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STATE OF WASHINGTON  
2014 FEB 28 PM 3:04

**COURT OF APPEALS  
DIVISION I  
OF THE STATE OF WASHINGTON  
Case No. 71042-7-I**

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**Radiance Capital, L.L.C.,  
Respondent,**

v.

**Nicholas W. Bartz  
Appellant.**

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**Brief of Respondent Radiance Capital, LLC**

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## I. RESTATEMENT OF THE ISSUES

**Issue No. 1:** The trial court did not err in awarding Radiance Capital, LLC summary judgment, and denying Nicholas Bartz' CR 12(b) Motion to Dismiss, because Bartz is personally subject to Washington's jurisdiction and venue was proper in King County, Washington.

**Issue No. 2:** Radiance Capital, LLC is entitled to reasonable attorney fees and costs on appeal.

## II. COUNTER STATEMENT OF THE CASE

### A. Summary of Facts.

The respondent, Radiance Capital, LLC ("Radiance"), is a duly licensed and registered Washington limited liability company which finances the purchase of commercial equipment for its customers. CP 67. The appellant, Nicholas Bartz ("Bartz"), entered into an Equipment Financing Agreement with Radiance in May of 2008 as Managing Member of Health Pro Solutions, LLC ("Health Pro"). CP 74-82 (hereafter referred to as the "Agreement").

The Agreement includes a choice of law and consent to jurisdiction clause which states "[D]ebtor agrees to submit to the jurisdiction of the State of Washington in King County." CP 75, paragraph 26. The "debtor" under the Agreement is "Health Pro Solutions, LLC."

Attached to the Agreement is a document entitled “Exhibit ‘A’ to Equipment Financing Agreement.” CP 77. “Exhibit A” expressly incorporates the terms of the Equipment Financing Agreement and provides that Nicholas Bartz “guarantee[s] and promise[s] to make all of the payments and perform all of the Debtor’s obligations as specified [in the] Equipment Financing Agreement.” CP 77, see paragraph entitled “**PERSONAL GUARANTEE(S)**.” Nicholas Bartz does not dispute he signed the Equipment Financing Agreement and its “Exhibit A.” CP 76, 77.

Pursuant to the Agreement, Radiance advanced \$43,466.18 for Health Pro’s purchase of various office furniture and electronic equipment. CP 77. The sum advanced was to be repaid over a 60-month term in monthly payments of \$1,137.02 per month. CP 77. Radiance retained a security interest in the equipment per a Uniform Commercial Code (UCC-1) filing with the State of Michigan, where the equipment was initially delivered. CP 65-66.

It is undisputed that Health Pro defaulted on the Agreement by failing to make payments when due. CP 121-125, CP 156-158. In further breach of the Agreement, Bartz also admits the collateral equipment was moved from Michigan to Arizona and placed in the possession of a third party,

Dr. Fred Goldblatt, whom Bartz says agreed “to assume the finance agreement payments.” CP 124, paragraph 14. As a result, Bartz admits he does not even know the current whereabouts of the collateral equipment. CP 124, paragraph 16. There is nothing in the record to indicate that Radiance consented to relocation of the collateral or assignment of the Agreement, and it did not.

**B. Summary of Procedure.**

In March of 2012, Radiance filed suit against Nicholas Bartz and Health Pro Solutions, LLC in King County Superior Court for breach of contract, seeking a money judgment and an order requiring Bartz surrender the collateral equipment. CP 54-56.

Radiance filed a Motion for Summary Judgment against Nicholas Bartz on August 19, 2013, requesting a judgment for past due payments totaling \$29,342.82, plus recoverable costs and attorney fees. CP 67-96. Bartz has not disputed the sums due and owing to Radiance. CP 121-125.

In response to Radiance’s summary judgment motion, Bartz moved to dismiss Radiance’s Complaint for lack of jurisdiction under CR 12(b). CP 97-119.<sup>1</sup> Bartz denied that Washington was the proper venue for this

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<sup>1</sup> Radiance did not seek summary judgment against Health Pro Solutions, LLC, which was dismissed as a party defendant because it was defunct as of November 2011. CP 122, 53.

action, and alleged the Court lacked jurisdiction over him personally. CP 121-125.

Radiance's Motion for Summary Judgment and Bartz' Motion to Dismiss were argued and considered at one hearing, which took place on September 20, 2013. CP 161-163. Based on the argument of counsel and consideration of the pleadings listed in the Order Granting Summary Judgment, the Court granted Radiance summary judgment and denied Bartz' Motion to Dismiss. CP 161-163. Radiance was awarded its attorney fees and costs in an amount reserved for later motion. CP 161.

Radiance subsequently moved for a specific award of attorney fees and costs, to which there was no opposition. CP 32-42. An Amended Final Judgment Summary, Order Granting Summary Judgment and Denying the Defendant's CR 12(b) Motion to Dismiss was entered in favor of Radiance on October 4, 2013. CP 164-166. Bartz filed a timely appeal of this final order. CP 159-166. The sole issue on appeal is whether King County Superior Court was the proper venue and had jurisdiction over Nicholas Bartz in order to enter the final judgment against him.

### **III. ARGUMENT**

Bartz alleges the appeals court finds itself "in the exact position as was the trial court" in considering the parties' cross-motions for summary

judgment and dismissal under CR 12(b). Brief of Appellant at p. 7. This is incorrect. The Court of Appeals applies an abuse of discretion standard when assessing the validity of a forum selection clause. Dix et al v. ICT Group, Inc. et al, 160 Wn.2d 826, 833, 161 P.3d 1016 (2007). Under this standard of review, a trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds. Id. citing Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993).

While a grant of summary judgment by the trial court is reviewed de novo, see Campbell v. Ticor Title Ins. Co., 166 Wn.2d 466, 470, 209 P.3d 859 (2009), Bartz did not dispute any facts alleged in Radiance's Motion for Summary Judgment. Bartz' sole response to the summary motion was his Motion to Dismiss based and his allegation that he is not bound by the Agreement's forum selection clause. Under the circumstances, the standard of review is abuse of discretion.

**Issue 1: The trial court did not abuse its discretion in finding that Nicholas Bartz is subject to Washington's jurisdiction and venue is proper in King County, Washington.**

**A. Nicholas Bartz is bound by the Agreement's forum selection clause, which includes consent to Washington jurisdiction and venue in King County.**

A party may consent to personal jurisdiction by written agreement, particularly in the commercial context. Kysar v. Lambert, 76 Wn.App. 470, 484, 887 P.2d 431 (1995). As cited by Kysar, the United States Supreme Court has noted the frequent stipulation to a particular jurisdiction by parties to a commercial transaction:

“... [B]ecause the personal jurisdiction requirement is a waivable right, there are a ‘variety of legal arrangements’ by which a litigant may give ‘express or implied consent to the personal jurisdiction of the court.’ For example, particularly in the commercial context, parties frequently stipulate in advance to submit their controversies for resolution within a particular jurisdiction. Where such forum-selection provisions have been obtained through ‘freely negotiated’ agreements and are not ‘unreasonable and unjust,’ their enforcement does not offend due process.”

(Citations omitted.) Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 n.14, 85 L. Ed. 2d 528, 105 S. Ct. 2174 (1985); see also M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 10-11, 32 L. Ed. 2d 513, 92 S. Ct. 1907 (1972); Chan v. Society Expeditions, Inc., 39 F.3d 1398, 1994

WL 560976; Northwestern Nat'l Ins. Co. v. Donovan, 916 F.2d 372, 375 (7th Cir. 1990); Heller Fin., Inc. v. Midwhey Powder Co., 883 F.2d 1286, 1290, 1292 n.4 (7th Cir. 1989).

An agreement that shows consent to jurisdiction is to be respected unless the challenging party clearly shows that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching. Kysar at 484 and 485, citing 983 F.2d at 1119, quoting Zapata, 407 U.S. at 15; Exum v. Vantage Press, Inc., 17 Wn. App. 477, 478-79, 563 P.2d 1314 (1977) (Washington, as non-chosen forum, refused to accede to "unfair and unreasonable" choice-of-forum clause).

A "choice-of-forum clause" is one in which the parties agree on a presiding tribunal, as opposed to a "choice-of-law clause" where parties designate only the body of law which will apply to resolve their disputes. Kysar, at 485, string citation omitted. A "choice-of-forum clause" generally shows a consent to personal jurisdiction, even where it may refer only to venue. Id. citing Northwester Nat'l Ins Co v. Donovan, 916 F.2d 372 (7<sup>th</sup> Cir. 1990).

Bartz contends he is not bound by the consent to jurisdiction clause because he is not the "Debtor" under the Agreement and because his personal guaranty does not contain its own consent to jurisdiction clause.

Brief of Appellant at pp. 7 and 14. Both contentions are without merit. Under the authorities cited as applied to the Agreement's unambiguous terms, Bartz did consent to jurisdiction in Washington and venue in King County.

The Agreement at paragraph 26 provides:

**“26. CHOICE OF LAW; WAIVER OF JURY TRIAL. THIS AGREEMENT SHALL BE DEEMED FULLY EXECUTED AND PERFORMED IN THE STATE OF WASHINGTON AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS THEREOF WITHOUT REGARD TO THE CONFLICTS OF LAWS RULES OF SUCH STATE. DEBTOR AGREES TO SUBMIT TO THE JURISDICTION OF THE STATE OF WASHINGTON IN KING COUNTY. EACH CREDITOR AND DEBTOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION INVOLVING THIS AGREEMENT.” CP 75.**

The quotation above is exactly how the Agreement reads, including the **boldface** and ALLCAPS font. Nicholas Bartz' initials appear on the bottom of the page where this paragraph is located in the Agreement.

The Agreement includes Nicholas Bartz' "Personal Guarantee" at "Exhibit A." CP 77. This "Exhibit A" is signed by Nicholas Bartz and begins:

“CREDITOR AND DEBTOR HAVE ENTERED INTO THE EQUIPMENT FINANCING AGREEMENT DESCRIBED ABOVE (THE ‘AGREEMENT’), THE TERMS OF WHICH ARE INCORPORATED HEREIN BY THIS REFERENCE. THIS IS A SCHEDULE A TO THE AGREEMENT [...]”

“Exhibit A” goes on to state a “**PERSONAL GUARANTEE(S)**” wherein Nicholas Bartz guarantees and promises “to make all of the payments and to perform all of the Debtors’ (Health Pro Solutions, LLC) obligations as specified in this Equipment Financing Agreement.” CP 77. The Personal Guarantee states that Bartz waives rights and defenses available to a guarantor, and agrees he is liable for Radiance’s attorney’s fees and costs in enforcing the guarantee, whether or not suit is filed.

Bartz promises in “Exhibit A” not only to make all payments under the Agreement, but to perform “all Debtor’s obligations” under the Agreement. An “obligation” is something which a person is bound to do, or a binding promise, contract, or duty enforceable by law. Webster’s Universal College Dictionary, p. 546 (2001). Under the circumstances, the fact that Bartz is not the “Debtor” under the Agreement is irrelevant. Bartz personally agreed to perform all of the promises made by the “Debtor,” so he is in the exact same position as the “Debtor” where it comes to performance of the Agreement and all of its terms.

Contrary to Bartz' argument otherwise, "Schedule A" is not a separate legal contract. "Exhibit A" is attached to the Equipment Financing Agreement and incorporates by reference all terms of that Agreement, including the consent to jurisdiction clause. "Exhibit A" is a part of the Equipment Financing Agreement, and that Agreement **does contain** a "consent to jurisdiction" clause which is also a forum-selection clause, not a choice-of-law provision.

The Agreement's language is plain, including the language contained in "Exhibit A." Where there is no ambiguity, the Court need investigate no further. Bartz agreed to perform all of the Debtor's obligations under the Equipment Financing Agreement which binds him to the clear and unambiguous consent to jurisdiction and venue clause. The King County Superior Court Judge did not abuse his discretion, and his decision to exercise jurisdiction over Bartz was not manifestly unreasonable. Venue was also proper in that Court.

**B. The forum-selection clause does not "misrepresent" facts, nor is it unenforceable simply because it is in a standard form.**

Bartz alleges that the Agreement's consent to jurisdiction clause should be rejected because it is in a "boilerplate" contract and because it

“misrepresents the facts.” Brief of Appellant at pp. 20-21. His position is contrary to established law and his allegations are inaccurate.

Forum selection clauses are prima facie valid. Kysar v. Lambert, supra, at 484-85, 887 P.2d 431 (1995); see also Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 10, 92 S. Ct. 1907, 32 L. Ed. 2d 513 (1972). A forum selection clause may be enforced even if it is in a standard form consumer contract, not subject to negotiation; enforcement serves the “salutary purposes of enhancing contractual predictability.” Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 589-95, 593-594, 111 S. Ct. 1522, 113 L. Ed. 2d 622 (1991). Such clauses may reduce the costs of doing business, thus resulting in reduced prices to consumers. Id. at 594.

Washington’s Supreme Court in Dix et al v. ICT Group, Inc. et al, 160 Wn.2d 826, 833, 161 P.3d 1016 (2007), noted the “typical synthesis” of the Bremen and Carnival Cruise Lines analyses set out by a number of courts as follows:

(1) A forum-selection clause is presumptively valid and enforceable and the party resisting it has the burden of demonstrating that it is unreasonable, (2) a court may deny enforcement of such a clause upon a clear showing that, in the particular circumstance, enforcement would be unreasonable, and (3) the clause may be found to be unreasonable if (i) it was induced by fraud or overreaching, (ii) the contractually selected forum is so unfair and inconvenient as, for all practical purposes, to deprive the plaintiff of a remedy or of its day in court, or (iii) enforcement would contravene a strong public policy of the State where the action is filed.

Gilman v. Wheat, First Sec., Inc., 345 Md. 361, 378, 692 A.2d 454 (1997) (discussing Bremen, Carnival Cruise Lines, and their progeny).

Washington's Supreme Court in Dix, supra, agreed with Gilman's analysis, and also noted that "[a] party arguing that the forum selection clause is unfair or unreasonable bears a **heavy burden** of showing that trial in the chosen forum would be so seriously inconvenient as to deprive the party of a meaningful day in court." Dix, supra, at 833, Emphasis added.

Importantly, in assessing a forum selection clause for enforceability, the court does not accept the pleadings as true. Dix, supra, citing Bank of Am., NA v. Miller, 108 Wn. App. 745, 748, 33 P.3d 91 (2001) and Voicelink Data Servs., Inc. v. Datapulse, Inc., 86 Wn. App. 613, 618, 937 P.2d 1158 (1997). The challenging party must present evidence to justify non-enforcement. Id.

Thus, under established case law, while a forum-selection clause may be rejected if the agreement is not "freely negotiated," more is required to reject a clause than to prove it is in a "boilerplate" contract and there was little to no negotiation, particularly in the commercial context.

Bartz claims that the parties' Agreement was not subject to any negotiation because he had no direct contact with Radiance and the transaction took place through a broker. CP 123. Bartz further claims that the Agreement's language "shall be deemed fully executed and performed

in the State of Washington...” is “false.” See Brief of Appellant at p. 21. Bartz’ claims are insufficient to render the clause unenforceable.

This matter involves a commercial transaction: purchase of commercial equipment which Bartz used in his physician’s office. CP 121-125. Bartz contacted a broker, whose job was evidently to find an appropriate entity from which Bartz could obtain funds for his needed equipment. CP 123. That entity was Radiance. There is nothing unusual, and no violation of public policy, in holding Bartz to the Agreement’s forum selection clause under these facts. Indeed, if such simple allegations were sufficient to satisfy the “heavy burden” of one challenging a forum selection clause in a standard agreement, undoubtedly a huge number of such clauses would be summarily unenforceable. That is not the law in Washington.

The forum selection and consent to jurisdiction clause in the Agreement here is a paragraph IN ALL CAPS on a page which Nicholas Bartz personally initialed at the bottom right corner. CP 75. The clause states that the Agreement is “DEEMED FULLY EXECUTED AND PERFORMED IN THE STATE OF WASHINGTON ...” The word “deem” means “to hold as an opinion.” Webster’s Universal College Dictionary, p. 210 (2001). The use of this word “deem” accurately describes the parties’ agreement, namely, that the chosen forum for resolution of any dispute concerning the Agreement is Washington. It is a

statement easily understood to indicate a choice of forum and jurisdiction. The statement is not meant to demonstrate a fact, but to demonstrate an agreement.

Bartz has failed to meet his heavy burden of showing enforcement of the Agreement's forum selection clause is so unfair or unjust as to render the clause unenforceable.

**C. Washington's long-arm statute provides a second basis for exercise of jurisdiction over Nicholas Bartz.**

Under RCW 4.28.185, a person who performs certain actions in Washington submits to the jurisdiction of Washington State, which actions include transaction of any business in Washington. Radiance did not file its action in Washington specifically under RCW 4.28.185, but based on the forum selection and consent to jurisdiction clause in the Agreement. Nevertheless, RCW 4.28.185 provides a second basis on which the Court should find that Nicholas Bartz is subject to Washington jurisdiction.

As noted in Kysar, the Court may find that exercise of long-arm jurisdiction is a second, independent basis for exercise of jurisdiction, even where there is a forum-selection clause. Kysar, supra at 442. "Purposeful, minimum contacts" with the forum state are required but can consist merely of "ordering insurance by telephone and mail" (Griffiths & Sprague Stevedoring Co v. Bayly, Martin & Fay, Inc., 71 Wn.2d 679, 430 P.2d 600 (1967)), or answering a phone solicitation and ordering by phone

call from a vendor in Washington (Sorb Oil Corp v. Batalla Corp, 32 Wn.App. 296, 299, 647 P.2d 514 (1982)).

Bartz now finds himself in Michigan. CP 125. Michigan is where the equipment financed by Radiance was originally delivered. CP 123. Bartz states he also had his business located previously in Arizona and resided there at one time. CP 121-122. The “debtor” under the Agreement, Health Pro, was evidently an LLC established in Nevada. CP 122. Bartz says he resided briefly in California during relevant times as well. CP 121. The Agreement lists Bartz’ business address in Michigan, but Bartz says the business was closed in 2011 and the collateral equipment was last located in Arizona (with a third party to whom the defendant gave the equipment, in violation of the Agreement with Radiance). CP 124. Now, Bartz does not even know where the equipment is located at all. CP 124.

While it might make most sense for Radiance to sue in the State in which the equipment is located, due to Bartz’ breach of contract, no one seems to know where that is. On the other hand, at all relevant times, Radiance has been located in Washington.

This case presents a perfect example of the usefulness of a forum selection and consent to jurisdiction clause.

The Agreement provides that it will be “deemed” (ie. in “the opinion” of the parties considered...) to be fully executed and performed in

Washington. CP 59. The Agreement states that the “DEBTOR AGREES TO SUBMIT TO THE JURISDICTION OF THE STATE OF WASHINGTON IN KING COUNTY.” CP 59. In his personal guaranty, Bartz then agrees “to perform all of Debtor’s obligations” under the Agreement. CP 61. Bartz is a moving target, nowhere in the record does he reveal his precise residence address, and at this point no one knows where the collateral equipment is located because Bartz allowed a third party to take possession of it. Under these facts, it is reasonable and just that this breach of contract suit be adjudicated in Washington. Bartz is subject to Washington jurisdiction under the contract, and also under the long-arm statute.

**Issue 2: Radiance is entitled to an award of its attorney fees and costs on appeal.**

Radiance requests and is entitled to its attorney fees and costs incurred for this appeal under paragraph 18 of the Agreement which provides:

“Debtor shall pay Creditor [Radiance] its costs and expenses, including repossession and attorney’s fees and court costs incurred by Creditor in enforcing this Agreement. This Agreement includes the payment of such amounts whether an action is file and whether an action that is file is dismissed.” CP 75.

**IV. CONCLUSION**

Bartz attaches a “Discharge of Debtor” as an Appendix to his Brief of Appellant (p. A-1), stating that “the effect of Bartz’ bankruptcy discharge

is presently being discussed by ... counsel.” Bartz goes on to state that this Court of Appeals “should at least take into due consideration the likely effect of the bankruptcy discharge.” Radiance objects to the Court’s consideration of this document. This document was not a part of the record below, nor was any bankruptcy ever mentioned by Bartz or any attorney on his behalf prior to entry of the final summary judgment.

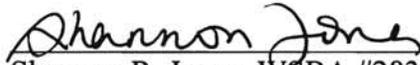
Without waiver of its objection, should the Court consider the Discharge Order, the Court should also consider the documents attached as an Appendix to this brief. This includes a Notice that Bartz’ Chapter 7 case was closed without a discharge on June 9, 2011. Appendix at p. A-1. This also includes a Notice and Motion to Reopen the Ch. 7 Case which was filed in the Michigan bankruptcy court on October 4, 2013, without any notice to Radiance. Appendix at p. A-2 to p. A-5. This also includes an Order Reopening the case which was entered on October 4, 2013, without any notice to Radiance.

Radiance was not listed as a creditor in the original bankruptcy filing, and was only made aware of the bankruptcy filing after Bartz’ Washington counsel stipulated to the Amended Final Judgment Summary and Order Granting Summary Judgment and Denying Motion to Dismiss signed by Judge Jay White of the King County Superior Court on October 4, 2013.

The effect of this Discharge Order is not properly before this Court. Whether there was fraud or other wrongdoing may or may not be a matter for decision of a bankruptcy court at a later date.

Radiance requests this appeal be denied, the trial court summary judgment and order denying the motion to dismiss be upheld, and for an award of attorney's fees and costs on appeal.

Respectfully submitted this 26 day of February, 2014.



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Shannon R. Jones, WSBA #28300  
Campbell, Dille, Barnett & Smith, PLLC  
Attorneys for Respondent

## APPENDIX

Form ntc7clwd

211 West Fort Street  
Detroit, MI 48226

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of Michigan

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Case No.: **08-63007-mbm**  
Chapter: 7

In Re: (NAME OF DEBTOR(S))

Nicholas William Bartz  
4535 Eagle Drive  
Jackson, MI 49201

Social Security No.:  
xxx-xx-1411

Employer's Tax I.D. No.:

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**NOTICE OF CHAPTER 7 CASE CLOSED WITHOUT DISCHARGE**

All creditors and parties in interest are notified that the above-captioned case has been closed without entry of discharge as Debtors did not file Official Form 23, Debtor's Certification of Completion of Instructional Course Concerning Personal Financial Management.

Dated: 6/9/11

BY THE COURT

Katherine B. Gullo , Clerk of Court  
UNITED STATES BANKRUPTCY COURT

APPENDIX, PG APP-1

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

---

IN RE: **NICHOLAS WILLIAM BARTZ**

CASE NO. 08-63007-mbm  
CHAPTER 7  
HON. MARCI B. MC IVOR

DEBTOR.

---

**NOTICE OF OPPORTUNITY TO BE HEARD**

Debtor has filed papers with the court to Reinstate Chapter 7

**Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to [relief sought in a motion or objection], or if you want the court to consider your views on the [motion] [objection], within 20 days, you or your attorney must:

1. File with the court a written response or an answer, explaining your position at:<sup>1</sup>

**United States Bankruptcy Court**  
211 W. Fort Street, Suite 2100  
Detroit, MI 48226

If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above. All attorneys are required to file pleadings electronically.

You must also mail a copy to everyone listed on the Matrix.

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing.

**If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.**

Date: October 4, 2013

/s/David I. Goldstein  
David I. Goldstein (P14130)  
4930 Washtenaw Ave.  
Ann Arbor, MI 48108  
734-528-9886  
734-528-9887 fax  
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<sup>1</sup>Response or answer must comply with F. R. Civ. P. 8(b), (c) and (e)

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE: NICHOLAS WILLIAM BARTZ

CASE NO. 08-63007-mbm  
CHAPTER 7  
HON. MARCI B. MC IVOR

DEBTOR.

**DEBTOR'S MOTION TO REOPEN CASE TO ALLOW FOR FILING OF THE FINANCIAL  
MANAGEMENT COURSE CERTIFICATE**

NOW COME the Debtor, by and through his Attorney, David I. Goldstein, and says by way of his Motion to Reopen case, that;

1. This matter is a matter filed under Chapter 7, Title 11, United States Code;
2. This case was filed on September 22, 2008;
3. A 341A Meeting was held in this matter on November 5, 2008, which hearing was held and completed;
4. At the time of the filing of this action, Debtor filed Certification that she had completed the pre-filing credit counseling course required by statute and conducted by GreenPath;
5. Debtor had an obligation to file with this court Certification of completion of a Debtor education course conducted by a certified counselor within 45 days after the closing of their 341A Hearing;
6. The Debtor has completed that course;
7. On June 9, 2011, this Court entered an Order closing this case without discharge;
8. Debtor file this Motion for the purpose reopening this case to allow them to file the official Form 23, showing completion of his Debtor Education Course for the purpose of allowing a discharge to be entered.

WHEREFORE, Debtor prays that this Court enter an order reopening this case for the purpose of allowing the entry of a discharge.

Dated: October 4, 2013

/s/ David I. Goldstein  
David I. Goldstein (P14130)  
4930 Washtenaw Ave.  
Ann Arbor, MI 48108  
734-528-9886  
734-528-9887 fax  
Davidgoldstein.law@gmail.com

APPENDIX, PG APP-3

Bel Matrix for local noticing  
45-2  
Case 08-63007-mbm  
Western District of Michigan  
Detroit  
Date: 12/4/13 12:57:58 EDT 2013

American One Federal Credit Union  
18 East Michigan Ave.  
Jackson, MI 49201-1626

Bank of America  
P.O. Box 15726  
Wilmington, DE 19886-5726

Countrywide Mortgage  
P.O. Box 660694  
Dallas, TX 75266-0694

John Rustin  
100 West Fifth  
Suite 613  
Charlotte, NC 28202-1645

National City  
P.O. Box 856176  
Louisville, KY 40285-6176

Washington Mutual  
P.O. Box 9001123  
Louisville, KY 40290-1123

Wilshire Credit Corporation  
P.O. Box 1650  
Portland, OR 97207

Nicholas William Bartz  
535 Eagle Drive  
Jackson, MI 49201-9744

America's Servicing  
P.O. Box 1820  
Newark, NJ 07101-1820

Ana Mendez  
900 Mystic Drive  
Grants Pass, OR 97527-4956

Cal-Western Reconveyance Corp.  
P.O. Box 22004  
El Cajon, CA 92022-9004

E.M.C. Mortgage  
P.O. Box 141358  
Irving, TX 75014-1358

Marcy J. Ford  
Trott and Trott  
31440 Northwestern Highway Ste 200  
Farmington Hills, MI 48334-5422

(p)CHASE CARD SERVICES  
201 NORTH WALNUT STREET  
ATTN MARK PASCALE  
MAIL STOP DE1-1406  
WILMINGTON DE 19801-2920

Webster Bank  
P.O. Box 1809  
Hartford, CT 06144-1809

David I. Goldstein  
4930 Washtenaw  
Ann Arbor, MI 48108-1414

American Express  
Box 0001  
Los Angeles, CA 90096-8000

Annie C. Harris  
2079 Turnberry Lane  
Murrells Inlet, SC 29576-6807

Capital One Bank  
P.O. Box 60024  
City Of Industry, CA 91716-0024

Health Pro Solutions  
8912 Pinnacle Peak Rd.  
Ste 430  
Scottsdale, AZ 85255-3659

Michael Hurtienne  
1129 S.E. Rice  
Roseburg, OR 97470-4271

Recovery Management Systems Corporation  
25 S.E. 2nd Avenue, Suite 1120  
Miami, FL 33131-1605

Wilshire Credit  
P.O. Box 7195  
Pasadena, CA 91109-7195

Douglas Ellmann  
308 West Huron  
Ann Arbor, MI 48103-4204

APPENDIX, PG APP-4

oyidian  
O. Box 660487  
Dallas, TX 75266

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

u) Mortgage Electronic Registration Systems, (u)America's Servicing Company (u)EMC Mortgage Corporation

u)US Bank National Association (u)Wilshire Credit Corporation (u)JP Morgan Chase Bank, N.A.

u)Daniel M. McDermott

End of Label Matrix	
Mailable recipients	24
Bypassed recipients	7
Total	31

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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IN RE: NICHOLAS WILLIAM BARTZ

CASE NO. 08-63007-mbm  
CHAPTER 7  
HON. MARCI B. MC IVOR

DEBTOR.

---

**ORDER REOPENING CHAPTER 7 CASE  
AND DIRECTING THE CLERK OF THE COURT TO ENTER DISCHARGE**

This matter having come before the Court on the Debtor's Motion to Reopen Chapter 7 Case, and after a hearing being held on the matter or such hearing being waived, and after the Court being fully advised in the premises;

**IT IS ORDERED** that this case be reopened for the purpose of allowing the filing of Debtor Education Certificate

**IT IS FURTHER ORDERED** that the Clerk of the Court shall issue and Order of Discharge and serve the same on all creditors.

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

---

IN RE: NICHOLAS WILLIAM BARTZ

CASE NO. 08-63007-mbm  
CHAPTER 7  
HON. MARCI B. MC IVOR

DEBTOR.

---

**CERTIFICATE OF SERVICE OF  
DEBTOR'S MOTION TO REINSTATE**

I hereby certify that on the date indicated below, copies of Debtors' Motion Reinstate Case, Notice of Opportunity to Be Heard, Proposed Order and Proof of Service were electronically filed and/or deposited in the U.S. Mail to the parties listed on the attached matrix.

October 4, 2013

/s/ Rhonda J. Ratliff  
Rhonda J. Ratliff  
Assistant to David I. Goldstein

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

---

IN RE: NICHOLAS WILLIAM BARTZ

CASE NO. 08-63007-mbm  
CHAPTER 7  
HON. MARCI B. MC IVOR

DEBTOR.

---

**ORDER REOPENING CHAPTER 7 CASE  
AND DIRECTING THE CLERK OF THE COURT TO ENTER DISCHARGE**

This matter having come before the Court on the Debtor's Motion to Reopen Chapter 7 Case, and after a hearing being held on the matter or such hearing being waived, and after the Court being fully advised in the premises;

**IT IS ORDERED** that this case be reopened for the purpose of allowing the filing of Debtor Education Certificate

**IT IS FURTHER ORDERED** that the Clerk of the Court shall issue and Order of Discharge and serve the same on all creditors.

Signed on October 07, 2013

/s/ Marci B. McIvor  
Marci B. McIvor  
United States Bankruptcy Judge