

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

In re:

VIRGIL M. NEWTON
RUTH ANN NEWTON

CASE NO. 8:01-bk-09883-PMG

CHAPTER 7

Debtors.

STEPHEN L. MEININGER,
CHAPTER 7 TRUSTEE,

ADV. PROC. NO. 8:05-ap-_____

Plaintiff,

vs.

VIRGIL M. NEWTON; RUTH ANN
NEWTON; and CHRIST AT THE SEA
FOUNDATION, INC.,

Defendants.

**TRUSTEE'S COMPLAINT FOR
DECLARATORY JUDGMENT, TURNOVER OF PROPERTY TO THE ESTATE AND
VIOLATION OF THE FLORIDA UNIFORM FRAUDULENT TRANSFER ACT**

STEPHEN L. MEININGER, Chapter 7 Trustee (the "Plaintiff" or "Trustee"), by and through his undersigned counsel, files this Complaint for Declaratory Judgment, Turnover of Property to the Estate and Violation of the Florida Uniform Fraudulent Transfer Act against VIRGIL M. NEWTON, RUTH ANN NEWTON (collectively the "Debtors"), and CHRIST AT THE SEA FOUNDATION, INC. ("CSF") (collectively the "Defendants"), and respectfully represents as follows:

1. The Debtors filed their voluntary petition for relief under Chapter 7 of the Bankruptcy Code on May 24, 2001.

2. This adversary arises out of the above-referenced Chapter 7 case, bearing Case No. 8:01-bk-09883-PMG, which is now pending in this Court.

3. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334, and is a core matter.

4. The Plaintiff is the duly appointed, qualified, and acting trustee for the bankruptcy estate of the Debtors.

5. Upon information and belief, the Debtors are husband and wife and reside in Pinellas County, Florida.

6. Defendant, Christ at the Sea Foundation, Inc. (“CSF”), is a Florida non-profit organization with its principal address in Pinellas County, Florida, and was incorporated on November 7, 1997.

7. Upon information and belief, the Debtors are directors of CSF.

8. The §341 meeting of creditors was concluded on June 28, 2001.

9. The Discharge of the Debtor was entered on September 4, 2001.

10. The case was closed on October 28, 2004, and the Final Decree was entered on November 3, 2004.

11. On February 24, 2005, upon discovery of an undisclosed asset of the Debtor, the Trustee filed a Motion to Revoke Final Decree and Reopen Bankruptcy Estate (Court Docket No. 38).

12. On May 26, 2005, this Court entered an order granting said Motion (Court Docket No. 41).

13. On information or belief, Debtor Virgil M. Newton served as an officer / director from 1990 to 2000 of Kids of North Jersey, Inc. (“KNJ”), a New Jersey non-profit corporation

that operated a drug rehabilitation center for teenagers.

14. On June 8, 1998, the Internal Revenue Service (“IRS”) filed a Notice of Federal Tax Lien (“Tax Lien”) against Debtor Virgil M. Newton, claiming liability for a §6672 civil penalty (federal withholding taxes) for the 1996 tax year in the amount of \$131,169.34 were assessed on December 23, 1997. A true and correct copy of the Notice of Federal Tax Lien is attached hereto as Exhibit A.

15. The IRS made a formal demand for payment of this tax liability, but despite this demand, the tax liability remained unpaid.

16. As officer / director of KNJ, Debtor Virgil M. Newton knew or should have known that KNJ did not pay federal withholding taxes for the 1996 tax year.

17. As officer / director of KNJ, Debtor Virgil M. Newton knew or should have known that this tax liability remained unpaid and that the IRS would undertake efforts to demand payment from the date the tax period ended (December 31, 1996) to the date the Tax Lien was recorded (June 8, 1998).

18. Because of this unpaid tax liability, Debtor Virgil M. Newton faced insolvency because he did not have sufficient income or assets to satisfy a \$131,169.34 tax debt owed to the IRS.

19. On August 18, 1997, Debtors Virgil M. Newton and Ruth A. Newton attempted to convey real property located in Pinellas County, Florida to CSF by quit claim deed (hereinafter, “August 1997 quit claim deed”). The Debtors received one dollar (\$1.00) in consideration for conveyance of the real property. The address of the real property is 13280 Fourth Street East, Madeira Beach, Florida 33708, and the legal description is as follows:

**LOTS 12 AND 13, BLOCK “J”, PAGE’S REPLAT OF MITCHELLS BEACH,
ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 20, PAGE
69, OF THE PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA**

(hereinafter referred to as “the property”).

20. As of August 18, 1997, CSF was not a legal entity statutorily entitled to receive or own an interest in real property because it was not incorporated under the laws of Florida until November 7, 1997, eighty-one (81) days after the August 1997 quit claim deed.

21. Because CSF did not even exist as a legal entity on August 18, 1997, the attempted conveyance of property from the Debtors to CSF by quit claim deed on August 18, 1997 is null and void.

22. On or about July 30, 2003, Debtors Virgil Newton and Ruth Newton executed a corrective quit claim deed (hereinafter, “July 2003 corrective quit claim deed”) conveying the same property to CSF that the Debtors tried to convey to CSF in August 1997. Debtors received the sum of ten dollars (\$10.00) in consideration for conveyance of the property.

23. At the time the Debtors executed the corrective quit claim deed to the CSF in July 2003, the Debtors’ Chapter 7 bankruptcy case was still pending in this Court.

24. The Debtors failed to list the property or transaction in their Schedules and Statement of Financial Affairs. Additionally, the Debtors failed to amend their Schedules or Statement of Financial Affairs to account for the property or its disposition.

COUNT I – DECLARATORY JUDGMENT
(Debtors and the CSF)

25. The Plaintiff re-alleges paragraphs 1 through 24 as though each was set forth herein.

26. This is an action for declaratory judgment pursuant to 11 U.S.C. § 541.

27. By virtue of the Debtors' failed attempt to convey the property to CSF by way of the August 1997 quit claim deed, the Debtors continued to possess legal interest in the property after August 18, 1997.

28. The Debtors continued to possess legal interest in the property at the time of the filing of their bankruptcy petition on May 24, 2001.

29. All legal or equitable interests of the Debtors in the property as of the petition date is property of the estate pursuant to 11 U.S.C. § 541.

30. The Debtors failed to disclose their interest in the property in the Schedules or Statement of Financial Affairs.

WHEREFORE, the Plaintiff seeks entry of an order declaring that the real property is property of the estate and for such other and further relief as is just and proper.

COUNT II – TURNOVER OF PROPERTY TO THE ESTATE
(the CSF)

31. The Plaintiff re-alleges paragraphs 1 through 30 as though each was set forth herein.

32. This is an action for turnover of property to the estate pursuant to 11 U.S.C. § 542.

33. The property that the Debtors attempted but failed to convey to CSF on August 18, 1997 is property of the estate pursuant to 11 U.S.C. § 541, and the Plaintiff respectfully requests that this Court compel CSF to turnover the property to the estate pursuant to 11 U.S.C. § 542(a).

34. The same property that the Debtors retained after August 18, 1997 and then conveyed to CSF on July 30, 2003 is property of the estate pursuant to 11 U.S.C. § 541, and the

Plaintiff respectfully requests that this Court compel CSF to turnover the property to the estate pursuant to 11 U.S.C. § 542(a).

WHEREFORE, the Plaintiff seeks entry of an order directing CSF to immediately turnover the property, or pay the equivalent value thereof, to the Plaintiff and for such other and further relief this Court deems just and proper.

COUNT III – VIOLATION OF FLORIDA UNIFORM FRAUDULENT TRANSFER
ACT: FLORIDA STATUTE §726.105(1)(a)
(Debtors and the CSF)

35. The Plaintiff re-alleges paragraphs 1 through 34 as though each was set forth herein.

36. Defendant CSF is an insider within the meaning of Florida Statutes §726.102(7)(a)(4).

37. The transfer of the property by quit claim deed on August 18, 1997 was made with the intent to hinder, delay, or defraud creditors of the debtors in that:

- i. The transfer was made to the Defendant CSF, who is and was at all relevant times, an insider.
- ii. The Debtors effectively retained possession and control of the property after the transfer on August 18, 1997.
- iii. The Debtors failed to disclose the transfer or their legal interest in the property in their Schedules or Statement of Financial Affairs.
- iv. Debtor Virgil M. Newton was insolvent or became insolvent after the transfer was made.
- v. The transfer occurred shortly after an IRS tax debt of \$131,169.34 for 1996 federal withholding taxes became due and owing.

vi. The transfer was made without the Debtor's receipt of reasonably equivalent value in exchange for the transfer, in this case: one dollar (\$1.00).

38. The transfer of the property by the August 1997 quit claim deed was fraudulent as to creditors, specifically the IRS, under Florida Statute §726.105(1)(a) and, accordingly, may be avoided to the extent necessary to satisfy creditor claims pursuant to Florida Statute §726.108.

WHEREFORE, the Plaintiff respectfully prays that the Court deem the transfer by Debtors Virgil M. Newton and Ruth A. Newton to Defendant CSF by quit claim deed on August 18, 1997 as "fraudulent" within the meaning of Florida Statutes §726.105, that such fraudulent transfer be avoided pursuant to Florida Statutes §726.108, and that the Court award the Plaintiff such other and further relief as it may deem just and proper.

COUNT IV – VIOLATION OF FLORIDA UNIFORM FRAUDULENT TRANSFER ACT:
FLORIDA STATUTE §726.106(1)
(Debtors and the CSF)

39. The Plaintiff re-alleges paragraphs 1 through 38 as though each was set forth herein.

40. The transfer of property by quit claim deed on August 18, 1997 from Debtors to CSF was fraudulent pursuant to Florida Statutes §726.106(1) in that:

- i. The claim of the IRS in the amount of \$131,169.34 for 1996 federal withholding taxes arose before the date of the transfer.
- ii. The Debtors did not receive the equivalent value of the property in exchange for the transfer.
- iii. The Debtors were insolvent at the time of the transfer in that they could not satisfy a debt owed to the IRS for \$131,169.34 that became due and owing on December 31, 1996.

41. The transfer of the property by the August 1997 quit claim deed was fraudulent as to creditors, specifically the IRS, under Florida Statute §726.106(1) and, accordingly, may be avoided to the extent necessary to satisfy creditor claims pursuant to Florida Statute §726.108.

WHEREFORE, the Plaintiff respectfully prays that the Court deem the transfer by Debtors Virgil M. Newton and Ruth A. Newton to Defendant CSF by quit claim deed on August 18, 1997 as “fraudulent” within the meaning of Florida Statutes §726.106, that such fraudulent transfer be avoided pursuant to Florida Statutes §726.108, and that the Court award the Plaintiff such other and further relief as it may deem just and proper.

Respectfully submitted on this 9th day of July, 2005.

DONICA LAW FIRM, P.A.
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Attorney for Trustee

/s/ Herbert R. Donica
Herbert R. Donica, Esq.
Florida Bar No. 841870

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Complaint has been sent by regular U.S. Mail or the Court’s CM/ECF system on the 9th day of July, 2005 to: **Alberto F. Gomez, Jr., Esq., Debtors’ Attorney**, 119 S. Dakota Avenue, Tampa, FL 33606.

/s/ Herbert R. Donica
Herbert R. Donica, Esq.