

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 99-8364 CIV-HURLEY

JUAN ROMAGOZA ARCE, NERIS  
GONZALEZ, and CARLOS MAURICIO,

Plaintiffs,

v.

JOSE GUILLERMO GARCIA and CARLOS  
EUGENIO VIDES CASANOVA,

Defendants.

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**MOTION FOR PROCEEDINGS SUPPLEMENTARY AND FOR LEAVE TO FILE COMPLAINT  
FOR FRAUDULENT TRANSFER IMPLEADING THIRD PARTY DEFENDANTS**

Plaintiffs Juan Romagoza Arce, Neris Gonzalez, and Carlos Mauricio (collectively “Plaintiffs/judgment creditors” or “Plaintiffs”), by and through undersigned counsel, file their Motion for Proceedings Supplementary and For Leave to File Complaint for Fraudulent Transfer Impleading Third Party Defendants and as grounds therefore state:

**I. INTRODUCTION**

On July 31, 2002, this Court entered Final Judgments in favor of Plaintiffs for a total of \$54.6 million for torture. Over \$54 million of that judgment remains unsatisfied.

Through post-judgment discovery, Plaintiffs/judgment creditors have learned that Defendant Vides Casanova has engaged in a pattern of transferring his assets to insiders for no value in order to avoid the judgment and thwart his creditors in this case. Further, Defendant Vides Casanova continues to shield assets from this Court and Plaintiffs. Unless action is taken to undo the fraudulent transfers and prevent future ones, as well as to force Defendant Vides Casanova to reveal his hidden assets, Defendants will succeed in flouting the authority of this Court; the entire legal process that this court conducted will be rendered less meaningful; and, in the end, justice will be denied in this case. Plaintiffs herein seek three forms of relief: that this Court conduct proceedings supplementary in which it orders Defendant Vides Casanova to appear and testify before the Court regarding his assets; that this Court grant Plaintiffs leave to implead the recipients of the fraudulent transfers; and that this Court grant equitable relief—either an injunction against further transfers, or

preferably, the appointment of a receiver to take control of Defendant Vides Casanova's assets to learn what he has, and to prevent his future flouting of the judgment against him.

## II. STATEMENT OF FACTS

### **A. Fraudulent Transfers**

Through post-judgment discovery, Plaintiffs have learned of a number of fraudulent transfers—transfers made to obvious insiders for no value during the course of this litigation. These transfers, documented with statements from investment accounts and admitted in deposition by Defendant Vides Casanova, are chronicled below:

- On September 13, 2000, Defendant Carlos Eugenio Vides Casanova transferred \$20,000 to Maria Gema Vides Melendez, his adult daughter, for no consideration. See Deposition of Carlos Eugenio Vides Casanova attached hereto as Exhibit A (“Vides Casanova Depo.”) at p. 24, line 9 to p. 25 line 13.
- On September 14, 2000, Defendant Carlos Eugenio Vides Casanova transferred \$59,307.87 to pay off debts owed by Geraldo Vides Melendez, his adult son, for no consideration. Id. at p. 58, line 23 to p. 59, line 4.
- On September 19, 2000, Defendant Carlos Eugenio Vides Casanova transferred \$20,000 to Marta Del Carmen Vides Demmer, his adult daughter, for no consideration. Id.
- On October 14, 2000, Defendant Carlos Eugenio Vides Casanova transferred \$8,500 to Geraldo Vides Melendez, his adult son, for no consideration. Id. at p. 59, line 12 to line 21.
- On October 15, 2000, Defendant Carlos Eugenio Vides Casanova transferred \$9,000 to Clara Maria Reigito, the wife of his adult son, Geraldo Vides Melendez, for no consideration. Id. at p. 59, line 22 to line 24.
- On October 23, 2000, Defendant Carlos Eugenio Vides Casanova transferred \$9,500 to Geraldo, a/k/a Juan Carlos, Demmer, the husband of his adult daughter, Marta Del Carmen Vides Demmer, for no consideration. Id. at p. 61, line 18 to p. 62, line 16.
- On October 24, 2000, Defendant Carlos Eugenio Vides Casanova transferred \$9,000 to Roberto Vides Casanova, his brother, allegedly to repay loans for which there were no records. Id. at p. 63, line 6 to p. 65, line 7.
- In or about late October 2000, Defendant Carlos Eugenio Vides Casanova transferred another \$6,000 to Roberto Vides Casanova, his brother, allegedly to repay loans for which there were no records. Id. at p. 65, line 20 to line 23.

If his motivation in making these transfers--to avoid this judgment--were not obvious enough, Defendant Vides Casanova admitted in several passages of his deposition that his purpose was to hinder his creditors in this matter.

BY MR. GORMAN:

Q. Why did you give Marta \$20,000 in September of 2000?

A. Honestly, when you are in a situation such as this, it's like someone condemned to death.

Q. You mean a situation where you are being sued for a great deal of money?

A. Well, no, no. Well, it could be that. Well, you see, what it is, what I want to say is that I made a decision.

(Id. at p. 26, line 17 to line 25.)

\* \* \*

BY MR. GORMAN:

Q. The situation that you referred to when you said it was like being under a death sentence, am I correct that that situation is being sued in this case and in the other lawsuit involving the nuns?

A. Well, yes, it's part of that. You see, when you see that, one tends to start thinking of how you can go about providing for your family so as not to leave them unprotected.

(Id. at p. 28, line 2 to line 9.)

\* \* \*

Q. But the reason you made the decision to begin spending the money or giving the money to your children or other family members was because of these lawsuits which you were forced to defend; isn't that true?

THE INTERPRETER: Interpreter requests the last part of the question to be read back.

(Thereupon, a portion of the record was read by the reporter.)

THE WITNESS: Yes, but basically because of my responsibility to assist my children.

(Id. at p. 26, line 17 to line 25.)

By his own admission, the Defendant Vides Casanova gave his assets to insiders to avoid this judgment.

#### **B. Hidden Assets**

Additionally, it appears that Defendant Vides Casanova has assets that he is either hiding, or has transferred to third parties. At his deposition, General Vides Casanova was asked about the assets that had generated \$130,191 of income that he reported on his 2000 tax return.

BY MR. GORMAN:

Q. Okay, Mr. Vides, I'm looking at your 2000 income tax return, which is included within Exhibit 11.

And I see on your foreign tax credit schedule, which is Form 1116, that you had \$130,191 of income from investments outside of the United States. Would you tell me what those investments were?

A. No investments. I've never had any investments.

Q. Has your wife?

A. At that date, I think that she didn't either. All she had was her coffee plantation, which she sold when she came here, but no investments of -- I've never had any investments. I assure you that that is not mine. These are not my investments. I've never had any investments.

(Id. at p. 69, line 2 to line 18.)

The Defendant is clearly hiding something. Defendant Vides Casanova has assets, significant assets, assets so significant that he earned and declared \$130,000 in "*passive*" income in the single year prior to the filing of this action. See Form 1116, attached to Vides Casanova Depo. As part of Exhibit 11, marked here as Tab 1. This investment income inexplicably stopped upon filing of this action, and Vides Casanova has managed to keep his assets which generated it, as well as whatever income these assets generated in later years, hidden from the Plaintiffs/judgment creditors in this case. [\[1\]](#)

### **III. MEMORANDUM OF LAW: FLORIDA LAW APPLIES AND CALLS FOR SUPPLEMENTARY PROCEEDINGS AND RELIEF FROM FRAUDULENT TRANSFERS**

#### **A. Applicable law and jurisdiction to implead third parties.**

Rule 69, Federal Rules of Civil Procedure, states:

The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable.

See Fed. R. Civ. P. 69. As no statute of the United States governs, this Court should apply the Florida law on the issue, which includes Fla. Stat. § 56.29 concerning proceedings supplementary as well as fraudulent transfers; and Fla. Stat. § 726.101 *et seq* concerning fraudulent transfers specifically. See e.g. MCI Telecommunications Corporation v. O'Brien, 913 F. Supp. 1536 (S.D. Fla. 1995)(citing Rule 69(a) as calling for the application of Fla. Stat. § 56.29 in proceedings supplementary). It is also proper to implead third party transferees in proceedings supplementary. See Fla. Stat. § 56.29(6)(b)(“When any gift, transfer, assignment

or other conveyance of personal property has been made by or contrived by defendant to delay, hinder or defraud creditors, the court shall order the gift, transfer, assignment or other conveyance to be void and direct the sheriff to take the property to satisfy the execution.”); see also Sverdahl v. Farmers & Merchants Sav. Bank, 582 So. 2d 738, 1991 (4th DCA 1991), and Standard Property Investment Trust, Inc. v. Luskin, 585 So. 2d 1099 (4th DCA 1991)(examples of impleading third party defendants pursuant to Fla. Stat. § 56.29).

With good reason, the United States Supreme Court has called upon District Courts to exercise ancillary jurisdiction and broad equitable powers in proceedings supplementary, including the relief sought here: remedying fraudulent transfers by impleading third parties and appointing a receiver. As the Supreme Court stated in Peacock v. Thomas, 516 U.S. 349, 116 S.Ct. 862 (1996):

Without jurisdiction to enforce a judgment entered by a federal court, “the judicial power would be incomplete and entirely inadequate for the purpose for which it was conferred by the constitution.” . . . In defining that power, we have approved the exercise of ancillary jurisdiction over a broad range of supplementary proceedings involving third parties to assist in the protection and enforcement of federal judgments – including attachment, mandamus, garnishment and the prejudgment avoidance of fraudulent conveyances.

516 U.S. at 356, 116 S.Ct. at 868. Peacock supports the exercise of a district court of ancillary jurisdiction, in particular for claims brought under a state’s version of the Uniform Fraudulent Transfer Act to implead third parties and undo transfers to satisfy a judgment. See Epperson v. Entertainment Express, Inc., 242 F.3d 100, 105 (2nd Cir. 2001)(citing Peacock as authority for ancillary jurisdiction over a claim brought under the Uniform Fraudulent Transfer Act impleading third party transferees).

Thus, the Supreme Court calls for this Court to give meaning to its judgment by availing itself of the state statutes available to ensure the judgment is enforced.

#### **B. Florida law entitles Plaintiffs to proceedings supplementary.**

A plaintiff who holds a valid and outstanding execution is entitled to proceedings supplementary to execution upon filing an affidavit so stating. Fla. Stat. § 56.29(1). Here, the Plaintiffs have nearly \$54 million left to collect and have provided said affidavit. See Exhibit B. When the plaintiff moves the Court, as Plaintiffs have here, for proceedings supplementary, “the court *shall* require the defendant in execution to appear before it or a master at a time and place specified by the order in the county of the defendant’s residence to be examined concerning his or her property.” Fla. Stat. § 56.29(2)(emphasis added). Where the defendant has transferred property to insiders, “the defendant has the burden of proof to establish that such transfer or gift from him or her was not made to delay, hinder or defraud creditors.” Fla. Stat. § 56.29(6)(a).

### C. Florida law calls for equitable relief to prevent fraudulent transfers.

Florida has also adopted the Uniform Fraudulent Transfer Act, which states:

1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or obligation incurred, if the debtor made the transfer or incurred the obligation (a) With actual intent to hinder, delay, or defraud any creditor of the debtor.

Fla. Stat. § 726.105(1)(a).

Clearly, by giving his assets to his son, his daughters, his brother, a son-in-law, and a daughter-in-law, Defendant Vides Casanova has acted to delay, hinder or defraud the Plaintiffs.

The legislature has authorized courts to liberally grant relief to preserve assets in a case such as this where fraudulent intent has been established. Among the remedies are “avoidance of the transfer, attachment, and injunction, *appointment of a receiver and ‘any other relief the circumstances may require.’*” Friedman v. Heart Inst. of Port St. Lucie, Inc., 836 So. 2d 189, 192 (Fla. 2003) (quoting Fla. Stat. § 726.108(1)(b))(emphasis added).

Here, the circumstances require strong measures. The \$54 million outstanding judgment, which was handed down to compensate the Plaintiffs/judgment creditors and to punish the Defendants for heinous acts, remains unpaid. Defendant Vides Casanova has managed to largely thwart the rule of law already with fraudulent transfers—albeit ones that he could not deny in light of the documentary evidence—and by hiding assets that clearly must exist somewhere given that they were generating a *declared* annual income of \$130,000 prior to this lawsuit. Defendant Vides Casanova has shown a willingness to fraudulently transfer assets and to hide assets, and so the only prudent course to take in enforcing the judgment is to have a receiver take control of the Defendant Vides Casanova's assets once and for all. Only then can the Court be sure that it is finding what assets Defendant Vides Casanova actually has, and that he cannot simply transfer the assets to third parties to hinder, delay or defraud the Plaintiffs. Alternatively, this Court should enjoin Defendant Vides Casanova from any future transfers of his assets.

### IV. CONCLUSION

Respectfully, Plaintiffs request that this Court order Defendant Vides Casanova to appear and be examined about his assets under threat of contempt; allow the Plaintiffs/judgment creditors to implead the third parties that have received or were beneficiaries of fraudulent transfers with the Complaint for Fraudulent Transfer, attached as Exhibit C; and appoint a Receiver to take control of and administer all of

Defendants' assets.

Dated this \_\_\_\_ day of September, 2004.

Respectfully submitted,

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#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed on this \_\_\_\_ day of September, 2004 to: Kurt Klaus, Esq., Law Offices of Kurt R. Klaus, Jr., 3191 Coral Way, Suite 402-A, Miami, FL 33145.

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John Andres Thornton

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[\[1\]](#) The only assets that Plaintiffs have made progress towards recovering were the approximately \$265,000 that the Defendant Vides Casanova left in plain view on the incorrect assumption that they would be protected as exempt from execution. He claimed these funds were exempt as part of the Prepaid College Trust Fund, despite not having placed those monies into the Fund. This Court, by Order entered August 29, 2003, denied his claim of exemption. Clearly, Defendant Vides Casanova's intent all along has been to shield all of his assets. He has largely succeeded.