

STATE OF MAINE
SAGADAHOC, ss.

BUSINESS AND CONSUMER DOCKET
Location: West Bath
Docket No. BCD-WB-CV-10-15

Ryan Madore,

Plaintiff

v.

ORDER
(Motion to Strike Demand for Jury Trial)

Kennebec Heights Country Club, et al.,

Defendants

This matter is before the Court on the Motion of Defendants Kennebec Heights Country Club (KHCC), Kennebec Heights Limited Partnership (KHLP), and Michael V. Jennings to Strike Plaintiff Ryan L. Madore's Demand for a Jury Trial.

Plaintiff's Amended Complaint contains two counts: 1) pursuant to the Uniform Fraudulent Transfer Act (UFTA), 14 M.R.S. §§ 3571-82 (2009), Plaintiff seeks avoidance of allegedly fraudulent transfers made by Defendant KHCC, execution on the property transferred, and attorney fees; and 2) Plaintiff requests that the Court disregard the corporate entity of Defendant KHCC and determine that Defendant Jennings is personally liable for Defendant KHCC's debt in the amount of \$75,513.74.

Factual Background

The full factual background of the case is contained in *Madore v. Kennebec Heights Country Club*, 2007 ME 92, 926 A.2d 1180. In *Madore*, the Law Court affirmed a 2005 jury verdict in Plaintiff's favor in the amount of \$10,240 for breach of an employment contract, and further held that Plaintiff was entitled to judgment on his wage payment claim, pursuant to 26 M.R.S. § 626 (2006). *See id.* ¶¶ 9, 15, 926 A.2d at 1184-85. On remand, the court entered judgment in favor of Plaintiff for \$75,513.74, which

included interest, costs, and attorney fees. *See Order, Madore v. Kennebec Heights Country Club*, No. CV-03-304 (Me. Super. Ct. Jan. 22, 2008). Defendant KHCC has not paid any monies to satisfy the judgment. According to Plaintiff, Defendant KHCC has not satisfied the judgment due to its insolvency and dissolution.¹

In his Amended Complaint, Plaintiff alleges that after the original judgment in 2005, Defendant KHCC fraudulently transferred for less than reasonably equivalent value, with the intent to hinder Plaintiff's recovery valuable, certain assets that could have been used to satisfy the judgment. Among the alleged fraudulent transfers is Defendant KHCC's grant of a security interest to Defendant KHLP in certain equipment.² Defendant KHLP is a Maine Limited Partnership, of which Defendant Jennings is the General Partner and President. Defendant Jennings is also President, General Manager, and Director of Defendant KHCC. In part because of Defendant Jennings' relationship to both business entities, Plaintiff alleges that Defendant KHLP is an insider of Defendant KHCC.³

Discussion

Article I, Section 20 of the Maine Constitution provides: "In all civil suits, and in all controversies concerning property, the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced" The Constitution "safeguards the right to a jury trial on all legal claims," but no jury trial is available for equitable issues. *See Cyr v. Cote*, 396 A.2d 1013, 1016 (Me. 1979).

"To determine the often elusive question of whether a claim is legal or equitable, there must be an appraisal of the basic nature of the issue presented, including the relief sought." *Id.* "Where a plaintiff seeks damages as full compensation for an injury, the claim is legal and the plaintiff is entitled to a jury trial. On the other hand, when the primary recovery pursued is equitable, the inclusion of a

¹ Amended Complaint, ¶¶ 20, 24.

² Amended Complaint, ¶¶ 20-22, 26.

³ Amended Complaint, ¶ 23.

request for money damages does not convert the proceeding into an action at law.” *DesMarais v. Desjardins*, 664 A.2d 840, 844 (Me. 1995) (citation and quotation marks omitted). When a statute does not provide for a jury trial, “the right to a jury trial will depend on the nature of that new cause of action. If the nature of the claim is such that its pre-1820 analogue was not tried to a jury the new cause of action will similarly carry no such right.” *Thermos Co. v. Spence*, 1999 ME 129, ¶ 8, 735 A.2d 484, 486 (quotation marks omitted).

A. Uniform Fraudulent Transfer Act

In Count I, Plaintiff contends that in violation of UFTA, Defendant KHCC fraudulently conveyed a security interest in certain property to an insider and/or for less than reasonably equivalent value to avoid payment on the judgment against Defendant KHCC. *See* 14 M.R.S. § 3578. Plaintiff requests relief of “an avoidance of any fraudulent transfers and that he be granted an execution on such property, along with costs, attorney[] fees[,] and such other relief deemed reasonable by the court.” Defendants contend that Plaintiff is not entitled to a jury trial because UFTA is an “equitable procedure for undoing transfers that were intended to defraud or future creditors under certain circumstances”⁴ and Plaintiff has not requested damages pursuant to 14 M.R.S. § 3578(1)(C)(3).⁵

“UFTA was designed to prevent debtors from transferring assets in order to avoid creditors” and a UFTA action is plainly an action for fraud. *See Leighton v. Fleet Bank of Me.*, 634 A.2d 453, 458 (Me. 1993). Fraud is one of the “most ancient foundations” of a court’s equity jurisdiction, *see*

⁴ M. Strike 3.

⁵ 14 M.R.S. § 3578(1)(C)(3) (2009) provides:

1. ACTION FOR RELIEF. In any action for relief against a transfer or obligation under this Act, a creditor, subject to the limitations provided in section 3579, may obtain:

....

C. Subject to applicable principles of equity and in accordance with applicable civil rules of procedure:

....

(3) Damages in an amount not to exceed double the value of the property transferred or concealed;

Hartshorn v. Eames, 31 Me. 93, 96-97 (1849), and “[i]rrespective of whether the injured party has an adequate remedy at law or for want of equitable remedy will suffer an irreparable loss, fraud is one of the fundamental grounds of equitable jurisdiction,” *Jensen v. Snow*, 131 Me. 415, 421, 163 A. 784, 787 (1933). A jury trial is, however, available in fraud actions under certain circumstances. For instance, when the Law Court considered whether there is a right to a jury trial for wrongful interference by undue influence and duress, both species of constructive fraud, with an expected legacy or gift under a will, it stated:

Although fraud is a fundamental ground of equitable jurisdiction, regardless of whether the injured party has an adequate remedy at law, it is not exclusively equitable as demonstrated by an action at law for deceit. Thus, it is said that [in] the abstract, fraud is neither a legal nor an equitable issue. Because fraud cannot be classified as strictly legal or equitable, the remedy sought is a highly significant factor in determining the right to a jury trial.

Cyr, 396 A.2d at 1019 (citations and quotation marks omitted); *see also Avery v. Whatley*, 670 A.2d 922, 924-25 (Me. 1996). In *Cyr*, because the plaintiffs sought damages as full compensation for the injury in addition to equitable relief, the Law Court concluded that they were entitled to a jury trial. 396 A.2d at 1019.

In the present case, Plaintiff is not seeking damages to compensate him for his loss. He has already obtained a judgment for damages in the previous proceedings to compensate him for Defendant KHCC’s breach of contract and statutory violations. Instead, Plaintiff is seeking to enforce that judgment in part through an equitable remedy (avoidance) available within UFTA. *See Thermos Co.*, 1999 ME 129, ¶ 18, 735 A.2d at 488 (stating that “the nature of equitable claims [are] those requiring creative, injunctive, or unique action by the court”). Contrary to Plaintiff’s argument, the fact that the judgment of which Plaintiff seeks enforcement is based on a claim for monetary damages does not change the fundamental nature of *this* action.

Plaintiff nevertheless contends that the Law Court has recognized the right to a jury trial in fraudulent transfer cases. Simply stated, the authority on which Plaintiff relies does not support his

entitlement to a jury trial. Each case involved either title to land where a jury trial is constitutionally available, *see Huber v. Williams*, 2005 ME 40, 869 A.2d 737 (affirming a jury verdict on a UFTA claim involving a transfer of land); *Hall v. Sands*, 52 Me. 355 (1864) (involving a jury trial on the issue of a fraudulent conveyance of a mortgage in a title dispute); *Porter v. Sevey*, 43 Me. 519 (1857) (affirming a jury verdict on a claim of fraudulent transfer in a title dispute); *Brown v. Osgood*, 25 Me. 505 (1846) (same); *Westcott v. McDonald*, 22 Me. 402 (1843) (granting a new trial after a jury verdict on a fraudulent transfer of land case); *Blake v. Howard*, 11 Me. 202 (1834) (affirming a jury verdict on a claim of fraudulent transfer in a title dispute), or the underlying action was for debt collection, *see Whitehouse v. Bolster*, 95 Me. 458, 50 A. 240 (1901). In other words, none of the cases supports the proposition that a jury trial is available in all fraudulent transfer actions.

Similarly, none of the pre-1820 Massachusetts cases cited by Plaintiff establishes that a jury trial was available in fraudulent conveyance cases that did not involve land.⁶ *See Mansfield v. Patteson*, 15 Mass. 491 (1819) (involving a jury trial when title to property was at issue and alleged to be fraudulently conveyed by the grantor); *Bridge v. Eggleston*, 14 Mass. 245 (1817) (involving a jury trial when title to land was at issue); *Ricker v. Ham*, 14 Mass. 137 (1817) (upholding a jury verdict when title to land was involved and the land was alleged to be fraudulently conveyed); *Clarke v. Waite*, 12 Mass. 439 (1815) (involving a jury trial when title to property was at issue and alleged to be fraudulently conveyed by the grantor); *Bennett v. Bedford Bank*, 11 Mass. 421 (1814) (upholding a transfer of land as not fraudulent as against a future creditor); *Gibbs v. Chase*, 10 Mass. 125 (1813) (involving a case of trespass, not fraud).

In short, although a jury trial is available in some fraudulent transfer actions, its availability depends upon the subject matter of the claim, and the nature of the relief requested. As explained above, except in limited circumstances (which are not present in this case), where a party asserts a claim for

⁶ The Massachusetts Constitution provides that “[i]n all controversies concerning property . . . the parties have a right to a trial by jury.” Ma. Const. pt.1, art. XV.

equitable relief, the party is not entitled to a trial by jury. Here, Plaintiff seeks to void the transfer, which is an action for equitable relief. Accordingly, Plaintiff is not entitled to a jury trial on Count I of his Amended Complaint.

B. Piercing the Corporate Veil

In Count II of his Amended Complaint, Plaintiff contends that the corporate form should be disregarded because (a) Defendant KHCC has intermingled its business activity with Defendant KHLP, (b) Defendant KHCC is under capitalized, and (c) Defendant KHCC has not maintained the formalities of the corporate form. Defendants argue that because veil piercing is not a cause of action, but an equitable remedy, Plaintiff is not entitled to a trial by jury on Count II.

A party seeking to pierce the corporate veil must establish “that the other party abused the privilege of a separate corporate identity and an unjust or inequitable result would occur if the court recognized the separate corporate existence.” *Advanced Constr. Corp. v. Pilecki*, 2006 ME 64, ¶ 10, 901 A.2d 189, 194-95 (quotation marks omitted). In *McCain Foods, Inc. v. St. Pierre*, the Law Court said that “[t]he issue of whether the corporate form should be disregarded and an officer, director or other party held personally liable for the corporation's obligations is an issue involving the courts’ equitable powers.” 463 A.2d 785, 787 (Me. 1983) (citing *Bangor Punta Operations, Inc. v. Bangor and Aroostook Railroad*, 417 U.S. 703 (1974)). When a jury considers the issue of whether the corporate veil should be pierced, it serves only in an advisory capacity, unless the issue is tried to the jury by consent. M.R. Civ. P. 39(d); see *McCain Foods, Inc.*, 463 A.2d at 787. Because the parties have not consented to a trial by jury on Count II, and because the claim is otherwise for equitable relief, Plaintiff is not entitled to a jury trial on its request that the Court disregard the corporate veil.

Conclusion

Based on the foregoing analysis, the Court grants Defendants' Motion to Strike Jury Demand.

Pursuant to M.R. Civ. P. 79(a), the Clerk shall incorporate this Order into the docket by reference.

Date: 10/21/10



Justice, Maine Business & Consumer Docket