

B1040 (FORM 1040) (12/15)

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|--|---|--|
| ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse) | | ADVERSARY PROCEEDING NUMBER (Court Use Only) |
| PLAINTIFFS Evan Acton Wyly and Lisa Lyn Wyly, In Their Capacities As Co-Trustees of the Wrangler Trust | DEFENDANTS Samuel Evans Wyly and The Internal Revenue Service | |
| ATTORNEYS (Firm Name, Address, and Telephone No.) Jason S. Brookner and G. Tomas Rhodus Gray Reed & McGraw LLP 1601 Elm Street, Suite 4600 Dallas, TX 75201 (214) 954-4135 | ATTORNEYS (If Known) | |
| PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input checked="" type="checkbox"/> Trustee | PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee | |
| CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Declaratory judgment that the Wrangler Trust is not the Alter Ego of the Debtor | | |
| NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.) | | |
| FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column) | FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input checked="" type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case) | |
| <input checked="" type="checkbox"/> Check if this case involves a substantive issue of state law | <input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23 | |
| <input type="checkbox"/> Check if a jury trial is demanded in complaint | Demand \$ -0- | |
| Other Relief Sought | | |

B1040 (FORM 1040) (12/15)

| BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES | | |
|---|--|--|
| NAME OF DEBTOR Samuel Evans Wyly | | BANKRUPTCY CASE NO. 14-35043-BJH-11 |
| DISTRICT IN WHICH CASE IS PENDING U.S. Bankruptcy Court Northern District of Texas | | DIVISION OFFICE Dallas |
| | | NAME OF JUDGE Barbara J. Houser |
| RELATED ADVERSARY PROCEEDING (IF ANY) | | |
| PLAINTIFF | DEFENDANT | ADVERSARY PROCEEDING NO. |
| DISTRICT IN WHICH ADVERSARY IS PENDING | | DIVISION OFFICE |
| | | NAME OF JUDGE |
| SIGNATURE OF ATTORNEY (OR PLAINTIFF) <i>/s/ Jason S Brookner</i> | | |
| DATE March 7, 2017 | PRINT NAME OF ATTORNEY (OR PLAINTIFF) JASON S. BROOKNER | |

INSTRUCTIONS

The filing of a bankruptcy case creates an “estate” under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor’s discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court’s Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff’s attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

Jason S. Brookner
Texas Bar No. 24033684
G. Tomas Rhodus
Texas Bar No. 16824500
GRAY REED & McGRAW LLP
1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332

**COUNSEL TO EVAN ACTION WYLY AND
LISA LYN WYLY, CO-TRUSTEES OF THE
WRANGLER TRUST**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

| | | |
|----------------------------------|---|--------------------------|
| In re: | § | Chapter 11 |
| | § | |
| SAMUEL EVANS WYLY, | § | Case No. 14-35043-BJH-11 |
| | § | |
| Debtor. | § | |
| _____ | § | |
| | § | |
| EVAN ACTON WYLY and LISA LYN | § | |
| WYLY, IN THEIR CAPACITIES AS CO- | § | Adversary No. 17-_____ |
| TRUSTEES OF THE WRANGLER TRUST, | § | |
| | § | |
| Plaintiffs, | § | |
| | § | |
| v. | § | |
| | § | |
| SAMUEL EVANS WYLY and THE | § | |
| INTERNAL REVENUE SERVICE, | § | |
| | § | |
| Defendants. | § | |
| _____ | § | |

COMPLAINT

Evan Acton Wyly and Lisa Lyn Wyly, as co-trustees of the Wrangler Trust (the “Trustees” or “Plaintiffs”), for their Complaint against Samuel Evans Wyly (“Sam Wyly” or the “Debtor”) and the Internal Revenue Service (the “IRS”), allege as follows:

**I.
NATURE OF THE ACTION**

1. This is an adversary proceeding brought pursuant to section 541(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 7001(9) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) to determine the scope and extent of the property of the Debtor’s estate.

2. The IRS contends that the Wrangler Trust is the Debtor’s alter ego in accordance with a doctrine commonly called “reverse-veil piercing” (hereinafter, the “Alter Ego Claim”).

3. The Alter Ego Claim is property of the Debtor’s estate. As a result, if the Alter Ego Claim is valid, then the assets of the Wrangler Trust are property of the Debtor’s estate under 11 U.S.C. § 541(a) and are available for the benefit of *all* of the Debtor’s creditors, not just the IRS.

4. The Wrangler Trust, however, is an independent entity, separate and apart from the Debtor in every respect. Accordingly, the Alter Ego Claim is invalid, and the Wrangler Trust is not liable for any of the Debtor’s debts.

5. Given the IRS’s persistence on this point, a determination as to the Wrangler Trust’s status as an alter ego of the Debtor is necessary, and principles of judicial economy dictate that the Alter Ego Claim be decided by this Court as part of the Debtor’s bankruptcy case.

6. The Trustees, therefore, file this action seeking a declaratory judgment that the Wrangler Trust is not the Debtor’s alter ego and, as a result, the corpus of the Wrangler Trust is

neither property of the Debtor's estate under section 541(a) of the Bankruptcy Code, nor available for distribution to any of the Debtor's creditors.

**II.
JURISDICTION AND VENUE**

7. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157, 1334, 2201 and 2410.

8. Venue of this adversary proceeding is proper under 28 U.S.C. § 1409.

9. This adversary proceeding presents a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (O).

10. The Trustees, on behalf of the Wrangler Trust, consent to the entry of final orders or judgment by this Court in this adversary proceeding if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

**III.
THE PARTIES**

11. The Wrangler Trust was created effective June 30, 2000. The Trustees are the initial co-trustees of the Wrangler Trust. The Wrangler Trust is listed as a creditor of Debtor in the Debtor's schedules.

12. Sam Wyly is an individual, and he is also the Debtor in the above-captioned chapter 11 case pending in this Court under Case No. 14-35043-BJH-11. The Debtor is the settlor of the Wrangler Trust. The Debtor may be served with process via first class U.S. mail, postage prepaid, at his residence located at 3905 Beverly Drive, Dallas, Texas 75205.

13. A copy of this Complaint is also being served upon counsel to Sam Wyly via the Court's CM-ECF Notification System, as well as via first class U.S. mail, postage prepaid, to

Vinson & Elkins LLP, 2001 Ross Avenue, Suite 3700, Dallas, Texas 75201, Attention: James J. Lee, Esq.

14. The IRS is an instrumentality of the United States Government and, pursuant to Rules 7004(b)(4) and (5) of the Federal Rules of Bankruptcy Procedure, may be served by first class U.S. mail, postage prepaid, addressed to (i) the civil process clerk at the office of the United States Attorney for the Northern District of Texas, 1100 Commerce Street, Third Floor, Dallas, Texas 75242-1699; (ii) the Attorney General of the United States at Washington, District of Columbia by certified mail; and (iii) the Internal Revenue Service, Area Counsel, at 4050 Alpha Road, Farmers Branch, TX 75244.

15. The IRS has appeared in the Debtor's underlying chapter 11 case. Counsel of record for the IRS is also being served via the Court's CM-ECF Notification System and via first class U.S. mail, postage prepaid.

IV. BACKGROUND

16. The Wrangler Trust is an irrevocable Texas trust created by the Debtor as settlor, effective as of June 30, 2000.

17. The beneficiaries of the Wrangler Trust, as described in the Agreement of Trust ("Agreement") are "the children of [the Debtor] and all of their respective descendants, whether now living or hereafter born or adopted, as well as Rosemary Acton Wyly." Agreement § 1.5.

18. The stated purpose of the Wrangler Trust is to provide for "the relative health, education and maintenance needs of [the Debtor's] children" and "the discretionary needs of the [Debtor's] grandchildren and more remote descendants" during its term. Agreement § 3.1.

19. Exhibit A to the Agreement is the Standard Trust Provisions (the “Standard Terms”), which are incorporated by reference into the Agreement for all purposes. Agreement § 5.5.

20. The Trustees were appointed as the initial co-trustees of the Wrangler Trust pursuant to the Agreement. The Trustees are two of the Debtor’s adult children.

21. The Debtor is neither a trustee, *see* Agreement § 2.2(a), nor a beneficiary of the Wrangler Trust.

22. The Debtor does not, and has not, controlled or directed the Wrangler Trust or any of its activities.

23. The Debtor does not have, and has never had, in any sense, a present ownership interest in the Wrangler Trust.

24. The Wrangler Trust was not formed and has not been utilized by the Debtor to conduct his personal business.

25. Appropriate formalities and financial accounting are and have always been followed to maintain the assets and liabilities of Wrangler Trust separate from the assets and liabilities of the Debtor.

26. The financial activities of Wrangler Trust are not and have never been intertwined with those of the Debtor.

27. The Wrangler Trust is not and has never, in any sense, operated as a sham.

28. There is not, and has never been, any unity between the Debtor and the Wrangler Trust such that the separateness of the Wrangler Trust would have ceased.

29. Despite the foregoing, the IRS nonetheless contends that the Wrangler Trust is the Debtor’s alter ego, based on four distinct allegations:

- (a) The Debtor allegedly received over 70% of the distributions from the Wrangler Trust;
- (b) The Debtor allegedly intended to use – and allegedly did use – the Wrangler Trust to fund his lifestyle;
- (c) The Debtor allegedly intended to utilize cash generated by the Wrangler Trust for his own purposes; and
- (d) Shortly after the Wrangler Trust was settled, the Debtor was allegedly making arrangements for the Wrangler Trust to satisfy certain charitable commitments.

30. Even assuming that these allegations are true and can be proven by the IRS, it would not change the fact that under governing legal standards, the Wyly Trust is not the Debtor's alter ego, and the Wrangler Trust is not liable for the Debtor's debts.

31. The Wrangler Trust, therefore, files this complaint seeking a determination and resolution of the alleged Alter Ego Claim as part of the administration of the Debtor's estate because, if the Alter Ego Claim is successful, the proceeds would be used to fund the Debtor's chapter 11 plan and distributions to creditors.

V.

CLAIM FOR RELIEF:

Declaratory Judgment that the Wrangler Trust is not the Alter Ego of the Debtor

32. The Trustees repeat and reallege the allegations set forth in paragraphs 1 through 31 above, as if more fully set forth at length herein.

33. The Wrangler Trust is, and at all times has been, separate from the Debtor. Since inception of the Wrangler Trust, all trust and entity-specific formalities have been observed.

34. The Debtor is neither a beneficiary of the Wrangler Trust, nor does the Debtor have any rights to any of the Wrangler Trust assets.

35. The Debtor has no legal or effective control over the Wrangler Trust, the corpus of the Wrangler Trust or the Trustees.

36. The Wrangler Trust was neither organized, nor has it been operated, as a tool or business conduit of the Debtor.

37. The Wrangler Trust was not formed or used for any illegal purpose.

38. The Wrangler Trust was not formed or used to perpetrate a fraud or a monopoly.

39. The Wrangler Trust was not formed or used to circumvent any statutes or laws.

40. The Wrangler Trust was not formed, used or relied upon to protect against a crime or to justify a wrong.

41. The Wrangler Trust was not formed, used or relied upon as part of an unfair device to achieve an inequitable result.

42. As a consequence, the Trustees are entitled to a declaratory judgment in their favor that the Wrangler Trust is not an alter ego of the Debtor, and that the Wrangler Trust assets are, therefore, not property of the Debtor's estate under section 541(a) of the Bankruptcy Code.

VI. PRAYER

WHEREFORE, the Trustees respectfully pray that the Court:

(A) Enter a declaratory judgment that the Wrangler Trust is not the alter ego of the Debtor and the assets of the Wrangler Trust are not property of the Debtor's estate under section 541(a) of the Bankruptcy Code; and

(B) Enter judgment in favor of the Trustees granting such other and further relief as the Court may deem just and proper.

Respectfully submitted this 7th day of March, 2017.

GRAY REED & MCGRAW LLP

By: /s/ Jason S. Brookner

Jason S. Brookner

Texas Bar No. 24033684

G. Tomas Rhodus

Texas Bar No. 16824500

1601 Elm Street, Suite 4600

Dallas, Texas 75201

Telephone: (214) 954-4135

Facsimile: (214) 953-1332

Email: jbrookner@grayreed.com

trhodus@grayreed.com

**COUNSEL TO EVAN ACTON WYLY AND
LISA LYN WYLY, CO-TRUSTEES OF THE
WRANGLER TRUST**