

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department M

SS029343

**PROSPECT CAPITAL COPORATION vs LEVINE
LEICHTMAN CAPITAL PARTNERS, INC., et al.**

October 31, 2019

4:14 PM

Judge: Honorable Mark A. Young
Judicial Assistant: K. Metoyer
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

The Court, having taken the matter under submission on 10/30/2019, now rules as follows: The Court amends and adopts its amended Tentative Ruling as the Final Ruling as follows:

****FINAL RULING****

Merits

Defendants Levine Leichtman Capital Partners, LLC, Levine Leichtman Capital Partners IV, LP, LLC Partners IV GP, LLC, PWC investments Group, LLC, Steven Hartman, lauren Leichtman, Arthur Levine and Kimberly Pollack (collectively, the “LLCP Defendants”) demur to the First through Sixth Causes of Action in the First Amended Complaint (FAC). The LLC Partners’ demurrer was joined by defendant James Collaran (collectively, the “Defendants”).

In their demurrer, the Defendants argue that all causes for fraudulent transfer (including aiding and abetting and conspiracy) fail because Plaintiff participated in, and or ratified the transfers at issue. Defendants further argue that the Fifth Cause of Action for aiding and abetting the fraudulent transfer claim must fail because this theory is not recognized by California law. In opposition, Plaintiff argues that ratification is not a defense in California and that California recognizes liability for aiding and abetting intentional torts such as fraudulent transfers.

A demurrer for sufficiency tests whether the complaint states a cause of action. (Hahn v. Mirda (2007) 147 Cal.App.4th 740, 747.) “A demurrer reaches only to the contents of the pleading and such matters as may be considered under the doctrine of judicial notice’ [Citations]; The allegations of the pleading demurred to must be regarded as true [Citations]; a demurrer does not, however, admit contentions, deductions or conclusions of fact or law alleged in the pleading [Citations], or the construction placed on an instrument pleaded therein [Citation], or facts impossible in law [Citation], or allegations contrary to facts of which a court may take judicial knowledge. [Citations]” (South Shore Land Co. v. Petersen (1964) 226 Cal.App.2d 725, 732.)

“The following basic principle is also applicable to general demurrers, to wit: all that is

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necessary against a general demurrer is that upon a consideration of all the facts stated, it appears that the party whose pleading is attacked by such a demurrer is entitled to any relief at the hands of the court against his adversary, notwithstanding the facts may not be clearly stated, or may be intermingled with a statement of other facts irrelevant to the cause of action or defense shown, or although the plaintiff, in his complaint, or the defendant, in his answer, may demand relief to which he is not entitled under the facts alleged. [Citation]" (Id. at 732-733.)

Participation/Ratification

As stated, Defendants first argue that the First through Sixth Causes of Action must fail as a matter of law because Plaintiff participated, or ratified the transactions at issue. As set forth below, the Court disagrees with Defendant's position and believes that under California law: (1) ratification is not a defense; and (2) even if it was a defense, the issue could not be decided at the demurrer stage of this case based upon the facts alleged in the FAC.

California courts routinely hold that fraudulent transfers are void. *Swinford v. Rogers*, (1863) 23 Cal. 233, 235; *Everts v. Sunset Farms*, (1937) 9 Cal. 2d 691, 698. In California, these transactions are void and not merely voidable, and unlike a voidable transaction, a party cannot validate or ratify a void transaction. *Yvanova v. New Century Mortgage Corporation* (2016), 62 Cal. 4th 919, 936. The adoption of the California Uniform Voidable Transfer Act ("CUVTA") does not change this analysis, with the exception of limited circumstances that are not applicable to the demurrer stage of this case, such as whether Defendants are good faith purchasers for reasonably equivalent value. California Civil Code § 3439.04.

California courts have yet to directly address the question of whether a fraudulent transfer is void or voidable under CUVTA. The Court, however, finds the opinion *Cass v. Wallace* (In re Cass), (Bankr. C.D. Cal. 2012) 476 B.R. 602, to be a well reasoned analysis of California law and the effect of CUVTA. As summarized by the In re Cass court, "Nevertheless, in addressing the question of whether a fraudulent transfer is void or voidable under the CUFTA, the court observes that there is no indication in the CUFTA's language or in its legislative history that the California legislature intended to change the common law and establish fraudulent transfers in general as voidable instead of void." Id. at 617. This Court agrees with the analysis of In re Cass, and concludes that fraudulent transfers, with a very limited exception, remain void and not merely voidable. In response, Defendants' relied upon another bankruptcy court case, *Bresnahan v. Dunn* (In re Dunn), (B.A.P. 9th Cir. 2006), 2006 WL 6810930, to support their position. The holding of In re Dunn, however, was that the party lacked standing to bring a fraudulent transfer claim. The In re Dunn court's statement regarding voidable transactions was merely dicta and did not contain any analysis of the interaction between the CUFTA and California common law.

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As a result, Defendants are prevented from raising ratification as a defense to the six causes of action. The cases cited by Defendants in support of their position that ratification exists as a defense are either out-of-state authorities where these transactions under that state's common law would be voidable instead of void, or not on point and involve issues of estoppel or standing.

Second, even if the transactions were voidable under the CUVTA and ratification was a defense, the FAC sets forth facts that, if true, establishes that Plaintiffs did not have "full knowledge" of the transactions at issue. (FAC ¶¶ 70, 73-74, 86, 89, 90, 99, 109, 111). The allegations of misleading and inaccurate projections are relevant to this analysis and defeat, at the demurrer stage, Defendants' argument that Plaintiff ratified these transactions with full knowledge of the circumstances of these transactions. Thus, even if ratification was an appropriate defense, the Court would not sustain a demurrer in this matter based upon the allegations contained in the FAC.

Aiding and Abetting a Fraudulent Transfer

California courts have recognized liability for aiding and abetting an intentional tort. *Casey v. U.S. Bank Nat. Assn.*, 127 Cal. App. 4th 1138, 1144 (2005). Fraudulent conveyance is an intentional tort, and as a result, aiding and abetting a fraudulent conveyance is a proper cause of action. See *Berger v. Varum*, (2019) 35 Cal. App. 5th 1013, 1025-26 (recognizing liability for aiding and abetting a fraudulent transfer). Moreover, the same analysis that leads courts to recognize conspiracy to commit fraudulent transfers as a cause of action, would apply to aiding and abetting liability. In *Taylor v. S & M Lamp Co.*, (1961) 190 Cal.App.2d 700, 706, the court held that the plaintiff had adequately stated a cause of action for conspiracy to commit a fraudulent transfer because "[c]ivil liability for conspiracy to commit a tort has long been recognized in this state," and pursuant to UVTA it "is contrary to public policy for a debtor to convey or to conceal his property for the purpose of defrauding his creditors." (Ibid.) The court thus concluded, "a debtor and those*1026 who conspire with him to conceal his assets for the purpose of defrauding creditors are guilty of committing a tort and each is liable in damages." (Ibid.; see also *Monastra v. Konica Business Machines, U.S.A., Inc.* (1996) 43 Cal.App.4th 1628, 1644–1645 (person other than the debtor or transferee who conspires with others to effect a fraudulent transfer may be held jointly liable for the creditor's damages).

As a result, the Court concludes that Defendant's demurrer to the Fifth Cause of Action should be overruled.

****END OF FINAL RULING****

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Clerk to give notice.

Certificate of Mailing is attached.