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FACSIMILE COVER LETTER**TO: MS. ANDREA WARE****U.S. COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT****FAX NO: 1-404-335-6162****REFERENCE: MARIE JEANNE JEAN, ET.AL. V. CARL
DORELIEN, ET. AL.
CASE NO: 0412069-I****DATE: April 29, 2004 at 11:50 a.m.****TOTAL NUMBER OF PAGES (including cover letter): 10****IF PROBLEMS OCCUR DURING TRANSMISSION OR IF ALL 10 PAGES
ARE NOT RECEIVED, PLEASE CONTACT US IMMEDIATELY AT (305)
461-4447.****ADDITIONAL COMMENTS OR INSTRUCTIONS*****Attached is Defendant's/Appellee's Response to
Plaintiffs'/Appellants' Emergency Motion for
Injunction Pending Appeal.*****CONFIDENTIALITY NOTICE**

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UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CASE NO: 0412069-I

MARIE JEANNE JEAN, in her individual capacity,
and as parent and legal guardian for minors
VLADIMY PIERRE and MICHELDA PIERRE, and
LEXIUSTE CAJUSTE,

Plaintiffs/Appellants,

vs.

CARL DORELIEN, and LUMP SUM CAPITAL,
LLC, a Maryland limited liability Company,

Defendants/Appellees.

RESPONSE TO PLAINTIFFS'/APPELLANTS'
EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL

Defendant/Appellee, CARL DORELIEN, through the undersigned attorney,
files this his Response to the Plaintiffs'/Appellants' Emergency Motion for
Injunction Pending Appeal, and states:

Background

Defendant/Appellee, CARL DORELIEN, a citizen and resident of Haiti, is a

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former military officer in the Haitian Army. When the U.S.A. by force returned Jean Bertrand Aristide to the presidency of Haiti in 1994, President Aristide dissolved the Army and exiled its officers. Defendant/Appellee, CARL DORELIEN, entered the U.S.A. legally around 1995 and won the Florida Lottery in 1997. Defendant/Appellee, CARL DORELIEN, was arrested by the Immigration and Naturalization Services (INS) in June of 2001 and deported in January, 2003.

The Plaintiff/Appellant, MARIE JEANNE JEAN, filed this suit in January, 2003. Plaintiff/Appellant, LEXIUSTE CAJUSTE, filed suit in October, 2003.

The fraudulent transfer claim was added on March 10th, 2004. Defendant/Appellee, CARL DORELIEN, filed his Answer, Affirmative Defenses and Counter-Claim on March 30, 2004, regarding Plaintiffs'/Appellants' 2d Amended Complaint.

Several Motions to Dismiss and for Judgment on the Pleadings were filed by the Defendant/Appellee, CARL DORELIEN. The trial court dismissed the

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claim of Plaintiff/Appellant, LEXIUSTE CAJUSTE, based on the statute of limitations, and the balance of the 2nd Amended Complaint based on failure to exhaust adequate remedies in Haiti.

Plaintiffs/Appellants seek a temporary injunction pending appeal.

Argument

The elements of an injunction are; “first, clear legal right or interest in the subject matter of the suit.”

Herein, Plaintiffs'/Appellants' allegations have been found to be legally insufficient to maintain a cause of action. The Defendant, has raised several affirmative defenses e.g. lack of standing, res adjudicate, et. al., that Plaintiffs/Appellants have not responded to.

“Second, likelihood of irreparable harm because of the unavailability of an adequate remedy at law.”

The judicial test to determine the adequacy of the remedy at law is whether a judgment can be obtained in a proceeding at law.

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The test is not whether the judgment can be collected. Stewart v. Manget, 132 Fla. 498, 181 So. 2d 370 (1938).

“Third, substantial likelihood of success on the merits.” Diamond v. Interstate Trading Corp., 606 So. 2d 631, 632 (Fla. 3rd DCA 1992).

Herein, the trial court has found that as a matter of law Plaintiffs/Appellants are not entitled to relief.

The likelihood that Plaintiff/Appellant, MARIE JEANNE JEAN, can get a passport to come from Haiti to pursue her dubious claims is small.

The claim of Plaintiff/Appellant, LEXIUSTE CAJUSTE, is clearly barred by the Statute of Limitations.

Plaintiffs/Appellants have failed to comply with procedural requirements.

They have not filed verified pleadings or affidavits. Fla. R.Civ.P. 1.610.

Defendant/Appellee filed affidavits and verified pleadings to dismiss Plaintiffs'/Appellants' temporary injunction.

“Potential” judgment creditors have no right to a preliminary injunction.

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“The law is unequivocally established that an injunction against disposition of Defendant’s assets simply may not be granted upon the ground that their preservation is required to satisfy a subsequent money judgment” Leight v. Berkman, 483 So. 2d 476, 477 (Fla. 3rd DCA, 1986), Creditors and Debtors Practice in Florida, 2d Edition, The Fla. Bar 2003 at pages 4-20-21.

A Fraudulent Transfer: requires proof of less than reasonably equivalent value.

Plaintiffs/Appellants have not even alleged that the proposed sale of the right to periodic lottery payments to Lump Sum Capital, LLC, is for less than reasonably equivalent value, let alone verify or support such allegation with an affidavit.

The proposed transaction is an arms length transaction for fair market value for the purpose of paying accumulated debts, attorney’s fees, living expenses, school tuition et. al., as set forth in Defendant’s/Appellee’s verified pleadings and affidavits.

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See Creditors and Debtors Practice in Florida, Fla. Bar, 2003, Chapter 7

Fraudulent Transfers. See attached docket items 38, 39, 51, 52, 53, 55, 56 and 58.

WHEREFORE, Defendant/Appellee, CARL DORELIN, demands this Court deny Plaintiffs'/Appellants' application for an injunction and order Plaintiffs/Appellants to pay costs and fees herein.

Respectfully submitted,

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BY: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was faxed and mailed to: Matthew J. Eisenbrandt, Esq., The Center of Justice and Accountability, 870 Market Street, Suite 684, San Francisco, CA 94102, Fax No: (415) 544-0456; Stephen F. Rosenthal, Esq., Podhurst, Orseck, Josefsberg, Eaton, Meadow, Olin & Perwin, 25 West Flagler Street, Suite 800, Miami, Florida 33130-1780, Fax No: (305) 358-2382; Dwayne E. Williams, Esq., Holland & Knight, LLP, 701 Brickell Avenue, Suite 3000, Miami, Florida 33131, Fax No: (305) 789-7799; Thomas E. Bishop, Esq. Holland & Knight, LLP, 50 North Laura Street, Suite 3900 Jacksonville, Florida 32202, Fax: (904) 358-1872; John Andres Thornton, Esq., 9 Island Avenue, Suite 2005, Miami Beach, Florida 33139, Fax: (305) 532-6851; Scott Behren, Esq., Waldman, Hildebrandt, Feluren & Trigoboff, P.A., 2200 North Commerce Parkway, Suite 202, Weston, Florida 33326, Fax: (954) 467-6222, Lucinda Hoffman, Esq.,

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