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IN RE:

Chapter 7

O.C. IRON WORKS, INC.,

Debtor,

Case No: 05-36895 (CGM)

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THOMAS GENOVA, as Trustee,

Plaintiff,

Adv. Proc. No. 07-

- against -

ORANGE COUNTY IRONWORKS, LLC, DANIEL  
TEUTUL, PAUL M. TEUTUL and PAUL TEUTUL,

Defendants.

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**COMPLAINT**

Plaintiff Thomas Genova, as Trustee, by his attorneys, Peckar & Abramson, P.C. and McCabe & Mack LLP, as and for his complaint against defendants Orange County Ironworks, LLC, Daniel Teutul, Paul M. Teutul, and Paul Teutul, respectfully alleges upon information and belief as follows:

1. Plaintiff Thomas Genova is the Trustee of the Debtor O.C. Iron Works, Inc. ("Debtor"), a corporation organized under the laws of the State of New York.
2. The Court has jurisdiction over this adversary proceeding pursuant to 11 USC §§544 and 550.
3. On July 6, 2005, an Order for Relief was entered upon the filing of a Petition by the Debtor under Chapter 7 of the United States Bankruptcy Code.
4. Defendant Orange County Ironworks, LLC ("OCIW-LLC"), at all times relevant herein, is a domestic limited liability company organized under the laws of the State of New York.

5. Defendants Daniel Teutul, Paul M. Teutul and Paul Teutul (collectively “the

Teutuls”), are each residents of the State of New York.

6. Defendant Daniel Teutul is the son of defendant Paul Teutul, and at all times relevant herein, was the corporate treasurer and a “manager” of the Debtor, and in or about 2002-2003 became the beneficial owner of the Debtor.

7. Defendant Paul M. Teutul is the son of defendant Paul Teutul, and at all times relevant herein, was the record owner of all of the outstanding stock of the Debtor.

8. Defendant Paul Teutul was the founder of the Debtor, and caused the stock of the Debtor to be issued to his son, defendant Paul M. Teutul, and served as a “consultant” to the Debtor.

9. Defendant Paul Teutul, as head of the Teutul family, exercised de facto control over the Debtor.

10. For eleven years, the Debtor engaged in the successful business of miscellaneous and structural steel fabrications at 27 Stone Castle Road, Rock Tavern, New York and at 163 Temple Hill Road, Vails Gate, New York.

11. In November 2003, at a time when the Debtor was being managed solely by Daniel Teutul, although owned nominally by his brother, Paul M. Teutul, the Debtor defaulted and was terminated under a Subcontract with Turner Construction Company (“Turner”) to furnish miscellaneous and structural steel at a construction project for the NYC School Construction Authority. Turner gave the Debtor written notice that Turner would hold it liable for all costs and damages that Turner incurred in completing the Subcontract and resulting from delays to the Project. The Teutuls were told personally that Turner would bring suit against the Debtor to recover such damages.

12. On or about February 25, 2004, Turner commenced an action against the Debtor

(the "Turner Action") in the Supreme Court, New York County under Index No.

600346/04 to recover the damages arising from Debtor's breach of its subcontract with Turner.

13. Upon being faced with its liability to Turner, the Teutuls devised and undertook a scheme to continue the business of the Debtor through a newly formed entity, OCIW-LLC, and divert the assets of the Debtor to the newly formed entity, OCIW-LLC, in order to shed the Debtor of its assets and thereby hinder, delay and defraud the creditors of the Debtor, including Turner.

14. In furtherance of this scheme, from in or about February 2004 through in or about October 2004, the defendants undertook certain actions, including, but not limited to, the following:

a) formed Defendant OCIW-LLC employing the same trade name and same doing business name of the Debtor of Orange County Ironworks, thereby intending that the customers of the Debtor would continue to contract for services and materials with OCIW-LLC;

b) commencing in or about February/March 2004, obtained numerous new contracts in the name of OCIW-LLC from the existing customers of the Debtor, thereby exploiting business opportunities that would have, and should have, belonged to the Debtor;

c) subcontracted the work of these new contracts to the Debtor at prices determined by defendant Daniel Teutul, thereby insuring that the profits of these new contracts went to OCIW-LLC;

d) performed the work under these new contracts at the fabrication shops

and office facilities still leased by the Debtor at 27 Stone Castle Road, Rock Tavern, New York and at 163 Temple Hill Road, Vails Gate, New York;

e) purportedly purchased the shop equipment and office equipment of the

Debtor based on an appraisal that, among other things, substantially understated the actual “in place” values of the shop equipment and omitted significant items of shop equipment owned by the Debtor, including shop equipment owned by the Debtor which OCIW-LLC has used, and continues to use;

f) deposited checks issued by customers payable to the Debtor into the

accounts of OCIW-LLC;

g) preferentially purchased materials from vendors of the Debtor who in

turn forgave debts owed by the Debtor, thereby preserving for OCIW-LLC the Debtor’s goodwill with its vendors;

h) in or about October 2004, transferred the employees of the Debtor to

OCIW-LLC;

i) in or before November 2004, conveyed and transferred the valuable

leaseholds for the 27 Stone Castle Road, Rock Tavern, New York and for the 163 Temple Hill Road, Vails Gate, New York shop and office facilities to OCIW-LLC, without consideration for the fixed assets, and at a monthly rental that did not reflect fair value for the leaseholds;

j) used the premises leased by the Debtor for office and shop work for this

start-up operation, OCIW-LLC, as well as for work by other entities controlled by the Teutuls, including, Gabriel Steel Erectors and Danfall Equipment, LLC, without consideration; and

k) on or about October 2004, completed the Debtor's existing contracts at

costs paid from the Debtor's funds, thereby preserving the goodwill of the Debtor that was being transferred to OCIW-LLC without consideration.

15. On June 23, 2005, the New York State Appellate Division, First Department, affirmed the award of partial summary judgment in Turner's favor on the issue of Debtor's liability in the Turner Action.

16. On July 6, 2005, the Debtor filed a Petition under Chapter 7 of the United States Bankruptcy Code to liquidate the Debtor.

17. On April 19, 2006, Turner obtained and docketed a judgment against the Debtor for damages in the sum of \$1,303,799.71, which was filed as a claim in the Debtor's Bankruptcy Estate.

18. During the eleven years of its operation, the Debtor had created valuable goodwill and made its name well known in the business of miscellaneous and structural steel fabrication.

19. From in or about February 2004, to in or about to July 2005, the Teutuls, with the intent to hinder, delay and defraud the creditors of the Debtor, including Turner, conveyed the goodwill, trade names, business, leases, equipment, contracts and other valuable assets of the Debtor to defendant OCIW-LLC without fair consideration.

20. At the time of and subsequent to the transfer of the Debtor's business to OCIW-LLC, the principal operators of both companies, being the same persons, collected payments that were required to be made to the Debtor and assumed contracts on which payments were required to be made to the Debtor, all of which sums were preferential payments constituting trust funds for the benefit of the creditors of the Debtor, including, Turner.

21. The conveyance of the Debtor's goodwill to OCIW-LLC was without

consideration.

22. Exploiting Debtor's goodwill, in 2004, its first year of operation, OCIW-LLC

had sales of \$5.5 million and in 2005 had sales of \$15 million. At least \$9.5 million of OCIW-LLC's sales between 2004 and 2006 were generated from former customers of the Debtor.

23. The assets of the Debtor consisting of, among other things, its goodwill, trade

names, business, leases, contracts and shop equipment constitute a trust fund for the payment of the debts and obligations to its creditors, the value of which was more than sufficient to pay the debts and obligations of the Debtor to its creditors.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST  
DEFENDANT ORANGE COUNTY IRONWORKS, LLC**

24. Plaintiff repeats, reiterates and realleges each and every allegation contained in

paragraphs numbered "1" through "23" as if the same were more fully set forth herein at length.

25. At the time of the transfers and conveyances of the goodwill, trade names,

business, leases, contracts, equipment and other assets from the Debtor to OCIW-LLC (the "Conveyances"), an action for money damages had been commenced against the Debtor by Turner.

26. The Conveyances made by the Debtor were without fair consideration.

27. Turner's final docketed judgment against the Debtor has not been satisfied.

28. As a result of the foregoing, the plaintiff is entitled to an order and judgment of

this Court pursuant to §273-a of the Debtor and Creditor Law of the State of New York that the Conveyances be adjudged fraudulent and that the Conveyances be vacated and set aside.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST  
DEFENDANT ORANGE COUNTY IRONWORKS, LLC**

29. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "28" as if the same were more fully set forth herein at length.

30. At the time of the Conveyances, the Debtor was insolvent or, as a result of the Conveyances, was rendered insolvent.

31. The assets of the Debtor conveyed to OCIW-LLC had a value, at the time of the Conveyances, in excess of the Debtor's debts and liabilities.

32. As a result of the foregoing, the plaintiff is entitled to an order and judgment of this Court pursuant to §273 of the Debtor and Creditor Law of the State of New York that the Conveyances be adjudged fraudulent and that the Conveyances be vacated and set aside.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST  
DEFENDANT ORANGE COUNTY IRONWORKS, LLC**

33. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "32" as if the same were more fully set forth herein at length.

34. The Conveyances were made by the Debtor to OCIW-LLC with the actual intent to hinder, delay and defraud its creditors, and OCIW-LLC accepted the Conveyances with like intent.

35. As a result of the foregoing, the plaintiff is entitled to an order and judgment of this Court pursuant to §276 of the Debtor and Creditor Law of the State of New York that the Conveyances be adjudged fraudulent and that the Conveyances be vacated and set aside.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST  
DEFENDANT ORANGE COUNTY IRONWORKS, LLC**

36. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "35" as if the same were more fully set forth herein at length.

37. At all times relevant hereto, the Debtor was in the business of miscellaneous steel fabrication and structural steel fabrication.

38. At all times relevant hereto, the Debtor was entirely owned, operated and controlled by the Teutuls.

39. At all times relevant hereto, defendant Daniel Teutul was the corporate treasurer and a "manager" of the Debtor and was the beneficial owner of the Debtor.

40. Defendant OCIW-LLC was formed as an entity contemporaneously with the commencement of the Turner Action.

41. Daniel Teutul was made the sole member of defendant OCIW-LLC.

42. From in or about February 2004, to in or about November 2004, defendant OCIW-LLC acquired all of the tangible and intangible property and assets of the Debtor, including the goodwill of its business, or assumed ownership over said property, including without limitation, the trade name of "Orange County Iron Works" and variations thereof.

43. In or about October 2004, nearly all of the Debtor's employees became employees of defendant OCIW-LLC.

44. Defendant OCIW-LLC engages in the same miscellaneous steel fabrication and structural steel fabrication business engaged in by the Debtor.

45. Many of the Debtor's customers became customers of defendant OCIW-LLC.



46. Defendant OCIW-LLC uses a trade name that is substantially similar or

identical to that used by the Debtor, uses the same office and shop locations, fixtures, telephone and facsimile number used by the Debtor and employs substantially the same employees that were employed by the Debtor to conduct its business.

47. Defendant OCIW-LLC uses many of the same vendors that supplied the Debtor,

including vendors from whom defendant OCIW-LLC made preferential purchases, in order to preserve the goodwill with those vendors and to ensure the continuity of the business transferred to defendant OCIW-LLC.

48. Defendant OCIW-LLC utilizes the same assets that were utilized by Debtor,

including, but not limited to, cranes, vehicles, tools and equipment.

49. Defendant Daniel Teutul is employed by defendant OCIW-LLC and conducts

the day-to-day operations of defendant OCIW-LLC in the same manner that he managed the operations of the Debtor before it purportedly ceased conducting business.

50. Defendant Daniel Teutul controls the daily operations of OCIW-LLC, and Marie

Ziegler maintains the accounts and the books of defendant OCIW-LLC, as both did in the same manner for the Debtor.

51. Immediately after defendant OCIW-LLC was created, it began to receive

contracts that should have gone to the Debtor, while using the Debtor to perform the work under those contracts.

52. From the creation of defendant OCIW-LLC, the Debtor began to wind down its

operations and prepare for its purported liquidation.

53. Directly following the purported acquisition by OCIW-LLC of all of the assets

and property of the Debtor, the Debtor purportedly ceased business operations.

54. As a result of the foregoing, defendant OCIW-LLC merged with the Debtor and

became liable for the debts and liabilities of Debtor as the successor to the Debtor.

55. As a result of the foregoing, plaintiff is entitled to an order and judgment of this

Court that defendant OCIW-LLC is the successor to the Debtor and liable to the creditors of the Debtor.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANTS**  
**DANIEL TEUTUL, PAUL M. TEUTUL AND PAUL TEUTUL**

56. Plaintiff repeats, reiterates and realleges each and every allegation contained in

paragraphs numbered "1" through "55" as if the same were more fully set forth herein at length.

57. Defendant Daniel Teutul, in his capacity as beneficial owner, "manager" and

corporate officer of the Debtor, defendant Paul M. Teutul, in his capacity as record owner of the stock of the Debtor, and defendant Paul Teutul, as de facto controlling party of the Debtor, acting in concert with each other, orchestrated the Conveyances without making any provisions for the payment or discharge of the debts and liabilities of the Debtor.

58. Because of the actions of these defendants, the Debtor has no means or property

with which to pay its liabilities.

59. At the time the Conveyances were orchestrated by these defendants, the Debtor

was a defendant in the Turner Action for money damages that resulted in the docketing of a final judgment against the Debtor which is unsatisfied.

60. The Conveyances which were orchestrated by these defendants were without

fair consideration.

61. The Conveyances which were orchestrated by these defendants rendered the

Debtor insolvent and unable to pay its debts.

62. As a result of the foregoing, the plaintiff is entitled to an order and judgment that the Conveyances orchestrated by these defendants were fraudulent pursuant to §§273 and/or 273(a) of the Debtor and Creditor Law of the State of New York and that the Conveyances be adjudged fraudulent and that the Conveyances be vacated and set aside and that these defendants be ordered to vacate and set aside the Conveyances.

**AS AND FOR A SIXTH CAUSE OF ACTION AGAINST DEFENDANTS  
DANIEL TEUTUL, PAUL M. TEUTUL AND PAUL TEUTUL**

63. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered “1” through “62” as if the same were more fully set forth herein at length.

64. Defendants Daniel Teutul, Paul M. Teutul and Paul Teutul, acting in concert with each other, did orchestrate, instigate, cause and/or abet the Conveyances of all of the goodwill, trade names, equipment, contracts, leases and other property and assets of the Debtor to OCIW-LLC, with the actual intent to hinder, delay and defraud the Debtor’s creditors, and caused the Conveyances to be accepted on behalf of defendant OCIW-LLC, with knowledge of the wrongful and actual fraudulent intent.

65. As a result of the foregoing, the plaintiff is entitled to an order and judgment that the Conveyances orchestrated by these defendants were fraudulent pursuant to §276 of the Debtor and Creditor Law of the State of New York and that the Conveyances be vacated and set aside and that these defendants be ordered to vacate and set aside the Conveyances.

WHEREFORE, plaintiff demands judgment against defendants as follows:

a. That the Conveyances by the Debtor to defendant Orange County Ironworks, LLC of its goodwill, equipment, leases, contracts and other property and assets be adjudged fraudulent, vacated and set aside, and that defendant Orange County Ironworks, LLC be held liable for the value of the Conveyances;

b. That defendant Orange County Ironworks, LLC be found to be liable as the successor to the Debtor for the liabilities of Debtor;

c. That defendants Daniel Teutul, Paul M. Teutul and Paul Teutul be held liable for the value of the Conveyances;

d. That defendants Orange County Ironworks, LLC, Daniel Teutul, Paul M. Teutul and Paul Teutul be liable for plaintiff's reasonable attorneys' fees costs and disbursements with respect to this proceeding, pursuant to §276-a of the Debtor and Creditor Law of the State of New York;

e. For the costs, disbursements, incurred in prosecuting this action; and

f. For such other and further relief as this Court may deem just and proper.

Dated: June 22, 2007  
New York, NY

PECKAR & ABRAMSON, P.C.

By: /s/ Howard M. Rosen  
HOWARD M. ROSEN, ESQ. (HR #9443)  
Co-Counsel for Plaintiff  
Thomas Genova, as Trustee  
546 Fifth Avenue, 17th Fl.  
New York, NY 100036  
(212) 382-0909

and

Dated: June 22, 2007  
Poughkeepsie, NY

McCABE & MACK LLP

By: /s/ Lance Portman  
LANCE PORTMAN, ESQ. (LNP-3079)  
Co-Counsel for Plaintiff Thomas Genova,  
as Trustee  
63 Washington Street  
Poughkeepsie, NY 12601  
(845) 486-6800