

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CIV-80119-MARRA/JOHNSON ✓

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

Related cases:

08-80232, 08-80380, 08-80381, 08-80994,
08-80993, 08-80811, 08-80893, 09-80469,
09-80591, 09-80656, 09-80802, 09-81092

ORDER

_____ This cause is before the Court upon Plaintiff Jane Doe's Motion for Injunction Restraining Fraudulent Transfer of Assets, Appointment of a Receiver to Take Charge of Property of Epstein, and to Post a \$15 Million Bond to Secure Potential Judgment (DE 165). Defendant Jeffrey Epstein filed a response in opposition to the motion (DE 198), and Plaintiff filed a reply (DE 217). The motion is now fully briefed and ripe for review.

_____ Plaintiff's motion argues that Defendant is fraudulently transferring his assets with the specific intent to defeat any judgment that might be entered against him in this and other similar cases. Plaintiff therefore seeks an order enjoining Defendant from fraudulent transfers of his assets, appointing a receiver to take charge of Defendant's property, and requiring Defendant to post a \$15 million dollar bond against any potential judgment in this case.

The relief sought by Plaintiff is injunctive and, essentially, amounts to a prejudgment writ of attachment. Rosen v. Cascade Intern., Inc., 21 F.3d 1520, 1530 (11th Cir. 1994) (vacating district court's preliminary injunction freezing defendant's assets). "No relief of this character has been thought justified in the long history of equity jurisprudence." De Beers Consol. Mines, Ltd. v. United States, 325 U.S. 212, 222-23 (1945).

"Preliminary injunctive relief freezing a defendant's assets in order to establish a fund with which to satisfy a potential judgment for money damages is simply not an appropriate exercise of a federal district court's authority." Rosen, 21 F.3d at 1530. Indeed, "[i]t is entirely settled by a long and unbroken line of Florida cases that in an action at law for money damages, there is simply no judicial authority for an order requiring the deposit of the amount in controversy into the registry of the court ... or indeed for any restraint upon the use of a defendant's unrestricted assets prior to the entry of judgment." Id. at 1531, quoting Konover Realty Assoc., Ltd. v. Mladen, 511 So.2d 705, 706 (Fla. 3d DCA 1987).

In Florida, an injunction cannot be entered to prevent a party from using or disposing of his assets prior to the conclusion of a legal action. Briceno v. Bryden Investments, Ltd., 973 So.2d 614, 616 (Fla. 3d DCA 2008). See also SME Racks, Inc. v. Sistemas Mecanicos Para, Electronica, S.A., 243 Fed.Appx. 502 (11th Cir. 2007) (affirming district's court's denial of preliminary injunction to freeze defendant's assets); Proctor v. Eason, 651 So.2d 1301, 1301-02 (Fla. 2d DCA 1995) (Defendant not required to deposit funds in court registry prior to final judgment where Plaintiff failed to show unavailability of an adequate remedy at law and the likelihood of irreparable harm, two elements essential to entry of an injunction); Lawhon v. Mason, 611 So.2d 1367 (Fla. 2d DCA 1993) (quashing trial court order requiring defendant to

give plaintiffs ten days notice prior to the transfer of any assets in excess of \$500).

Additionally, as the Eleventh Circuit explained in Rosen:

In actions at law, plaintiffs in Florida possess an adequate, exclusive prejudgment remedy for the sequestration of assets under the attachment statute, Fla.Stat. Ann. § 76.04-.05 (West 1987), provided that they can satisfy the enumerated statutory grounds for relief. Accordingly, **the use of injunctive relief as a substitute for the remedy of prejudgment attachment, with its attendant safeguards, is improper.**

21 F.3d at 1531 (emphasis added). Here, Plaintiff did not move to amend her complaint to allege a claim under the Florida Uniform Fraudulent Transfers Act ("FUFTA"), Fla. Stat. § 726.101, et seq.¹ Rather, she filed the present motion for injunctive relief. Even if she had moved to amend her complaint, it is certainly not clear that she could meet the required statutory elements. Plaintiff's motion is premised on the contention that Defendant is fraudulently transferring his assets. However, Plaintiff's motion is entirely devoid of evidence of Defendant's alleged fraudulent transfers. The Court declines to conclude that Defendant is fraudulently transferring assets based upon the adverse inferences relied upon by Plaintiff. Plaintiff's supplemental filing regarding the titles of approximately five of Defendant's vehicles is clearly de minimis, particularly in light of Plaintiff's repeated characterization of Defendant as a "billionaire."

Based upon the foregoing, it is hereby

ORDERED AND ADJUDGED that

¹Fraudulent transfer claims under Florida law arise under the Florida Uniform Fraudulent Transfers Act ("FUFTA"), Fla. Stat. § 726.101, et seq. FUFTA, as set forth in Florida Statute § 726.105, provides the substantive requirements that must be pled to state a valid fraudulent transfer claim. Nationsbank, N.A. v. Coastal Utilities, Inc., 814 So.2d 1227, 1229 (Fla. Dist Ct. App. 2002). The plaintiff must show that "(1) there was a creditor to be defrauded; (2) a debtor intending fraud; and (3) a conveyance of property which could have been applicable to the payment of the debt due." Id.

(1) Plaintiff Jane Doe's Motion for leave to Provide Recently-obtained Deposition Testimony and Affidavit (DE 386 in 08-80119) is **GRANTED**.

(2) Plaintiff Jane Doe's Motion for Injunction Restraining Fraudulent Transfer of Assets, Appointment of a Receiver to Take Charge of Property of Epstein, and to Post a \$15 Million Bond to Secure Potential Judgment (DE 165 in 08-80119) is **DENIED**.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this 5th day of November, 2009.



KENNETH A. MARRA
United States District Judge

Copies to:
all counsel of record