

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

In re:

Case No. 3:11-bk-8765-PMG

Richard Haisfield  
and Audrey L. Haisfield,

Debtors.

Chapter 11

Official Committee of Unsecured Creditors  
of Richard Haisfield and Audrey L. Haisfield,

Plaintiff,

vs.

Adv. No. 3:13-ap-65-PMG

1<sup>st</sup> Choice Breeding, LLC, et al.,

Defendants.

**ORDER ON DEFENDANTS' MOTIONS TO DISMISS  
DESIGNATED COUNTS OF AMENDED COMPLAINT**

**THIS CASE** came before the Court for hearing to consider fourteen Motions to Dismiss designated Counts of the Plaintiff's Amended Complaint. (Docs. 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, and 62).

The Plaintiff, the Official Committee of Unsecured Creditors, filed an Amended Complaint for Avoidance of Transfers, for Damages, and for Other Relief. (Doc. 3). The Amended Complaint is 209 pages in length, names 37 individuals or entities as Defendants, and contains 138 Counts. Twenty-two

of the Defendants filed fourteen separate Motions to Dismiss designated Counts of the Amended Complaint, and the Motions to Dismiss the designated Counts are presently before the Court.

Generally, the action for civil conspiracy in Count 2 should be dismissed because the Amended Complaint does not allege the details of the conspiracy and does not specify each Defendant's participation in the conspiracy. Additionally, the action for an accounting in Count 138 should be dismissed because the Amended Complaint does not sufficiently identify which Defendants are the subject of the Count.

The remaining Counts designated in the Motions to Dismiss are Count 1 for alter ego liability and to pierce the corporate veil, Count 136 and Count 137 for injunctive relief, and a number of Counts to avoid and recover fraudulent or preferential transfers. These remaining designated Counts sufficiently state claims upon which relief can be granted, and the Motions to Dismiss the Counts should be denied.

### **I. The Amended Complaint**

In the Amended Complaint, the Plaintiff alleges that the Defendants engaged in a number of complex transactions to defraud the Debtors' creditors. A summary of the allegations appears in the Complaint's Introduction:

1. The Debtors are in the business of breeding and selling racehorses. In 2006, the Debtors represented to creditors that they had total assets of \$102,300,000 and a net worth and equity of \$40,000,000 in order to induce those creditors to lend money to them. Since that time, the Debtors, with the aid of their relatives, have fraudulently transferred approximately \$21,000,000 (a conservative estimate) in assets for the purpose of defrauding creditors and evading payment of their debts (the "Fraudulent Transfer Scheme").

(Doc. 3, ¶ 1). According to the Amended Complaint, the Fraudulent Transfer Scheme involved four primary components:

(a) the wholesale transfer of the Debtors' assets in 2009 to new limited partnerships controlled by the Debtors through two new revocable trusts;

(b) the transfer of ownership interests and the proceeds therefrom in a thoroughbred stallion named Medaglia D'Oro, which resulted in Marc and Randy Haisfield and/or entities owned by them receiving over \$6,000,000;

(c) the systematic transfer of ownership interests in companies owned in whole or in part by the Debtors to Marc and Randy Haisfield and/or entities owned by them; and

(d) the transfer of interests in other horses owned by the Debtors which were transferred to the very companies they controlled before they fraudulently transferred their interests therein to Marc and Randy Haisfield.

(Doc. 3, ¶ 6). Marc Haisfield and Randy Haisfield are the sons of the Debtor, Richard Haisfield. (Doc. 3, ¶¶ 29, 36).

The allegations that apply to the entire Fraudulent Transfer Scheme are set forth in the first 274 paragraphs of the Amended Complaint. These paragraphs are divided into four main sections entitled "Introduction," "The Parties," "Jurisdiction and Venue," and "Factual Allegations." The Factual Allegations are further divided into three subsections entitled "Background," "The Fraudulent Transfer Scheme," and "Piercing the Veils the Haisfields Utilized to Perpetrate Fraud and Civil Conspiracy."

The specific causes of action asserted in the Amended Complaint are set forth after the Factual Allegations. Generally, Count 1 is an action for alter ego liability and to pierce the corporate veil (¶¶ 275-294); Count 2 is an action for civil conspiracy (¶¶ 295-300); Counts 3 through 134 are actions for the avoidance of transfers (¶¶ 301-593); Counts 135 through 137 are actions for injunctive relief (¶¶ 350-362)(sic); and Count 138 is an action for an accounting (¶¶ 363-367)(sic) .

Fourteen Motions to dismiss designated Counts of the Amended Complaint are presently before the Court. In the Motions, the moving Defendants challenge Count 1, Count 2, Count 136, Count 137, Count 138, and a number of the avoidance Counts.

## **II. Count 1**

Count 1 is an action “to impose alter ego liability and pierce the corporate veils of the Debtors and Debtors’ Entities.” (§ 275).

The Debtors are Richard Haisfield and Audrey Haisfield.

The “Debtors’ Entities” are identified in the Amended Complaint as ALH Management, Inc., Atoka Bloodstock, LLC, the Audrey Haisfield Revocable Living Trust, Family Broodmares, LLC, Family Broodmares II, LLC, Family Broodmares III, LLC, Haisfield Holdings, LLC, Haisfield Management, LLC, Haisfield Ventures, LP, Haisfield Ventures II, LLC, Haisfield Ventures III, LLC, Medaglia I, LLC, Nevertell Kentucky II, LLC, Nevertell Farm Kentucky IV, LLC, Palm Beach Racing Partnership, LLLP, Palm Beach Racing II, LLC, Plantation Classic Investments, Inc., the Richard Haisfield Revocable Living Trust, Stone\*Wall Farm Broodmares, LLC, Stone\*Wall Farm Kentucky, LLC, Stone\*Wall Farm Ocala, LLC, Stone\*Wall Farm Stallions Racing Division I, LLC, Stone\*Wall Farm Stallions, LLC, Stone\*Wall Farm Stallions I, LLC, Stone\*Wall Farm Stallions XII, LLC, and Stone\*Wall Farm Stallions 53, LLC. (§ 46, n.2).

In Count 1, the Plaintiff incorporates Paragraphs 1 through 274 of the Amended Complaint. (§ 276). In Paragraph 1, as incorporated in Count 1, the Plaintiff alleges that the Debtors transferred assets valued at approximately \$21,000,000 to defraud their creditors (the Fraudulent Transfer Scheme). In Count 1, the Plaintiff further alleges, among other allegations:

282. The Debtors, as the owners, operators, officers, managers, and/or directors of the Debtors' Entities, have abused and disregarded the corporate entity of each of the Debtors' Entities and have made them mere instrumentalities of their affairs.

283. Such unity of interest, operation, control, and/or ownership exists among the Debtors and the Debtors' Entities that the separate affairs and personalities of the Debtors and the Debtors' Entities no longer exist.

...

287. The Debtors operated the Debtors' Entities for their benefit and engaged in the Fraudulent Transfer Scheme to commingle and intertwine their financial affairs with the Debtors such that they served as the alter ego of the Debtors.

288. The Debtors in combination with the other Defendants have acted in concert to intentionally abuse the corporate form of each of the Debtors' Entities in order to defeat justice, perpetrate actual or constructive fraud, and evade contractual responsibility on preexisting liabilities.

Based on these allegations, the Plaintiff seeks the entry of a judgment (1) piercing the veil of the Debtors' Entities, (2) determining that the Debtors' Entities are the alter egos of the Debtors, (3) determining that the Debtors' Entities are liable for the Debtors' debts, including the fraudulent transfers alleged in the Amended Complaint, and (4) determining that the assets of the Debtors' Entities are property of the Debtors' bankruptcy estate.

The moving Defendants assert that Count 1 should be dismissed because the alter ego claim is only a remedy or theory of liability, and not a separate cause of action. (See, for example, Doc. 49, p. 4)(citing Oginsky v. Paragon Properties of Costa Rica, LLC, 784 F.Supp.2d 1353 (S.D. Fla. 2011)). According to the moving Defendants, the alter ego remedy may be pled in the specific Counts to which it relates, but may not stand alone as a separate Count in the Amended Complaint. (Transcript, pp. 20, 21, 26).

The moving Defendants' statement of the alter ego theory of liability is accurate.

[I]t is black letter law in Florida that seeking a determination that a shareholder is the “alter ego” of a corporation and therefore liable for the corporation’s debts, or similarly seeking to pierce the corporate veil of a corporation to impose liability on the shareholder for the corporation’s debts, is *not* an independent claim or cause of action. *See Tara Productions, Inc. v. Hollywood Gadgets, Inc.*, 2010 WL 1531489 at 9 (S.D. Fla. Apr. 16, 2010)( “[a]lter ego is not a separate cause of action for which relief can be granted”). Rather, it is a means of imposing liability on the shareholder based on an underlying cause of action for which the corporation is liable, including tort liability or liability for breach of contract.

In re Fiddler’s Creek, LLC, 2010 WL 6618876, at 2 (Bankr. M.D. Fla.)(Emphasis in original). Thus, the alter ego doctrine is a means of imposing liability with respect to an underlying cause of action, and not an independent claim. In re CLK Energy Partners, LLC, 2011 WL 1312275, at 9 (Bankr. W.D. La.).

In this case, however, Count 1 of the Amended Complaint does not function as an independent claim for alter ego liability. Rather, the Amended Complaint is predicated on a wide-ranging Fraudulent Transfer Scheme, and the alter ego Count is only one request for relief in an extensive Complaint that includes 131 Counts to avoid fraudulent or preferential transfers. In other words, the Amended Complaint includes a number of underlying causes of action or substantive rights to which the alter ego claim may relate.

Stated differently, the alter ego claim is not asserted in the Amended Complaint as a stand-alone cause of action. See Meyer v. Bayles, 2012 WL 2522896, at 4, n.4 (W.D. La.). It pertains to the fraud-based claims that form the substance of the Complaint. Accordingly, the alter ego claim may be asserted as the remedy to enforce the substantive rights. See In re CLK Energy Partners, LLC, 2011 WL 1312275, at 9.

The Motions to Dismiss Count 1 should be denied, and Count 1 should not be dismissed for failure to state a claim upon which relief can be granted. See In re Rocky Mountain Recreational Communities, LLC, 2012 WL 5248480 (Bankr. D. Mont.)(The Court declined to dismiss an alter ego count, where the complaint also included fraudulent transfer claims that provided the basis for the remedy.).

### **III. Count 2**

Count 2 is an action against all of the Defendants, except Lisa Haisfield, for civil conspiracy. (¶ 295).

Generally, a civil conspiracy involves an alleged agreement to commit a wrongful act, such as fraud, and a claim for civil conspiracy must be pled with specificity. American United Life Insurance Co. v. Martinez, 480 F.3d 1043, 1067-68 (11<sup>th</sup> Cir. 2007).

In order to state a claim for civil conspiracy, the Plaintiff must allege: “(a) an agreement between two or more parties, (b) to do an unlawful act or to do a lawful act by unlawful means, (c) the doing of some overt act in pursuance of the conspiracy, and (d) damage to plaintiff as a result of the acts done under the conspiracy.” *United Technologies Corp. v. Mazer*, 556 F.3d 1260, 1271 )11<sup>th</sup> Cir. 2009). Furthermore, as the Plaintiff’s conspiracy claim is based on fraud, the Plaintiff must meet the heightened pleading standard of Rule 9(b).

In re Palm Beach Finance Partners, L.P., 488 B.R. 758, 777 n.16 (Bankr. S.D. Fla. 2013). To satisfy the standard, a plaintiff must specifically allege “the who, what, where, when, how of the alleged conspiracy,” and also specify each defendant’s participation in the conspiracy. In re Palm Beach Finance Partners, L.P., 488 B.R. at 777-78(quoted Begualg Investment Management, Inc. v. Four Seasons Hotel Limited, 2011 WL 4434891, at 6 (S.D. Fla.)).

In this case, the Plaintiff alleges in Count 2 of the Amended Complaint that the Defendants “conspired with one another to construct and perpetuate the Fraudulent Transfer Scheme” for the purpose of advancing their collective financial interests. (§ 297). The Plaintiff also alleges that the Defendants received fraudulent transfers from the Debtors and the Debtors’ Entities in connection with the Scheme, with the intent to defraud the Debtors’ creditors. (§ 298).

The moving Defendants assert that Count 2 should be dismissed, because the “Plaintiff lumps all of the defendants together and contends that they each conspired with one another without differentiating between the different roles or overt acts of each alleged co-conspirator.” (See, for example, Doc. 49, p. 6). The moving Defendants acknowledge that Paragraphs 1 through 294 are incorporated into Count 2, and that Paragraphs 1 through 294 include allegations regarding multiple transactions among all of the Defendants. Even with the incorporated allegations, however, the moving Defendants assert that they cannot determine which allegations are intended to support the conspiracy claim, or which allegations apply to particular Defendants. (Transcript, pp. 39-40).

In response to the Motions, the Plaintiff refers to a complex web of transactions that is difficult to unravel, and asserts that the Fraudulent Transfer Scheme essentially involves only five individuals. (Transcript, pp. 32-34). According to the Plaintiff:

We allege that after you wade through the 274 paragraphs, you would find an agreement among all of those entities and their principals to do an unlawful act, which, in this case, is to engage in the fraudulent transfers, individually and collectively, by the doing of some overt act in furtherance of the conspiracy.

And those overt acts are the transfers.



(Transcript, p. 35). Apart from alleging a general conspiracy by all of the Defendants to create a complex network of transfers, however, the Plaintiff does not indicate which allegations in the Amended Complaint distinguish each Defendant's role in the alleged conspiracy.

Count 2 of the Amended Complaint alleges only a global agreement among all of the Defendants to engage in numerous transfers. The Amended Complaint does not specifically allege the content of the agreement or the details of the conspiracy, and does not specify each Defendant's participation in the conspiracy. To plead a claim for civil conspiracy, a plaintiff "must state facts which put each defendant on notice as to how he allegedly joined the conspiracy." See Lui Ciro, Inc. v. Ciro, Inc., 895 F.Supp. 1365, 1384 (D. Hawaii 1995).

The allegations are not sufficient to state a claim for civil conspiracy. The Motions to Dismiss Count 2 of the Amended Complaint should be granted, and Count 2 of the Amended Complaint should be dismissed without prejudice.

#### **IV. Count 136 and Count 137**

Count 136 is an action for a preliminary and permanent injunction "to enjoin the Debtors, Medaglia I, Marc Haisfield, Randy Haisfield, and all entities in which Audrey Haisfield, Richard Haisfield, Marc Haisfield, or Randy Haisfield, either individually or collectively, own at least a fifty percent (50%) interest, from exercising or selling the MDO Breeding Right." (§ 353)(sic). The MDO Breeding Right is defined as "a right to breed one (1) Thoroughbred mare to [Medaglia D'Oro] in each Northern Hemisphere breeding season during which [Medaglia D'Oro] stands at stud." (§ 161).

Count 137 is an action for a preliminary and permanent injunction "to enjoin SWF Ocala, Woodford Stallions, Hallmarc Stallions, Family Broodmares III, Palm Beach Rac. II, and Marc

Haisfield from transferring any breeding or boarding proceeds received by these parties in connection with running the Ocala Farm.” (§ 356)(sic).

The moving Defendants assert that Count 136 and Count 137 should be dismissed primarily because (1) any request for an injunction should be brought in a separate motion, and (2) the Plaintiff will not suffer any irreparable harm if the injunction is not granted, because any alleged harm may be compensated with a money judgment. (See, for example, Doc. 49, pp. 7-8; Transcript, pp. 45, 51-52).

The Motions to Dismiss Count 136 and Count 137 should be denied.

A Court may enter an injunction “as either an interim or permanent remedy for certain breaches of common law, statutory, or constitutional rights.” Klay v. United Healthcare Group, Inc., 376 F.3d 1092, 1097 (11<sup>th</sup> Cir. 2004). A permanent injunction is “a form of relief the court grants when a plaintiff succeeds on a substantive cause of action.” Fauley v. Washington Mutual Bank FA, 2014 WL 1217852, at 8 (D. Ore.). Similarly, a preliminary injunction is a *remedy* that is available upon the showing of certain well-defined requirements.” Hanover Insurance Group v. Singles Roofing Co., Inc., 2012 WL 2368328, at 8 (N.D. Ill.)(Emphasis in original).

Consequently, a plaintiff may request an injunction as a separate count in a complaint, to the extent that the request seeks a remedy for viable substantive claims found elsewhere in the pleading. In re Krause, 414 B.R. 243, 269 (Bankr. S.D. Ohio 2009). A plaintiff’s entitlement to the injunctive remedy, of course, depends upon the success of its substantive causes of action. Chahine v. First Magnus Financial Corporation, 2010 WL 4694449, at 3 (E.D. Mich.). Additionally, the plaintiff must ultimately demonstrate the four elements that are traditionally required for injunctive relief, including the element

that no adequate remedy is available at law. Fauley v. Washington Mutual Bank FA, 2014 WL 12217852, at 9.

In this case, the Amended Complaint contains 132 Counts to avoid fraudulent or preferential transfers. The substantive claims have not been adjudicated and remain viable causes of action. Accordingly, the Motions to Dismiss Count 136 and Count 137 should be denied, and the Counts for injunctive relief should not be dismissed at this stage of the proceeding.

#### **V. Count 138**

Count 138 is an action “for an accounting against the Debtors, Randy Haisfield, Marc Haisfield, and the Haisfield Entities.” (§ 363)(sic).

In Count 138, the Plaintiff incorporates the first 274 Paragraphs of the Amended Complaint regarding the transfer of assets “among the Debtors, Marc Haisfield, and Randy Haisfield, and the dozens of entities in which they possess an interest.” (§§ 364, 365)(sic). The Plaintiff then asserts that an accounting is necessary “to trace and quantify the amount of funds and property transferred to these parties.” (§ 367)(sic).

The moving Defendants contend that Count 138 “requires a more definite statement,” in part because the term “Haisfield Entities” is not defined in the Amended Complaint. (See, for example, Doc. 49, p. 8). Accordingly, the Defendants assert that the Amended Complaint does not adequately identify which entities would be obligated to provide an accounting if the relief were granted. (Transcript, p. 55).

In response to the moving Defendants’ request for a more definite statement, the Plaintiff acknowledges that “Haisfield Entities” is not a defined term in the Amended Complaint. The Plaintiff

contends, however, that the target of the accounting action includes all known and unknown defendants. (Transcript, p. 55).

Motions for a more definite statement are not typically favored “under the liberal notice pleading approach” in the Federal Rules of Civil Procedure. In re Skyway Communications Holding Corp., 389 B.R. 801, 811 (Bankr. M.D. Fla. 2008)(quoting In re Reliance Financial & Investment Group, Inc., 2006 WL 3663243, at 6 (S.D. Fla.)). In addition to the liberal notice practice, the motions are viewed with disfavor because of “the availability of discovery to obtain the information needed for a party to present its case.” In re Gulf Fleet Holdings, Inc., 491 B.R. 747, 761 (Bankr. W.D. La. 2013).

In this case, however, multiple defendants are named in the Amended Complaint, and the Plaintiff acknowledges that Count 138 is not directed to a well-defined group of the defendants. Because the Count does not adequately identify which defendants are obligated to respond to the claim, it is appropriate to require the Plaintiff to amend Count 138 to clarify which individuals or entities are subject to the accounting action. See In re CLK Energy Partners, LLC, 2010 WL 1930065, at 7 (Bankr. W.D. La.). In other words, the deficiency in the pleading relates not only to the Defendants’ ability to prepare a defense, but to whether they are required to respond in the first instance. See In re Appalachian Fuels, LLC, 2012 WL 4059948, at 5 (Bankr. E.D. Ky.)(The Court granted a motion for more definite statement, where the defendants were “left to guess” whether undefined names in the complaint referred to “the same group of individuals or differing groups.”).

Accordingly, the Motions to Dismiss Count 138 should be granted, and Count 138 should be dismissed without prejudice.

## **VI. Fraudulent transfer Counts**

A number of Counts in the Amended Complaint are actions to avoid actually or constructively fraudulent transfers. The fraudulent transfer actions include Counts 13, 14, 19, 20, 23, 24, 25, 26, 27, 28, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 85, 86, 97, 98, 99, 100, 111, 112, 114, 115, 132, and 133. Each Count relates to one transfer.

Count 57 and Count 58 of the Amended Complaint are representative of the actions to avoid actually and constructively fraudulent transfers. Both Counts are actions “for relief against transferee Atoka, an alter ego of the Debtors, arising from the transfer to it on or around June 4, 2009, of a \$1,000,000 payment of a ‘commission’ or ‘profit’ from the sale proceeds of Medaglia D’Oro, from the Debtors through their alter egos, ALH Management, Plantation Classic Investments, Inc., SWF Kentucky, NTK II, and Medaglia I.” (¶ 423).

Count 57 is an action to avoid the transfer as actually fraudulent. In Count 57, the Plaintiff incorporates Paragraphs 302 through 304 of the Amended Complaint. Paragraph 302, in turn, incorporates Paragraphs 1 through 274 of the Amended Complaint; Paragraph 303 alleges that the transfer was made with the actual intent to hinder, delay, and defraud the Debtors’ creditors; and Paragraph 304 recites the badges of fraud that traditionally have been found to evidence fraudulent intent for avoidance purposes.

Count 58 is an action to avoid the transfer as constructively fraudulent. In Count 58, the Plaintiff incorporates Paragraphs 306 and 307 of the Amended Complaint. Paragraph 306 again incorporates Paragraphs 1 through 274, and Paragraph 307 alleges that the transfer was not made for reasonably equivalent value or in good faith, and that the Debtors were insolvent at the time of the transfer.

The moving Defendants assert that the fraudulent transfer Counts should be dismissed because the Amended Complaint does not contain sufficient factual allegations to support the claims. “Instead, Plaintiff simply incorporates all 274 factual allegations and legal conclusions set forth in the Introduction, The Parties, Jurisdiction and Venue, and Factual Allegations sections. Plaintiff makes no effort to identify the particular factual allegations which relate to the single transfer which is the subject of these counts.” (See, for example, Doc. 58, pp. 7-8; Doc. 62, p. 8).

The Motions to dismiss the fraudulent transfer Counts should be denied.

Clearly, the Amended Complaint is an extensive document involving numerous, inter-related transactions and allegations. On March 21, 2014, however, the Plaintiff filed a Supplemental Memorandum in response to the Motions to dismiss the fraudulent transfer Counts. (Doc. 94). According to the Plaintiff, the Supplement is intended to assist the Court and the Defendants “in identifying which of Paragraphs 1 through 274 provide the most specific support for the transfers alleged in the particular Count.” (Doc. 94, ¶ 7). With respect to each Count challenged by the moving Defendants, the Supplement lists the paragraphs in the Factual Allegations that relate to the relevant transfer.

With respect to Count 57 and Count 58, for example, the Plaintiff asserts that Paragraphs 127 through 134 contain specific factual allegations to support the avoidance of the \$1,000,000 transfer to Atoka on June 4, 2009. Paragraphs 127 through 134 include the following allegations:

1. Atoka was an entity owned one hundred percent (100%) by Richard Haisfield until it was transferred to Haisfield Ventures in 2009 for no consideration. (¶ 127).
2. No commission was owed to Atoka. (¶ 127).

3. The payment is reflected on the tax return of NTK II as a distribution to owner as opposed to an expense. (§ 127).

4. Atoka remained an inactive business for years and was only revived in July, 2009, after the sale of Medaglia D'Oro, . . . only to be dissolved by year end. (§ 127).

5. The purported commission was not disclosed to the purchaser of Medaglia D'Oro . . . pursuant to Section 8.2 of the Purchase and Sale Agreement. (§ 128).

6. Richard Haisfield testified he subsequently used approximately \$700,000 of the \$1,000,000 profit/commission to purchase (or use as a down payment on) a farm in Ocala, Florida, where Audrey Haisfield and he currently reside. (§ 129).

7. The Debtors have failed to produce documentation to account for the \$1,000,000 commission paid to Atoka. (§ 130).

Based on these factual allegations, among other allegations, the Plaintiff asserts that the June, 2009, transfer of \$1,000,000 to Atoka is avoidable as an actually and constructively fraudulent transfer.

The Motions to Dismiss the fraudulent transfer Counts should be denied. The Motions were essentially based on the lack of specificity with respect to each Count. (See Transcript, p. 78). In the Motions, the Defendants asserted that the Plaintiff had not sufficiently connected the transfer alleged in each fraudulent transfer Count to any specific factual allegations contained in the first 274 Paragraphs of the Complaint.

The Plaintiff has filed a written Supplement, and addressed the lack of specificity by identifying particular Factual Allegations in the Amended Complaint that relate to each of the challenged Counts. The fraudulent transfer Counts should not be dismissed for failure to state a cause of action.

## **VII. Preference Counts**

A number of Counts in the Amended Complaint are actions to avoid preferential transfers. The preference actions include Counts 113, 116, and 134.

Count 113 is representative of the actions to avoid the alleged preferences. Count 113 is an “action for relief against transferees Haisfield Ventures II and Family Broodmares III arising from the transfer to Haisfield Ventures II of the foal from the mare known as First Move from the Debtors through their alter egos, Plantation Classic Investments, Inc., and SWF Stallions, which was then subsequently transferred from Haisfield Ventures II to Family Broodmares III on or around August 25, 2010, purportedly for \$50,000 of forgiveness of debt, pursuant to 547(b) of the Bankruptcy Code.” (§ 549).

The moving Defendants assert that the preference actions should be dismissed, primarily because the Plaintiff has not alleged that the transferee “was a creditor or that the transfer was on account of an antecedent debt owed by the debtor,” as required for a cause of action under §547(b). (See, for example, Doc. 59, p. 12)(Emphasis in original).

In response to the Motions to Dismiss, the Plaintiff contends that the allegations of an “antecedent debt” appear in Paragraphs 533 through 537 of the Amended Complaint, and the Plaintiff has added those Paragraphs to all of the preference Counts “by interlineation.” (Doc. 94, p. 6; Transcript, p. 81). In Paragraph 533, for example, the Plaintiff alleges that the “transferee is a purported creditor of the Debtors,” and in Paragraph 535, the Plaintiff alleges that the “transfer was for or on account of purported antecedent debt of the Debtors and/or their alter egos.” (Doc. 3, §§ 533-537).

The Motions to dismiss the preference Counts should be denied. Even though the allegations in the “interlineated” paragraphs are generic, the Amended Complaint also includes a number of allegations that identify the transfer or payment at issue, the parties to the transfer, and the parties’ relationship to each other. Under the circumstances, the Amended Complaint provides the Defendants with notice of the preference claims, and the Defendants may pursue the details of the transactions and



antecedent debt through discovery. In re Oakwood Homes Corporation, 340 B.R. 510, 522 (Bankr. D. Del. 2006). See also In re Antioch Company, 451 B.R. 810, 815 n. 4 (Bankr. S.D. Ohio 2011)(A recitation of the preference elements is sufficient, where the information regarding the specific antecedent debt may be provided during discovery.).

The preference Counts should not be dismissed for failure to state a cause of action.

### **VIII. Conclusion**

The Plaintiff filed an Amended Complaint for Avoidance of Transfers, for Damages, and for Other Relief. The Amended Complaint names 37 individuals or entities as defendants, and contains 138 Counts. Fourteen Motions to Dismiss designated Counts of the Amended Complaint are presently before the Court.

Generally, the action for civil conspiracy in Count 2 should be dismissed because the Amended Complaint does not allege the details of the conspiracy and does not specify each Defendant's participation in the conspiracy. Additionally, the action for an accounting in Count 138 should be dismissed because the Amended Complaint does not sufficiently identify which Defendants are the subject of the claim.

The remaining Counts designated in the Motions to Dismiss are Count 1 for alter ego liability and to pierce the corporate veil, Counts 136 and 137 for injunctive relief, and a number of Counts to avoid and recover preferential or fraudulent transfers. These remaining designated Counts sufficiently state claims upon which relief can be granted, and the Motions to Dismiss the Counts should be denied.

Accordingly:

**IT IS ORDERED** that:

1. The Motions to Dismiss Designated Counts of the Amended Complaint are granted in part and denied in part as set forth in this Order.

2. The Motions to Dismiss are granted as to Count 2 for civil conspiracy, and Count 138 for an accounting, and Count 2 and Count 138 of the Amended Complaint are dismissed without prejudice.

3. The Motions to Dismiss the remaining designated Counts of the Amended Complaint are denied.

**DATED** this 23 day of April, 2014.

**BY THE COURT**

Paul M. Glenn

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PAUL M. GLENN  
United States Bankruptcy Judge