

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

<b>IN RE:</b>  <b>MISTY CHANEY BRADY, DEBTOR</b>	<b>CASE NO. 17-41120-MXM</b>  <b>CHAPTER 11</b>
<b>MAXUS HEALTHCARE PARTNERS, PLAINTIFF</b>  <b>v.</b>  <b>MISTY CHANEY BRADY, DEFENDANT.</b>	<b>ADV. NO.</b>

**COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT PURSUANT TO  
SECTION 523 OF THE BANKRUPTCY CODE**

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**NOW INTO COURT**, through undersigned counsel, comes Maxus Healthcare Partners, LLC (“*Maxus*”), who files this *Complaint to Determine Dischargeability of Debt Pursuant to Section 523 of the Bankruptcy Code* (the “*Complaint*”). In support of the Complaint, Maxus respectfully represents as follows:

**I. SUMMARY**

1. On December 31, 2012, Maxus executed an Asset Purchase Agreement (the “*APA*”) with Texas RHH, LLC (“*RHH*”) and Misty Chaney-Brady (“*Brady*”) (as RHH’s sole shareholder).<sup>1</sup> In connection with the APA, Maxus paid more than \$7 million.

2. Well after the transaction closed, Maxus learned that (i) RHH historically failed to remit payroll taxes to the IRS; (ii) RHH accumulated over \$2.7 million in tax liens; and (iii) RHH’s financial statements were materially fraudulent. The multimillion dollar tax lien was

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<sup>1</sup> A true and correct copy of the APA is attached hereto as **Exhibit A**. Exhibits have been redacted to the extent necessary to protect the privacy of certain information such as names, phone numbers, account numbers.

never disclosed to Maxus prior to the execution of the APA. Instead, RHH and Brady represented that RHH was free and clear of all liens. To make matters worse, the multimillion dollar tax lien was purposefully hidden from Maxus. Brady and RHH proceeded to materially breach various known terms of the APA, with the knowledge and intent to cause injury to Maxus. In furtherance of the fraud scheme, Brady also illegally accessed Maxus's computer systems, causing further damages.

3. Maxus then brought suit against RHH and Brady—and BP Chaney, LLC; Zera, Inc.; Curtis James Brady; Furtek & Associates, LLC; and Richard E. Furtek—in the 17th District Court of Texas, Tarrant County (Case No. 017-275219-14) (the “*State Court Suit*”) for various acts of breach of contract, fraud, fraudulent inducement, negligent misrepresentation, money had and received/unjust enrichment, conversion and other related business torts. After a six-week trial, the jury returned its verdict on February 21, 2017 (the “*Jury Verdict*”).<sup>2</sup> In the Jury Verdict, the jury determined that Brady committed fraud and other harmful intentional injury against Maxus and fixed Brady's liability at \$4,859,628.90 in damages.<sup>3</sup>

4. The afternoon before the Jury Verdict was to be reduced to judgment, Brady commenced the above-captioned bankruptcy proceeding (Case No. 17-41120) under chapter 13, which was later converted to chapter 11. On May 30, 2017, the Court granted Maxus's *Motion to Lift Stay* and permitted (i) Maxus to proceed in the State Court Suit proceedings to have the 17th District Court, Tarrant County, Texas (the “*State Court*”) issue and enter a judgment in the State Court Suit, and for Debtor to take any action authorized in the State Court in response; and (ii) Debtor and Maxus to take any and all actions in the State Court or any appellate court after entry of such judgment as may relate to such judgment becoming a final and unappealable

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<sup>2</sup> A copy of the Jury Verdict is attached hereto as **Exhibit B**.

<sup>3</sup> This amount is calculated by adding the damages the jury found against Brady for fraud (\$2.3 million – Question No. 23), money had and received (\$2.3 million – Question No. 39), promissory estoppel (\$250,000 – Question No. 42), and harmful access of a computer (\$9,628.89 – Question No. 37).

judgment. Maxus's Motion for Entry of Judgment is set for hearing in State Court on August 1, 2017.

5. Maxus brings this adversary proceeding seeking a determination from this Court that the entirety of the debt owed by Brady to Maxus arising from the State Court Suit is non-dischargeable under section 523 of the Bankruptcy Code. *See* 11 U.S.C. §§ 523(a)(2)(A), 523(a)(6).

## II. JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1334, 151, and 157 and the Standing Order of Reference in this district. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) relating to this Court's determination of a discharge of certain debts.

7. Venue is proper in this district under 28 U.S.C. § 1409(a).

8. This Court has constitutional authority to enter a final judgment as to the dischargeability of a debt. *Farooqi v. Carroll (In re Carroll)*, 464 B.R. 293, 312 (Bankr. N.D. Tex. 2011).

## III. PARTIES

9. Maxus Healthcare Partners, LLC ("**Maxus**") is a limited liability company authorized to do business in Texas, with its principal place of business in Fort Worth, Texas.

10. The Debtor, Misty Chaney Brady ("**Brady**"), is an individual residing in Fort Worth, Texas, and is a debtor under chapter 11 of the Bankruptcy Code.

## IV. FACTUAL BACKGROUND

11. As determined by the jury in the State Court Suit, Brady committed fraud against Maxus; wrongfully retained millions of dollars that belonged to Maxus; committed promissory estoppel against Maxus, and committed harmful access by computer.

***A. Brady made a series of fraudulent representations to Maxus in order to induce Maxus to purchase Texas RHH, LLC and Zera, Inc. from Brady for over \$7 million dollars.***

12. Maxus furnishes certified and licensed home health services to patients in the State of Texas. Seeking to expand the area it serviced, Maxus entered into negotiations with Texas RHH, LLC ("**RHH**"), through Brady (as RHH's sole shareholder) to purchase RHH's assets and properties.

13. Prior to engaging in negotiations with Maxus, Brady had incurred a multi-million dollar payroll tax liability with the Internal Revenue Service (the "**IRS**"). Throughout her negotiations with Maxus for the sale of RHH's assets, Brady (i) submitted fraudulent financial statements to Maxus; and (ii) never disclosed the payroll tax liability (or the resulting IRS lien) to Maxus.

14. Ultimately, on December 31, 2012, Maxus, RHH and Brady (as RHH's sole shareholder) entered into the Asset Purchase Agreement (the "**APA**"). By way of the APA, Maxus acquired substantially all of the assets, rights and properties owned, held or used by RHH that related to RHH's business. Brady also executed the APA in her individual capacity, as to certain sections thereof, for the purpose of inducing Maxus to execute the APA. Unquestionably, Maxus relied on Brady's representations and covenants leading up to and in the APA. Maxus eventually discovered that RHH made numerous misrepresentations concerning the APA, and breached the APA's representations and warranties. RHH's liability for its breaches of the APA's representations and warranties can be imputed to Brady (RHH's sole shareholder).

15. In an effort conceal the existence of the payroll tax liability (and resulting IRS lien), Brady used millions of Maxus's dollars that had been wired to RHH and Brady pre-closing to immediately pay off approximately \$3.4 million of taxes, penalties and interest that RHH

owed the IRS. Brady used the wired money despite the fact that the money was only to be used to fund the closing, at the time of closing. Brady never disclosed her plan to use Maxus's closing money to pay off the undisclosed payroll tax liabilities. In connection with her improper use of Maxus's money, at trial, the jury found that Brady wrongfully retained \$2.3 million that belonged to Maxus (separate from the fraud damages the jury found Maxus sustained).

16. When the parties negotiated the APA, Zera Inc.'s ("**Zera**") (of which Brady is the sole shareholder) financials were included in RHH's financial statements and depicted as RHH's Granbury branch. The revenues and assets associated with the Granbury branch represented an important part of the APA. However, Maxus could not acquire Zera's Medicare provider number at the closing of the APA due to a prohibition on transferring such provider numbers less than thirty-six months after the respective provider number is issued. Accordingly, Maxus, RHH and Brady included a provision in the APA that required a "Management Agreement" to be executed between Maxus and Zera (the "**Management Agreement**"). Effectively, the Management Agreement permitted Maxus to operate the Granbury branch using Zera's provider number and receive all of the associated revenues.

17. The parties agreed that the Management Agreement would stay in place indefinitely until Zera transferred the provider number to Maxus, due to the thirty-six month rule. In addition to the Management Agreement, Brady (as Zera's sole shareholder) represented that the provider number would ultimately be transferred to Maxus. Despite the thirty-six month period lapsing months ago and Brady's express representations that the provider number would be transferred to Maxus, Brady and Zera refused to transfer the Medicare provider number. At trial, the jury found Brady liable for promissory estoppel, in the amount of \$250,000.00, as a result of Brady's "promise" that she would transfer Zera's Medicare Provider Number to Maxus.

18. Brady made a number of fraudulent misrepresentations to Maxus regarding RHH's financial condition. For example, Brady repeatedly sent fraudulent financial statements to Maxus that concealed the multi-million dollar payroll tax liability. When Brady made these representations, Brady knew they were false and/or made the representations recklessly, as a positive assertion, and without knowledge of their truth. As Brady intended, Maxus relied upon these representations and omissions of material facts to its detriment when it entered into the agreements at-issue in this case, which has caused injury to Maxus.

19. Maxus paid RHH and Brady more than \$7 million, which was a grossly inflated price given the misrepresentation of RHH's financial condition. As found by the jury, this misrepresentation caused Maxus to sustain \$2.3 million in damages.

20. Likewise, Brady promised that she would transfer Zera's Medicare Provider Number to Maxus at the expiration of the 36-month rule. Despite this promise, Brady failed to transfer Zera's Medicare Provider Number to Maxus. This false promise caused Maxus to sustained \$250,000 in damages.

***B. Brady committed harmful access by computer to further the above-outlined fraud scheme.***

21. In furtherance of her fraudulent scheme, Brady directed Maxus's email server host, Hostway Global Web Solutions ("**HGWS**"), to eliminate Maxus's security controls over Maxus's email accounts on renewhomehealth.com (which was purchased under the APA as an Acquired Asset). This provided Brady with full and exclusive access to the security controls of Maxus's email systems.

22. RHH's employees became Maxus's employees as of the Closing Date. One of these transferred employees was RHH's Director of Operations, who is also Brady's close friend. That employee was directed by Maxus to change the security controls for the email accounts

(which were Acquired Assets) and transfer them to Maxus. Unbeknownst to Maxus, the employee never changed the controls. It was not until soon before the State Court Suit was filed that Maxus discovered that Brady still had administrative rights and access to the email system. The employee's resignation was suspiciously timed with the wrongful activities of Brady and RHH.

23. Because that employee had administrative access to Maxus's email accounts, Maxus logged in to the email system on October 9, 2014, to change the employee's security controls and terminated the employee's access. The next day, on October 10, 2014, Brady contacted HGWS and—using a Site Control password that was never disclosed to Maxus and which Maxus never even knew existed—Brady changed the security controls back and locked Maxus out of the email system.

24. For the first six business days after Brady locked Maxus out, until an emergency consulting firm hired by Maxus was able to redirect current emails to a new hosting site set up by Maxus, Maxus could receive and send emails but could not set up new accounts and could not change or recover logins or passwords for users.

25. Importantly, the server contained all email history of the business, including forty-five current email accounts as well as archived emails of an unknown number of former employees. Brady prevented Maxus from accessing or migrating these archives contained on the hosting server. Brady admitted that she purposely eliminated Maxus's security controls and changed the security control codes to provide her with control and exclusive access to the archived emails stored on the hosting site.

26. Maxus was forced to incur emergency consulting fees in an attempt to regain control over its email systems, redirect emails to ensure that future emails were protected, and set up email accounts for new users.

27. Maxus was also forced to seek and obtain temporary injunctive relief to regain access to emails (at least those that still existed and had not already been deleted or destroyed by Brady).

## V. PROCEDURAL BACKGROUND

28. After learning of Brady's fraud and other actionable conduct, Maxus filed the State Court Suit against Brady and several other entities for various acts of breach of contract, fraud, fraudulent inducement, negligent misrepresentation, money had and received/unjust enrichment, conversion and other related business torts in the 17th District Court of Texas, Tarrant County (Case No. 017-275219-14).

29. After a six-week trial on the merits, the jury returned its verdict on February 21, 2017. In the Jury Verdict, the jury determined that Brady was liable for fraud, money had and received, promissory estoppel, and other harmful intentional injury against Maxus and fixed Brady's liability at \$4,859,628.90 in damages.

30. After receipt of the Jury Verdict, Maxus filed a *Motion for Entry of Final Judgment and Motion for Award of Attorney's Fees and Expenses* (the "***Motion for Entry of Judgment***") on March 10, 2017 in the State Court Suit.

31. After discussion with counsel, the Motion for Entry of Judgment was set for hearing on Tuesday, March 21, 2017 at 8:30 AM. On the afternoon before the setting of the Motion for Entry of Judgment, Brady commenced the above-captioned bankruptcy case (Case No. 17-41120) under chapter 13, which was later converted to chapter 11.

32. On May 10, 2017, Maxus filed a *Motion to Lift Stay to Allow Maxus Healthcare Partners, LLC to Proceed within State Court with Proceedings to Obtain Issuance and Entry of Judgment in Maxus Healthcare Partners, LLC v. Texas RHH, LLC, et al., Case No. 17-275219-14, 17th Judicial District, Tarrant County, Texas, and for Debtor and Maxus to Conduct such*

*Further Proceedings as Applicable to Obtain Final and Unappealable Judgment* (the “**Motion to Lift Stay**”) (ECF Doc. No. 39, Case No. 17-41120). On May 30, 2017, the Court granted the Motion to Lift Stay and permitted Maxus to proceed in the State Court Suit proceedings to have the State Court Issue and enter a judgment upon the Jury Verdict and for Brady to take any action authorized in the State Court in response.

33. Maxus’s Motion for Entry of Judgment is set for hearing in State Court on August 1, 2017.

## VI. CAUSES OF ACTION

### **Cause of Action One:** **Fraud under Section 523(a)(2)(A) of the Bankruptcy Code**

34. Section 523(a)(2)(A) of the Bankruptcy Code provides that a debt is nondischargeable if it is “for money, property, services, or an extension, renewal, or refinancing of credit,” to the extent that it was “obtained by false pretenses, a false representation, or actual fraud.” 11 U.S.C. § 523(a)(2)(A).

35. In the Fifth Circuit, for a debt to be nondischargeable under section 523(a)(2)(A) of the Bankruptcy Code, the creditor must show that (i) the debtor made a representation; (ii) the debtor knew the representation was false; (iii) the representation was made with the intent to deceive the creditor; (iv) the creditor actually and justifiably relied on the representation; and (v) the creditor sustained an injury as a proximate result of its reliance. *Guion v. Sims (In re Sims)*, 479 B.R. 415, 423 (Bankr. S.D. Tex. 2012), *subsequently aff’d*, 548 F. App’x 247 (5th Cir. 2013)(citing to *AT&T Universal Card Servs. v. Mercer (In re Mercer)*, 246 F.3d 391, 403 (5th Cir. 2001)).

36. As outlined herein and determined by the State Court jury, Brady made several representations to Maxus which she knew to be false with the intent of deceiving Maxus,

including: (i) the financial condition of RHH; and (ii) that Zera's Medicare provider number would be transferred to Maxus.<sup>4</sup>

37. Brady made these statements with the intent to deceive Maxus and Maxus actually and justifiably relied on these materially false statements and nondisclosures when it entered into the APA.

38. As a proximate and foreseeable result of Brady's fraudulent misrepresentation concerning the financial condition of RHH, Maxus overpaid to purchase RHH's assets, as determined by the State Court Jury.<sup>5</sup>

39. As a proximate and foreseeable result of Brady's fraudulent misrepresentation that Zera's Medicare provider number would be transferred to Maxus, Maxus sustained damages by paying for Zera's Medicare provider number which was never received, as determined by the State Court Jury.<sup>6</sup>

40. Under Texas law, a director may be personally liable for the tort debt of his company if the claimant can prove that (a) the director's conduct amounts to actual fraud on the claimant and (b) the director's conduct was primarily for his direct personal benefit. TEX. BUS. ORG. CODE § 21.223(b); *JNS Aviation, Inc. v. Nick Corp.*, 418 B.R. 898, 907 (N.D. Tex. 2009). As outlined herein and as determined by the State Court, Brady—in part through her companies RHH and/or Zera—committed actual fraud on Maxus in order for Brady to profit from the fraud on Maxus. Therefore, to the extent deemed necessary, it is proper to find Brady personally liable for any tort debt attributed to RHH and/or Zera arising from the herein outlined fraud activities. *See Kwasneski v. Williams (In re Williams)*, ADV 10-05077, 2011 WL 240466, at \*3 (Bankr. W.D. Tex. Jan. 24, 2011) (finding that under Texas law, in cases of misrepresentations or fraud,

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<sup>4</sup> See Jury Verdict, Question Nos. 19, 17, and 22.

<sup>5</sup> See Jury Verdict, Question No. 23.

<sup>6</sup> See Jury Verdict, Question No. 42.

a corporate agent may be held personally liable for his own misrepresentations); *see Luce v. First Equipment Leasing Corp.(Matter of Luce)*, 960 F.2d 1277, 1283 (5th Cir. 1992)(establishing debt arising from a fraudulent scheme can be imputed to a related party which shared in monetary benefits of that fraud).

**Cause of Action Two:**  
**Willful and Malicious Injury under Section 523(a)(6) of the Bankruptcy Code**

41. Section 523(a)(6) of the Bankruptcy Code excepts from discharge debts “for willful and malicious injury by the debtor to another entity or to the property of another entity.” 11 U.S.C. § 523(a)(6).

42. The Fifth Circuit has aggregated “willful and malicious into a unitary concept and held that an injury is “willful and malicious” where there is either an objective substantial certainty of harm or a subjective motive to cause harm. *Raspanti v. Keaty (In re Keaty)*, 397 F.3d 264, 269 (5th Cir. 2005); *Guerra & Moore, Ltd., LLP v. Cantu (In re Cantu)*, 389 F. App’x 342, 345 (5th Cir. 2010).

43. As outlined herein and determined by the State Court jury, Brady intentionally accessed Maxus’s computer, computer network, or computer system without the effective consent of Maxus.<sup>7</sup>

44. Brady committed this tortious conduct with the intent to injure Maxus by continuing to perpetrate Brady’s fraud scheme against Maxus. *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998).

**VII. PRAYER**

45. **WHEREFORE**, Maxus respectfully requests that this Court enter a judgment against Brady which:

(a) declares that Brady’s indebtedness to Maxus for fraud is a nondischargeable debt

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<sup>7</sup> See Jury Verdict, Question No. 36.

pursuant to 11 U.S.C. § 523(a)(2)(A);

- (b) declares that Brady's indebtedness to Maxus for money had and received (relating to her improper withholding of Maxus's money) is a nondischargeable debt pursuant to 11 U.S.C. § 523(a)(6);
- (c) declares that Brady's indebtedness to Maxus for promissory estoppel (relating to her failure to transfer Zera's Medicare Provider Number) is a nondischargeable debt pursuant to 11 U.S.C. § 523(a)(6);
- (d) declares that Brady's indebtedness to Maxus for harmful access to a computer is a nondischargeable debt pursuant to 11 U.S.C. § 523(a)(6);
- (e) grants a nondischargeable judgment in favor of Maxus against Brady, in an amount to be determined; and
- (f) grants Maxus any other and further relief to which Maxus may be entitled.

Respectfully submitted,

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**ATTORNEYS FOR MAXUS HEALTHCARE  
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**CERTIFICATE OF SERVICE**

I, undersigned counsel, hereby certify that on June 30, 2017 a true and correct copy of the foregoing *Complaint to Determine Dischargeability of Debt under 11 U.S.C. §§ 523(a)(2)(A) and 523(a)(6)* was served upon the following parties through this Court’s CM/ECF noticing system and by regular first class mail:

Gregory Wayne Mitchell The Mitchell Law Firm, L.P. 12720 Hillcrest Road Suite 625 Dallas, TX 75230	Synchrony Bank c/o PRA Receivables Management, LLC PO Box 41021 Norfolk, VA 23541	United States Trustee 1100 Commerce Street Room 976 Dallas, TX 75242
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/s/ Bryan T. Davis  
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