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8 **Attorneys for Tri Tool Inc.**

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

12 **SECURITIES AND EXCHANGE**
13 **COMMISSION,**

14 **Plaintiff,**

15 **vs.**

16 **CHARLES P. COPELAND,**
17 **COPELAND WEALTH**
18 **MANAGEMENT, A FINANCIAL**
19 **ADVISORY CORPORATION;**
20 **and COPELAND WEALTH**
21 **MANAGEMENT, A REAL**
22 **ESTATE CORPORATION,**

23 **Defendants.**

CASE NO. 11-cv-08607-R-DTB

TRI TOOL INC.'S
NOTICE OF APPEAL

Ctrm: 8, 2nd Floor
Judge: Hon. Manuel L. Real

24 **NOTICE IS HEREBY GIVEN** that Tri Tool Inc., a Nevada corporation (“Objecting
25 Creditor”), in the above-named case, hereby appeals to the United States Court of Appeals for the
26 Ninth Circuit from the following Orders:

27 **“ORDER ON MOTION FOR: (1) APPROVAL OF THE RECEIVER’S DISTRIBUTION OF**
28 **ASSETS TO THE INVESTORS OF COPELAND PROPERTIES 18, L.P.; AND (2)**
AUTHORIZATION TO TERMINATE AND CANCEL COPELAND PROPERTIES 18, L.P., AS
AN ENTITY” (Document #385, “Preliminary Order”), a copy of which Tri Tool attaches hereto
as Exhibit “A”, and incorporated herein by this reference, entered November 6, 2013, as to: (A) the

1 provisions of Paragraphs 1 through 3, inclusive, and 6 of the Order, and (B) partial appeal as to
2 Paragraph 7 of the Order (as described hereinafter), with the provisions of the specified appealed
3 paragraphs of the Order quoted below as follows:

4 “1. Due process has been satisfied because Opposing Parties filed
5 lengthy briefs and substantial evidentiary materials in opposition to the Motion and
6 had an opportunity to be heard.”

7 “2. Copeland Properties 18, L.P. (“CP18”) does not owe Copeland
8 Properties Three, L.P. (“CP3”) any money because Receiver’s evidence shows that
9 limited partners of CP3 received equitable interests in CP18 valued at \$1,705,000;
10 and, the remaining debt obligation of \$423,544.11 owed by CP18 to CP3 was
11 transferred by CP3 to Copeland Real Estate, Inc. (“CRI”) to offset CP3’s obligation
12 to CRI”.

13 “3. Receiver shall pay management fees in the amount of \$165,466.80
14 owed by CP18 to its general partner, CWM Realty”.

15 “6. Tri Tool’s claim against CP18 based on the alleged fraudulent
16 transfer by CP3 to CP18 of proceeds of a Pacific Western Bank loan is time-barred.
17 However, Tri Tool’s claim based on the alleged fraudulent transfer from CP3 to
18 CP18 of \$330,000 for payment of a debt owed by CP18 to the seller of property in
19 Wendover, North Carolina (the “Wendover Note”) is not time-barred. Therefore,
20 the Court will determine the merits of Tri Tool’s claim relating to the Wendover
21 Note after the following briefing and hearing.

22 November 18, 2013 - Tri Tool’s brief in support of claim;

23 November 25, 2013 - Receiver’s brief in opposition to claim;

24 December 4, 2013 - Tri Tool’s reply brief; and

25 December 16, 2013 - Hearing on Claim”.

26 “ORDER DENYING TRI TOOL INC.’S CLAIM” (Document 411, “Final Order”), a copy of
27 which Tri Tool attaches hereto as Exhibit “B”, and incorporates herein by this reference, entered
28 January 9, 2014, as to the Order, all inclusive, that:

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- (A) Tri Tool does not have a right to a jury trial;
- (B) The transfer was not Fraudulent; and
- (C) Conclusion.

Statement of Related Cases:

Objecting Creditor is not aware of any cases pending in the United States Court of Appeals for the Ninth Circuit that would be deemed related pursuant to Ninth Circuit Rule 28-2.6.

**PETERSON & KELL,
A LAW CORPORATION**

Dated: February 12, 2014

**By: /s/ Rollie A. Peterson
Rollie A. Peterson, Esq.
Attorney for Objecting Creditor
Tri Tool Inc.**

EXHIBIT “A”

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION – LOS ANGELES

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

CHARLES P. COPELAND,
COPELAND WEALTH
MANAGEMENT, A FINANCIAL
ADVISORY CORPORATION,
AND COPELAND WEALTH
MANAGEMENT, A REAL
ESTATE CORPORATION,

Defendants.

CASE NO. 11-cv-08607-R-DTB

**ORDER ON MOTION FOR: (1)
APPROVAL OF THE RECEIVER'S
DISTRIBUTION OF ASSETS TO
THE INVESTORS OF COPELAND
PROPERTIES 18, L.P.; AND (2)
AUTHORIZATION TO TERMINATE
AND CANCEL COPELAND
PROPERTIES 18, L.P. AS AN
ENTITY**

Date: October 28, 2013
Time: 10:00 a.m.
Ctm: 8, 2nd Floor
Judge: Hon. Manuel L. Real

The Court, having considered the Receiver's Motion for an Order: (1)
Approving the Receiver's Distribution of Assets to the Investors of
Copeland Properties 18, L.P.; and (2) Authorizing Termination and
Cancellation of Copeland Properties 18, L.P. as an Entity ("Motion") filed
by Mulvaney Barry Beatty Linn & Mayers LLP, counsel for Thomas C.
Hebrank ("Receiver"), the court-appointed Permanent Receiver for

1 Copeland Wealth Management, a Financial Advisory Corporation,
2 Copeland Wealth Management, a Real Estate Corporation (“CWM
3 Realty”), and their subsidiaries and affiliates, and the three oppositions
4 thereto filed by counsel for Tri Tool, Inc. (“Tri Tool”), counsel for Neal
5 Bricker (“Bricker”), and counsel for Janet Ihde (“Ihde”), Janet Ihde IRA
6 (“Ihde IRA”), Melvyn and Ruth Ross (“the Rosses”), Sandra Hayes, and
7 Joseph and Beth Dotan (collectively “Opposing Parties”), and good cause
8 appearing therefor,

9 IT IS HEREBY ORDERED that the motion is granted subject to
10 further proceedings as follows:

- 11 1. Due process has been satisfied because Opposing Parties filed
12 lengthy briefs and substantial evidentiary materials in opposition
13 to the Motion and had an opportunity to be heard.
- 14 2. Copeland Properties 18, L.P. (“CP18”) does not owe Copeland
15 Properties Three, L.P. (“CP3”) any money because Receiver’s
16 evidence shows that limited partners of CP3 received equity
17 interests in CP18 valued at \$1,705,000; and, the remaining debt
18 obligation of \$423,544.11 owed by CP18 to CP3 was transferred
19 by CP3 to Copeland Real Estate, Inc. (“CRI”) to offset CP3’s
20 obligation to CRI.
- 21 3. Receiver shall pay management fees in the amount of
22 \$165,466.80 owed by CP18 to its general partner, CWM Realty.
- 23 4. The Receiver may withhold payment by CP18 to Ihde and the
24 Ihde IRA because of her debts to other receivership entities.
- 25 5. The Rosses do not have an interest in CP18, but do have a claim
26 against Copeland Properties Twelve, L.P. (“CP12”) and a claim
27 against CWM Realty secured by its interest in CP18. However,
28 the Rosses’ security interest is not perfected and the Receiver

1 has priority over their security interest for the Receiver's claims
2 against CWM Realty and CP12. The Receiver shall consider the
3 Rosses' claims in connection with distributions by CWM Realty
4 and CP12.

5 6. Tri Tool's claim against CP18 based on the alleged fraudulent
6 transfer by CP3 to CP18 of proceeds of a Pacific Western Bank
7 loan is time-barred. However, Tri Tool's claim based on the
8 alleged fraudulent transfer from CP3 to CP18 of \$330,000 for
9 payment of a debt owed by CP18 to the seller of property in
10 Wendover, North Carolina (the "Wendover Note") is not time-
11 barred. Therefore, the Court will determine the merits of Tri
12 Tool's claim relating to the Wendover Note after the following
13 briefing and hearing:

- 14 November 18, 2013 – Tri Tool's brief in support of claim;
- 15 November 25, 2013 – Receiver's brief in opposition to claim;
- 16 December 4, 2013 – Tri Tool's reply brief; and,
- 17 December 16, 2013 – Hearing on claim.

18 7. Receiver shall distribute the assets of CP18 and cancel the entity
19 following the adjudication of Tri Tool's remaining claim.

20
21 **IT IS SO ORDERED.**

22 **Dated: Nov. 5, 2013**

23 
24 _____
25 **Judge, United States District Court**

26 Submitted by:
27 **MULVANEY BARRY BEATTY LINN & MAYERS LLP**

28 By: /s/ John H. Stephens
Attorneys for Thomas C. Hebrank,
Permanent Receiver
HEBCO.125.507187.1

EXHIBIT “B”

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE)	CASE NO. CV 11-8607-R
COMMISSION,)	
)	ORDER DENYING TRI TOOL INC'S
Plaintiff,)	CLAIM
)	
v.)	
)	
CHARLES P. COPELAND, COPELAND)	
WEALTH MANAGEMENT, A FINANCIAL)	
ADVISORY CORPORATION, AND)	
COPELAND WEALTH MANAGEMENT, A)	
REAL ESTATE CORPORATION,)	
)	
Defendants.)	

With the exception of one issue, the Court's order entered November 5, 2013 resolved the Receiver's motion to distribute the assets of, and then cancel, Copeland Properties 18 ("CP18"). The issue left unresolved is the validity of Tri-Tool Inc.'s ("Tri Tool") claim against CP18 based on an allegedly fraudulent transfer. The Court previously ruled that this claim was not barred by the statute of limitations and ordered further briefing on the merits of the claim. Doc. No. 385. The parties have now fully briefed the issue.

The transfer at issue is Copeland Properties 3's ("CP3") payment of \$333,544.11 to CP18.

28

1 CP18 used the \$333,544.11 to pay off a debt it owed to the seller of real property CP18 purchased
2 in Wendover, North Carolina. The debt owed to the seller was evidenced by a promissory note
3 (“Wendover Note”).

4 **A. Tri Tool does not have a Right to a Jury Trial**

5 Tri Tool contends that it has a right to a jury trial. Tri Tool is incorrect as “[n]o right to
6 jury trial attaches to equitable proceedings in the administration of a receivership.” *United States*
7 *v. Arizona Fuels Corp.*, 739 F.2d 455, 460 (9th Cir. 1984). Due to the fact that the case involved a
8 summary proceeding, the court in *Arizona Fuels* left open the question of whether a party in a
9 plenary action with a receiver would be entitled to a jury trial. *Id.* The court did, however, make it
10 clear that there was no right to a jury trial in a summary proceeding in an equitable receivership.
11 *Id.* at 460 (“Tenneco’s conclusion that it would have been entitled to a jury trial in a plenary
12 action, even if correct, does not support its claim that otherwise proper summary proceedings
13 violated any existing right. We have already held that summary proceedings were proper, so the
14 jury trial argument fails.”)

15 The instant dispute, like the one in *Arizona Fuels*, is the proper subject of a summary
16 proceeding. *Id.* at 458 (“Receivership courts have the general power to use summary procedure in
17 allowing, disallowing, and subordinating the claims of creditors.”) A plenary proceeding is not
18 necessary here because the Receiver is not engaged with Tri Tool in an ownership dispute over
19 specific property or funds. *Id.* Rather, Tri Tool simply has a claim against the Receivership Estate.
20 Because this dispute is properly proceeding as a summary proceeding within the administration of
21 an equitable receivership, Tri Tool does not have a right to a jury trial. *Id.*

22 **B. The Transfer was not Fraudulent**

23 Tri Tool argues that CP3’s transfer of \$333,544.11 to CP18 constituted an actual intent
24 fraudulent transfer under California Civil Code Section 3439.04(a)(1) and a constructive intent
25 fraudulent transfer under California Civil Code Section 3439.04(a)(2). If Tri Tool is correct it
26 could have a claim against CP18 on the basis of CP18’s status as a transferee of CP3. *Mejia v.*
27 *Reed*, 31 Cal.4th 657, 663 (2003).

1 *I. Actual Intent Fraud Pursuant to Cal. Civ. Code § 3439.04(a)(1)*

2 California Civil Code Section 3439.04(a)(1) provides that a transfer is fraudulent if it was
3 made “[w]ith actual intent to hinder, delay, or defraud any creditor of the debtor.” Factors that
4 courts may give consideration to in determining whether there is “actual intent” for purposes of
5 § 3439.04(a)(1) include:

- 6 (1) Whether the transfer or obligation was to an insider;
- 7 (2) Whether the debtor retained possession or control of the property transferred after the
transfer;
- 8 (3) Whether the transfer or obligation was disclosed or concealed;
- 9 (4) Whether before the transfer was made or obligation was incurred, the debtor had been
sued or threatened with suit;
- 10 (5) Whether the transfer was of substantially all the debtor's assets;
- 11 (6) Whether the debtor absconded;
- 12 (7) Whether the debtor removed or concealed assets;
- 13 (8) Whether the value of the consideration received by the debtor was reasonably
equivalent to the value of the asset transferred or the amount of the obligation incurred;
- 14 (9) Whether the debtor was insolvent or became insolvent shortly after the transfer was
made or the obligation was incurred;
- 15 (10) Whether the transfer occurred shortly before or shortly after a substantial debt was
incurred, and
- (11) Whether the debtor transferred the essential assets of the business to a lienholder who
transferred the assets to an insider of the debtor.

16 Cal. Civ. Code § 3439.04(b).

17 Here, a consideration of the relevant factors leads to the conclusion that there was no actual
18 intent to delay, hinder, or defraud. For instance, CP3 did not maintain control of the money after it
19 was transferred, the transfer was not concealed, CP3 was not threatened with suit or being sued
20 when the transfer was made, and the transfer did not deprive CP3 of substantially all of its assets.
21 On balance, the evidence does not support a finding that the transfer was made with the actual
22 intent to hinder, delay, or defraud.

23 Tri Tool’s arguments relating to these factors are not persuasive. For example, Tri Tool
24 argues that Copeland maintained control of the funds after they were transferred, and that, as a
25 result, factor number two favors a finding of actual intent. Reply, p. 6. Copeland is not the debtor
26 for purposes of this analysis. Rather, CP3, the transferor, is. Cal. Civ. Code § 3439.04(a) (“A
27 transfer made or obligation incurred by a debtor is fraudulent . . .”). The transfer was made by
28 CP3, not Copeland, and Tri Tool has not advanced any argument or authority to the effect that

1 Copeland should be considered CP3's alter ego for purposes of this claim.

2 Tri Tool's argument regarding whether the transfer was concealed only relates to the
3 Pacific Western Bank loan which the Court has already determined to be time-barred. Tri Tool
4 asserts that the transfer was of substantially all of CP3's assets. Tri Tool acknowledges, however,
5 that, along with the transfer at issue here, CP3 paid an investor named Franklin \$230,000 and also
6 "paid other creditors." Reply, p. 6. Therefore the transfer relating to the Wendover Note did not
7 constitute substantially all of CP3's assets.

8 On balance, the factors in § 3439.04(b) do not support a finding that the transfer was made
9 with the actual intent to delay, hinder, or defraud any creditor.

10 *2. Constructive Fraud Pursuant to Cal. Civ. Code § 3439.04(a)(2)*

11 California Civil Code Section 3439.04(a)(2) provides that a transfer is fraudulent if
12 "[w]ithout receiving reasonably equivalent value in exchange for the transfer or obligation . . . the
13 debtor either: (A) Was engaged or was about to engage in a business or transaction for which the
14 remaining assets of the debtor were unreasonably small in relation to the business or transaction
15 [or] (B) Intended to incur, or believed or reasonably should have believed that he or she would
16 incur, debts beyond his or her ability to pay as they became due."

17 CP3 received reasonably equivalent value from CP18 in exchange for CP3's payment to
18 CP18. Specifically, as the Court has already found, the debt obligation arising from the transfer of
19 the funds at issue here "was transferred by CP3 to Copeland Real Estate, Inc. ("CRI") to offset
20 CP3's obligation to CRI." Doc. No. 385, p. 2, ¶ 2. Thus the value that CP3 received in return for
21 its payment relating to the Wendover Note was a satisfaction of a debt CP3 owed to CRI. And, the
22 value of this satisfaction—\$423,544.11—was reasonably equivalent to the value of CP3's
23 payment to CP18. *Id.* As a result, Tri Tool's claim based on California Civil Code
24 Section 3439.04(a)(2) is without merit.

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C. Conclusion

The evidence does not support a finding that CP3's payment to CP18 of \$333,544.11 used by CP18 to cancel the Wendover Note was a fraudulent transfer. Tri Tool's claim against CP3 is therefore denied.

IT IS HEREBY ORDERED that Tri-Tool's claim based on the Wendover Note is denied.

Dated: January 9, 2014.



MANUEL L. REAL
UNITED STATES DISTRICT JUDGE

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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

12 **SECURITIES AND EXCHANGE**
13 **COMMISSION,**

14 **Plaintiff,**

15 **vs.**

16 **CHARLES P. COPELAND,**
17 **COPELAND WEALTH**
18 **MANAGEMENT, A FINANCIAL**
19 **ADVISORY CORPORATION;**
20 **and COPELAND WEALTH**
21 **MANAGEMENT, A REAL**
22 **ESTATE CORPORATION,**

23 **Defendants.**

24 **CASE NO. 11-cv-08607-R-DTB**

25 **CERTIFICATE OF SERVICE**
26 **OF TRI TOOL INC.'S**
27 **NOTICE OF APPEAL**

28 **Ctrm: 8, 2nd Floor**
Judge: Hon. Manuel L. Real

29 I, Sheleen Haddad, declare I am a citizen of the United States and a resident of the County
30 of Sacramento; I am over the age of eighteen (18) years, and not a party to or interested in this action.
31 I am an employee of Peterson & Kell, A Law Corporation, and my business address is 2377 Gold
32 Meadow Way, Suite 280, Gold River, California 95670.

33 On February 13, 2014, I caused to be served the following document(s):

- 34 (1) **Tri Tool Inc.'s Notice of Appeal; and**
- 35 (2) **Certificate of Service of Tri Tool Inc.'s Notice of Appeal.**

X **BY FEDERAL ELECTRONIC FILING:** By causing the document to be electronically filed via the Court's CM/ECF System, which effects electronic service on counsel who are registered with the CM/ECF System on the following parties:

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11
12 On February 13, 2014, I caused to be served the following document(s):

13 **Plaintiff Tri Tool Inc.'s Notice of Appeal**

14 by placing the original a true copy into sealed envelopes addressed and served as follows:

15 **BY OVERNIGHT COURIER:** I caused such envelope to be placed for collection and
16 delivered in accordance with standard overnight delivery procedures for delivery the next
17 business day on the following parties:

18 Everett G. Barry, Jr., Esq.
John H. Stephens, Esq.
Patrick L. Prindle, Esq.
19 Toby S. Kovalivker, Esq.
MULVANEY BARRY BEATTY LINN
20 & MAYERS, LLP
401 West A Street, 17th Floor
21 San Diego, CA 92101-7994

22 I declare under penalty of perjury under the laws of the State of California that the foregoing
23 is true and correct. Executed on February 13, 2014, at Gold River, California.

24 /s/ Sheleen K. Haddad
25 **SHELEEN K. HADDAD**