Stillwater Liquidating LLC v CL Recovery Trading Fund III, L.P.
2019 NY Slip Op 33108(U)
October 17, 2019
Supreme Court, New York County
Docket Number: 653433/2018
Judge: Jennifer G. Schecter

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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STILLWATER LIQUIDATING LLC, Index No.: 653433/2018

Plaintiff, **DECISION & ORDER**

-against-

CL RECOVERY TRADING FUND III, L.P., CRESTLINE MANAGEMENT L.P., CRESTLINE INVESTORS, INC., and CURT I. FUTCH,

Defendants.

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JENNIFER G. SCHECTER, J.:

Defendants CL Recovery Trading Fund III, L.P. (Recovery), Crestline Management L.P. (Management), Crestline Investors, Inc. (Investors), and Curt I. Futch move to dismiss the complaint. Plaintiff Stillwater Liquidating LLC opposes the motion. The motion is only granted in part.

Background

The facts are drawn from the complaint (Dkt. 2) and are assumed true unless conclusory or refuted by documentary evidence.

Plaintiff is a "court-approved entity formed in connection with the settlement of several class actions and bankruptcy proceedings, charged with pursuing recoveries on behalf of the creditors of the investment funds (the Funds) that were subject to (those) proceedings" (Complaint ¶ 1).[1] The Funds "were the victims of a fraudulent scheme,

[1] The Funds are listed in footnote 1 of the Complaint.

resulting in several complex insolvency proceedings and the commencement of numerous district court class actions" (*id.*). This is yet another action in which plaintiff seeks recovery on behalf of the Funds' creditors (*see Stillwater Liquidating LLC v Partner Reins. Co., Ltd.*, 2017 WL 318658, at *1 [Sup Ct, NY County Jan. 23, 2017] ["Plaintiff, essentially, is an SPV created to collect on more than $575 million allegedly owed by the Funds to their creditors"], *affd* 151 AD3d 585 [1st Dept 2017]). In this case, two of the Funds transferred certain assets to one of the defendants, Recovery, for far less than they allegedly were worth. Plaintiff claims that these transfers were constructively fraudulent because they were made without fair consideration when the Funds were insolvent. Since this motion concerns the threshold question of whether plaintiff has standing to pursue these claims, it is essential to understand how plaintiff came into existence and the scope of its mandate.

Plaintiff was formed pursuant to two written agreements dated December 23, 2013: (1) the Global Settlement Agreement (Dkt. 3 [the GSA]); and (2) the "Stillwater Agreement" (Dkt. 4 [the Stillwater Agreement]) (collectively, the Agreements). There are numerous parties to the Agreements, including those involved in then-pending litigation involving the Funds. The two Funds at issue in this case and their managers are parties to the Agreements (*see* Dkt. 3 at 4 [defining the Stillwater Defendants], 6 [listing the Funds]). However, neither plaintiff nor defendants are signatories to the Agreements.

The Agreements gave rise to plaintiff's existence and govern plaintiff's role as the Funds' liquidating trust. The parties to the Agreements formed plaintiff to operate the

"Structure" to exploit certain defined assets (Assets) for the benefit of the Funds' creditors. The "primary purpose" of the Structure is "recovering, collecting, holding, administering, distributing and liquidating" the Assets that were "assigned and transferred to the Structure pursuant to the Agreements" (*see* Dkt. 4 at 24).

The Assets generally consist of "real estate investments and related claims and causes of action" and "law loans, non-real estate litigation claims, investments in fund of funds, corporate loans, life insurance investments, and related claims and causes of action" (*id.* at 24-25). Paragraph 12 of the GSA formally defines the Assets and governs their transfer to the Structure:

> On the Effective Date, the JPLs (solely in their capacity as the Joint Provisional Liquidators of Gerova, and not individually), Gerova, Gerova's former directors and officers, and Gerova's subsidiaries and the former directors and officers thereof, shall be deemed to have automatically transferred their ownership interests, whether direct or indirect, in the assets formerly belonging to the Stillwater Funds (the "Former Stillwater Assets"), and their interests in Net Five and any rights attendant thereto (including with respect to the rights to receive Gerova's and Galanis' percentage share in any proceeds generated from the properties held by Net Five (the "Properties and Proceeds," and with the Former Stillwater Assets, the "Assets"), to a structure which shall be formed to hold all of the Assets and Third Party Claims pursuant to the terms of a Management Agreement appended to the Stillwater Agreement (the "Structure"). ***Also on the Effective Date, the Stillwater Funds and Stillwater Defendants (and all those acting in concert with them) shall be deemed to have automatically transferred their ownership interest in the Assets, including all of the assets of the Stillwater Funds, and any rights attendant thereto, … to the Structure***. A summary of the Assets transferred and deemed transferred to the Structure (which include intangible assets and claims relating to and arising out of such Assets of any and all kinds), is attached hereto as **Appendix 1**. (Dkt. 3 at 13-14 [emphasis added]).[2]

[2] Defendants focus on the earlier portion of paragraph 12, which speaks to assets held by Gerova

Appendix 1 (titled "Summary of Assets") sets forth nine categories of Assets with an aggregate estimated value of between $8.8 million and $50.5 million (*see id.* at 47), an amount well below the $575 million owed by the Funds. Two of the categories, "Litigation Claims (against Third Parties)" and "Intangibles of the Stillwater Funds," are not valued and their listed value is "unknown" (*see id.*).

The Agreements were approved by the bankruptcy court by order dated April 2, 2014 (Dkt. 8).[3] That order reiterates that the Assets were "deemed to have automatically transferred into the Structure" (*id.* at 4).

At issue in this case are two transfers agreed upon by two of the Funds – Stillwater Market Neutral Fund II LP and Stillwater Market Neutral Fund Ltd. (collectively, the Sellers) – on the very day after the bankruptcy court approved the Agreements. To explain, since 2010, the Sellers had owned notes governing interests in Carrington Investment Partners (the CIP Notes). On December 31, 2013, the Sellers exchanged their CIP Notes for new PIK Step-Up Notes, issued by Carrington Holding Company, LLC (Carrington), due January 15, 2021 (Dkt. 19 [the PIK Notes]; *see* Dkt. 20 [offering circular]).

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that formerly belonged to the Funds. Their argument that the subject notes are not former assets of Gerova because they belonged to the Funds at the time of the transfer is a strawman. That is because the above emphasized portion of paragraph 12 provides that the Structure also includes Assets owned by the Funds (i.e., those that were never transferred to Gerova).

[3] The Agreements also received court approval in the other settled litigation (*see* Dkts. 9, 10).

On April 3, 2014, the Sellers and Recovery entered into a Purchase and Sale Agreement, pursuant to which Recovery was to pay Sellers $2,524,060 for three PIK Notes with a total face value of $11,473,000 (Dkt. 23 [the PSA]).[4] The purchase price was based on 22% of the PIK Notes' face value. Only two of the PIK Notes were ultimately sold – one for $260,480 and another for $844,580. The third sale, which was supposed to be or $1,419,000, did not go forward due to objections raised in the bankruptcy proceedings. Thus, in total, two PIK Notes, with an aggregate face value of $5,023,000 (the Notes), were sold to Recovery for $1,105,060.

Plaintiff claims the sale of the Notes for only 22% of their face amount was well below their actual value,[5] and thus was a fraudulent conveyance because the Sellers, like the other Funds, had been insolvent since 2008 due to the transfer of all of their assets to Gerova for no consideration (*see* Complaint ¶¶ 42-43). At that time, the Funds owed their creditors more than $575 million and, since its creation, plaintiff has been attempting to recover on those debts for the benefit of the Funds' creditors.

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[4] Investors was the general partner of Recovery. Management was Recovery's manager. Futch was, at the time of the underlying events, employed at Management as a managing director and senior portfolio manager and was personally involved with the transfers governed by the PSA. Defendants all allegedly had a close preexisting relationship to the individuals that controlled the Funds (Complaint ¶ 27; *see* Dkt. 4 at 2).

[5] In support of their motion, defendants do not actually explain why the 22% price paid was fair; rather, they simply claim that plaintiff has failed to sufficiently plead that the 22% paid was not fair value. Plaintiff's allegation that Carrington's own financial records indicate that the Notes were worth approximately 70% of their face value permits a reasonable inference that the 22% discount was not fair (*see* Complaint ¶ 46). Plaintiff further alleges that "the average audited fair value for the Notes since 2013 through 2017 has been 69% of their fair value" (¶ 47).

Plaintiff commenced this action on July 9, 2018. The complaint asserts nine causes of action: (1-3) constructive fraudulent conveyance under New York Debtor and Creditor Law (DCL) §§ 273, 274, and 275; (4) intentional fraudulent conveyance under DCL § 276; (5) a claim under DCL § 278;[6] (6) aiding and abetting fraudulent conveyance and aiding and abetting breach of fiduciary duty;[7] (7) civil conspiracy; (8) unjust enrichment; and (9) constructive trust. Each cause of action is asserted against all of the defendants. Defendants move to dismiss.[8] Their motion is granted in limited part.

Discussion

Legal Standard

On a motion to dismiss, the court must accept as true the facts alleged in the complaint and all reasonable inferences that may be gleaned from those facts (*Amaro v Gani Realty Corp.*, 60 AD3d 491 [1st Dept 2009]). The court is not permitted to assess the merits of the complaint or any of its factual allegations, but may only determine if, assuming the truth of the facts alleged and the inferences that can be drawn from them, the complaint states the elements of a legally cognizable cause of action (*Skillgames, LLC v Brody*, 1 AD3d 247, 250 [1st Dept 2003], citing *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). If the defendant seeks dismissal of the complaint based on

[6] "DCL § 278 does not state a cause of action …but rather speaks to available remedies for fraudulent conveyances" (*Abbas Corp. (Pvt) Ltd. v Michael Aziz Oriental Rugs, Inc.*, 2018 WL 1779380, at *9 [SDNY Apr. 3, 2018]).

[7] It is unclear why these distinct claims are pleaded in a single cause of action.

[8] The oral-argument transcript has been e-filed under Dkt. 88 (4/19/19 Tr.).

documentary evidence, the motion will succeed only if "the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]; *Leon v Martinez*, 84 NY2d 83, 88 [1994]).

Standing

The parties' disputes regarding who among them is bound by the Agreements is a red herring. Plaintiff does not assert a claim for breach of the Agreements. That the PSA may have run afoul of the Agreements and court orders is not determinative of whether the sale of the Notes was a fraudulent transfer. The only relevant threshold issue is whether plaintiff has standing to assert DCL claims based on fraudulent transfers of the Funds' assets.[9] It does.

As a general matter, a liquidating trust has standing to sue fraudulent transferees of assets belonging to the entities for whose benefit the trust exists.[10] The Agreements provide that plaintiff is to marshal the "Assets" of the Funds, and those Assets are defined to include litigation claims against third parties (*see* Dkt. 3 at 47). The very purpose of

[9] Defendants' argument that plaintiff's claims were released in the GSA is rejected. The release only covers claims as of the effective date of the Agreements (*see* Dkt. 3 at 7). The sales governed by the PSA postdated the GSA and are therefore not covered by the release.

[10] *See RGH Liquidating Tr. v Deloitte & Touche LLP*, 17 NY3d 397, 407-08 (2011) ("The assets of RGH's bankruptcy estate vested in the Trust, and these assets included claims of the bankruptcy estate's creditors, who are the beneficiaries of any recoveries from Deloitte and Lommele. ... chapter 11 plans apparently often call for this type of postconfirmation liquidation vehicle (PCLV) to collect, administer and distribute estate assets after the debtor's plan has been confirmed"]). It is academic whether the Structure should be considered the liquidating trust and plaintiff its agent or whether plaintiff itself should be considered the liquidating trust.

this power is for plaintiff to ensure that all of the Assets are maintained in the Structure so that the Funds' creditors can look to the Structure for recovery due to the fraud that was perpetrated on the Funds. DCL claims, which seek to unwind fraudulent transfers, would result in the Notes and their proceeds being remitted to the Structure so that the Funds' creditors could be satisfied from those Assets.

Significantly, plaintiff is not going to be enriched. Rather, it is bringing this action in furtherance of its responsibility to ensure that Assets rightfully belonging to the Structure remain available to satisfy the Funds' creditors. That is plaintiff's core mission. Rejecting standing would undermine plaintiff's very purpose. If actual creditors of the Funds could only pursue recovery individually, the Structure would make little sense. The whole point of the Structure was that individual creditors would not separately hunt down each fraudulent transferee. Instead, assets could be marshaled into the Structure such that all creditors would look to a central source to satisfy their claims. Were this not so, each of the Funds' creditors could have sued defendants for the sale of the Notes, which is exactly the waste and inefficiency that the Structure was designed to avoid.

The Agreements support this conclusion. They required all of the Funds' assets to be transferred to the Structure. Those assets included the Notes. Indeed, the PIK Note that was going to be sold to Recovery was instead transferred to the Structure after an objection was raised. It is hard to understand why the other two Notes were not similarly transferred to the Structure, but rather, were sold to Recovery and thus unavailable to satisfy the Funds' creditors. That sale potentially prejudiced the Structure, which had a

prior contractual right to the Notes. By selling the Notes to Recovery instead of transferring them to the Structure, the Structure has a grievance against the Sellers. In other words, the Structure is a creditor of the Sellers (*see* DCL § 270 ["'Creditor' is a person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent."]). The Structure, therefore, has suffered an injury in fact and plaintiff's role as the Structure's manager gives it a sufficient interest in the Notes to sue for their fraudulent transfer (*see Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 772 [1991]; *Security Pac. Natl. Bank v Evans*, 31 AD3d 278, 279 [1st Dept 2006]; *Fairbanks Capital Corp. v Nagel*, 289 AD2d 99, 100 [1st Dept 2001] [mortgage servicer has standing to prosecute foreclosure action on behalf of noteholder], *accord CWCapital Asset Mgt., LLC v Great Neck Towers, LLC*, 99 AD3d 850, 851 [1st Dept 2012]).

Constructive Fraudulent Conveyance[11]

Plaintiff stated a claim for constructive fraudulent conveyance against Recovery by pleading that, while the Structure and the Sellers were insolvent, the Notes were

[11] *See* DCL § 273 ("Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration"); § 274 ("Every conveyance made without fair consideration when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to his actual intent"); § 275 ("Every conveyance made without fair consideration when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of

transferred to Recovery for unfair consideration (*Matter of CIT Group/Commercial Servs., Inc. v 160-09 Jamaica Ave. Ltd. Partnership*, 25 AD3d 301, 302 [1st Dept 2006]; *see Wimbledon Fin. Master Fund, Ltd. v Bergstein*, 2017 WL 3024254, at *4 [Sup Ct, NY County July 17, 2017], *affd* 166 AD3d 496 [1st Dept 2018]). Defendants have not shown that the "fair salable value" of the Sellers' or the Structure's assets (*see* DCL § 271) exceeded their liabilities or that the 22% paid for the Notes is not materially below the Notes' allegedly appraised 70% face value (*Stillwater*, 151 AD3d at 586 ["the allegations that Stillwater Funding transferred its interests in the collateral, allegedly worth over $200 million, to defendants to satisfy a debt worth less than $40 million, thereby leaving Stillwater Funding unable to pay other creditors, states a cause of action for fraudulent conveyance"]). Likewise, plaintiff pleads bad faith by alleging that the Funds' managers and defendants were aware that the subject transfers were violative of the Agreements and court orders (*see CIT Group*, 25 AD3d at 303 ["Even assuming, arguendo, that the payment was made in partial satisfaction of a bona fide antecedent debt, it was not made in good faith. Good faith is required of both the transferor and the transferee, and it is lacking when there is a failure to deal honestly, fairly, and openly"]).

Further specificity is not required because constructive fraudulent conveyance claims are not subject to the heighted pleading standard of CPLR 3016(b) (*Ridinger v W. Chelsea Dev. Partners LLC*, 150 AD3d 559, 560 [1st Dept 2017]; *see Wimbledon Fin. Master Fund, Ltd. v Wimbledon Fund, SPC*, 162 AD3d 433, 433-34 [1st Dept 2018]

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such business or transaction without regard to his actual intent").

[court is obligated to accept the petition's allegations as true unless defendant refuted them]). Because reasonable inferences of insolvency, inadequate consideration, and bad faith may be drawn from the facts alleged in the complaint, the motion to dismiss the constructive fraudulent conveyance claims is denied.

Intentional Fraudulent Conveyance

Defendants' argument that plaintiff has not stated a claim for intentional fraudulent conveyance is relegated to a single paragraph in their moving brief in which they maintain that allegations made on information and belief are insufficient to meet pleading requirements CPLR 3016(b) (*see* Dkt. 67 at 19). That contention is unsupported and incorrect (*see Pludeman v Northern Leasing Sys., Inc.*, 10 NY3d 486, 491 [2008] ["section 3016(b) should not be so strictly interpreted as to prevent an otherwise valid cause of action in situations where it may be 'impossible to state in detail the circumstances constituting a fraud"]). Indeed, claims under DCL § 276 may be pleaded based on the badges of fraud (*Wimbledon*, 166 AD3d at 497, citing *Wall St. Assocs. v Brodsky*, 257 AD2d 526, 529 [1st Dept 1999] ["Due to the difficulty of proving actual intent to hinder, delay, or defraud creditors, the pleader is allowed to rely on 'badges of fraud' to support his case, i.e., circumstances so commonly associated with fraudulent transfers that their presence gives rise to an inference of intent. Among such circumstances are: a close relationship between the parties to the alleged fraudulent transaction; a questionable transfer not in the usual course of business; inadequacy of the

consideration; the transferor's knowledge of the creditor's claim and the inability to pay it; and retention of control of the property by the transferor after the conveyance"]).

Here, defendants are alleged to have had actual knowledge that the Agreements and court orders required the Notes to be placed in the Structure and prohibited their transfer elsewhere. The allegations of a close relationship between defendants and the Sellers, the questionable timing of transfers just after the bankruptcy court approved the Agreements, and the purchase of the Notes for inadequate consideration suffice to permit a reasonable inference that the sale of the Notes was knowingly effectuated to prejudice the Sellers' creditors. While more proof will be required to ultimately prevail, pleading these badges of fraud is enough to survive a motion to dismiss (*see Taberna Preferred Funding II, Ltd. v Advance Realty Grp. LLC*, 45 Misc3d 1204[A], at *13 [Sup Ct, NY County 2014]).

Proper DCL Defendants

DCL claims are only properly asserted against the transferor and transferee (*see* DCL § 278 [remedies for fraudulent conveyance are to set aside the conveyance or attach or levy the property]). Based on the allegations in the complaint, Recovery is the only proper defendant on the DCL claims because the other defendants are not alleged to possess the Notes and are not parties to the PSA. Liability cannot be extended to other parties simply because they participated in the fraudulent transfer (*Fed. Deposit Ins. Corp. v Porco*, 75 NY2d 840, 842 [1990]; *see Geo-Group Communications, Inc. v Chopra*, 2018 WL 3632498, at *8 [SDNY July 30, 2018] ["there is no liability for aiding

and abetting a fraudulent conveyance, nor is there constructive fraud liability for a transferor of funds"], citing *Amusement Indus., Inc. v Midland Ave. Assocs., LLC*, 820 F Supp 2d 510, 533 [SDNY 2011] ["a fraudulent conveyance claim may be brought against a defendant who assisted in the fraudulent conveyance where the defendant was itself a transferee of the assets or a beneficiary of the conveyance. But in such an instance, there is no need to resort to a claim of 'aiding and abetting.' Instead, such a defendant may be sued directly for the fraudulent conveyance"]).

Priestley v Panmedix Inc. (134 AD3d 642 [1st Dept 2015]) is not to the contrary. In *Priestley*, while the motion court had "granted plaintiff leave to amend the complaint to … assert a claim for aiding and abetting a fraudulent conveyance," the Appellate Division never expressly held that such a cause of action is viable (*see id.* at 642 ["Plaintiff is entitled to amend the complaint to assert a claim for aiding and abetting ***fraud***"] [emphasis added]).[12] The Appellate Division further held that, "[u]nder New York law, there exists a common law cause of action for tortious interference with enforcement of a judgment" based on plaintiff possessing "a valid judgment at the time of the fraudulent conveyance" (*see id.* at 643). Here, plaintiff is not seeking to enforce a judgment.

The court is unconvinced that *Priestley* intended to deviate from the federal courts' understanding that the Court of Appeals, in *Federal Deposit*, rejected the notion

[12] The other case cited by plaintiff also did not involve aiding and abetting fraudulent conveyance (*see Goldin v TAG Virgin Islands, Inc.*, 149 AD3d 467 [1st Dept 2017]).

that an aiding and abetting fraudulent conveyance claim is viable. *Geo-Group*, decided three years after *Priestley*, held that such a claim was not viable. This court concurs that no such claim exists under New York law and that if *Priestley* meant to hold to the contrary, it would have expressly done so. Clear Court of Appeals precedent controls.

That said, as *Amusement Industries* makes clear, the beneficiaries of fraudulent conveyances can be held directly liable under a DCL claim. It is plausible, based on the allegations in the complaint, that Recovery's general partner (Investors), manager (Management), and the individual who actually caused Recovery to enter into the PSA (Futch) directly benefited from the sale of the Notes. While plaintiff does not explicitly plead that they did, the court will allow them to amend to directly assert DCL claims against these defendants under the beneficiary theory set foth in *Amusement Industries*. As pleaded, the DCL claims against the defendants other than Recovery are conclusory and appear to be based on a theory of vicarious liability, aiding and abetting and conspiracy, none of which are tenable. If plaintiff really intends to base its claims on a beneficiary theory, its complaint should do so clearly and plead facts supporting this theory.

Remaining Claims

The remainder of the claims are dismissed with prejudice. Conspiracy is not an independent cause of action under New York law (*Johnson v Law Office of Schwartz*, 145 AD3d 608, 611 [1st Dept 2016]; *see Alexander & Alexander of N.Y. v Fritzen*, 68 NY2d 968, 969 [1986]), and is duplicative of the untenable aiding and abetting claim (*see*

Federal Deposit, 75 NY2d at 842 ["Nor is there merit to plaintiff's argument that (DCL 273-a) created a creditor's cause of action in conspiracy, assertable against nontransferees or nonbeneficiaries solely for assisting in the conveyance of a debtor's assets"]). Likewise, an unjust enrichment claim is duplicative because it inherently rises and falls with the DCL claims (*Stillwater*, 2017 WL 318658, at *9 ["the possible recovery on the grounds of unjust enrichment ... entirely turn(s) on the merits of the DCL ... claims"]; *see Brunner v Estate of Lax*, 47 Misc 3d 1206[A], at *9 [Sup Ct, NY County 2015] [same], *affd* 137 AD3d 553 [1st Dept 2016]). Plaintiff's aiding and abetting breach of fiduciary duty claim, predicated on the theory that serving as a counterparty to the PSA amounts to substantial assistance of the Funds' managers' breach of fiduciary duty, is simply a recast version of the claim that liability may be imposed for assisting the fraudulent transfer and is thus precluded by *Federal Deposit*. To wit, the claim is pleaded in the very same cause of action as aiding and abetting fraudulent conveyance. Finally, the constructive trust claim is dismissed because the parties were not in a fiduciary relationship (*see Abacus Fed. Sav. Bank v Lim*, 75 AD3d 472, 473 [1st Dept 2010]).

Accordingly, it is ORDERED that defendants' motion to dismiss the complaint is granted in part to the extent that: (1) the DCL claims asserted against Management, Investors, and Futch are dismissed without prejudice with leave to replead within 30 days; (2) the claim under DCL § 278 is dismissed since it is a remedy and not an independent cause of action; (3) the aiding and abetting fraudulent conveyance, aiding

and abetting breach of fiduciary duty, civil conspiracy, unjust enrichment, and constructive trust claims are dismissed with prejudice; and (4) the motion is otherwise denied; and it is further

ORDERED that a preliminary conference will be held on November 22, 2019, at 11:30 a.m., and the parties shall submit their joint letter at least one week beforehand.

Dated: October 17, 2019

ENTER:

Jennifer G. Schecter, J.S.C.