

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Magistrate Judge: O'Sullivan

MARIE JEANNE JEAN, in her)
individual capacity, and as parent)
and legal Guardian for minors,)
VLADIMIR PIERRE and)
MICHELDA PIERRE and)
LEXIUSTE CAJUSTE,)
)
Plaintiffs,)
vs..)
)
CARL DORELIEN,)
and Lump Sum Capital, LLC)
a Maryland Limited Liability)
Company,)
)
Defendant.)
_____)

CASE NO: 03-20161-CIV-KING

MOTION TO DISMISS TEMPORARY INJUNCTION

COMES NOW the Defendant, CARL DORELIEN, by and through his undersigned counsel, pursuant to FRCP 7 and Local Rule 7.1, moves this Court to dismiss the temporary injunction herein and in support states:

1. On March 10, 2004, this Court entered a temporary injunction for 10 days with leave for the Plaintiffs to apply for a 10 day extension, enjoining the Defendant, CARL DORELIEN, from completing an assignment of his lottery winnings to Defendant, Lump Sum Capital, LLC, in exchange for full and fair consideration.

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2. Defendant, CARL DORELIEN, through the undersigned has submitted affidavits from the family members he supports with his lottery winnings.

3. Plaintiffs have failed to provide any proof that said transfer is fraudulent.

4. Plaintiffs have failed to provide any proof that they are entitled to enjoin the Defendants from completing their business transaction.

5. Plaintiffs have failed to provide any proof that would entitle them to any order restricting the use of funds by Defendant, CARL DORELIEN, to pay the living and educational expenses of his family, debts and attorney's fees and costs.

6. Plaintiffs have no legal or factual basis for a claim of fraudulent transfer or emergency temporary injunction.

7. Plaintiffs knew, or should have and could have known upon reasonable investigation under the circumstances that Defendant, CARL DORELIEN, won the Florida Lottery in 1997 prior to their filing the original complaint herein but waited until their motion for continuance of the trial scheduled herein to file their baseless complaint for fraudulent transfer.

8. The transaction complained of is an exchange not a transfer of assets.

WHEREFORE, the Defendant, CARL DORELIEN, prays this Court dismiss the temporary injunction/restraining order rendered herein.

MEMORANDUM OF LAW

Transfer involving actual fraud are deemed fraudulent as to future creditors and are therefore

avoidable. Fla. Stat. 726.105(1)(a).

Constructively fraudulent transfer by insolvent debtors may not be voided by future creditors. Fla. Stat. 726.106(1).

Herein there is not transfer of assets merely an exchange for reasonable value.

The party alleging fraud must prove it and the burden of proof rests on the complainant the presumption being against the existence fraud. McCary v. Bobenhausen, 366 So. 2d 77 (1979); Scott v. Dansby, 334 So. 2d 331 (1976). Plaintiffs have not offered any proof.

There is a presumption that business transactions are honest and made without fraud as to creditors and he who asserts that a particular transaction is fraudulent must provide it. Tischler v. Robinson, 79 Fla. 638, 84 So. 914 (1920). Again, Plaintiffs offer no proof of fraud as to them.

Defendant, CARL DORELIEN, has a right to his winnings and to use them for his and his family's benefit absence proof of fraud as to legitimate creditors.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was mailed on this 30th day of March, 2004, to: See Attached List.

LAW OFFICES OF KURT R. KLAUS, JR.

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BY: 

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(Names and Addresses of Counsel)

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