and costs.

51. Pursuant to 11 U.S.C. § 502(j), any and all Claims of Defendants, and/or their assignee, against the Debtors' chapter 11 estates or Plaintiff previously allowed by the Debtors or by Plaintiff, must be reconsidered and disallowed until such time as Defendants pay to Plaintiff an amount equal to the aggregate amount of the Avoidable Transfer(s).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court grant him the following relief against Defendants:

- A. On Plaintiff's First, Second, and Third Claims for Relief, judgment in favor of Plaintiff and against Defendants, avoiding all of the Avoidable Transfers and directing Defendants to return to Plaintiff the amount of the Avoidable Transfers, pursuant to 11 U.S.C. §§ 547(b) and/or 548 and 550(a), plus interest from the date of demand at the maximum legal rate and to the fullest extent allowed by applicable

law, together with the costs and expenses of this action including, without limitation, attorneys' fees;

- B. On Plaintiff's Fourth Claim for Relief, judgment in favor of Plaintiff and against Defendants disallowing any claims held or filed by Defendants against the Plaintiff until Defendants return the Avoidable Transfers to Plaintiff pursuant to 11 U.S.C. § 502(d) and (j); and
- C. Granting Plaintiff such other and further relief as this Court may deem just and proper.

Dated: January 30, 2018

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