UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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In re: Case No. 9:14-bk-00954-FMD
Chapter 7

William P. McCuan,

Debtor.
_____/

Regions Bank and
Robert E. Tardif, Jr.,

Plaintiffs,

v. Adv. Pro. No. 9:14-ap-402-FMD

MDG Lake Trafford, LLC, et al.,

Defendants,

and

Jill McCuan, et al.,

Impleaded Third-Party Defendants.
_____/

ORDER GRANTING
MOTION FOR RECONSIDERATION

THIS PROCEEDING came on for hearing on October 10, 2017, on the *Corrected Motion to Reconsider* filed by Plaintiffs, the Chapter 7 Trustee and Regions Bank, (the "Motion"),[1] the response filed by Debtor and the Impleaded Third-Party Defendants (the "Impleaded Defendants"),[2] and Plaintiffs' reply.[3]

The Motion relates to a portion of this Court's oral ruling on Debtor's and the Impleaded Defendants' motions for partial summary judgment.[4] In its oral ruling, the Court stated that because the Court lacks jurisdiction over certain out-of-state assets, it cannot order turnover of the assets or enter a money judgment for their value against the transferees of the assets in a proceeding supplementary under § 56.29, Florida Statutes.[5] The issue on reconsideration is whether § 56.29 authorizes the Court to enter a money judgment against the transferees of out-of-state assets when the Court lacks jurisdiction to avoid the underlying transfer.

Having carefully considered the Motion, the Court finds that § 56.29 authorizes a court to enter a money judgment against a transferee of a judgment debtor's asset in cases even when the court lacks jurisdiction over the transferred asset. Therefore, the Court will grant the Motion.

A. Background

1. *State Court Litigation and Removal to the Bankruptcy Court*

In April 2009, Regions Bank ("Regions") sued William McCuan, the debtor in this voluntary Chapter 7 case ("Debtor"), in Florida state court on his guaranties of various corporate obligations.[6] After Regions obtained a judgment against Debtor in excess of $4 million (the "Judgment"), it commenced proceedings supplementary under § 56.29 and impleaded Debtor's wife, Jill McCuan, and the McCuan Irrevocable Trust as third-party defendants (the "Proceeding Supplementary").

Nearly five years later, Debtor filed his Chapter 7 bankruptcy case.[7] Shortly thereafter, the Chapter 7 Trustee (the "Trustee") removed the Proceeding Supplementary to this Court and joined the action as a party plaintiff. Then, Regions and the Trustee (together, "Plaintiffs") moved to implead the McCuan Family Trust and McCuan Family, LLC, as additional impleaded defendants.[8]

[1] Doc. No. 210.
[2] Doc. No. 211.
[3] Doc. No. 214.
[4] Transcript, Doc. No. 115, p. 7; ll 7-12; Doc. No. 138.
[5] Unless otherwise stated, statutory references are to the Florida Statutes.
[6] Regions filed five separate lawsuits against Debtor. This adversary proceeding arises from the judgment obtained in one of the lawsuits.
[7] Case No. 9:14-bk-00965-FMD.
[8] Doc. No. 15.

Jill McCuan, the McCuan Irrevocable Trust, the McCuan Family Trust, and McCuan Family, LLC, are referred to collectively as the "Impleaded Defendants."

The Court granted Plaintiffs' motion and Plaintiffs filed a joint amended impleader complaint (the "Complaint") seeking relief under § 56.29.[9]

2. *Relevant Allegations of Plaintiffs' Complaint*

Plaintiffs allege that Debtor transferred certain identified assets to hinder, delay, or defraud Regions' efforts to collect the Judgment.[10] Among the alleged transfers are transfers within and from accounts that Debtor maintained at Brown Investment Advisory & Trust Company (the "Brown Accounts"). Brown Investment Advisory & Trust Company is located in the state of Maryland.

Plaintiffs allege that in September 2008—within the lookback period of § 56.29(3)(a)—Debtor retitled three Brown Accounts, with balances totaling nearly $4 million, from his name alone to himself and his wife, Jill McCuan, as tenants by the entireties; that starting in 2009, Debtor transferred funds in the retitled Brown Accounts to other accounts at SunTrust Bank; and that Debtor later transferred the funds from the SunTrust accounts for his own personal benefit.

Plaintiffs seek the turnover of the funds in the Brown Accounts that Debtor transferred to the Impleaded Defendants and entry of judgment against the Impleaded Defendants for the value of funds, irrespective of whether the Impleaded Defendants retained them.[11]

3. *The Court's Summary Judgment Ruling*

Debtor and the Impleaded Defendants separately moved for partial summary judgment on the Complaint.[12] Among other grounds, they contended that because Brown Investment Advisory & Trust Company and the Brown Accounts are located in Maryland, this Court, in a proceeding supplementary under § 56.29, has no authority to compel turnover of the funds or to avoid their transfer. To support their arguments, Debtor and the Impleaded Defendants relied on Florida appellate court rulings in *Sargeant v. Al-Saleh*[13] and *Burns v. State Dep't of Legal Affairs*.[14]

In *Sargeant*, Florida's Fourth District Court of Appeal held that § 56.29 does not apply extraterritorially and that Florida courts do not have *in rem* or *quasi in rem* jurisdiction over foreign property. Thus, the court held that § 56.29 does not authorize a court to order a party to bring property into Florida from outside the state, further holding that to execute a judgment against foreign assets, a creditor must proceed under the laws of the jurisdiction where the property is located. Relying on *Sargeant*, Florida's Fifth District Court of Appeal in *Burns* likewise held that bank accounts located out-of-state were not subject to turnover in Florida because the trial court lacked subject matter jurisdiction over property located in a foreign jurisdiction.

This Court agreed with the analysis of *Sargeant* and *Burns*, holding that although a bankruptcy court has *in rem* jurisdiction over all the debtor's assets, wherever located,[15] a bankruptcy court's jurisdiction in a proceeding supplementary under § 56.29 is limited by Florida law. Because under Florida law, Florida courts do not have *in rem* jurisdiction over property located beyond the territorial boundaries of Florida, the Court held that it had no jurisdiction over the Brown Accounts.

The Court then orally ruled that because it had no authority to avoid the alleged transfers of the Brown Accounts, it was further precluded from entering a monetary judgment against the Impleaded Defendants in connection with the alleged Brown Account transfers. The Court entered its *Order on Implead Third Party Defendants' Motion for Summary Judgment*,[16]

[9] Doc. Nos. 38, 40, 60.
[10] Doc. No. 60, pp. 5-8.
[11] Doc. No. 60, pp. 9-10.
[12] Doc. Nos. 91, 92.
[13] 137 So. 3d 432 (Fla. 4th DCA 2014).
[14] 147 So. 3d 95 (Fla. 5th DCA 2014).
[15] 28 U.S.C. § 1334(e).
[16] Doc. No. 123.

which it later summarized in its *Order Denying Motion for Rehearing, Reconsideration and/or to Alter or Amend Summary Judgment Order*.[17]

Plaintiffs seek reconsideration of the Court's ruling regarding its inability to enter a money judgment in connection with the alleged transfers of the funds in the Brown Accounts.

B. Standard for Motions for Reconsideration

The Court's partial summary judgment ruling is interlocutory.[18] Because interlocutory decisions resolve fewer than all claims, the court retains jurisdiction and has broad discretion to reconsider or revise interlocutory decisions at any time before the entry of a final judgment.[19] Motions for reconsideration brought before the entry of a final judgment are not subject to heightened standards for reconsideration.[20] Here the Court finds that reconsideration is appropriate.

C. Analysis

Section 56.29 provides judgment creditors with tools to discover the judgment debtor's assets and recover them to satisfy the underlying judgment. Because § 56.29 is equitable in nature, Florida courts have held that the statute should be liberally construed to afford the judgment creditor the most relief possible.[21]

To that end, § 56.29 provides for three separate remedies.[22] First, under § 56.29(6), the court may order any property of the judgment debtor, debt, or obligation due to judgment debtor, that is not exempt from execution, in the hands of another person be levied upon and applied toward the satisfaction of the judgment debt. Second, § 56.29(6) provides that the court may enter any orders, judgments, or writs required to carry out the purpose of this section, including those orders necessary or proper to subject property or property rights of any judgment debtor to execution, and including entry of money judgments against any person over whom the court obtained personal jurisdiction irrespective of whether such person has retained the property.

Last, under § 56.29(9), the court may entertain claims concerning the judgment debtor's assets brought under chapter 726 (the Florida Uniform Fraudulent Transfer Act) and enter any order or judgment, including a money judgment against any initial or subsequent transferee, irrespective of whether the transferee has retained the property.

1. *The Court May Enter a Money Judgment.*

Prior to 2014, the language of § 56.29 did not specifically authorize the entry of a money judgment against the transferee of a judgment debtor's assets. Instead, the statute merely permitted the court to "enter any orders required to carry out the purpose of this section." The Impleaded Defendants argue that the version of § 56.29[23] in effect when Regions commenced the Proceeding Supplementary did not expressly provide for the entry of money judgments.

Although this is true, the language in the 2005 version of § 56.29 ("court may enter any orders") has been construed broadly to include the entry of money judgments against impleaded defendants. For example, in *Pollizzi v. Paulshock*,[24] the court held that liberal construction of § 56.29 enabled it to enter a money judgment against the judgment debtor's shareholders and corporate officers who were found to have improperly transferred monies from the judgment debtor's accounts to

[17] Doc. No. 138.
[18] *See, e.g., General Television Arts, Inc. v. Southern Railway Co.*, 725 F.2d 1327, 1331 (11th Cir. 1984) ("A partial summary judgment is not a 'final' judgment subject to appeal under 28 U.S.C.A. § 1291 unless the district court has certified it as final under Rule 54(b).").
[19] *Harper v. Lawrence Cty., Ala.*, 592 F.3d 1227, 1231 (11th Cir. 2010).
[20] *Am. Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 514 (4th Cir. 2003).
[21] *Sanchez v. Renda Broad. Corp.*, 127 So. 3d 627, 628 (Fla. 5th DCA 2013).
[22] Effective July 1, 2016, § 56.29 was amended and its subsections consolidated and renumbered. Unless otherwise stated, citations are to the 2016 version of the statute.
[23] Fla. Stat. § 56.29 (2005).
[24] 52 So. 3d 786, 789 (Fla. 5th DCA 2010).

themselves. The 2014 amendment to § 56.29 merely added specific language authorizing the entry of a money judgment in order codify what was the existing practice in proceedings supplementary.[25]

The Court finds that under the version of § 56.29 in effect when Regions commenced its Proceeding Supplementary, a court has the authority to enter a money judgment in a proceeding supplementary against the Impleaded Defendants.

2. *The Court Need Not Have Jurisdiction over an Asset in Order to Enter a Money Judgment Against Transferee or Party Holding the Asset.*

Having determined that the Court has the authority to enter a money judgment against a transferee or a holder of an asset of the judgment debtor, the question before the Court is whether it may do so when the Court has no jurisdiction over the transferred asset itself.

Although this Court relied on *Sergeant* in concluding that it was without jurisdiction under Florida law to order the turnover of the Maryland property, the court in *Sergeant* did not discuss its ability to enter a money judgment. Instead, the *Sergeant* court focused on its concern that permitting a Florida court to compel the turnover of foreign assets would eviscerate state statutes that require the domestication of foreign judgments. But this concern is not present when a money judgment is entered. Accordingly, the Court concludes that under Florida law, it is authorized under § 56.29 to enter a money judgment against the transferee of a transferred asset even when the asset itself it located outside of Florida's jurisdiction.

3. *Deposit Funds Are Choses in Action for which Jurisdiction Follows the Owner.*

Besides the plain language of § 56.29 authorizing entry of a money judgment, there is another basis for this Court's ruling. Unlike the asset at issue in *Sergeant*—physical stock certificates—the property at issue here are deposit accounts. A deposit account is not tangible personal property; it merely creates an intangible chose in action.[26] By depositing money into a bank account, the depositor enters into a debtor-creditor relationship with the bank. Title to the money passes to the bank, and the depositor receives a contract claim against the bank equal to the account balance.[27] This intangible personal property right is a chose in action.[28]

A chose in action is a "personal right not reduced into possession, but recoverable by a suit at law," including a "right to receive or recover a debt, demand, or damages on a cause of action *ex contractu* or for a tort or omission of a duty."[29] Courts have found that a chose in action and other intangibles are property under § 56.29(5).[30] For example, in *Wells Fargo Bank, N.A. v. Barber*,[31] the court held that under § 56.29, it had jurisdiction over membership interests in a limited liability company, distinguishing *Sergeant* because the stock certificates held in a foreign jurisdiction differed from a membership interest in a limited liability company. The court reasoned that because a membership interest in a limited liability company is intangible personal property it accompanies the owner. Because the owner was in Florida, the court held that it had *in rem* jurisdiction over the membership interests and § 56.29 applied.

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[25] *Biel Reo, LLC v. Barefoot Cottages Dev. Co., LLC*, 156 So. 3d 506, 509 n.2 (Fla. 1st DCA 2014). ("Effective July 1, 2014, Section 56.29(9) was amended to expressly include what has long been the law in Florida, that 'entry of any orders' includes 'entry of money judgments against any impleaded defendants [.]'").

[26] Fla. Stat. § 679.1021(pp.). "General intangible" means any personal property, including things in action.

[27] *In re Bakersfield Westar Ambulance, Inc.*, 123 F.3d 1243, 1246 (9th Cir. 1997).

[28] Fla. Stat. Ann. § 679.1021(pp.).

[29] *Myd Marine Distrib., Inc. v. Int'l Paint Ltd.*, 201 So. 3d 843, 845 (Fla. 4th DCA 2016) (quoting *Puzzo v. Ray*, 386 So. 2d 49, 50-51 (Fla. 4th DCA 1980)) (internal quotations omitted).

[30] *See Myd Marine Distrib., Inc. v. Int'l Paint Ltd.*, 201 So. 3d at 845; *Donan v. Dolce Vita Sa, Inc.*, 992 So. 2d 859, 860 (Fla. 4th DCA 2008); *Puzzo v. Ray*, 386 So. 2d at 50-51; *Gen. Guar. Ins. Co. of Fla. v. DaCosta*, 190 So. 2d 211, 213–14 (Fla. 3d DCA 1966).

[31] 85 F. Supp. 3d 1308, 1314-15 (M.D. Fla. 2015).

Here, there is no dispute that this Court has personal jurisdiction over Jill McCuan because her primary residence is in Florida. The interest Jill McCuan allegedly acquired in the Brown Accounts is intangible personal property that accompanies her personally and is properly subject to jurisdiction in Florida.[32] Therefore, Jill McCuan's interest in the Brown Accounts (or any later transfer from the Brown Accounts to the SunTrust accounts) is subject to this Court's jurisdiction under § 56.29. The Court can therefore enter a money judgment.

To be clear, this ruling is limited: the Court finds only that it has the authority to enter a money judgment under § 56.29.

4. *Issues Not Raised in the Motion Will Not Be Addressed by the Court.*

Last, at the hearing on the Motion, the Trustee raised an issue regarding another substantive ruling made by the Court in its summary judgment ruling. The Court had ruled that because the Brown Accounts had been fully pledged to SunTrust Bank as collateral for loans to Debtor because prior to the alleged transfers, the alleged transfers were not subject to avoidance under § 56.29. Counsel for the Trustee argued to the Court that the Brown Accounts had not, in fact, been fully pledged to SunTrust Bank. The Court will not address reconsideration of its ruling on this issue without a proper motion and an opportunity for the Defendants to respond.

Accordingly, for the foregoing reasons, it is

ORDERED:

1. That the Motion to Reconsider is GRANTED. Those portions of the Court's prior rulings inconsistent with this Order are VACATED.

2. The Court will set a status conference in this adversary proceeding to discuss scheduling trial.

[32] *See Wells Fargo Bank, N.A. v. Barber*, 85 F. Supp. 3d at 1314-15.

DATED: February 13, 2018.

/s/ Caryl E. Delano

Caryl E. Delano
United States Bankruptcy Judge

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