

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
KENNETH SHAY KLEIN and	)	CASE NO. 12-31617 HCD
CYNTHIA RUTH KLEIN	)	CHAPTER 7
DEBTORS	)	
	)	
	)	
JOSEPH D. BRADLEY, TRUSTEE	)	
PLAINTIFF	)	
vs.	)	PROC. NO. 14-3063
	)	
KENNETH SHAY KLEIN, CYNTHIA	)	
RUTH KLEIN, ARUBA BANK N.V.,	)	
MARGARET DEJONGE, MONARCH	)	
COMMUNITY BANK, 1 <sup>ST</sup> SERVICE	)	
SOLUTIONS, INC., CREATIVE	)	
FINANCIAL GROUP, INC., TONY	)	
KOLOMAYETS, OMEGA FINANCIAL	)	
GROUP, LTD., and RICHARD A.	)	
KRANITZ	)	
DEFENDANTS	)	

Appearances:

J. Richard Ransel, Esq., Lisa Gilkey Schoetzow, Esq., Jamie C. Woods, Esq., 228 West High Street, Elkhart, Indiana 46516, for Plaintiff Joseph D. Bradley.

Martin E. Seifert, Esq., 444 East Main Street, Fort Wayne, Indiana 46802, for Defendants Kenneth Shay Klein and Cynthia Ruth Klein.

Rebecca Hoyt Fischer, Esq., 401 East Colfax, South Bend, Indiana 46617, and Robert G. Riffner, Esq., 1834 Walden Office Square, Room 500, Schaumburg, Illinois 60173, for Defendants Omega Financial Group, LTD and Tony Kolomayets.

Jacqueline S. Homann, Esq., 202 South Michigan Street, South Bend, Indiana 46634, for Defendant Margaret DeJonge.

Aruba Bank, N.V., Camacuri 12, c/o Highest Ranking Officer, P.O. Box 192, Oranjestad, Aruba, pro se.

Richard A. Kranitz, 1009 Washington Street, Grafton, Wisconsin 53024, pro se.

1<sup>st</sup> Service Solutions, Inc., c/o Highest Ranking Officer, 1701 West Northwest Highway, Grapevine, Texas 76051, pro se.

Creative Financial Group, Inc., c/o Bibi Yassin, Registered Agent, 3745 White Heron Drive, Orlando, Florida 32802, pro se.

**ORDER GRANTING DEFENDANTS' MOTIONS TO STRIKE AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

At South Bend, Indiana, on August 27, 2015.

The three motions before the court consist of the Motion for Summary Judgment filed by the Plaintiff, Joseph D. Bradley, Trustee (Summary Judgment Motion) [ECF No. 47]; the Defendant's Motion to Strike filed by Defendants Kenneth and Cynthia Klein (Klein Motion) [ECF No. 56]; and Motion to Strike filed by Defendant Margaret DeJonge (DeJonge Motion) [ECF No. 82]. The court has jurisdiction to decide the matters before it pursuant to 28 U.S.C. §§ 1334 and 157, and Northern District of Indiana Local Rule 200.1. The court has determined this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (H).

**Background**

**Bankruptcy Case**

The circumstances relating to the bankruptcy case underlying this adversary proceeding are involved and tortuous. The case began with a voluntary chapter 11 petition on May 2, 2012. On their voluntary petition, Debtors Kenneth

and Cynthia Klein listed the nature of their business as “Other.” They indicated affiliation with other bankruptcy cases pending in this district, in the Western District of Michigan, and the Northern District of Ohio.<sup>1</sup> Venue in this district is proper under 28 U.S.C. § 1408(2)<sup>2</sup> because of the Kleins’ affiliation with a prior case pending in this district.

Their voluntary petition shows the Kleins were associated with or formerly associated with 120 different business entities.<sup>3</sup> Although not directly described as such, the business activities of the Kleins appear to involve the purchase, development, or management of commercial real estate.

As of the date they filed their petition for relief under chapter 11, the Kleins listed different street and mailing addresses. They indicated Coldwater, Michigan as their street address, and a mailing address in Angola, Indiana.<sup>4 5</sup>

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<sup>1</sup>These cases are: Napoleon Ohio Associates LLC, Northern District of Ohio chapter 11 case number 11-36328 (filed November 28, 2011); Coldwater Portfolio Partners LLC, Northern District of Indiana chapter 11 case number 12-31182 (filed April 2, 2012); and AO Associates LLC, Western District of Michigan chapter 11 case number 12-03952 (filed April 24, 2012).

<sup>2</sup>28 U.S.C. § 1408(2) states: “Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district – (2) in which there is pending a case under title 11 concerning such person’s affiliate, general partner, or partnership.”

<sup>3</sup>These entities included over 100 limited liability companies, and several corporations and associations.

<sup>4</sup>Coldwater, Michigan is neither within this district nor within this circuit. Angola, Indiana is within both.

<sup>5</sup>On April 29, 2013, the debtors filed a Notice of Change of Debtors’ Mailing  
(continued...)

On December 12, 2012, the United States trustee filed a motion to convert the chapter 11 case to chapter 7, alleging conduct constituting “cause” under § 1112(b)(1) and (b)(4). The allegations in the motion to convert include the following: charges of gross mismanagement of the chapter 11 estate; failure to file truthful and accurate reports concerning incurring secured and unsecured debt without court authorization; conduct constituting fraud, dishonesty, and/or incompetence concerning the misappropriation and use of estate assets; and failure to fulfill fiduciary obligations to creditors. Following a hearing, the court granted the motion to convert to chapter 7 on December 19, 2012. The United States trustee assigned Joseph Bradley as the chapter 7 trustee.

The claims register in the Kleins’ chapter 7 case shows the filing of 67 claims, with a total amount claimed of \$182,304,433.76. Two of the defendants in adversary proceeding 14-3063 have filed proofs of claim. Margaret DeJonge filed unsecured claim 56 for \$773,334.00; Monarch Community Bank filed secured claim 23 for \$125,601.04 and unsecured claim 24 for \$11,584,170.66. In addition, one of the Kleins’ affiliated companies, Coldwater Portfolio Partners LLC, filed unsecured claim 60 for \$1,977,814.50.

On February 4, 2015, Margaret DeJonge, one Defendant in this adversary proceeding number 14-3063, requested the court to take judicial notice “of the pleadings and order and judgments in Adversary Proceeding No. 13-3020”

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<sup>5</sup>(...continued)  
Address showing a new address in Tierra del Sol, Aruba.

[ECF No. 83]. Without any objections, the court granted the motion on March 10, 2015 [ECF No. 96].

DeJonge Adversary Proceeding No. 13-3020

Margaret DeJonge filed adversary proceeding 13-3020 against the Kleins on April 8, 2013. Count I of the complaint challenged the dischargeability of the amount the Kleins owe DeJonge under § 523(a)(2)(A) and (B). Count II objected to the Kleins discharge pursuant to § 727(c), (d), and (e). After the court denied the Kleins Rule 12(b)(6) motion to dismiss, DeJonge and the Kleins filed a joint notice of settlement. In exchange for the dismissal of DeJonge's objection to their discharge, the Kleins agreed that their debt to DeJonge is non-dischargeable. Without any objection from the chapter 7 case trustee, Joseph Bradley, or the United States trustee, the court approved their agreed entry for a finding of nondischargeability of debt, pursuant to § 523, and dismissal of the § 727 complaint with prejudice.

Bradley Adversary Proceeding No. 14-3063

Joseph Bradley is the Plaintiff in this adversary proceeding number 14-3063. The parties named defendants in this adversary proceeding include the Debtors, DeJonge, and seven other entities. In this adversary proceeding, Bradley alleges the Kleins violated § 364 by secretly incurring secured debt without court authorization during September 2012, a time when their bankruptcy case was pending under chapter 11. Bradley's pleadings reference the alleged secret secured debt and related transactions as the "Improper Loan." For convenience in addressing this Summary Judgment Motion, the court will also use this

nomenclature without making a determination whether it is an accurate description of the transaction. Bradley alleges the court did not approve the \$800,000.00 Promissory Note executed by the Kleins and payable to DeJonge documenting this Improper Loan. He further alleges the Kleins executed various other documents without court approval to secure the Improper Loan.<sup>6</sup>

Bradley's complaint posits that the Kleins transferred the \$800,000 proceeds from the Improper Loan to Omega Financial Group, LTD (Omega) and Tony Kolomayets (Kolomayets), other defendants in this adversary proceeding. Bradley alleges that Omega and Kolomayets transferred \$696,000 to third parties, one of whom is also a defendant named in this adversary proceeding. In this adversary proceeding Bradley seeks to avoid the unauthorized postpetition transactions that transferred estate property to the defendants and recovery of those monies.

The court has dismissed three of the ten defendants named in the complaint as of the date of this decision.<sup>7</sup> A fourth defendant is the subject of a

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<sup>6</sup>Other documents executed allegedly without court approval include the following: a Pledge and Security Agreement to secure the Promissory Note; an Assignment Separate from Certificate to secure the Improper Loan; and a Confession of Judgment concerning the Improper Loan.

<sup>7</sup>On motions of the Plaintiff, the court dismissed defendant 1<sup>st</sup> Service Solutions, Inc. on January 26, 2015 [ECF No. 61]; defendant Monarch Community Bank on January 28, 2015 [ECF No. 67]; and defendant Richard A. Kranitz on January 28, 2015 [ECF No. 68].

pending motion for default judgment.<sup>8</sup> The court found ineffective service on a fifth defendant.<sup>9</sup> The defendants remaining involved in this adversary proceeding are the Kleins, DeJonge, Omega, and Kolomayets.

### Discussion

The primary motion before the court seeks summary judgment. Rule 7056 of the Federal Rules of Bankruptcy Procedure provides that Federal Rule of Civil Procedure 56 governs this court's review of a motion for summary judgment. Summary judgment is proper only where the record shows that "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a); Fed. R. Bankr. P. 7056. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses." *Id.* at 323-24. The moving party bears the initial burden of showing that no genuine issue of material fact exists. *Id.* at 323. In ruling on a summary judgment motion, the court accepts the non-moving party's evidence as true, draws all inferences in favor of the non-moving party, and does not weigh the evidence and credibility of the witnesses. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

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<sup>8</sup>Creative Financial Group, Inc.

<sup>9</sup>Aruba Bank, N.V.

## Motions to strike

Before addressing the merits of the Summary Judgment Motion, the court must first consider the motions to strike filed by DeJonge and the Kleins. Both motions to strike seek to have the court strike portions of the Trustee's [Bradley's] Affidavit in Support of Motion for Summary Judgment [ECF No. 46] as inadmissible.

"Admissibility is the threshold question because a court may consider only admissible evidence in assessing a motion for summary judgment." *Gunville v. Walker*, 583 F.3d 979, 985 (7<sup>th</sup> Cir. 2009). "With regard to affidavits, they must be made on personal knowledge, set forth facts as would be admissible in evidence, and the affiant must be competent to testify to the matters stated therein." *Hughes v. SouthernCare, Inc.*, 2014 WL 4843810, \*2 (N.D. Ind. Sept. 29, 2014). The court has broad discretion concerning the admissibility of evidence. *See, e.g., Balderston v. Fairbanks Morse Engine Div. of Coltec Industries*, 328 F.3d 309, 318 (7<sup>th</sup> Cir. 2003) ("A district court's refusal to strike or disregard portions of an affidavit in a motion for summary judgment is reviewed for an abuse of discretion."); *Cocroft v. HSBC Bank USA, N.A.*, 2015 WL 4597537, \*4 (7<sup>th</sup> Cir. July 31, 2015) ("We review for abuse of discretion a district court's refusal to strike or disregard an affidavit (or portions thereof) in a motion opposing summary judgment.").

The Klein Motion asks the court to strike paragraphs 10 and 11 of the Trustee's Affidavit under Civil Rule 56(c)(4), asserting the lack of personal knowledge. These paragraphs refer to prior testimony given by Linda McCall and Patte Weikel about banking activities relating to the Kleins. Trustee Bradley

responds that the testimony referenced in paragraphs 10 and 11 occurred at the first meeting of creditors at which he was present. The court notes that Bradley did not attach as an exhibit to his affidavit the transcript from the first meeting of creditors or relevant excerpts from it to support his assertions in these paragraphs.

Civil Rule 56 controls the court's review of the Klein Motion.

**Affidavits or Declarations.** An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

Fed. R. Civ. P. 56(c)(4).

**Objection That a Fact Is Not Supported by Admissible Evidence.** A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

Fed. R. Civ. P. 56(c)(2).

Bradley apparently offers the testimony of McCall and Weikel to establish who controlled a certain bank account and the purpose for disbursements from that account. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Fed. R. Evid. 801(c). Hearsay evidence is inadmissible. Fed. R. Evid. 802. The statements attributed to McCall and Weikel in Bradley's affidavit about the Kleins' banking activities fall within the definition of hearsay. Bradley has not pointed to any exception to the hearsay rule permitting the admission of this evidence. The court grants the Kleins' Motion to strike paragraphs 10 and 11 of

the Trustee's Affidavit. For purposes of ruling on the Summary Judgment Motion, the court will not consider these paragraphs.

The DeJonge Motion requests the court to strike three paragraphs in the Trustee's Affidavit. Paragraphs 3 and 4 discuss the circumstances and documents related to the transaction Bradley references as the Improper Loan. The subject transactions all occurred during September 2012, more than two months before the United States trustee appointed Bradley as chapter 7 trustee. DeJonge objects to paragraphs 3 and 4 because Bradley has no personal knowledge regarding the facts in these paragraphs. DeJonge faults paragraph 5 because it references documents presented at a hearing conducted on December 10, 2012, at which time she was not a party. Trustee Bradley responds to DeJonge's objection only to state that he has reviewed the loan documentation signed by the Kleins and all documents presented at the December hearing. DeJonge was not involved in the December 2012 hearing. Consequently, she did not have an opportunity to challenge the documents in question. As the court has noted, when considering a summary judgment motion, the court must draw all inferences in favor of the party opposing the motion. *See Anderson*, 477 U.S. at 249. By accepting the documents addressed in these paragraphs as part of the consideration of the Summary Judgment Motion, the court would effectively be making a decision as to their weight. This is not an inference in favor of the non-moving party. The court will not consider these paragraphs in considering the Summary Judgment Motion. The court also notes Bradley has not pointed to any hearsay exception permitting the admission of

documents in question. The documents themselves, rather than testimony about the documents, would be probative about whether a genuine issue of material fact is present. The benefit of any doubt goes to DeJonge on this point. The court grants DeJonge's motion and will not consider paragraphs 3, 4, and 5 of Bradley's affidavit in ruling on the Summary Judgment Motion.

#### Summary Judgment Motion

“Summary judgment is such a drastic procedure that it should be used sparingly so that no party having a scintilla of merit to his claim or defense should be denied his day in court.” *In re Freeman*, 68 B.R. 904, 910 (Bankr. M.D. Pa. 1987); *Suburban Teamsters of Northern Illinois Health, Welfare and Pension Funds v. Callaghan Paving, Inc.*, 583 F. Supp. 105, 110 (N.D. Ill. 1984) (“Summary judgment is an extraordinary remedy, which should be granted prudently, especially where the subjective factors of motive and intent figure centrally.”) Besides showing the lack of any genuine issue of material fact, the movant seeking summary judgment must also establish that the controlling substantive law supports a result in its favor. *See ANR Advance Transp. Co. v. Int'l Brotherhood of Teamsters, Local 710*, 153 F.3d 774, 777 (7<sup>th</sup> Cir. 1998). (“When the material facts are not in dispute, as in this case, the sole question is whether the moving party ... is entitled to judgment as a matter of law.”) The party opposing a motion for summary judgment must raise genuine and specific issues of factual or legal dispute for trial and “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986);

*Cox v. Health Alliance (In re EIY Co., Inc.)*, 2014 WL 793691, \*2 (Bankr. C.D. Ill. Feb. 26, 2014) (“The party opposing a motion for summary judgment must raise genuine and specific issues of factual or legal dispute for trial ...”).

To facilitate this inquiry, the local rules of this court require all motions for summary judgment to “be accompanied by a ‘Statement of Material Facts’ which ... shall identify those facts as to which the moving party contends there is no genuine issue and shall be supported by appropriate citations to ... admissible evidence.” N.D. Ind. L.B.R. B-7056-1(a). As the Seventh Circuit has noted, such statements are

not merely superfluous abstracts of the evidence. Rather, they are intended to alert the court to precisely what factual questions are in dispute and point the court to the specific evidence in the record that supports a party’s position on each of these questions. They are, in short, roadmaps, and without them the court should not have to proceed further, regardless of how readily it might be able to distill the relevant information from the record on its own.

*Waldridge v. American Hoechst Corp.*, 24 F.3d 918, 923 (7<sup>th</sup> Cir. 1994).

The court notes Bradley’s Summary Judgment Motion is accompanied by a supporting brief as required by the local rules of this court. N.D. Ind. L.B.R. B-7007-1(a). He has not filed a separate statement of material facts as required by Rule B-7056-1(a). None of the defendants have suggested they have suffered any prejudice by the omission. The court, in its discretion, will overlook this procedural deficiency.

On the subject of summary judgment, the local rules of this court also impose duties on the party opposing summary judgment. As spelled out in N.D. Ind.

B-7007-1(a), the defendants remaining in this adversary proceeding, DeJonge, the Kleins, and Omega and Kolomayets, have all responded to the Summary Judgment Motion with briefs and memoranda of law. However, like the plaintiff, these defendants have neglected the requirement for noting genuine issues. “Any party opposing the motion shall ... serve and file a ‘Statement of Genuine Issues’ setting forth all material facts as to which it is contended there exists a genuine issue, supported with appropriate citations to ... other admissible evidence ... .” N.D. Ind. L.B.R. B-7056-1(a). The record in this adversary proceeding includes no statement of genuine issues from either DeJonge, the Kleins, or Omega and Kolomayets. Because Bradley has not claimed any injury from this omission, and the non-moving defendants do not have the initial burden, the court will not penalize the failure.

The memoranda and responses provided by the parties contain recitations of their respective views of the circumstances relevant to the Improper Loan that is the subject of this adversary proceeding. The parties have also pointed to those portions of the rules, statute, and case law they argue support their respective positions. While the court finds these references helpful in assessing whether Bradley, as movant, “is entitled to judgment as a matter of law,” they fall short of identifying with precision whether or not a “genuine dispute as to any material fact” exists. See Fed. R. Civ. P. 56(a). Particularly in an adversary proceeding involving sophisticated commercial transactions such as are present in this proceeding, the absence of clear, specific statements about material facts and

genuine issues creates a situation in which the court has scant guidance in evaluating the propriety of granting summary judgment.

After a review of the court records in the Kleins' chapter 7 case, and the submissions of the parties in this adversary proceeding, and without considering the challenged paragraphs in Bradley's affidavit, the court has gleaned the following material facts. Lacking a clear statement from the parties, however, the court cannot conclude the following are the only points of agreement.

1. The Kleins filed case number 12-31617, a voluntary petition under chapter 11 on May 2, 2012.
2. On May 4, 2012, the court provided the Kleins a Notice of Status As, And Obligations Of, Debtor-In-Possession in Chapter 11 [case 12-31617, ECF No. 10]. Among other matters, this Notice references statutory obligations of a chapter 11 debtor-in-possession under §§ 363 and 365 regarding incurring debt, obtaining credit, and transferring or disposing of property of the estate.
3. During September 2012 the Kleins engaged in a transaction with DeJonge that Bradley references as the Improper Loan [see adversary proceeding 14-3063: complaint, ECF No. 1 at ¶¶6-10; DeJonge amended answer, ECF No. 58 at ¶¶6-9; Klein answer, ECF No. 25 at ¶¶6-10]. Whether the court should characterize this transaction as outside of the ordinary course of business is not clear based on the current record.
4. The court converted the chapter 11 case to chapter 7 on December 19, 2012 [case 12-31617, ECF No. 232].

5. The United States trustee assigned Bradley as trustee in the chapter 7 case on December 19, 2012 [case 12-31617, ECF No. 235].
6. The court approved the agreed entry of non-dischargeability of the Kleins' debt to DeJonge under § 523 in adversary proceeding 13-3020 [adversary proceeding 13-3020, ECF No. 24].

The court's review of the parties' submissions also suggests several areas where the parties are in disagreement. Again, the uncertainties in the record before the court prevent the court from determining that the following are the only points of dissension.

1. Were the September 2012 transactions relating to the Improper Loan were carried out in the ordinary course of the Klein's business?
2. If the Improper Loan was not in the ordinary course, should DeJonge have known about the bankruptcy and the need for court approval?
3. Was DeJonge justified in relying on representations made to her that court approval of the loan was not required?
4. Were funds retained by Omega and Kolomayets part of the DeJonge loan proceeds, or were the monies paid by another entity as compensation for services rendered by Omega and Kolomayets?
5. Were Omega and Kolomayets initial transferees of the DeJonge loan proceeds, or were they simply a conduit as escrow agents?
6. Did DeJonge rescind her loan to the Kleins?

7. Did the Improper Loan harm the bankruptcy estate such that it resulted in harm to the other creditors of the Kleins?
8. Will recovery of the Improper Loan proceeds benefit any creditor other than DeJonge?

Based on the record that currently exists in this adversary proceeding, the court cannot find the absence of genuine issues of material fact. Determining the nature of the Kleins' business and the circumstances of the DeJonge Improper Loan is fundamentally important in assessing whether the loan was part of the Kleins' ordinary course of business while they were operating under chapter 11. *See, e.g., In re Dave Noake, Inc.*, 45 B.R.555, 556 (Bankr. D. Vt. 1984) ("Charges for post-petition services rendered or goods delivered to the debtor in possession in the ordinary course of business are not within the purview of Code section 549."); *In re T.A. Brinkoetter & Sons, Inc.*, 2012 WL 1865485, \*4 (Bankr. C.D. Ill. May 22, 2012) ("[A] debtor in possession is allowed to operate its business within the broad parameters of sound business judgment ... .") Whichever way the court resolves the ordinary course of business issue will trigger other factual issues. Also unaddressed is the relevance and significance, if any, of the determination that the Kleins' debt to DeJonge is excepted from discharge pursuant to § 523.

Omega and Kolomayets have responded to the Summary Judgment Motion by stating any monies they received were payments for services paid by a third party. Bradley has not pointed to any facts to the contrary. Because this is Bradley's motion, the court must view the record in the light most favorable to the

non-movants. *See KDC Foods, Inc. v. Gray, Plant, Mooty, Mooty & Bennett, PA*, 763 F.3d 743, 746 (7<sup>th</sup> Cir. 2014) (The court must construe all facts and draw all reasonable inferences in favor of the non-moving party.). For purposes of considering this Summary Judgment Motion the court will accept the Omega and Kolomayets characterization of the source of monies they received.

Apart from genuine issues of material fact, the court finds, after reviewing the briefs and memoranda of law submitted by the parties, it cannot say that Bradley is entitled to a judgment as a matter of law. If the DeJonge Improper Loan was in the ordinary course of the Kleins' business, Bradley may have not claim to it. Both the complaint in this adversary proceeding and the Summary Judgment Motion simply assume the transaction was not in the ordinary course without showing why this is so for business activities involving the development, purchase, or management of commercial real estate. DeJonge argues that she rescinded her loan to the Kleins. Permitting her the benefit of any doubt concerning rescission in considering the Summary Judgment Motion, Bradley cites no provision that he can recover any monies from DeJonge after the rescission. In Indiana, "[t]he function of contract rescission is to restore the parties to their pre-contract position, that is, the status quo." *French v. State Farm Fire & Cas. Co.*, 950 N.E.2d 303, 311 (Ind. Ct. App. 2011). After rescission it is as if the contract never existed. *Ocwen Loan Servicing, LLC v. National Mut. Fire Ins. Co.*, 2012 WL 1067854, \*5 (S.D. Ind. Mar. 29, 2012).

### Conclusion

The court finds that the Defendant's Motion to Strike filed by Defendants Kenneth and Cynthia Klein (Klein Motion) and Motion to Strike filed by Defendant Margaret DeJonge (DeJonge Motion) are well taken and grants those motions. The court will, therefore, strike paragraphs 3, 4, 5, 10, and 11 of the Trustee's Affidavit in Support of Motion for Summary Judgment. The court will not consider these paragraphs as part of its resolution of the Summary Judgment Motion.

After a review of record concerning the Summary Judgment Motion of Plaintiff Joseph Bradley, and not considering those matters stricken, the court finds that genuine issues of material fact are present in this adversary proceeding. Further, the court finds that the record in this adversary proceeding, as it currently exists, does not show that the Plaintiff is entitled to a judgment as a matter of law.

As ordered by this court on May 7, 2015 [ECF No. 113], the parties have to and including three months after the date of this order, that is November 27, 2015, to complete discovery.

SO ORDERED.

/s/ HARRY C. DEES, JR.  
HARRY C. DEES, JR., JUDGE  
UNITED STATES BANKRUPTCY COURT