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11 **UNITED STATES BANKRUPTCY COURT**  
12 **FOR THE DISTRICT OF NEVADA**

13 In re: ) Case No.: 15-10110-LED  
14 )  
15 AMERI-DREAM REALTY, LLC, ) Chapter 7  
16 )  
17 Debtor. )

18 \_\_\_\_\_ )  
19 VICTORIA NELSON, In Her Capacity As The )  
20 Chapter 7 Trustee Of AMERI-DREAM ) Adv. Proceeding No.:  
21 REALTY, LLC, )  
22 Plaintiff, ) **COMPLAINT**

23 vs. )  
24 )  
25 XL AMERICA, INC.; XL INSURANCE )  
26 AMERICA, INC.; XL SELECT )  
27 PROFESSIONAL; PEARL INSURANCE )  
28 GROUP, LLC; GREENWICH INSURANCE )  
29 COMPANY; and DOES I through X; and ROE )  
30 CORPORATE DEFENDANTS XI through )  
31 XX, )  
32 Defendants. )

**COMPLAINT**

1  
2 The Chapter 7 Trustee, Victoria L. Nelson (the “**Trustee**” or the “**Plaintiff**”), by and  
3 through her attorneys, Schwartz Flansburg PLLC, complains and alleges against the Defendants  
4 as follows:  
5

6 **JURISDICTION, PARTIES AND VENUE**  
7

8 1. Ameri-Dream Realty, LLC (the “**Company**”) was a real estate sales and property  
9 management company based in Las Vegas, Nevada prior to filing for relief under Chapter 7 of  
10 the United States Bankruptcy Code.  
11

12 2. The Company is a resident of the State of Nevada and conducted significant  
13 business activities in the District of Nevada.  
14

15 3. The Plaintiff is the Court-appointed Chapter 7 Trustee over the Company in Case  
16 No. 15-10110-LED, United States Bankruptcy Court for the District of Nevada (the “**Action**”).  
17

18 4. XL America, Inc., XL Insurance America, Inc. and XL Select Professional  
19 (collectively, “**XL America**”) are U.S. Based insurers offering insurance and reinsurance  
20 coverages and services.  
21

22 5. Pearl Insurance Group, LLC (“**Pearl**”) is an Illinois limited liability company  
23 which operates as an insurance broker, administrator, and marketer of custom insurance  
24 solutions in the United States.  
25

26 6. Greenwich Insurance Company (“**Greenwich**”) is a member of XL America and  
27 a domestic insurance company which offers a variety of insurance coverage to individuals and  
28 corporations throughout the United States.  
29

30 7. XL America, Pearl and Greenwich are hereinafter at times each referred to as a  
31 “**Defendant**” and collectively as the “**Defendants.**”  
32  
33  
34

1 8. The names and capacities, whether individuals, corporations, associates or  
2 otherwise of Defendants named herein as DOE and ROE CORPORATION are unknown or not  
3 yet confirmed. Upon information and belief, said DOE and ROE CORPORATION Defendants  
4 are responsible for damages suffered by Plaintiff and, therefore, Plaintiff sues said Defendants  
5 by such fictitious names. Plaintiff will ask leave to amend this Complaint to show the true  
6 names and capacities of each DOE and ROE CORPORATION Defendant at such time as the  
7 same has been ascertained.  
8  
9

10  
11 9. This Court has supplemental jurisdiction over all claims in this case because they  
12 are asserted in connection with the Trustee's duties to recover assets on behalf of the estate, and  
13 because the allegations in this lawsuit share a common nexus of facts with those in the Action.  
14

15 10. This Court has personal jurisdiction over the Defendants and venue is proper in  
16 the Bankruptcy Court for the District of Nevada because: (i) the Defendants engaged in  
17 significant business in this District; and (ii) the Company is a debtor before this Court, and  
18 holds the claims asserted in this Complaint.  
19  
20

21 **INSURANCE POLICY**

22 11. The Defendants provided a Real Estate Professionals Errors and Omissions  
23 Policy, Policy No. PEG9145932-6 (the "**Policy**") for the policy period of June 14, 2013,  
24 through June 14, 2014, to the Company.  
25  
26

27 12. The Company is named as an insured and entitled to coverage under the Policy.  
28

29 **COMPANY BACKGROUND**

30 13. The Company was managed by John M. Brown ("**Mr. Brown**") and his former  
31 spouse, Elsie Pelada-Brown ("**Ms. Peladas-Brown**").  
32  
33  
34

1 14. As part of its business, the Company managed residential rental properties (the  
2 “**Business**”). In the normal course of its Business, the Company received and held rental  
3 security deposits on behalf of its customers’ tenants. At the time of the wrongful actions  
4 asserted herein, the Company held in excess of \$1,200,000 of tenant security deposit money  
5 (the “**Security Deposits**”).  
6

7  
8 15. Under Nevada Revised Statutes Section 645.310(1), security deposits for tenants  
9 are to be retained until the termination of the underlying lease or rental transaction.  
10

11 **THE UNAUTHORIZED TRANSFERS**

12 16. In late March 2014, the Company discovered that significant funds were missing  
13 from the bank account designated to hold tenant security deposits. At the time of the discovery,  
14 the Company held security deposits for more than 1,000 tenants.  
15

16 17. Mr. Brown subsequently discovered that significant funds had been transferred  
17 from a bank account designated to hold those tenant Security Deposits on behalf of the  
18 Company.  
19

20 18. Unkown to Mr. Brown or the Company, Ms. Pelada-Brown orchestrated various  
21 unauthorized transactions, which transactions included the wire transfers of the majority of the  
22 Security Deposits to the Philippines.  
23

24 19. Specifically, on the following dates, Ms. Peladas-Brown Brown transferred  
25 money from the Company’s general account at JP Morgan Chase Bank (the “**General**  
26 **Account**”) and/or security deposit account at JP Morgan Chase Bank (the “**Security Deposit**  
27 **Account**”) to Unibank, Inc. Metro Philippines (the “**Philippines Bank**”):  
28  
29

30 a. On February 27, 2013, Ms. Peladas-Brown transferred \$25,000 from the  
31 General Account to the Philippines Bank;  
32  
33  
34

1           b.       On May 14, 2013, Ms. Peladas-Brown transferred \$50,000 from the  
2 Security Deposit Account to the Philippines Bank;

3           c.       On April 10, 2013, Ms. Peladas-Brown transferred \$49,263 from the  
4 Security Deposit Account to the Philippines Bank;

5           d.       On April 17, 2013, Ms. Peladas-Brown transferred \$24,600 from the  
6 Security Deposit Account to the Philippines Bank;

7           e.       On May 17, 2013, Ms. Peladas-Brown transferred \$97,930 from the  
8 Security Deposit Account to the Philippines Bank;

9           f.       On May 24, 2013, Ms. Peladas-Brown transferred \$49,000 from the  
10 Security Deposit Account to the Philippines Bank;

11           g.       On June 25, 2013, Ms. Peladas-Brown transferred \$71,500 from the  
12 Security Deposit Account to the Philippines Bank;

13           h.       On July 18, 2013, Ms. Peladas-Brown transferred \$35,000 from the  
14 security deposit account to the Philippines Bank;

15           i.       On September 10, 2013, Ms. Peladas-Brown transferred \$7,670 from the  
16 Security Deposit Account to the Philippines Bank;

17           j.       On September 23, 2013, Ms. Peladas-Brown transferred \$18,700 from  
18 the Security Deposit Account to the Philippines Bank;

19           k.       On September 27, 2013, Ms. Peladas-Brown transferred \$23,255 from  
20 the Security Deposit Account to the Philippines Bank;

21           l.       On October 9, 2013, Ms. Peladas-Brown transferred \$10,020 from the  
22 Security Deposit Account to the Philippines Bank;

1 m. On October 22, 2013, Ms. Peladas-Brown transferred \$13,960 from the  
2 Security Deposit Account to the Philippines Bank;

3 n. On October 24, 2013, Ms. Peladas-Brown transferred \$11,700 from the  
4 Security Deposit Account to the Philippines Bank; and

5 o. On December 20, 2013, Ms. Peladas-Brown transferred \$8,000 from the  
6 Security Deposit Account to the Philippines Bank.  
7

8  
9 20. Including, but not limited to, the specific transactions listed above, Ms. Peladas-  
10 Brown embezzled a total of \$1,174,373.63 in Security Deposits from the Company.  
11

12 **THE INNOCENCE OF THE COMPANY AND MR. BROWN**

13  
14 21. Neither the Company nor Mr. Brown had any knowledge of Ms. Peladas-  
15 Brown's scheme; and on May 4, 2015, Mr. Brown was divorced from Ms. Peladas-Brown. The  
16 divorce decree, which was uncontested, requires Ms. Peladas-Brown to indemnify Mr. Brown  
17 and the Company for her unilateral embezzlement of the Security Deposits.  
18

19 22. At all times relevant herein, Ms. Peladas-Brown was a member, manager and the  
20 property manager for the Company. Ms. Peladas-Brown was also a licensed real estate agent  
21 and property manager in the State of Nevada, and a member of the Greater Association of Las  
22 Vegas Realtors.  
23  
24

25 **THE PROSECUTION OF MS. PELADAS-BROWN**

26  
27 23. As a licensed realtor and property manager in the State of Nevada, Ms. Peladas-  
28 Brown is charged with the knowledge and responsibility of safeguarding the Security Deposits.  
29 It is undeniable in light of Ms. Peladas-Brown's licenses that she knew sending the Security  
30 Deposits to the Philippines would be a violation of the law, and would cause her to lose her real  
31  
32  
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1 estate licenses, which licenses are now inactive. Ms. Peladas-Brown also knew she had a duty  
2 to manage the Security Deposits prudently and in a fashion that minimized risk.

3  
4 24. In sum, Ms. Peladas-Brown had the knowledge and the motive to breach her  
5 fiduciary duties to the Company, its customers and its tenants, and in fact did breach such duties  
6 by secretly transferring the Security Deposits to the Philippines. The transfers of the Security  
7 Deposits were made for no consideration at all, and Ms. Peladas-Brown understood the Security  
8 Deposits could not possibly be repaid.  
9

10  
11 25. On September 16, 2015, the Nevada Real Estate Commission held a hearing  
12 regarding Ms. Peladas-Brown's actions, where her attorney, Mr. Lance Maningo, indicated Ms.  
13 Peladas-Brown's acquiescence to the factual allegations listed above, and admitted the funds  
14 were used to support Ms. Peladas-Brown's family and friends in the Philippines after  
15 catastrophic events.  
16  
17

18 26. The Security Deposits were disbursed by Ms. Peladas-Brown in the Philippines  
19 and are not recoverable. Ms. Peladas-Brown disbursed the Security Deposits to friends and  
20 family in need after the damage caused by catastrophic events in the Philippines.  
21

22 **ADVERSARY PROCEEDING AGAINST MS. PELADAS-BROWN**

23  
24 27. On May 21, 2015, the Trustee, in her capacity as Chapter 7 Trustee for the  
25 Company, initiated that certain adversary proceeding against Ms. Peladas-Brown in the United  
26 States Bankruptcy Court for the District of Nevada, Adversary Case No. 15-01087-LED.  
27

28 28. In her complaint, the Trustee asserted four claims for relief against Ms. Peladas-  
29 Brown: (i) breach of fiduciary duty to the Company; (ii) common law misrepresentation to the  
30 Company; (iii) negligent misrepresentation to the Company; and (iv) declaratory relief that the  
31  
32  
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34

1 Company and Mr. Brown are innocent and had no knowledge of Ms. Peladas-Brown's  
2 wrongdoings (collectively, the "**Peladas-Brown Claims for Relief**").

3  
4 29. On October 26, 2015, the United States Bankruptcy Court (the "**Bankruptcy**  
5 **Court**") held a hearing on the Trustee's motion for summary judgment on all of the Peladas-  
6 Brown Claims for Relief.

7  
8 30. On October 27, 2015, the Bankruptcy Court entered an order granting summary  
9 judgment on all Peladas-Brown Claims for Relief, with findings of fact and conclusions of law.  
10 See Adv. Case No. 15-01087-LED, Docket Nos. 20 and 21.

11  
12 31. The Judgment against Ms. Peladas-Brown is in the amount of \$1,174,373.63,  
13 together with prejudgment interest at the rate of 5.75%, compounded annually and compounded  
14 from February 1, 2013, and post-judgment interest at the rate established by 28 U.S.C. § 1961,  
15 compounded annually. See Adv. Case No. 15-01087-LED, Docket No. 21.  
16  
17

### 18 **INSURANCE CLAIMS**

19 32. On April 9, 2014, Ryan J. Works, Esq., as counsel for the Company and Mr.  
20 Brown, sent a Notice of Claim letter to XL America regarding the actions of Ms. Peladas-  
21 Brown. A copy of the Notice of Claim Letter is attached hereto as **Exhibit 1**.  
22

23  
24 33. Pursuant to the terms of the Policy, Greenwich agreed to pay for claims, up to  
25 \$1,000,000.00, resulting from an act or omission in the performance of real estate services for  
26 which the insured (the Company) is obligated to pay.  
27

28 34. Although the Policy excludes coverage under Section IV(C) for claims "based on  
29 arising out of any dishonest, intentionally fraudulent, criminal or malicious act or omission by  
30 the Insured," under the facts described herein, the Company and Mr. Brown constitute  
31 "Innocent Insureds" under Section VI(D) of the Policy:  
32  
33  
34



1 D. Innocent Insureds

2 If coverage of this policy would not apply because of Exclusion C. or  
3 because of noncompliance with Condition B., such Exclusion or Condition  
4 will not apply to any Insured who did not commit, participate in, or have  
5 knowledge of any of the acts described in Exclusion C. and whose conduct  
6 did not violate Condition B.

7 35. Ms. Peladas-Brown's unilateral wrongdoings triggered Greenwich's obligation  
8 to indemnify the Company for the loss of the Security Deposits.

9 36. On April 10, 2014, Mr. Works, as counsel for the Company and Mr. Brown,  
10 submitted a claim report form to the Defendants (the "**Claim**"), providing additional notice of a  
11 claim under the Policy and the obligations of the Defendants to reimburse the Company based  
12 on Ms. Peladas-Brown's actions. A copy of the Claim is attached hereto as **Exhibit 2**.  
13

14 37. Upon initiation of the Adversary Proceeding, Defendants were once again  
15 provided Notice of the Claim, particularly that Defendants were ignorant and innocent of Ms.  
16 Peladas-Brown's unilateral wrongdoings, which is attached as **Exhibit 3**.  
17

18 38. As of the date hereof, the Defendants have not paid any monies to the Company  
19 or Mr. Brown for claims made under the Policy.  
20

21  
22  
23 **FIRST CLAIM FOR RELIEF**  
24 **(Breach of Contract)**

25 39. The Plaintiff hereby realleges the allegations set forth in paragraphs 1 through  
26 37, as if fully set forth herein.  
27

28 40. The Defendants wrote the Policy of insurance naming the Company as an  
29 insured under the Policy.  
30

31 41. As an insured, the Policy constituted a contract between the Company and  
32 Defendants.  
33

1 42. The Company satisfied all conditions precedent to the Policy.

2 43. On April 9, 2014, and April 10, 2014, the Company submitted its Claim under  
3 the Policy.  
4

5 44. To date, the Defendants have not reimbursed the Company for the loss of  
6 Security Deposits as required under the Policy.  
7

8 45. The Defendants breached the Policy by not reimbursing the Company for the  
9 loss of the Security Deposits.  
10

11 46. As a direct and proximate cause of the Defendants' breach, the Company has  
12 been damaged, the exact amount to be proven at trial.  
13

14 47. The Plaintiff has been required to obtain the services of counsel to prosecute this  
15 claim, and is entitled to recover reasonable attorneys' fees and other costs incurred in this matter  
16 as special damages, in addition to any other relief to which it may be entitled.  
17

18 **SECOND CLAIM FOR RELIEF**  
19 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

20 48. The Plaintiff hereby realleges the allegations set forth in paragraphs 1 through  
21 46, as if fully set forth herein.  
22

23 49. The Defendants wrote the Policy of insurance naming the Company as an  
24 insured under the Policy.  
25

26 50. As an insured, the Policy constituted a contract between the Company and  
27 Defendants.  
28

29 51. A covenant of good faith and fair dealing is implied into every contract  
30 construed pursuant to Nevada law, including the Policy.  
31  
32  
33  
34

1           52.     The Defendants breached the implied covenant of good faith and fair dealing in  
2 various ways, including but not limited to denying the Company's claims, and as such,  
3 performed in a manner unfaithful to the terms of the Policy.  
4

5           53.     As a direct and proximate cause of the Defendants' breaches, the Company has  
6 been damaged, in the exact amount to be proven at trial.  
7

8           54.     By their actions, Defendants are guilty of breaching the implied covenant of  
9 good faith and fair dealing and as such, the Company may recover compensatory damages.  
10

11          55.     The Plaintiff has been required to obtain the services of counsel to prosecute this  
12 claim, and is entitled to recover reasonable attorneys' fees and other costs incurred in this matter  
13 as special damages, in addition to any other relief to which it may be entitled.  
14

15                                 **THIRD CLAIM FOR RELIEF**  
16                                 **(Breach of Fiduciary Duty)**

17          56.     The Plaintiff hereby realleges the allegations set forth in paragraphs 1 through  
18 55, as if fully set forth herein.  
19

20          57.     A fiduciary duty exists where one has the right to expect trust and confidence in  
21 the integrity and fidelity of another.  
22

23          58.     In Nevada, the duty owed by an insurer to an insured is fiduciary in nature.  
24

25          59.     Accordingly, at all times relevant and material hereto, the Defendants owed the  
26 Company a fiduciary duty.  
27

28          60.     The Defendants breached their fiduciary duties to the Company in various ways,  
29 including but not limited to denying the Company's claims, and as such, performed in a manner  
30 unfaithful to the terms of the Policy.  
31  
32  
33  
34

1 61. The tortious conduct of the Defendants proximately caused damage to the  
2 Company because the Company was not reimbursed for the loss of Security Deposits as  
3 required by the Policy.  
4

5 62. By their actions, the Defendants are guilty of oppression, fraud and/or malice,  
6 express or implied.  
7

8 63. Accordingly, the Company, in addition to compensatory damages, may recover  
9 punitive damages for the sake of example and by way of punishing the Defendants.  
10

11 64. The Plaintiff has been required to obtain the services of counsel to prosecute this  
12 claim, and is entitled to recover reasonable attorneys' fees and other costs incurred in this matter  
13 as special damages, in addition to any other relief to which it may be entitled.  
14

15 **FOURTH CLAIM FOR RELIEF**  
16 **(Violations of NRS 686A.310)**

17 65. The Plaintiff hereby realleges the allegations set forth in paragraphs 1 through  
18 64, as if fully set forth herein.  
19

20 66. At all times relevant and material hereto, NRS 686A.310 was in full force and  
21 effect.  
22

23 67. The Defendants violated NRS 686A.310 in various ways, including but not  
24 limited to:  
25

26 a. Failing to acknowledge and act reasonably promptly upon  
27 communications with respect to claims arising under the Policy;  
28

29 b. Failing to adopt and implement reasonable standards for the prompt  
30 investigation and processing of claims arising under the Policy;  
31

32 c. Failing to effectuate prompt, fair and equitable settlements of claims in  
33 which liability of the insurer has become reasonably clear; and  
34

1 d. Compelling insureds to institute litigation to recover amounts due under  
2 the Policy.

3  
4 68. As a direct and proximate cause of the Defendants' breaches, the Company has  
5 been damaged, the exact amount to be proven at trial.

6  
7 69. By their actions, the Defendants are guilty of oppression, fraud and/or malice,  
8 express or implied. Accordingly, the Company, in addition to compensatory damages, may  
9 recover punitive damages for the sake of example and by way of punishing the Defendants.

10  
11 70. The Plaintiff has been required to obtain the services of counsel to prosecute this  
12 claim, and is entitled to recover reasonable attorneys' fees and other costs incurred in this matter  
13 as special damages, in addition to any other relief to which it may be entitled.  
14

15 **FIFTH CLAIM FOR RELIEF**  
16 **(Declaratory Relief)**

17 71. The Plaintiff hereby realleges the allegations set forth in paragraphs 1 through  
18 70, as if fully set forth herein.

19  
20 72. There exists between the Plaintiff and Defendants a justiciable controversy  
21 regarding the rights and obligations of the parties under the Policy, specifically, but not limited  
22 to, whether the Policy requires the Defendants to reimburse the Company for the actions of Ms.  
23 Peladas-Brown and the loss of the Security Deposits.  
24

25  
26 73. The Plaintiff seeks a declaratory judgment to resolve this controversy.

27  
28 74. This action presents a justiciable controversy related to the obligations, rights,  
29 and limitations to the parties under the respective policies.

30 75. The Plaintiff and Defendants have adverse interests in this matter.

31  
32 76. The Plaintiff asserts a legally protectable interest that is ripe for determination.  
33  
34

1 77. The Plaintiff has been required to obtain the services of counsel to prosecute this  
2 claim, and is entitled to recover reasonable attorneys' fees and other costs incurred in this matter  
3 as special damages, in addition to any other relief to which it may be entitled.  
4

5 WHEREFORE, the Plaintiff prays for judgment as follows:

- 6 1. For general damages in excess of \$75,000.00;  
7  
8 2. For special damages determined at the time of trial;  
9  
10 3. For punitive damages;  
11  
12 4. For a judicial declaration as to the rights, obligations, and liabilities of the parties  
13 to the Policy of insurance;  
14  
15 5. For an award of reasonable attorneys' fees and costs of the suit incurred herein;  
16  
17 and  
18  
19 6. For such other and further relief as the Court may deem just and proper.

20 Dated this 29th day of October, 2015.

21 SCHWARTZ FLANSBURG PLLC

22 /s/ Samuel A. Schwartz  
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34