

Daniel Gershburg
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Attorney for Plaintiff, Robert L. Geltzer, Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In Re:

Chapter 7

OLANIYI L. AKANMU & OMOLAYO T. SUARA

Case No. 11-43773-CEC

Debtors.

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**ROBERT L. GELTZER, as Trustee of
the Estate of OLANIYI L. AKANMU &
OMOLAYO T. SUARA**

Plaintiff,

Adv. Proc. No.

-against-

XAVERIAN HIGH SCHOOL

Defendant.

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**COMPLAINT TO RECOVER FRAUDULENT TRANSFER
OF ESTATE PROPERTY**

The Complaint of Robert L. Geltzer as trustee (the “Trustee”) of Olaniyi L. Akanmu and Omolayo T. Suara (the “Debtors”), by his attorneys, Daniel Gershburg, Esq., P.C., respectfully as follows:

Jurisdiction and Venue

1. The United States District Court for the Eastern District of New York has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334. By virtue of 28

U.S.C. § 157(a), this adversary proceeding is automatically referred to the United States Bankruptcy Court for the Eastern District of the New York (the “Bankruptcy Court”).

2. This adversary proceeding is a core proceeding under, among other things, 28 U.S.C. § 157(b)(2)(A), (E), and (O). Because this is a core proceeding, the Bankruptcy Court has jurisdiction and power under 28 U.S.C. § 157(b) to hear and determine this adversary proceeding. Trustee consents to the entry of all final order or judgments by this Court if it is determined that this Court, absent consent of the parties herein, cannot enter final order or judgments consistent with Article III of the United States Constitution.

3. This adversary proceeding is also commenced pursuant to Sections 101, 105(a), 544, 548, 550 and 551 of the United States Bankruptcy Code; the general equity powers of the Bankruptcy Court; the Debtor Creditor Law of the State of New York (“NYDCL”), Sections 270 et seq; the general common law; and Federal Rules of Bankruptcy Procedure (FRBP) §§ 6009, 7001, 7008, et seq. to avoid and recover a fraudulent conveyance(s) of money or property of the estate.

Parties

4. On or about March 25, 2011 (the “Petition Date”), the Debtors filed a voluntary petition under Chapter 7 of Title 11 of the United States Code (the “Bankruptcy Code”) with this Court.

5. On or about March 28, 2011, the Trustee was appointed by the Office of the United States Trustee as interim trustee of the Debtors’ estate pursuant to § 701 and pursuant to § 702(d) of the United States Bankruptcy Code thereafter became permanent Trustee by operation of law and is serving as such.

6. Upon information and belief, Abraham Akanmu, is the minor son (the “Son”) of the Debtors and an individual who resides at 250 Pelton Avenue, Staten Island, NY 10310.

7. Upon information and belief, Xaverian High School (the “School”) is an entity that conducts business at 7100 Shore Road, Brooklyn, NY 11290.

Introductory Statement and Background

8. Pursuant to the Debtors’ testimony at the meeting of creditors conducted pursuant to § 341 of the United States Bankruptcy Code, it appears that, among other things, the Debtors paid approximately \$21,816.00 as and for their Son’s tuition to the School from approximately 2006 to the Petition Date (the “Transfer”).

9. From the testimony elicited at the Debtors’ § 341 hearing in addition to the documents provided by the Debtors to the Trustee on or about September 23, 2011, it appears that the Transfers, totaling approximately \$21,816.00, occurred for each academic year beginning with the 2006 to 2007 academic year through and until the 2010 to 2011 academic year. A copy of the Xaverian High School Statement evidencing payments made by the Debtors to the School for their Son’s tuition from 2006 through 2010 is attached hereto as “**Exhibit A**”.

10. This proceeding seeks the avoidance of the Transfers of the Debtors to, or for the benefit of, the Son and/or the School, and the turnover to the Trustee of the sums received by the School as result of the Transfers, plus interest from the dates of the Transfers, as to be determined at trial (the “Property”).

11. The Trustee is asserting the rights of unsecured creditors whose unsecured claims date back to the date of the Transfer pursuant to Bankruptcy Code § 544(b)(1) and NYDCL §278 and of future creditors pursuant to NYDCL §279.

First Claim for Relief

AVOIDANCE OF THE TRANSFER AS A FRAUDULENT CONVEYANCE

PURSUANT TO 11 U.S.C §§ 548, 550 AND 551

12. The Trustee repeats and realleges each and every allegation contained paragraphs 1 through 11 of this Complaint as if fully set forth therein.

13. Upon information and belief, the Trustee claims that on or about March 25, 2009 through the Petition Date, School received and/or was given the Transfers from and by the Debtors with no or inadequate consideration in an amount not less than approximately \$7,094.34.

14. The Property is property of the estate as provided for in § 541 of the Bankruptcy Code.

15. Upon information and belief, no monetary or other consideration was received by the Debtors from Son or School in exchange for the Transfers.

16. Upon information and belief, said disposition and/or parting with the Property comprising the Transfers was a “transfer(s)” under § 101(54) of the Bankruptcy Code.

17. Upon information and belief, the Debtors received less than a reasonably equivalent value for the transfer.

18. The Trustee reviewed the books and records that the Debtors supplied to the Trustee and has determined, upon information and belief, the Debtors were insolvent or

were rendered insolvent as a result of such Transfers and/or were left with unreasonably little capital as a result of said Transfers

19. Based on the foregoing, and pursuant to §§ 548, 550 and 551 of the Bankruptcy Code, the Trustee is entitled to judgment against School in an amount not less than \$7,094.34, plus interest, reasonable attorney's fees; and to attach the assets of Son and/or School and prevent transfers therefrom in the forgoing amount.

20. Based on the foregoing, and pursuant to §§ 548, 550 and 551 of the Bankruptcy Code, the Trustee is entitled to judgment against School in an amount not less than \$7,094.34, as well as any additional amounts that may be revealed in discovery, plus interest, reasonable attorney's fees; and to attach the assets of Son and/or School and prevent transfers therefrom in the forgoing amount.

Second Claim for Relief

AVOIDANCE OF THE TRANSFER AS A

FRAUDULENT CONVEYANCE PURSUANT TO 11 U.S.C §544(b) AND §§
273, 274, 275 and 278 OF NEW YORK DEBTOR CREDITOR LAW

21. The Trustee repeats and realleges each and every allegation contained paragraphs 1 through 20 of this Complaint as if fully set forth therein.

22. Upon information and belief, and according to the Debtors' testimony at the meeting conducted pursuant to Section 341 of the Bankruptcy Code, the Trustee claims that in or about 2006 through the Petition Date, Son and/or School received and/or was given the Transfers from and by the Debtors with little or no or inadequate consideration in an amount not less than \$21,816.00.

23. Upon information and belief and the testimony of the Debtors, the Trustee claims that in or about 2006 through the Petition Date, Son and/or School received and/or was given the Transfers from and by the Debtors with no or little or inadequate consideration in an amount not less than approximately \$21,816.00.

24. Upon information and belief, on the date of each of the Transfers, the Debtors: (i) were insolvent or were rendered insolvent as a result of such transfers, (ii) had unreasonably small capital for the business in which it was engaged or was about to engage, and/or (iii) intended to incur, or believed that it would incur, debts beyond its ability to pay as such debts matured.

25. Accordingly, pursuant to 11 U.S.C. § 544(b) and §§ 273, 274, 275 and 278 of NYDCL, the Trustee may avoid the Transfers.

26. Accordingly, pursuant to 11 U.S.C. § 540(a), the Trustee may recover from School, for the benefit of the Debtors' estate, the Transfers in the amount to be determined at trial that is not less than approximately \$21,816.00 as well as any additional amounts that may be revealed in discovery, plus interest; and to attach the assets of School and prevent transfers therefrom in the forgoing amount

27. Accordingly, pursuant to 11 U.S.C. § 550(a), the Trustee may recover from School, for the benefit of the Debtors' estate, the Transfers in the amount to be determined at trial that is not less than approximately \$21,816.00 as well as any additional amounts that may be revealed in discovery, plus interest; and to attach the assets of School and prevent transfers therefrom in the forgoing amount.

Third Claim for Relief

UNJUST ENRICHMENT FROM THE TRANSFER

28. The Trustee repeats and realleges each and every allegation contained in paragraphs 1 through 27 of this Complaint as if fully set forth herein.

29. Upon information and belief, Debtors did not receive adequate consideration from Son and/or School in connection with the Transfers.

30. Upon information and belief, in contrast, Son and/or School has been unfairly benefitted by receiving and retaining the Transfers, and has been unjustly enriched thereby.

31. By reason of the foregoing unjust enrichment of the Son and/School, the Trustee is entitled to judgment against the Son and/or School, the Trustee is entitled to judgment against the Son and/or School for the value of the Transfers, consisting of the value of the Transfers at the time of the Transfers in an amount to be determined at trial that is not less than \$21,816.00, as well as any additional amounts to be determined at trial that is not less than \$21,816.00, as well as any additional amounts that may be revealed in discovery, plus interest thereon, all for the benefit of the Debtor's estate.

32. By reason of the foregoing, the Court should impose a constructive trust of the Debtors' interest in the bank account(s) of Sons and/or School in an amount not less than \$21,816.00, as well as any additional amounts that may be revealed in discovery, to be held for the benefit of, and returned to, the Trustee for the benefit of the Debtors' estate's creditors, together with interest.

33. The Trustee asserts any interest in any and all bank accounts and other assets of Son and/or School on the grounds that they contain proceeds of the Transfers from the Debtors and/or that Son and/or School is indebted to the Debtors' estate from its receipt of the Transfers.

WHEREFORE, the Trustee respectfully requests judgment against School as follows:

(1) On Claim One, voiding the Transfers, and for damages on behalf of the Debtors in an amount to be determined at trial that is not less than approximately \$7,094.34, voiding the Transfers and for damages on behalf of the Debtors in an amount to be determined at trial that is not less than approximately \$7,094.34, as well as any additional amounts that may be revealed in discovery, plus interest; directing that a money judgment be entered for that amount, and directing that a constructive trust be imposed on School's assets, including any and all bank accounts and other real property owned by School, to prevent transfers therefrom in the foregoing amounts;

(2) On Claim Two, voiding the Transfers and for damages on behalf of the Debtors in an amount to be determined at trial that is not less than approximately \$21,816.00, as well as any additional amounts that may be revealed in discovery, plus interest; directing that a money judgment be entered for that amount, and directing that a constructive trust be imposed on School's assets, including any and all bank accounts and other real property owned by it, to prevent transfers therefrom in the foregoing amounts;

(3) On Claim Three, voiding the Transfers, awarding compensatory damages in an amount to be determined at trial not less than \$21,816.00, as well as any additional amounts that may be revealed in discovery, plus interest; directing that a money judgment be entered for that amount, and directing that a constructive trust be imposed on Son's and/or Schools's assets, including any and all bank accounts and other real property owned by them, to prevent transfers therefrom in the foregoing amounts;

- (4) On all claims, awarding pre- and post-judgment interest, costs and disbursements as allowed by law;
- (5) On all claims, awarding reasonable attorney's fees as allowed by law; and
- (6) Granting Plaintiff such other and further relief as to this Court appears just and proper.

Dated: New York, New York

March 18, 2013

/s/ Daniel Gershburg
DANIEL GERSHBRUG
Daniel Gershburg, Esq., P.C.
Counsel to the Trustee
Robert L. Geltzer, Trustee
100 Church Street, 8th Floor
New York, New York 10007
(718) 228-8748

Xaverian High School

7100 Shore Road
 Brooklyn, NY 11209
 Phone: (718) 836-7100

To the Parents of: Abraham Akanmu
 250 Pelton Avenue
 Staten Island, NY 10310

STATEMENT	
Statement date	9/21/2011
11092113585100001	

Charges For	
Abraham Olawale Akanmu	
Record ID	Student Grade
100035	

Amount Due	\$0.00
Amount Enclosed	

Please detach and return this portion with your remittance

Date	Type	Reference	Charge	Credit
7/1/2009	Charge	TUITION - PAYING ACA		
7/1/2009	Credit	Grant Award	\$10,100.00	
7/30/2009	Payment	Payment Received - Thank you		\$5,050.00
8/28/2009	Payment	Payment Received - Thank you		\$412.50
10/29/2009	Payment	Payment Received - Thank you		\$825.00
11/25/2009	Payment	Payment Received - Thank you		\$387.50
11/30/2009	Charge	Basketball Fee		\$850.00
12/30/2009	Payment	Payment Received - Thank you	\$175.00	
2/25/2010	Payment	Payment Received - Thank you		\$412.50
4/12/2010	Payment	Payment Received - Thank you		\$825.00
5/2010	Payment	Payment Received - Thank you		\$687.00
		Subtotal - Abraham Olawale Akanmu	\$0.00	\$412.50

					Total
					\$ 0.00

Xaverian High School

7100 Shore Road
 Brooklyn, NY 11209
 Phone: (718) 836-7100

To the Parents of: Abraham Akanmu
 250 Pelton Avenue
 Staten Island, NY 10310

STATEMENT	
Statement date	9/21/2011
11092113585100001	

Charges For	
Abraham Olawale Akanmu	
Record ID	Student Grade
100035	

Amount Due	\$0.00
Amount Enclosed	

Please detach and return this portion with your remittance

Date	Type	Reference	Charge	Credit
8/30/2007	Payment	Payment Received - Thank you		
9/26/2007	Payment	Payment Received - Thank you		\$347.91
10/29/2007	Payment	Payment Received - Thank you		\$217.41
11/29/2007	Payment	Payment Received - Thank you		\$217.45
12/28/2007	Payment	Payment Received - Thank you		\$217.45
1/30/2008	Payment	Payment Received - Thank you		\$217.45
2/4/2008	Charge	Basketball Fee		\$434.90
3/28/2008	Payment	Payment Received - Thank you	\$215.00	
6/12/2008	Payment	Payment Received - Thank you		\$434.90
7/1/2008	Charge	TESTING - PSAT/NMSQT		\$836.00
7/1/2008	Charge	Questia Research Pro	\$9.00	
7/1/2008	Charge	Activity Fee	\$12.00	
7/1/2008	Charge	TUITION - PAYING ACA	\$150.00	
7/1/2008	Credit	Grant Award	\$9,700.00	
9/29/2008	Payment	Payment Received - Thank you		\$4,850.00
10/30/2008	Payment	Payment Received - Thank you		\$1,723.35
11/25/2008	Payment	Payment Received - Thank you		\$366.67
12/5/2008	Charge	Basketball Fee		\$843.30
12/30/2008	Payment	Payment Received - Thank you	\$100.00	
1/29/2009	Payment	Payment Received - Thank you		\$366.67
3/30/2009	Payment	Payment Received - Thank you		\$366.67
4/29/2009	Payment	Payment Received - Thank you		\$366.67
5/18/2009	Payment	Payment Received - Thank you		\$366.67
6/28/2009	Payment	Payment Received - Thank you		\$721.00
7/1/2009	Charge	Questia Research Pro		\$825.00
7/1/2009	Charge	Activity Fee	\$12.00	
7/1/2009	Charge	Graduation Fee	\$150.00	
			\$250.00	

03-09

Xaverian High School

7100 Shore Road
 Brooklyn, NY 11209
 Phone: (718) 836-7100

STATEMENT	
Statement date	9/21/2011
11092113585100001	

Charges For	
Abraham Olawale Akanmu	
Record ID	Student Grade
100035	

To the Parents of: Abraham Akanmu
 250 Pelton Avenue
 Staten Island, NY 10310

Amount Due	\$0.00
Amount Enclosed	

Please detach and return this portion with your remittance

Date	Type	Reference	Charge	Credit
Abraham Olawale Akanmu				
		Summary balance as of 3/29/2006	\$0.00	\$0.00
5/13/2006	Payment	Payment Received - Thank you		\$400.00
6/28/2006	Payment	Payment Received - Thank you		\$2,312.53
7/27/2006	Payment	Payment Received - Thank you		\$770.83
7/31/2006	Charge	Questia Research Pro	\$12.00	
7/31/2006	Charge	Activity Fee	\$150.00	
7/31/2006	Charge	TUITION - PAYING ACA	\$9,250.00	
7/31/2006	Credit	Grant Award		\$3,750.00
9/2/2006	Payment	Payment Received - Thank you		\$770.83
9/28/2006	Payment	Payment Received - Thank you		\$770.83
10/27/2006	Payment	Payment Received - Thank you		\$79.18
12/28/2006	Payment	Payment Received - Thank you		\$79.16
1/29/2007	Payment	Payment Received - Thank you		\$79.16
2/26/2007	Payment	Payment Received - Thank you		\$79.16
3/5/2007	Charge	Basketball Fee	\$160.00	
3/29/2007	Payment	Payment Received - Thank you		\$79.16
4/26/2007	Payment	Payment Received - Thank you		\$76.19
5/14/2007	Payment	Payment Received - Thank you		\$324.97
7/1/2007	Charge	TESTING - PSAT/NMSQT	\$9.00	
7/1/2007	Charge	Questia Research Pro	\$12.00	
7/1/2007	Charge	Activity Fee	\$150.00	
7/1/2007	Charge	TUITION - PAYING ACA	\$9,700.00	
7/1/2007	Credit	Grant Award		\$4,850.00
7/10/2007	Payment	Payment Received - Thank you		\$1,541.66
7/27/2007	Payment	Payment Received - Thank you		\$770.87

0607

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B104 (Form 104) (08/07)	
ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	
ADVERSARY PROCEEDING NO.	
PLAINTIFF(S) ROBERT L. GELTZER, as Trustee of the Estate of OLANIYI L. AKANMU & OMOLAYO T. SUARA	DEFENDANT(S) XAVERIAN HIGH SCHOOL
ATTORNEY(S) (Firm Name, Address, Telephone No.) Daniel Gershburg, Esq., P.C. 100 Church Street, 8th Floor New York, NY 10007	ATTORNEY(S) (If Known)
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Trustee <input type="checkbox"/> Other	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee <input type="checkbox"/> Creditor <input type="checkbox"/> Trustee <input checked="" type="checkbox"/> Other
CAUSE OF ACTION (Write a brief statement of cause of action, including all U.S. statutes involved.) Action to recover fraudulent transfer of estate property pursuant to 11 U.S.C. §§ 544(b), 548, 550, 551 and §§ 273, 274, 275 and 278 of NYDCL and for unjust enrichment.	
NATURE OF SUIT (Number up to 5 boxes with the 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 checked="" type="checkbox"/> 13 – Recovery of money/property - § 548 fraudulent transfer <input checked="" 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 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 et seq. <input type="checkbox"/> 02 – Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy case)
<input 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: \$ 21,816.00
Other Relief Sought:	

B104 (Form 104) (08/07), Page 2		
BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR OLANIYI L. AKANMU & OMOLAYO T. SUARA		BANKRUPTCY CASE NO. 1-11-43773
DISTRICT IN WHICH CASE IS PENDING Eastern	DIVISION OFFICE Brooklyn	NAME OF JUDGE Craig
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY PROCEEDING IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ Daniel Gershburg	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Daniel Gershburg 100 Church Street, 8th Fl New York, NY 10007	
DATE March 22, 2012		

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 complete and file Form 104, the Adversary Proceeding Cover Sheet. 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.