

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, :  
Plaintiff :  
 :  
 :  
v. : 3:04-CV-00596(EBB)  
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 :  
JOHN J.SUTTON and :  
JOANNE C.SUTTON :

**RULING ON DEFENDANT JOANNE SUTTON'S MOTIONS TO DISMISS**

**INTRODUCTION**

This is a civil action in which the Government is seeking satisfaction of criminal monetary impositions from Defendant John Sutton ("John"). On February 6, 2002, this Court entered a criminal judgment in Docket Number 3:99-CR-230 (EBB), United States v. John J. Sutton, which judgment imposed a special assessment in the amount of \$100; restitution in the amount of \$799,950; and a criminal fine of \$60,000. It is the latter amount that is involved in this fraudulent transfer action.

**STATEMENT OF FACTS**

The Court sets forth only those facts deemed necessary to an understanding of the issues raised in, and decision rendered on, this Motion.

On or about November 6, 1986, Defendants John and Joanne Sutton ("Joanne"), purchased property located at Thorn Hill Road in Jackson, New Hampshire ("Thorn Hill"). The purchase was evidenced by a warranty deed, which identified the Defendants as

"Joint Tenants". On or about March 1, 2004, the Defendants sold Thorn Hill to a third-party for the purchase price of \$422,615.31. Joanne is the current holder of the entirety of the proceeds. Despite demand, John has failed to satisfy his outstanding criminal debt out of these proceeds. Defendants now live at 612 Carternotch Road, also in Jackson, New Hampshire.

The Government seeks to have this Court declare that John's apparent transfer of his portion of the proceeds in Thorn Hill to Joanne was a fraudulent transfer; thus, void to the extent necessary to satisfy his remaining criminal fine. Further, it seeks a judgment against Joanne, for the full amount of the debt, plus costs and fees.

Joanne has filed two identical Motions to Dismiss for lack of personal jurisdiction or for improper venue, or, in the alternative, she requests transfer of this case to the United States District Court for the District of New Hampshire.<sup>1/</sup> John also moved to transfer the case to New Hampshire, which Motion was denied by this Court on May 7, 2004.

#### **LEGAL ANALYSIS**

##### **I. Personal Jurisdiction**

Personal service on Joanne was made by the Government in full compliance with 28 U.S.C. Section 3004 of the Federal Debt Collection Procedures Act ("FDCPA"), inasmuch as Section 3004 permits nationwide service of process of a government complaint alleging fraudulent transfer.

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<sup>1/</sup> The two identical motions are Doc. Nos. 11 and 17. The Ruling is applicable to both.

The analysis of personal jurisdiction in a nationwide service of process case is different than that of the seminal "minimum contacts" analysis of International Shoe Co. v. Washington, 326 U.S. 310 (1945), which analysis is performed pursuant to the Due Process Clause of the Fourteenth Amendment.. In a nationwide service of process analysis, as must be performed under FDCPA, the question arises as to "whether the Fifth Amendment permits the exercise of jurisdiction by a federal court in circumstances in which a state court of the forum state would be proscribed from proceeding under International Shoe." Hallwood Realty Partners, L.P. v. Gotham Partners, 104 F.Supp.2d 279, 283 (S.D.N.Y. 2000). In other words, in performing this nationwide service of process jurisdictional analysis, the Court must determine the constraints of the Due Process clause of the Fifth Amendment, without the necessity of an initial analysis of the "minimum contacts" of the defendant with the forum state pursuant to the Fourteenth Amendment. Because the relevant "minimum contacts" under the Fifth Amendment are contacts with the United States, the court in Securities and Exchange Commission v. Softpoint, Inc., 2001 WL 43611 at \*3, 5 (S.D.N.Y. 2001), *citing* Mariash v. Morrell, 496 F.2d 1138 (2d Cir. 1974), held that the "minimum contacts" analysis is essentially unnecessary with respect to defendants such as Joanne, who is a citizen of the United States, properly served in New Hampshire.

Hence, in order to determine the correct answer to the jurisdictional issue in this case, the Court must turn to the five-factor "reasonableness" test enunciated in Asahi Metal

Industry Co. v. Superior Court, 480 U.S. 102, 113-114 (1987).

The five factors of Asahi are: (1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversy; and (5) the shared interest of the states in furthering substantive social policies.

The Court now turns to the Asahi factors seriatim, keeping the admonition of the Supreme Court in the forefront, that "dismissals resulting from the application of the reasonableness test should be few and far between." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477 (1985), *cited in* Metropolitan Life Insurance Co. v. Robertson-Ceco Corp., 84 F.3d 560, 575 (2d Cir. 1996). *Accord* Mallon v. Walt Disney World Co., 42 F.Supp.2d 143, 145 (D.Conn.1998) *quoting* Burger King, 471 U.S. at 477 (defendant in successful Rule 12(b)(2) challenge must present "compelling case" of unreasonableness.)

(1) Joanne's solitary argument regarding the burden to her of litigating this action in Connecticut is that she is a sixty-four-year-old woman who lives five hours away from this courthouse. The Court finds that such an alleged "burden" is trivial and comes nowhere close to the "unreasonable" standard that is demanded by Asahi and its progeny. As the burden of litigating in this forum to a disabled, unemployed individual who would, of necessity, be required to travel from Lowell,

Massachusetts to Bridgeport, Connecticut has been held to be in compliance with the Due Process Clause, Joanne's de minimus claim is easily dismissed out of hand. See Mashantucket Pequot Tribe v. Redican, 309 F.Supp.2d 309, 320 (D.Conn.2004).

(2) The interest of the State of Connecticut is paramount to that, if any, of New Hampshire. The Government herein alleges that Joanne willfully and knowingly has assisted her husband in unlawfully transferring his portion of the proceeds from the sale of Thorn Hill to her, in an effort to avoid payment of a criminal judgment entered in Connecticut. Resultingly, each fraudulent action asserted in the Government's Complaint, as taken by her, has been directed at this jurisdiction. It is this jurisdiction in which John's criminal liability was adjudicated and where the criminal fine is to be paid. The enforcement of the finality of its judgments is of great import to Connecticut. Granted, within a generalized concept of ordered liberty, all jurisdictions respect the finality of judgments of their sister states. However, it is that jurisdiction in which the judgment was entered that has, by far, the dominant interest in the collection of such unpaid judgment. This is even more so when the debt is owed to our society at large, as the result of criminal activities, and not simply an adjudication of civil liability between or amongst civil litigants.

(3) It is beyond cavil that the more convenient and effective relief may be achieved in that district where the Court and the Government has all information, files, and overall familiarity in both the criminal and civil actions, which plainly

is in the existent forum. This Court presided over John's criminal action and sentenced him. For the past year, the Court has thoroughly familiarized itself with the present fraudulent concealment action. The two Assistant U.S. Attorneys responsible for both the criminal and civil cases are assigned to the District of Connecticut. Naturally, then, both civil and criminal files are also maintained here. Both Connecticut Assistants have had extensive dealings with John's criminal activities and, for the last three years, have become remarkably familiar with his allegedly unlawful civil actions. To expect an Assistant U.S. Attorney from the District of New Hampshire to become as intimately familiar with these cases as the two Assistants from Connecticut already are is to request unreasonable, unnecessary duplication of effort, time, and expense to the Government. A fortiori, the same is true for the District Court for the District of New Hampshire. The Court declines to so burden both entities.

(4) The fourth factor - - the efficient administration of justice - - is generally determined by the court considering "where witnesses and evidence are likely to be located." Metropolitan, 84 F.3d at 574 (citations omitted). In a fraudulent conveyance action, the Government's central burden is straight forward and consists of the identification of several indicia of intent, in compliance with 28 U.S.C. Section 3304(b)(2). The majority of intent in this case will be a matter of public record (e.g., John's admission in his Answer to the Government's Complaint that the transfer of his share of the sale proceeds to

Joanne constituted substantially all of his assets; that the transfer to his wife of said assets was made to an "insider", as defined in Subsections 3304(b)(2)(A) and 3305(A0(1)). The Government has represented to this Court that all remaining indicia will be addressed through routine civil discovery, primarily written discovery requests. Due to the overall simplistic nature of this case, there exists very little need, if any, for witnesses or extensive discovery or evidence. See Government's Memorandum of Law (May 28, 2004) at 8. The Court is in full agreement with the Government's posture on an uncomplicated fraudulent conveyance action such as that presented here.

The Court further agrees that Joanne's anticipatable arguments favoring New Hampshire as the jurisdiction in which the most efficient administration of justice will be laid miss the point of the nature of the present litigation. First, she contends that New Hampshire is "where all the witnesses to the alleged fraudulent transfer are located and where the land at issue is located." Defendant's Memorandum of Law (May 17, 2004) at 8-9. This is the proverbial red herring, due to the fact that this is not a real property action. Assuming that Thorn Hill was in fact sold to bona fide purchasers, the transfer cannot be disturbed, as a matter of law. 28 U.S.C. § 3307.

Secondly, Joanne relies on a transfer provision provided for in 28 U.S.C. Section 3004(b)(2) which is inapplicable to this, a fraudulent conveyance action commenced under 28 U.S.C. Section 3001, et.seq., Subchapter D of the FDCPA. In contradistinction,

Section 3004(b)(2) permits defendants to transfer actions brought pursuant to Subchapters B and C of FDCPA only, which Subchapters relate to prejudgment and postjudgment collection remedies, not to fraudulent transfer actions. A thorough analysis of these Subchapters reveals the error of Joanne's reasoning with regard thereto. Put plainly, that part of Joanne's Motion seeking transfer pursuant to 28 U.S.C. Section 3004(b)(2), is DENIED, as legally impermissible.

(5) "This factor requires us to consider the common interests of the several states in promoting substantive social policies." Metropolitan, 84 F.3d at 575. Joanne has not suggested, must less shown, any substantive social policies that would be furthered by permitting this case to be heard in New Hampshire and this Court cannot imagine any.

It is beyond peradventure, then, that personal jurisdiction as to Joanne lies in the District of Connecticut and such exercise of jurisdiction is imminently reasonable. Further, in no way is it contrary to "traditional notions of fair play and substantial justice." See Chew v. Dietrich, 143 F.3d 24, 29 (2d Cir.), *cert. den'd*, 525 U.S. 948 (1998).

## **II. Venue**

Joanne contends that, even if this Court finds that it has personal jurisdiction over her, which it has, the action should nevertheless be dismissed as to her, pursuant to Fed.R.Civ.P. 12(b)(3). "Clearly, venue for this federal question case does not exist in the District of Connecticut. Both of the

Defendants, Mr. And Mrs. John Sutton, reside in New Hampshire, these alleged acts and omissions regarding the fraudulent transfer claim occurred in the District of New Hampshire and the property that is the subject of the fraudulent transfer claim is located in the District of New Hampshire." Defendant's Memorandum of Law at p. 10. Seemingly, Joanne asserts that this is just a legal given, inasmuch as, following the above-referenced quotation, she concludes her argument: "Therefore, venue is not proper in the District of Connecticut and the case should be dismissed pursuant to Federal Rules [sic] of Civil Procedure 12(b)(3)."

However, the Government counters that venue is proper, pursuant to the "co-conspirator venue rule." This rule provides that "so long as venue is proper as to [one] of the defendants, and at least one of the defendants commits an act in furtherance of the scheme in the forum district, then venue is proper in that forum as to all knowing participants in the alleged fraudulent scheme." RMS Titanic, Inc., et al. v. Geller, et al., 2000 WL 306997 at \* 4 (D.Conn. 2000). Accord Wyndham Associates v. Blintliff, 398 F.2d 614, 620 (2d Cir. 1968); Ryan v. Allen, 1997 WL 567717 (S.D.N.Y. 1997); Keene Corp. v. Weber, 394 F.Supp. 787 (S.D.N.Y. 1975). The Court notes, in addition, that a single act is sufficient to render venue proper. The act "need not constitute the core of the violation", but it "should be an important step in the fraudulent scheme, or at least more than an immaterial part of the alleged violations." Como v. Commerce Oil Co., 607 F.Supp. 335, 341-42 (S.D.N.Y. 1985). See also Steinberg

& Lyman v. Takacs, 690 F.Supp. 263 (S.D.N.Y. 1988)(holding that any nontrivial act in forum district is sufficient to establish venue).

The Court can reach no other conclusion but that John and Joanne Sutton are co-conspirators in John's unlawful transfer of funds to Joanne in order to avoid payment of his criminal fine in this District. His admission on the record at a hearing held in his criminal case - - that his wife took possession of his portion of the proceeds <sup>2/</sup> from the sale of Thorn Hill - - is an overt act in furtherance of the fraudulent transfer scheme, which occurred in this forum. <sup>3/</sup> So, too, is the overriding, continuing failure of John to pay his criminal fine in this forum.

This Court finds that, since venue is proper as to John, it is identically so as to his co-conspiring wife, Joanne.

#### **CONCLUSION**

Both identical Motions to Dismiss For Lack of Personal Jurisdiction, or Improper Venue, or, in the Alternative, to Transfer the Action to the District Court for the District of New Hampshire [Doc. Nos. 11 and 17] are hereby DENIED.

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<sup>2/</sup> According to his testimony, his wife gave him approximately \$27,000 from the \$422,615.31 received from the sale of Thorn Hill, even though they held the property as joint tenants.

<sup>3/</sup> The hearing was held before this Court on May 25, 2004.

SO ORDERED

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ELLEN BREE BURNS

SENIOR UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut this \_\_\_\_ day of January, 2005.