

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

In Re:

Warwick Properties LLC,  
Debtor-in-possession.

Case No. 08-16620

Federal Trade Commission,  
Plaintiff,

Adversary Proceeding No. 09-\_\_\_\_\_

v.

**COMPLAINT**

Warwick Properties LLC  
7683 SE 27th Street, Suite 241  
Mercer Island, Washington 98040,

Heidi Fogg  
9022 North Mercer Way  
Mercer Island, Washington 98040,

and John Stefanchik  
9022 North Mercer Way  
Mercer Island, Washington 98040,

Defendants.

The Federal Trade Commission (“FTC” or “the Commission”), a creditor and party-in-interest, files this Complaint against the debtor, Warwick Properties LLC (the “Debtor” or “Warwick”), its manager, Heidi Fogg (“Fogg”), and her husband, John Stefanchik (“Stefanchik”), and seeks to pierce the corporate veil of the Debtor, in reverse, to enforce the Commission’s lien against certain property held in the name of the Debtor. The Debtor is nothing but a shell, which Stefanchik and Fogg used to hold their residence in an improper

1 attempt to shelter their house from the claims of creditors such as the FTC. Stefanchik and Fogg  
2 abused Warwick's corporate form. Accordingly, Warwick also should be liable to the FTC on  
3 the judgment entered against Stefanchik, which arose from his deceptive practices.  
4 Alternatively, the Commission seeks to recover as fraudulent transfers various payments and  
5 transfers made by Stefanchik and/or Fogg to or on behalf of the Debtor. Finally, the  
6 Commission seeks a ruling from this Court that any purported assignment of Stefanchik's rights  
7 and interests in the Debtor to Fogg does not alter or impair the Commission's judgment lien or  
8 claims in this Adversary Proceeding.

### 9 JURISDICTION AND VENUE

10 1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334.  
11 This Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

12 2. Venue in the Western District of Washington is proper under 28 U.S.C.  
13 § 1409(a).

14 3. This Adversary Proceeding relates to *In re Warwick Properties LLC*  
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1 officers/license renewal in a timely manner. *See* Certified Certificate of Administrative  
2 Dissolution (Ex. D).

3           25. Warwick purportedly cured those defaults by filing an application for  
4 reinstatement on July 5, 2007. *See* Certified Application for Reinstatement (Ex. E).

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1           34.     Warwick obtained another loan in the amount of \$100,000 from Washington  
2 Mutual Bank (“Washington Mutual”), which was also secured by the Country Club Property.  
3 *See* Certified Deed of Trust dated July 9, 2001 (Ex. K).

4           35.     On or about June 11, 2004, Warwick sold the property to third parties for  
5 approximately \$904,000.

6                   **2.     Purchase of the Stefanchik Home Through Warwick**

7           36.     Warwick later purchased another property on Mercer Island. The address for the  
8 Mercer Island Property is: 9022 North Mercer Way, Mercer Island. The legal description for  
9 this property is: Lot 21, Sunnybank, according to the plat thereof, recorded in volume 29 of  
10 plats, page 31, in King County, Washington.

11           37.     Warwick purchased the Mercer Island Property from third parties on or about  
12 March 28, 2002 for the price of approximately \$1,750,000. *See* Statutory Warranty Deed (Ex.  
13 L).

14           38.     Warwick purchased the Mercer Island Property, in part, with cash in the  
15 approximate amount of \$500,000. Upon information and belief, Fogg and Stefanchik personally  
16 provided the funds, or provided funds through other corporate entities they controlled, for this  
17 \$500,000 payment. The balance of the purchase price, \$1,225,000, came from a loan from  
18 Washington Mutual to Warwick. *See* Deed of Trust dated April 3, 2002 (Ex. M).

19           39.     Stefanchik and Fogg have resided at the Mercer Island Property since its purchase  
20 by Warwick.

21           40.     In October 2002, one of Stefanchik’s corporations and his co-defendant in the  
22 Stefanchik Case, Beringer, provided a loan in the amount of \$870,000 to Warwick (the  
23 “Beringer Loan”). The Beringer Loan was secured by the Mercer Island Property. *See* Deed of  
24 Trust dated October 12, 2002 (Ex. N).

25           41.     Washington Mutual loaned additional funds (in the amount of \$2,500,000) to  
26 Warwick on or about June 10, 2004. *See* TD-.0-0006 Tc3vITD-.0-0 12, 2002 (Ex. N).

1           42.    Upon information and belief, the second loan by Washington Mutual to Warwick  
2 was used, in part, to replace its initial loan of \$1,225,000. *See* Substitution of Trustee/Deed of  
3 Reconveyance dated July 9, 2004 (Ex. P).

4           43.    On or about July 14, 2005, Warwick obtained a line of credit (up to \$500,000)  
5 from HomeStreet, which was secured by the Mercer Island Property. *See* Deed of Trust dated  
6 July 14, 2005 (Ex. Q).

7           44.    The funds from the line of credit extended by HomeStreet were used, in part, to  
8 make certain improvements and/or repairs to the Mercer Island Property.

9           45.    Upon information and belief, the payments due on each of the loans encumbering  
10 the Mercer Island Property were made using the personal income of Stefanchik. Upon  
11 information and belief, payments due to Washington Mutual and HomeStreet for the Mercer  
12 Island Property were also paid from proceeds of real property sales and/or operations of another  
13 corporate entity controlled by Fogg and/or Stefanchik – PSD.

14                   **3.    Warwick Receives Another Gift from PSD**

15           46.    PSD purchased a home in Seattle through a foreclosure sale on or about April 30,  
16 2002. PSD paid approximately \$34,001 for this parcel.

17           47.    PSD transferred this parcel to Warwick on or about December 1, 2004 for no  
18 consideration. *See* Certified Quit Claim Deed (Ex. R). The parcel is described in the land  
19 records as: Lot 9, Block 3, Interlaken (the “Seattle Property”).

20           48.    On or about November 29, 2004, Warwick obtained a loan in the amount of  
21 \$479,050 from HomeStreet, which was secured by the Seattle Property. *See* Deed of Trust dated  
22 November 29, 2004 (Ex. S).

23           49.    Warwick no longer holds title to the Seattle Property. Warwick transferred the  
24 property to Fogg, on or about October 10, 2005. *See* Certified Quit Claim Deed (Ex. T).

25           50.    Warwick received no consideration from Fogg for the Seattle Property.

26                   **D.    Warwick Is Merely A Shell Limited Liability Company**

27           51.    As noted above, Warwick, at times, faced administrative dissolution for failing to  
28 comply with state filing requirements for limited liability companies. *See* ¶¶ 24 to 29 *supra*.

1           52.     Since its formation, Warwick has not had employees.

2           53.     Warwick's manager, Fogg, has not, for at least one year prior to the filing of  
3 Warwick's bankruptcy petition, received a salary or compensation from Warwick. *See* SOFA  
4 Item No. 3.c.

5           54.     Although Fogg is named as the manager of Warwick, upon information and  
6 belief, Stefanchik directed and controlled the activities carried out in Warwick's name. In fact,  
7 Stefanchik was so involved with Warwick that he was sworn in to testify as one of the Debtor's  
8 representatives at the meeting of creditors. *See* Transcript of 341 Meeting (Ex. U).

9           55.     The funds for Warwick's operations were predominantly derived from three  
10 sources: 1) loans on the real properties it owned; 2) sale of the Country Club Property; and 3)  
11 income from Stefanchik directly or by and through entities owned or controlled by Stefanchik  
12 and/or Fogg.

13           56.     To the extent that Warwick held capital, it was, at best, minimally capitalized.  
14 According to the Debtor's Statement of Financial Affairs, it has not made any income since at  
15 least 2006. *See* SOFA Item No. 1.

16           57.     Warwick has not filed any tax returns. All income, expenses, and losses from  
17 Warwick were incorporated into the personal joint tax returns of Stefanchik and Fogg.

18           58.     Funds held by Warwick were often commingled with at least one other entity –  
19 PSD. *See* Ex. U at 30:14-31:14.

20           59.     Upon information and belief, Warwick's funds also were commingled with those  
21 of Stefanchik, Fogg, and/or other entities controlled by Stefanchik and/or Fogg.

22           60.     Warwick's "business" is so intertwined with Stefanchik and Fogg that it has  
23 attempted to sell property that is not titled in Warwick's name as part of this Bankruptcy Case.  
24 Yet, Warwick claims it owns both the Warwick Island Property and the Seattle Property. *See*  
25 Amended Schedules A & D (Docket No. 40). As noted in Paragraph 49 above, Warwick, in fact,  
26 does not hold title to the Seattle Property.

27           61.     Stefanchik and Fogg often moved money and assets among the various shell  
28 entities they owned, managed and/or directed. For example, Warwick received two parcels of





1 68. Fogg and Stefanchik operated their personal affairs, Warwick and PSD in such a  
2 manner that the separate identities of the entities and individuals have become so confused or  
3 merged that they cannot be separated.

4 69. Fogg and Stefanchik operated Warwick with the intent to violate or evade a duty  
5 to their creditors.

6 70. Stefanchik's and Fogg's use of Warwick in this manner constitutes fraud or an  
7 abuse of the corporate form.

8 71. In abusing the corporate form, Stefanchik, Fogg and/or Warwick caused damages  
9 to Stefanchik's and Fogg's creditors, such as the FTC.

10 72. Under these circumstances, adherence to the existence of Warwick as a separate  
11 corporate entity would be inequitable and promote fraud or result in manifest injustice to the  
12 Commission.

13 73. Accordingly, Warwick's corporate form should be disregarded, its veil pierced, in  
14 reverse, and it should be subject to, jointly and severally, with Stefanchik, the judgment entered  
15 in the Stefanchik Case. RCW § 25.15.060.

16 **COUNT II**

17 **AVOIDANCE OF A FRAUDULENT TRANSFER AS TO**  
18 **A DEBT TO THE UNITED STATES (28 U.S.C. §§ 3304 & 3306)**

19 74. The Commission incorporates and restates Paragraphs 1 through 65 of this  
20 Complaint, as though fully set forth in this Paragraph 74.

21 75. The FTC brings this count to avoid fraudulent transfers pursuant to 28 U.S.C.  
22 §§ 3304 & 3306 and the Federal Debt Collection Procedure Act of 1990, 28 U.S.C. § 3001, *et*  
23 *seq.* (the "FDCPA").

24 76. Upon information and belief, at various times Stefanchik and/or Fogg tendered  
25 the monthly payments due for the loans on the Mercer Island Property and also paid for various  
26 expenses associated with the maintenance, repair, upkeep, and improvement of the Mercer Island  
27 Property (collectively, with the mortgage payments on the Mercer Island Property and the  
28 Warwick Assignment, the "Unauthorized Transfers").

1 77. Since 2001, Stefanchik and/or Fogg, personally and/or through the Debtor, made  
2 the Unauthorized Transfers.

3 78. Stefanchik, Fogg and/or the Debtor made the Unauthorized Transfers with the  
4 actual intent to hinder, delay or defraud present and future creditors of Stefanchik, Fogg and/or  
5 the Debtor.

6 79. Stefanchik, Fogg and/or the Debtor made the Unauthorized Transfers without  
7 receiving reasonably equivalent value in exchange.

8 80. At the time the Unauthorized Transfers were made, Stefanchik, Fogg and/or the  
9 Debtor were insolvent or were rendered insolvent by the Unauthorized Transfers.

10 81. The Unauthorized Transfers left Stefanchik, Fogg and/or the Debtor with  
11 unreasonably small capital.

12 82. At the time Stefanchik, Fogg and/or the Debtor made the Unauthorized Transfers,  
13 they intended to incur, or believed or reasonably should have believed that they would incur,  
14 debts beyond its/their ability to pay as they came due.

15 83. Accordingly, the Unauthorized Transfers should be avoided pursuant to the  
16 FDCPA and 28 U.S.C. §§ 3304 & 3306.

17 **COUNT III**

18 **AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS**  
19 **(RCW § 19.40.011, *et seq.*)**

20 84. The Commission incorporates and restates Paragraphs 1 through 65 of this  
21 Complaint, as though fully set forth in this Paragraph 84.

22 85. Under Washington's Uniform Fraudulent Transfer Act, a creditor may avoid a  
23 fraudulent transfer of the Debtor or may obtain an attachment against the improperly transferred  
24 property. RCW § 19.40.071.

25 86. Upon information and belief, at various times Stefanchik and/or Fogg tendered  
26 the monthly payments due for the loans on the Mercer Island Property and also paid for various  
27 expenses associated with the maintenance, repair, upkeep, and improvement of the Mercer Island  
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1 Property (collectively, with the mortgage payments on the Mercer Island Property and the  
2 Warwick Assignment, the “Unauthorized Transfers”).

3 87. The Unauthorized Transfers constituted a transfer of an interest in Stefanchik,  
4 Fogg and/or the Debtor’s property.

5 88. The Unauthorized Transfers were made to or for the benefit of Stefanchik, Fogg  
6 and/or entities owned or controlled by Stefanchik and/or Fogg.

7 89. Stefanchik, Fogg and/or the Debtor made the Unauthorized Transfers with actual  
8 intent to hinder, delay or defraud a creditor of Stefanchik, Fogg and/or the Debtor, within the  
9 meaning of the Washington Uniform Fraudulent Transfer Act, RCW § 19.40.011, *et seq.* (the  
10 “WUFTA”).

11 90. Stefanchik, Fogg and/or the Debtor made the Unauthorized Transfers, or  
12 transferred the Debtor’s property, without receiving reasonably equivalent value in exchange.

13 91. At the time Stefanchik, Fogg and/or the Debtor made the Unauthorized Transfers,  
14 or transferred the Debtor’s property, Stefanchik, Fogg and/or the Debtor were insolvent or were  
15 rendered insolvent by the Unauthorized Transfers.

16 92. At the time Stefanchik, Fogg and/or the Debtor made the Unauthorized Transfers,  
17 Stefanchik, Fogg and/or the Debtor intended to incur, or believed or reasonably should have  
18 believed that they would incur, debts beyond their ability to pay as they came due.

19 93. Accordingly, the Unauthorized Transfers should be avoided pursuant to the  
20 WUFTA, § 19.40.011, *et seq.*

21 **COUNT IV**

22 **DECLARATORY JUDGMENT**  
23 **(28 U.S.C. § 2201; RCW § 26.16.050)**

24 94. The Commission incorporates and restates Paragraphs 1 through 65 of this  
25 Complaint, as though fully set forth in this Paragraph 94.

26 95. An actual controversy exists surrounding the rights of the Commission to  
27 Warwick and the Mercer Island Property.

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96. The Commission contends that the entire ownership interest in Warwick and the

- 1 (b) declaring the Commission's lien against the Mercer Island Property valid and  
2 enforceable;
- 3 (c) avoiding the Unauthorized Transfers pursuant to 28 U.S.C. §§ 3304 & 3306 and  
4 the FDCPA;
- 5 (d) avoiding the Unauthorized Transfers pursuant to WUFTA § 19.40.011 *et seq.*;
- 6 (e) ordering the return and recovery of the Unauthorized Transfers, or entering  
7 judgment against the Debtor for the value of the Unauthorized Transfers;
- 8 (f) declaring that notwithstanding the purported Warwick Assignment:
- 9 (1) Stefanchik is a *de facto* member or owner of Warwick;
- 10 (2) the entirety of the membership or ownership interest in Warwick and  
11 Warwick's interest in the Mercer Island Property, including any increase in value  
12 since it was first acquired through Warwick, is property of Stefanchik and/or  
13 community property of Stefanchik and Fogg, subject to the FTC's judgment lien  
14 and claim; and
- 15 (3) the FTC's judgment lien and claim are enforceable against the entirety of  
16 the membership or ownership interest in Warwick, against Warwick itself, and  
17 against the Mercer Island Property; and
- 18 (g) granting such other equitable relief as may be just and proper.

19 Dated: December 11, 2009

Respectfully submitted by:

20 FEDERAL TRADE COMMISSION  
21 WILLARD K. TOM  
22 GENERAL COUNSEL

23 /s/ Kimberly L. Nelson  
24 Michael P. Mora, III. Bar No. 6199875  
(admitted *pro hac vice*)  
25 Kimberly L. Nelson, VA Bar No. 47224  
(admitted *pro hac vice*)  
26 Federal Trade Commission  
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