

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

D.A.N. JOINT VENTURE, :
 :
 Plaintiff, :
 :
 V. : CASE NO. 3:04CV564(RNC)
 :
 JAMES M. COADY, et al., :
 :
 Defendants. :

RULING AND ORDER

D.A.N. Joint Venture, a judgment creditor of James M. Coady ("Coady"), brings this diversity action in two counts against Coady, his wife Joanne, and Constitution Securities of Florida, Inc. ("Constitution"), claiming that Coady has fraudulently transferred assets to Constitution and uses his wife to hold title to properties under his control. The first count seeks recovery against Constitution pursuant to Conn. Gen. Stat. § 52-552(e)(1); the second seeks to impose a constructive trust on property held by Mrs. Coady. Defendants have moved to dismiss both counts. For the reasons stated below, the motion is denied.

I. Facts

The following facts, taken from plaintiff's complaint, are assumed to be true for purposes of this motion. Plaintiff is the assignee of a judgment entered against Coady in 1991, which has a current value of \$657,491.85. Coady has engaged in fraud to avoid paying the judgment. He has borrowed a substantial sum from a third

party and transferred the proceeds of the loan to Constitution, with the intention of hindering, delaying or defrauding his creditors. In addition, he has arranged for his wife to hold legal title to substantial interests in companies and real properties to enable him to profit from these interests without having to satisfy his creditors.

II. Discussion

Defendants move to dismiss on eight grounds, none of which justifies dismissal.

A. Grounds applicable to both counts

Defendants move to dismiss the whole complaint based on plaintiff's failure to plead the citizenship of all its partners as required to establish the complete diversity necessary to invoke jurisdiction under 28 U.S.C. § 1332. Plaintiff has now established the existence of complete diversity by affidavit, (Rapczak Aff. ¶¶ 3-7.), which is sufficient.

Defendants also move to dismiss the whole complaint on the ground that plaintiff is barred from bringing an action in Connecticut by Conn. Gen. Stat. § 34-381(a), which prohibits a limited partnership transacting business in Connecticut from maintaining an action in Connecticut courts if it has not registered to do business in the state. Plaintiff has established by affidavit that its business in Connecticut is restricted to collecting debts

(Rapczak Aff. ¶ 10), which exempts it from the registration requirement. Conn. Gen. Stat. § 34-38o(b)(7).

B. Grounds applicable to the count brought against the Coadys

Defendants contend that the claim against the Coadys is barred by res judicata. This argument is unavailing because plaintiff does not seek to relitigate the claim that led to the original judgment against Coady.

Defendants next contend that plaintiff is trying to subject Coady to involuntary servitude in violation of the Thirteenth Amendment to the United States Constitution. Clearly, however, there is no such constitutional difficulty. The relief sought is money damages and a receivership for existing assets.

Defendants further contend that the claim against the Coadys is barred by a marital privilege. They cite no authority for this defense and none has been found. Moreover, it is not clear that plaintiff cannot prove its claim without violating the privilege. Accordingly, this argument is also unavailing.

C. Grounds applicable to the count brought against Constitution

Defendants argue that the claim against Constitution is barred by the applicable statute of limitations, Conn. Gen. Stat. § 52-552j. The statute provides that an action for fraudulent transfer must be brought "within four years after the transfer was made or the

obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant." Plaintiff argues plausibly that it could not reasonably have discovered the transfer to Constitution until October 2003, six months before this complaint was filed. Plaintiff's argument, which is unrebutted, raises an issue of fact that cannot be resolved on the present record.

Defendants contend, finally, that the claim against Constitution fails to plead fraud with particularity, as required by Federal Rule of Civil Procedure 9(b). However, Official Form 13, which is expressly declared to be a sufficient pleading by Federal Rule of Civil Procedure 84, demonstrates that it is enough for the complaint to allege that the debtor-defendant conveyed specified property to the transferee-defendant on or about a certain date for the purpose of defrauding plaintiff and hindering and delaying the collection of a specified debt. Plaintiff's complaint contains all these allegations.

III. Conclusion

Accordingly, defendants' motion to dismiss [Doc. #7] is hereby denied.

So ordered.

Dated at Hartford, Connecticut this 4th day of October 2004.

Robert N. Chatigny
United States District Judge