SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PATTERSON BELKNAP WEBB & TYLER LLP Plaintiff, - against - MARCUS & CINELLI LLP, DAVID P. MARCUS, BRIAN L. CINELLI, and JOHN DOES # 1–99, Defendants.	Index No. _____ **COMPLAINT**

Plaintiff *pro se*, Patterson Belknap Webb & Tyler LLP, for its Complaint, alleges:

1. Plaintiff Patterson Belknap Webb & Tyler LLP ("Patterson" or "Plaintiff") holds an unsatisfied judgment in the amount of $2,056,160.14, plus post-judgment interest from July 22, 2013, against an individual named Barbara Stewart ("Stewart" or the "Judgment Debtor") and seeks in this action to recover property of Stewart, namely a total of $2,375,000 in cash that was fraudulently transferred to Defendants.

THE PARTIES

2. Patterson is a limited liability partnership established and existing under the Partnership Laws of the State of New York, with its principal place of business at 1133 Avenue of the Americas, New York, New York 10036.

3. On information and belief, Defendant Marcus & Cinelli LLP ("M&C LLP") is, and at all relevant times was, a limited liability partnership established and existing under the Partnership Laws of the State of New York, with a principal place of business at 8416 Main Street, Williamsville, New York 14221.

4. On information and belief, Defendant David P. Marcus, Esq. ("Marcus")

is, and at all relevant times was, a citizen and resident of New York and a partner of M&C LLP.

5. On information and belief, Defendant Brian L. Cinelli, Esq. ("Cinelli") is a citizen and resident of New York and a partner of M&C LLP.

6. Defendants John Does #1–99 are fictitiously named defendants that may be parties necessary to this action or parties engaged in, or in some manner responsible for, the wrongful conduct alleged herein, that have not yet been identified (the "Doe Defendants" and, collectively with M&C LLP, Marcus, and Cinelli, the "Defendants").

JURISDICTION AND VENUE

7. Jurisdiction is proper pursuant to CPLR §§ 301 and 302 because Defendants reside or maintain a domicile in New York, Defendants transact business within New York, and/or a substantial part of the events giving rise to the claims asserted herein occurred in New York.

8. Venue is proper pursuant to CPLR § 503(a) because Patterson is a resident of New York County and a substantial part of the events giving rise to the claims asserted herein occurred in New York County.

PATTERSON'S JUDGMENT AGAINST STEWART AND PREVIOUS COLLECTION EFFORTS

9. On December 3, 2012, Patterson initiated an action in the Supreme Court of the State of New York against Stewart to recover past due fees for legal services Patterson rendered and invoiced in 2008 and 2009. The action is entitled *Patterson Belknap Webb & Tyler LLP v. Barbara Stewart*, Index No. 158524/12 (N.Y. Sup. Ct. N.Y. Cnty.) ("*Patterson Belknap v. Barbara Stewart*").

10. When Stewart failed to timely answer or otherwise respond to the complaint, Patterson moved for a default judgment.

11. On July 22, 2013, the Supreme Court awarded Patterson a judgment in the amount of $2,056,160.14, plus interest at 9% per annum from July 22, 2013 (the "Judgment").

12. Patterson served Stewart with a restraining notice pursuant to CPLR § 5222(b) (the "Restraining Notice") on August 5, 2013. The Restraining Notice instructed Stewart that as a judgment debtor, she "is forbidden to make or suffer any sale, assignment or transfer of, or any interference with any property in which [she has] an interest, except as [provided in CPLR § 5222(b)], except upon direction of the sheriff or pursuant to an order of the court, until the judgment or order is satisfied or vacated."

13. No part of the Judgment has been paid to date. Including post-judgment interest, the total amount currently due to Patterson is over $3.5 million.

14. Following entry of the Judgment, Patterson issued numerous information subpoenas and restraining notices to most of the major retail banks in New York City, where Stewart resides, and to several other financial institutions of which Patterson had reason to believe Stewart may be a client. Patterson also sought discovery from Stewart's accounting firm.

15. Meanwhile, Stewart was engaged in divorce proceedings. The divorce court found that Stewart had committed "egregious economic fault in claiming to have given away jewelry and property worth over $10 million, failing to disclose her offshore and foreign accounts, and secreting millions more in assets." *Stewart v. Stewart*, 133 A.D.3d 493, 494 (1st Dep't 2015).

16. Nevertheless, the divorce judgment included "valuable assets that will be sold (including luxury vehicles, a Swiss chalet and its contents, a Bermuda estate and its contents), with the net proceeds equally divided by the parties." *Id.* Additionally, Stewart was awarded stock valued at around $4.2 million in a company called Agravina, jewelry valued at

around $8.5 million, and two Swiss chalets valued at nearly $4 million. *Id.*

17. On February 17, 2016, Patterson took a deposition of Stewart.

18. At the deposition, Stewart testified that "[t]he only property [she] can sell and where Patterson will get their money is for the property in Bermuda." The Bermuda property has not been sold, and Bermuda court filings indicate that Stewart's interest in any proceeds from a future sale may be encumbered by debt on a mortgage loan from an entity controlled by her ex-husband.[1]

19. Stewart also testified about the jewelry she was awarded in the divorce, which the court valued at $8.5 million. Stewart claimed that she did not possess the jewelry—which included a diamond ring her ex-husband had bought her—because it had been misappropriated by her former daughter-in-law, Michele Stewart ("Michele").

20. Stewart testified further that she was not in possession of any jewelry other than the ring she wore to the deposition, which she claimed to have purchased for $217 in the 1960s.

21. Regarding the Agravina stock, Stewart testified that the judge had ordered her to sell the stock to pay her legal bills and that the sale proceeds went entirely to Defendant Marcus and another attorney.

22. As to the Swiss chalet the court awarded both Stewart and her ex-husband, Stewart testified that her ex-husband claims he owns it and that he will not allow her to sell it. As to the two Swiss chalets the court awarded Stewart outright, Stewart testified that Michele owned one and her grandchildren owned the other.

[1] *See Peirce Capital Ltd. v. William Peirce Stewart and Barbara K. Stewart*, [2016] SC (Bda) 33 Civ (Bermuda Sup. Ct. March 30, 2016), available at http://www.gov.bm/sites/default/files/Reasons-Peirce-Capital-Ltd-v-Stewart-and-Stewart.pdf.

23. In sum, Stewart claimed, "I don't have any money."

MARCUS'S RELATIONSHIP TO STEWART

24. Marcus has served as an attorney to Barbara Stewart for several years, including in litigation pertaining to several family trusts. That litigation, *inter alia*, resulted in the removal of Stewart as co-trustee of four family trusts. The Surrogate's Court wrote:

> [T]he special referee found [Stewart] unfit to continue to serve as a trustee because of her documented hostility to her co-trustee and beneficiaries of such severity that it interferes with trust administration, as well as her apparent failure to comprehend or comply with this court's previous determination regarding the bona fides of the children's trusts and the fact that she is neither a beneficiary or beneficial owner of the trust's assets. The special referee found that [Stewart's] behavior has been so unmindful, if not scornful, of her fiduciary responsibility as to threaten the very continuation of the trusts.

In re Stewart Inter Vivos Tr., 34 Misc. 3d 1216(A), 950 N.Y.S.2d 494 (N.Y. Sur. Ct. N.Y. Cnty. 2011) (internal citation omitted).

25. Notwithstanding these findings, the court partially granted Stewart's request for statutory commissions in connection with her prior service as a trustee, awarding her $695,960. *See In re Gregory Stewart Trust*, 109 A.D.3d 755 (1st Dep't 2013). But, as with proceeds from the sale of the Agravina stock discussed above, Stewart did not actually receive any of that money. Marcus asserted an attorneys' lien upon the funds and took them as payment for services that he purportedly rendered in the litigation where the commissions were awarded.

THE DIAMOND RING SALE AND THE FRAUDULENT CONVEYANCE OF PROCEEDS TO DEFENDANTS

26. At all relevant times, and at least since May 9, 2014, Marcus has had actual knowledge of Patterson's Judgment and of the Restraining Notice.

27. Despite that knowledge, Marcus facilitated Stewart's sale of a 24.79-carat Harry Winston diamond ring (the "Diamond Ring"). He did so mere months after the 2016

deposition in which Stewart claimed not to have any jewelry in her possession worth more than a couple hundred dollars and claimed to have "no money" and no assets (other than a property in Bermuda) that could be sold to satisfy Patterson's Judgment.

28. Beginning in or about June 2016, Marcus corresponded with an auction house based in New York City (the "Auction House") regarding the potential sale of the Diamond Ring. In the course of that correspondence, Marcus asked that all documents and discussions remain confidential.

29. On July 5, 2016, Marcus provided the Auction House with documents intended to demonstrate Stewart's ownership of the Diamond Ring, including an original bill of sale from Harry Winston dated January 23, 2003.

30. Two days later, the Auction House requested confirmation that Marcus had reviewed the files from Stewart's divorce proceeding and that he was confident his client had title to the Diamond Ring and could transfer it free and clear of any claims or encumbrances.

31. Marcus replied that he had "reviewed a substantial number of documents" from Stewart's divorce proceeding file and was confident Stewart had title to the Diamond Ring.

32. On July 14, 2016, the Auction House advised Marcus that there were two ways to sell the Diamond Ring. The first option was an "Important Jewels Sale," through which Stewart could potentially recover $3.5 million and neither M&C LLP nor Stewart would incur expenses. Such a sale would take place on September 22, 2016, and the proceeds would not be paid until 35 days after the sale. The second option was a private treaty sale, which could take place as early as late July, but through which Stewart would likely receive $2.5 million and the Auction House would keep a commission.

33. The next day, Marcus directed the Auction House to proceed with the

second option—a private sale of the Diamond Ring.

34. Despite inquiries by the Auction House regarding his client's capacity to sell the ring free and clear of any encumbrances, Marcus never mentioned the Restraining Notice. Meanwhile, he mentioned the existence of Patterson's Judgment, but assured the Auction House that it would not be a problem because Patterson was seeking to satisfy its Judgment through proceeds of the sale of the Bermuda property. But Patterson had never limited its enforcement efforts to a single asset and, as discussed above, the Bermuda property remains unsold and is subject to claims by another alleged creditor.

35. During the negotiation of the private sale agreement, Marcus explained to the Auction House that M&C LLP was a limited liability partnership, in which he was "an active partner with full authority to bind the partnership." He suggested that the sale agreement reflect his role as an agent for the seller and identify him as "David P. Marcus, as partner for Marcus & Cinelli, LLP."

36. On July 27, 2016, the Auction House provided Marcus with a copy of a private sale agreement (the "Private Sale Agreement").

37. That same day, Marcus signed the Private Sale Agreement on behalf of M&C LLP and "as agent for an undisclosed principal."

38. Upon the sale of the Diamond Ring, the Auction House asked Marcus for wiring instructions. Marcus provided the Auction House with the number of M&C LLP's bank account at First Niagara Bank.

39. On August 3, 2016, the Auction House deposited the $2.375 million from the Diamond Ring sale (the "Sale Proceeds") into M&C LLP's account at First Niagara Bank.

40. Marcus, Cinelli, and M&C LLP have exercised dominion and control over

the Sale Proceeds. Immediately before the deposit of the Sale Proceeds, the First Niagara account had a balance of approximately $50,000. Upon the transfer of the Sale Proceeds, the account balance grew to approximately $2.4 million. In the months following the transfer of the Sale Proceeds, Marcus, Cinelli, and M&C LLP used the Sale Proceeds for their own benefit. For example, they wrote checks against the First Niagara account made out to "Marcus & Cinelli LLP" that together totaled nearly $1.8 million. They also wrote checks and initiated transfers to other recipients totaling approximately $600,000. Based on information currently available to Patterson (including records produced by First Niagara Bank), none of the recipients of those other transfers was Stewart.

41. Thus, on information and belief, Stewart has not received any of the Sale Proceeds, and Defendants have not provided Stewart with fair consideration in exchange for the Sale Proceeds that they received. Information about the nature and value of consideration, if any, provided by Defendants to Stewart is uniquely in the control of Defendants.

42. Patterson's knowledge about the disposition of the Sale Proceeds is based on a diligent, but still incomplete, investigation. That investigation has been hindered by Marcus and M&C LLP's refusal to comply with duly issued subpoenas, as discussed further below.

43. To the extent that Marcus, Cinelli, and/or M&C LLP have distributed any portion of the Sales Proceeds to other entities, such entities are not yet known to Patterson, for the reasons just described, and are named as the Doe Defendants.

THE *STEWART V. STEWART* LITIGATION

44. On February 5, 2018, Stewart, represented by Marcus, filed suit against her former daughter-in-law, Michele, "to account for and recover a valuable jewelry collection that [Stewart] owned and entrusted to [Michele] as fiduciary, but which [Michele] ha[d] refused to account for or return." Michele later asserted counterclaims against Stewart. The action was

entitled *Stewart v. Stewart*, No. 1:19-cv-05960-NRB (S.D.N.Y.) ("*Stewart v. Stewart*").

45. On July 23, 2021, Michele's counsel wrote to the court regarding a proposed motion to compel Stewart to produce documents listed on her privilege log. In that correspondence, Michele's counsel referred to documents concerning the Diamond Ring that Stewart had produced to Michele on July 2, 2021. Patterson first learned about the existence and sale of the Diamond Ring as a result of Michele's letter to the court, which was filed on the docket in the case.

46. Shortly after learning about the Diamond Ring sale, Patterson sought discovery pursuant to CPLR § 5224, including from M&C LLP. Among other things, the subpoenas to M&C LLP sought documents and information regarding the sale of the Diamond Ring and the disposition of the Sale Proceeds.

47. M&C LLP refused to comply with Patterson's information and document subpoenas, despite multiple attempts by Patterson to meet and confer.

48. Three months after Patterson's issuance of the subpoenas, Stewart settled her three-year-long dispute with Michele.[2]

FIRST CAUSE OF ACTION

(Debtor and Creditor Law § 273: Conveyances by Insolvent)[3]
(As Against All Defendants)

49. Patterson incorporates the preceding paragraphs as if fully set forth herein.

50. The transfer of the Sale Proceeds to Defendants was a "conveyance"

[2] As part of the *Stewart v. Stewart* settlement, Stewart received certain items of jewelry (the "Settlement Jewelry"). Patterson has moved for an Order pursuant to CPLR 5225(a) directing Stewart to deliver the Settlement Jewelry to the New York County Sheriff. The motion is pending in *Patterson Belknap v. Barbara Stewart*.

[3] Citations to the "Debtor and Creditor Law" and "DCL" refer to the New York Uniform Fraudulent Conveyance Act that was in effect during the transactions and occurrences described herein, and not to the Uniform Voidable Transactions Act that took effect on April 4, 2020.

within the meaning of Debtor and Creditor Law ("DCL") § 270.

51. The transfer of the Sale Proceeds to Defendants was made when Stewart was insolvent.

52. The transfer of the Sale Proceeds to Defendants was made without fair consideration, *i.e.*, not for a fair equivalent and not in good faith.

53. The transfer of $2,375,000 from the Diamond Ring sale to M&C LLP was fraudulent as to Patterson, a present creditor of Stewart, and made in violation of DCL § 273.

SECOND CAUSE OF ACTION

(Debtor and Creditor Law § 273-a: Conveyances by Defendants)
(As Against All Defendants)

54. Patterson incorporates the preceding paragraphs as if fully set forth herein.

55. The transfer of the Sale Proceeds to Defendants was a "conveyance" within the meaning of DCL § 270.

56. The transfer of the Sale Proceeds to Defendants was made without fair consideration, *i.e.*, not for a fair equivalent and not in good faith.

57. The transfer of the Sale Proceeds to Defendants was made by Stewart after the Judgment had been docketed against Stewart as a defendant in Patterson's action for money damages.

58. The Judgment remains unsatisfied.

59. The transfer of $2,375,000 from the Diamond Ring sale to M&C LLP was fraudulent as to Patterson, a present creditor of Stewart, and made in violation of DCL § 273-a.

THIRD CAUSE OF ACTION

(Debtor and Creditor Law § 276: Conveyance Made with Intent to Defraud)
(As Against Marcus and M&C LLP)

60. Patterson incorporates the preceding paragraphs as if fully set forth herein.

61. The transfer of the Sale Proceeds to M&C LLP was a "conveyance" within the meaning of DCL § 270.

62. The transfer of the Sale Proceeds was made with actual intent to hinder, delay, or defraud Patterson.

63. At all relevant times, Marcus and Stewart knew that Patterson had a Judgment against Stewart, that Stewart was subject to the Restraining Notice, and that any sale of Stewart's personal property would violate the Restraining Notice and would hinder, impede, delay, and obstruct Patterson's efforts to enforce the Judgment.

64. Stewart sold the Diamond Ring months after testifying that she had "no money," that "[t]he only property [she] can sell and where Patterson will get their money is for the property in Bermuda," and that she had no jewelry of significant value in her possession.

65. On behalf of Stewart, Marcus provided the Auction House with information about Stewart's ownership of the Diamond Ring in communications that he sought to keep confidential. When communicating with the Auction House, Marcus never mentioned the Restraining Notice and gave the misleading impression that Patterson sought to satisfy its Judgment through assets other than the Diamond Ring. Acting as an agent for Stewart and with full authority to bind M&C LLP, Marcus entered into the Private Sale Agreement with the Auction House. When Patterson sought discovery from M&C LLP regarding the Diamond Ring sale, M&C LLP refused entirely to comply.

66. The transfer of $2,375,000 from the Diamond Ring sale to M&C LLP was fraudulent as to Patterson, a present creditor of Stewart, and made in violation of DCL § 276.

FOURTH CAUSE OF ACTION

(Tortious Interference with Collection of Money Judgment)
(As Against Marcus and M&C LLP)

67. Patterson incorporates the preceding paragraphs as if fully set forth herein.

68. At all relevant times, Marcus and Stewart knew that Patterson has a Judgment against Stewart, that Stewart was subject to the Restraining Notice, and that any sale of Stewart's personal property would violate the Restraining Notice. Despite this knowledge, on behalf of Stewart, Marcus facilitated the sale of the Diamond Ring and the transfer of the Sale Proceeds to M&C LLP. When communicating with the Auction House, Marcus never mentioned the Restraining Notice and gave the misleading impression that Patterson sought to satisfy its Judgment by through assets other than the Diamond Ring. Acting as an agent for Stewart and with full authority to bind M&C LLP, Marcus entered into the Private Sale Agreement with the Auction House. By arranging the Diamond Ring sale and the transfer of the Sale Proceeds to M&C LLP, Marcus and M&C LLP tortuously interfered with Plaintiff's rights to enforce and collect the Judgment.

69. As a result of Marcus and M&C LLP's tortious conduct, Patterson has suffered substantial damages, including without limitation, the attorneys' fees and disbursements Patterson has incurred and will incur in this action, additional delay in the satisfaction of the Judgment, and, to the extent the Sale Proceeds have been diminished or dissipated as a result of Marcus's and M&C LLP's conduct, the lost opportunity to collect the Sale Proceeds in satisfaction of the Judgment.

FIFTH CAUSE OF ACTION

(Civil Contempt)
(As Against Marcus and M&C LLP)

70. Patterson incorporates the preceding paragraphs as if fully set forth herein.

71. Stewart was issued the Restraining Notice, which prohibited her from "mak[ing] or suffer[ing] any sale, assignment, or transfer of, or any interference with any property in which [she has] an interest, except as [provided in CPLR § 5222(b)], except upon direction of the sheriff or pursuant to an order of the court, until the judgment or order is satisfied or vacated."

72. Stewart violated the Restraining Notice by selling the Diamond Ring, property in which she had an interest.

73. Marcus was aware of the Restraining Notice and nevertheless deliberately and knowingly facilitated Stewart's violation of the Restraining Notice by facilitating the sale of the Diamond Ring and the transfer of the Sale Proceeds to M&C LLP.

74. By reason of the foregoing, Patterson Belknap Webb & Tyler LLP seeks an Order of Contempt against Marcus and M&C LLP.

WHEREFORE, Plaintiff respectfully prays for:

i. An order and judgment setting aside the transfer to Defendants of the Sale Proceeds and directing Defendants to deliver to Patterson the Sale Proceeds in partial satisfaction of the Judgment;

ii. judgment against Defendants in the amount of $2,375,000;

iii. an order of contempt as to Marcus and M&C LLP and an award of actual damages in an amount to be determined at trial;

iv. an award of attorneys' fees pursuant to DCL § 276-a, Judiciary Law § 773, and any other applicable law or rule;

v. costs and disbursements of this action to the full extent permitted by law;

vi. pre-judgment and post-judgment interest to the full extent permitted by

law;

vii. punitive damages; and

viii. such further relief as the Court may deem just and proper.

Dated: New York, New York
August 2, 2022

PATTERSON BELKNAP WEBB & TYLER LLP

By: */s/ Daniel A. Lowenthal*

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