

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

VIRGIL M. NEWTON
RUTH ANN NEWTON

CASE NO. 8:01-bk-09883-PMG

CHAPTER 7

Debtors.

STEPHEN L. MEININGER,
CHAPTER 7 TRUSTEE,

ADV. PROC. NO. 8:05-ap-_____

Plaintiff,

vs.

VIRGIL M. NEWTON; RUTH ANN
NEWTON; and CHRIST AT THE SEA
FOUNDATION, INC.,

Defendants.

**TRUSTEE'S COMPLAINT FOR
DECLARATORY JUDGMENT, TURNOVER OF PROPERTY TO THE ESTATE AND
VIOLATION OF THE FLORIDA UNIFORM FRAUDULENT TRANSFER ACT**

STEPHEN L. MEININGER, Chapter 7 Trustee (the "Plaintiff" or "Trustee"), by and through his undersigned counsel, files this Complaint for Declaratory Judgment, Turnover of Property to the Estate and Violation of the Florida Uniform Fraudulent Transfer Act against VIRGIL M. NEWTON, RUTH ANN NEWTON (collectively the "Debtors"), and CHRIST AT THE SEA FOUNDATION, INC. ("CSF") (collectively the "Defendants"), and respectfully represents as follows:

1. The Debtors filed their voluntary petition for relief under Chapter 7 of the Bankruptcy Code on May 24, 2001.

2. This adversary arises out of the above-referenced Chapter 7 case, bearing Case No. 8:01-bk-09883-PMG, which is now pending in this Court.

3. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334, and is a core matter.

4. The Plaintiff is the duly appointed, qualified, and acting trustee for the bankruptcy estate of the Debtors.

5. Upon information and belief, the Debtors are husband and wife and reside in Pinellas County, Florida.

6. Defendant, Christ at the Sea Foundation, Inc. ("CSF"), is a Florida non-profit organization with its principal address in Pinellas County, Florida, and was incorporated on November 7, 1997.

7. Upon information and belief, the Debtors are directors of CSF.

8. The §341 meeting of creditors was concluded on June 28, 2001.

9. The Discharge of the Debtor was entered on September 4, 2001.

10. The case was closed on October 28, 2004, and the Final Decree was entered on November 3, 2004.

11. On February 24, 2005, upon discovery of an undisclosed asset of the Debtor, the Trustee filed a Motion to Revoke Final Decree and Reopen Bankruptcy Estate (Court Docket No. 38).

12. On May 26, 2005, this Court entered an order granting said Motion (Court Docket No. 41).

13. On information or belief, Debtor Virgil M. Newton served as an officer / director from 1990 to 2000 of Kids of North Jersey, Inc. ("KNJ"), a New Jersey non-profit corporation

that operated a drug rehabilitation center for teenagers.

14. On June 8, 1998, the Internal Revenue Service ("IRS") filed a Notice of Federal Tax Lien ("Tax Lien") against Debtor Virgil M. Newton, claiming liability for a §6672 civil penalty (federal withholding taxes) for the 1996 tax year in the amount of \$131,169.34 were assessed on December 23, 1997. A true and correct copy of the Notice of Federal Tax Lien is attached hereto as Exhibit A.

15. The IRS made a formal demand for payment of this tax liability, but despite this demand, the tax liability remained unpaid.

16. As officer / director of KNJ, Debtor Virgil M. Newton knew or should have known that KNJ did not pay federal withholding taxes for the 1996 tax year.

17. As officer / director of KNJ, Debtor Virgil M. Newton knew or should have known that this tax liability remained unpaid and that the IRS would undertake efforts to demand payment from the date the tax period ended (December 31, 1996) to the date the Tax Lien was recorded (June 8, 1998).

18. Because of this unpaid tax liability, Debtor Virgil M. Newton faced insolvency because he did not have sufficient income or assets to satisfy a \$131,169.34 tax debt owed to the IRS.

19. On August 18, 1997, Debtors Virgil M. Newton and Ruth A. Newton attempted to convey real property located in Pinellas County, Florida to CSF by quit claim deed (hereinafter, "August 1997 quit claim deed"). The Debtors received one dollar (\$1.00) in consideration for conveyance of the real property. The address of the real property is 13280 Fourth Street East, Madeira Beach, Florida 33708, and the legal description is as follows:

**LOTS 12 AND 13, BLOCK "J", PAGE'S REPLAT OF MITCHELLS BEACH,
ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 20, PAGE
69, OF THE PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA**

(hereinafter referred to as “the property”).

20. As of August 18, 1997, CSF was not a legal entity statutorily entitled to receive or own an interest in real property because it was not incorporated under the laws of Florida until November 7, 1997, eighty-one (81) days after the August 1997 quit claim deed.

21. Because CSF did not even exist as a legal entity on August 18, 1997, the attempted conveyance of property from the Debtors to CSF by quit claim deed on August 18, 1997 is null and void.

22. On or about July 30, 2003, Debtors Virgil Newton and Ruth Newton executed a corrective quit claim deed (hereinafter, “July 2003 corrective quit claim deed”) conveying the same property to CSF that the Debtors tried to convey to CSF in August 1997. Debtors received the sum of ten dollars (\$10.00) in consideration for conveyance of the property.

23. At the time the Debtors executed the corrective quit claim deed to the CSF in July 2003, the Debtors’ Chapter 7 bankruptcy case was still pending in this Court.

24. The Debtors failed to list the property or transaction in their Schedules and Statement of Financial Affairs. Additionally, the Debtors failed to amend their Schedules or Statement of Financial Affairs to account for the property or its disposition.

COUNT I – DECLARATORY JUDGMENT
(Debtors and the CSF)

25. The Plaintiff re-alleges paragraphs 1 through 24 as though each was set forth herein.

26. This is an action for declaratory judgment pursuant to 11 U.S.C. § 541.

27. By virtue of the Debtors' failed attempt to convey the property to CSF by way of the August 1997 quit claim deed, the Debtors continued to possess legal interest in the property after August 18, 1997.

28. The Debtors continued to possess legal interest in the property at the time of the filing of their bankruptcy petition on May 24, 2001.

29. All legal or equitable interests of the Debtors in the property as of the petition date is property of the estate pursuant to 11 U.S.C. § 541.

30. The Debtors failed to disclose their interest in the property in the Schedules or Statement of Financial Affairs.

WHEREFORE, the Plaintiff seeks entry of an order declaring that the real property is property of the estate and for such other and further relief as is just and proper.

COUNT II – TURNOVER OF PROPERTY TO THE ESTATE
(the CSF)

31. The Plaintiff re-alleges paragraphs 1 through 30 as though each was set forth herein.

32. This is an action for turnover of property to the estate pursuant to 11 U.S.C. § 542.

33. The property that the Debtors attempted but failed to convey to CSF on August 18, 1997 is property of the estate pursuant to 11 U.S.C. § 541, and the Plaintiff respectfully requests that this Court compel CSF to turnover the property to the estate pursuant to 11 U.S.C. § 542(a).

34. The same property that the Debtors retained after August 18, 1997 and then conveyed to CSF on July 30, 2003 is property of the estate pursuant to 11 U.S.C. § 541, and the

Plaintiff respectfully requests that this Court compel CSF to turnover the property to the estate pursuant to 11 U.S.C. § 542(a).

WHEREFORE, the Plaintiff seeks entry of an order directing CSF to immediately turnover the property, or pay the equivalent value thereof, to the Plaintiff and for such other and further relief this Court deems just and proper.

COUNT III – VIOLATION OF FLORIDA UNIFORM FRAUDULENT TRANSFER
ACT: FLORIDA STATUTE §726.105(1)(a)
(Debtors and the CSF)

35. The Plaintiff re-alleges paragraphs 1 through 34 as though each was set forth herein.

36. Defendant CSF is an insider within the meaning of Florida Statutes §726.102(7)(a)(4).

37. The transfer of the property by quit claim deed on August 18, 1997 was made with the intent to hinder, delay, or defraud creditors of the debtors in that:

- i. The transfer was made to the Defendant CSF, who is and was at all relevant times, an insider.
- ii. The Debtors effectively retained possession and control of the property after the transfer on August 18, 1997.
- iii. The Debtors failed to disclose the transfer or their legal interest in the property in their Schedules or Statement of Financial Affairs.
- iv. Debtor Virgil M. Newton was insolvent or became insolvent after the transfer was made.
- v. The transfer occurred shortly after an IRS tax debt of \$131,169.34 for 1996 federal withholding taxes became due and owing.

- vi. The transfer was made without the Debtor's receipt of reasonably equivalent value in exchange for the transfer, in this case: one dollar (\$1.00).

38. The transfer of the property by the August 1997 quit claim deed was fraudulent as to creditors, specifically the IRS, under Florida Statute §726.105(1)(a) and, accordingly, may be avoided to the extent necessary to satisfy creditor claims pursuant to Florida Statute §726.108.

WHEREFORE, the Plaintiff respectfully prays that the Court deem the transfer by Debtors Virgil M. Newton and Ruth A. Newton to Defendant CSF by quit claim deed on August 18, 1997 as "fraudulent" within the meaning of Florida Statutes §726.105, that such fraudulent transfer be avoided pursuant to Florida Statutes §726.108, and that the Court award the Plaintiff such other and further relief as it may deem just and proper.

COUNT IV – VIOLATION OF FLORIDA UNIFORM FRAUDULENT TRANSFER ACT:
FLORIDA STATUTE §726.106(1)
(Debtors and the CSF)

39. The Plaintiff re-alleges paragraphs 1 through 38 as though each was set forth herein.

40. The transfer of property by quit claim deed on August 18, 1997 from Debtors to CSF was fraudulent pursuant to Florida Statutes §726.106(1) in that:

- i. The claim of the IRS in the amount of \$131,169.34 for 1996 federal withholding taxes arose before the date of the transfer.
- ii. The Debtors did not receive the equivalent value of the property in exchange for the transfer.
- iii. The Debtors were insolvent at the time of the transfer in that they could not satisfy a debt owed to the IRS for \$131,169.34 that became due and owing on December 31, 1996.

41. The transfer of the property by the August 1997 quit claim deed was fraudulent as to creditors, specifically the IRS, under Florida Statute §726.106(1) and, accordingly, may be avoided to the extent necessary to satisfy creditor claims pursuant to Florida Statute §726.108.

WHEREFORE, the Plaintiff respectfully prays that the Court deem the transfer by Debtors Virgil M. Newton and Ruth A. Newton to Defendant CSF by quit claim deed on August 18, 1997 as "fraudulent" within the meaning of Florida Statutes §726.106, that such fraudulent transfer be avoided pursuant to Florida Statutes §726.108, and that the Court award the Plaintiff such other and further relief as it may deem just and proper.

Respectfully submitted on this 9th day of July, 2005.

DONICA LAW FIRM, P.A.
106 S. Tampania Avenue., Suite 250
Tampa, FL 33609
Phone (813) 878-9790
Fax (813) 878-9746
Attorney for Trustee

/s/ Herbert R. Donica
Herbert R. Donica, Esq.
Florida Bar No. 841870

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Complaint has been sent by regular U.S. Mail or the Court's CM/ECF system on the 9th day of July, 2005 to: **Alberto F. Gomez, Jr., Esq., Debtors' Attorney**, 119 S. Dakota Avenue, Tampa, FL 33606.

/s/ Herbert R. Donica
Herbert R. Donica, Esq.

Form 668 (Y) (c)
(Rev. August 1997)

1052

Department of the Treasury - Internal Revenue Service

Notice of Federal Tax Lien

District NORTH FLORIDA	Serial Number 599851389	For Optional Use by Recording Office
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As provided by sections 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

INSTR # 98158915
OR BE 09076 PG 0563
RECORDED 06/08/98 04:53 PM
RICHARD RYE CLERK OF COURT
HILLSBOROUGH COUNTY
DEPUTY CLERK K Lapeer

Name of Taxpayer VIRGIL M NEWTON

Residence 13253 BOCA CIEGA AVE
MADEIRA BEACH, FL 33708-2441

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of lien is released by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 8325(a).

Kind of Tax (a)	Tax Period Ended (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
6672	12/31/1996	405-58-5338	12/23/1997	01/22/2008	131169.34

Place of Filing CLERK OF CIRCUIT COURT HILLSBOROUGH COUNTY TAMPA, FL 33601	Total	\$ 131169.34
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This notice was prepared and signed at Jacksonville, FL on this,

the 21st day of May, 1998

TOP 5750 SP/LENS
INTERNAL REVENUE SERVICE
100 W BAY ST STE 35045
JACKSONVILLE FL 32202-4437

Signature For B BLUDE <i>David Blude</i>	Title MANAGER 59-01-2900
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(NOTE: Certificate of officer authorized by law to take acknowledgments is not essential to the validity of Notice of Federal Tax Lien Rev. Proc. 71-406, 1971-2 C.B. 499)

**U.S. Bankruptcy Court
Middle District of Florida**

In re:

Bankruptcy Case No. **8:01-bk-09883-PMG**

VIRGIL M. NEWTON AND RUTH ANN NEWTON
Debtor

Adversary Proceeding No. **8:05-ap-00533-PMG**

STEPHEN MEININGER
Plaintiff

v.

VIRGIL M. NEWTON
RUTH ANN NEWTON ET. AL.
Defendant

SUMMONS IN AN ADVERSARY PROCEEDING

YOU ARE SUMMONED and required to submit a motion or answer to complaint which is attached to this summons to the Clerk of the Bankruptcy Court within 30 days from the date of issuance of this summons, except that the United States and its offices and agencies shall submit a motion or answer to the complaint within 35 days of issuance.

Address of Clerk

Clerk, U.S. Bankruptcy Court
Middle District of Florida
Sam M. Gibbons Federal Courthouse
801 N. Florida Ave., Suite 727
Tampa, FL 33602

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

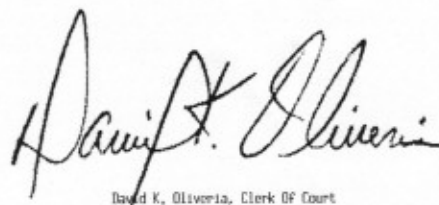
Name and Address of Plaintiff's Attorney

Herbert R. Donica - Atty for Trustee
106 S Tampania Avenue #250
Tampa, FL 33609

If you make a motion, your time to answer is governed by Federal Rule of Bankruptcy Procedure 7012.

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGEMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.




David K. Oliveria, Clerk of Court

***** Important Notice *****

Click [here](#) to receive the second page of the summons (certificate of service).

This certificate must be filed with the court after service has been made on the parties.

CSD 3007

continued caption next page:

Listing Of Defendant Names:

VIRGIL M. NEWTON
13253 BOCA CIEGA AVE.
MADEIRA BEACH, FL 33708

RUTH ANN NEWTON
13253 BOCA CIEGA AVE.
MADEIRA BEACH, FL 33708

CHRIST AT THE SEA FOUNDATION, INC.
C/O FR. CASSIAN NEWTON, REG. AGENT
13280 4TH STREET, E.
SUITE 2
MADIERA BEACH, FL 33708