

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 05-60833-CIV-MORENO

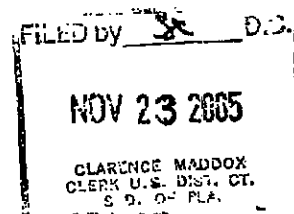
ROBERTO MARTINEZ, *et al.*,

Plaintiff,

vs.

MAJESTIC FARMS, LLC,

Defendant.



ORDER DENYING DEFENDANT'S MOTION TO DISMISS

The Receiver brings suit seeking to recover at least \$165,000 he alleges Joel and Leslie Steinger caused MBC and VBLLC to fraudulently transfer to their horse farm, Majestic Farms, LLC. In the complaint, the Receiver brings a claim for fraudulent transfer and a claim for unjust enrichment. Presently before the Court is the Defendant's motion to dismiss, or in the alternative, motion for a more definite statement (D.E. No. 8), filed on September 27, 2005, to which the Receiver responded on October 14, 2005. For the reasons that follow, the Defendant's motion is DENIED.

Analysis

The Defendant makes two arguments in its motion. First, the Defendant asserts that the complaint fails to allege fraud with sufficient particularity. As a result, the Defendant asserts that the Court should dismiss the complaint or compel the Plaintiff to provide a more definite statement. Second, in two sentences, the Defendant argues that the Plaintiff has not properly pleaded unjust enrichment under Florida law.

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According to Rule 9(b) of the Federal Rules of Civil Procedure, “[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.” Although the Defendant claims that the “who, what, when and where” are missing, examining the complaint makes clear that the Plaintiff has provided this information. The complaint provides specific dates, amounts, and parties for each allegedly fraudulent transaction, and it alleges who was behind the transfers. *See, e.g.*, Complaint ¶¶ 15-20. In short, the Plaintiff has easily met the requirements of Rule 9(b). Additionally, to the extent the Defendant claims that the Plaintiff has failed to state a claim for fraudulent transfer under Florida law, the Court disagrees. The complaint sufficiently alleges the elements of a claim for fraudulent transfer, and in particular, the complaint alleges several of the factors specifically listed in Fla. Stat. § 726.105(1)(b)(2) as relevant to determining fraudulent intent. For example, the complaint alleges that the transfers were made to insiders, that MBC and VBLLC failed to receive anything of value in exchange for the transfers, and that the transfers were concealed by false entries in the corporate records. Accordingly, the complaint adequately sets out a claim for fraudulent transfer. Further, as the complaint meets the particularity requirements of Rule 9(b), it certainly provides enough detail to allow the Defendant to frame a responsive pleading. For this reason, an order requiring a more definite statement is unwarranted.

Examining the unjust enrichment claim, the complaint sufficiently alleges “a benefit conferred upon a defendant by the plaintiff, the defendant’s appreciation of the benefit, and the defendant’s acceptance and retention of the benefit under circumstances that make it inequitable for him to retain it without paying the value thereof.” *Florida Power Corp. v. City of Winter Park*, 887 So. 2d. 1237, 1241 n.4 (Fla. 2004). Although the Defendant cites, without explanation, two cases supposedly in support of its claim that unjust enrichment has not been properly pleaded, those cases are inapposite.

Bowleg v. Browe simply explains that an action for unjust enrichment fails where the Plaintiff has an adequate legal remedy, such as breach of contract, which is not an issue here. 502 So. 2d 71 (Fla. Dist. Ct. App. 1987). Looking at the other cited case, the court in *Lowry v. Lowry* reversed a trial court decision dismissing a claim for unjust enrichment. 463 So. 2d 540 (Fla. Dist. Ct. App. 1985). On its face, this case lends more support to the Plaintiff, and the Defendant has provided no analysis in support of its position.

For these reasons, the Defendant's motion is DENIED.

DONE AND ORDERED in Chambers at Miami, Florida, this 22nd day of November, 2005.


FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies provided to:

Curtis Miner, Esq.
Peter M. Hoogerwoerd, Esq.
David M. Goldstein, Esq.