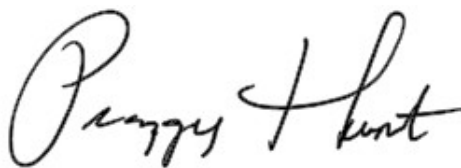


This order is SIGNED.

Dated: March 28, 2024



PEGGY HUNT
U.S. Bankruptcy Judge



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

In re:

INLAND BOAT CLUB, LLC,

Debtor.

Bankruptcy Case No. 22-21879

Chapter 11, Subchapter V

INLAND BOAT CLUB, LLC,

Plaintiff,

v.

Adversary Proceeding No. 22-02071

ADAM LEE, an individual; CASEY
WARREN, an individual; UTAH STATE
TAX COMMISSION; and U.S. SMALL
BUSINESS ADMINISTRATION,

Defendants.

Honorable Peggy Hunt

ADAM LEE, an individual and CASEY
WARREN, an individual,

Counterclaim Plaintiffs,

v.

INLAND BOAT CLUB, LLC,

Counterclaim Defendant.

ADAM LEE, an individual and CASEY WARREN, an individual,

Third Party Plaintiffs,

v.

ERIK BLOMQUIST, an individual;
HEATHER MCKENZIE, Trustee of THE
HEATHER MCKENZIE FAMILY
TRUST DATED 1/30/2020; MICHAEL
LEWIS, an individual; JULIE C. LEWIS,
Trustee of THE LEWIS FAMILY TRUST
DATED 12/30/2021; and CHARLES D.
WESTOVER, Trustee of THE CHARLES
DAVID WESTOVER REVOCABLE
TRUST, DATED 2/22/08,

Third Party Defendants.

ADAM LEE, an individual and CASEY WARREN, an individual,

Third Party Plaintiffs,

v.

ROCK CANYON BANK,

Third Party Defendant.

ORDER ON (1) MOTION FOR SUMMARY JUDGMENT FILED BY THIRD-PARTY DEFENDANT HILLCREST BANK, A DIVISION OF NBH BANK AND SUCCESSOR TO ROCK CANYON BANK, AND (2) MOTION TO DISMISS ADVERSARIAL PROCEEDING WITHOUT PREJUDICE FILED BY THIRD-PARTY PLAINTIFFS ADAM LEE AND CASEY WARREN

The matters before the Court are (1) a *Motion for Summary Judgement and Memorandum in Support* [Adv. Dkt. No. 104] (the “**SJ Motion**”) filed by Hillcrest Bank, a division of NBH Bank and successor to Third-Party Defendant Rock Canyon Bank (the “**Defendant**”), and (2) a *Motion to Dismiss Adversarial Proceeding Without Prejudice* [Adv. Dkt. No. 106] (the “**Motion to Dismiss**”) filed by Third-Party Plaintiffs Adam Lee and Casey Warren (collectively, the

“**Plaintiffs**”). Notices of hearing for the SJ Motion and the Motion to Dismiss (collectively, the “**Motions**”) were filed and properly served [Adv. Dkt. Nos. 105, 107].

The Motions pertain to a Third-Party Claim made by the Plaintiffs against the Defendant at pages 19–35 of the Plaintiffs’ *Amended Third Party Complaints* [Adv. P. Dkt. No. 61], asserting three Causes of Action against the Defendant seeking: (1) to avoid certain transactions under the Utah Voidable Transactions Act (the “**Avoidance Action**”); (2) a declaratory judgment determining that the Defendant’s former lien in certain collateral is junior to that of liens claimed by the Plaintiffs in the same collateral (the “**Declaratory Judgment Action**”); and (3) damages for negligence (the “**Negligence Action**”).

Defendant’s SJ Motion seeks dismissal of the Third-Party Claim with prejudice. The Plaintiffs filed an *Opposition* to the SJ Motion [Adv. Dkt. No. 108], and the Defendant filed a *Reply* [Adv. Dkt. No. 109] and the *Declaration of Todd Guymon* [Adv. Dkt. No. 110] in support of the SJ Motion.

The Plaintiffs’ Motion to Dismiss seeks dismissal of “this adversarial proceeding together with all of its counterclaims, crossclaims and third-party complaints without prejudice[,]” including the Third-Party Claim against the Defendant. Motion to Dismiss, p. 4. The Defendant filed a *Partial Objection* to the Motion to Dismiss [Adv. Dkt. No. 111].

The Defendant’s SJ Motion came on for hearing on November 7, 2023. Engles Tejada, Holland & Hart LLP, appeared for the Defendant; and Richard C. Terry, Terry Jessop & Bitner, appeared for the Plaintiffs. Argument was made and the hearing was continued to December 5, 2023, the time set for the hearing on the Plaintiffs’ Motion to Dismiss. On December 5, 2023, the Motion to Dismiss was argued, and the Court took the Motions under advisement.

The Court has considered the SJ Motion, the Opposition, the Reply, the Motion to Dismiss, the Partial Opposition, the record in the above-captioned case and in this adversary proceeding, the arguments of counsel, and the applicable law. Based thereon, the Court files concurrently herewith a *Memorandum of Decision* which is incorporated herein by reference. For the reasons stated in the Memorandum of Decision,

IT IS HEREBY ORDERED as follows:

1. The SJ Motion is **GRANTED IN PART** and **DENIED IN PART**.
2. The Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART**.
3. The Third-Party Claim against the Defendant is **DISMISSED** as follows:
 - a. The Avoidance Action is **DISMISSED** with prejudice;
 - b. The Declaratory Judgment Action is **DISMISSED** for lack of subject matter jurisdiction because it is moot;
 - c. To the extent that the Declaratory Judgment Action is not moot, it is **DISMISSED** with prejudice; and
 - d. The Negligence Action is **DISMISSED** for lack of subject matter jurisdiction.

--END OF ORDER--

DESIGNATION OF PARTIES TO BE SERVED

Service of the foregoing ***ORDER ON (1) MOTION FOR SUMMARY JUDGMENT FILED BY THIRD-PARTY DEFENDANT HILLCREST BANK, A DIVISION OF NBH BANK AND SUCCESSOR TO ROCK CANYON BANK, AND (2) MOTION TO DISMISS ADVERSARIAL PROCEEDING WITHOUT PREJUDICE FILED BY THIRD-PARTY PLAINTIFFS ADAM LEE AND CASEY WARREN*** shall be served to the parties and in the manner designated below.

By Electronic Service: The parties of record in this case, as identified below, are registered CM/ECF users.

- Matthew James Burne matthew.burne@usdoj.gov,
James.Gee@usdoj.gov;Lindsey.Huston@usdoj.gov;Rinehart.Peshell@usdoj.gov;Rachell
e.D.Hughes@usdoj.gov;Brittany.Dewitt@usdoj.gov
- Doyle S. Byers DSByers@hollandhart.com, BKNoble@hollandhart.com
- Kenneth L. Cannon kenneth.cannon@dentons.com, kristin.hughes@dentons.com
- John S. Gygi john.gygi@sba.gov
- Justin D. Heideman jheideman@heidlaw.com,
jthompson@heidlaw.com;mfoote@heidlaw.com;receptionist@heidlaw.com;vwillis@hei
dlaw.com;acooley@heidlaw.com
- Penrod W. Keith penrod.keith@dentons.com, kristin.hughes@dentons.com
- Engels Tejeda ejtejeda@hollandhart.com,
slclitdocket@hollandhart.com,intaketeam@hollandhart.com;lahansen@hollandhart.com
- Richard C. Terry richard@tjblawyers.com, cbcecf@yahoo.com
- Aaron M. Waite aaronmwaite@agutah.gov

By U.S. Mail: In addition to the parties receiving notice through the CM/ECF system, the following parties should be served notice pursuant to Fed. R. Civ. P. 5(b).

*Adam Lee
P O Box 713
Salem, UT 84653-0713*

*Casey Warren
1117 Falcom Circle
Mapleton, UT 84664-4734*

*Phillip Geurts
Geurts Law Firm
17011 Beach Blvd., Suite 900
Huntington Beach, CA 92647*