

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MICHAEL J. QUILLING, RECEIVER
FOR SARDUAKAR HOLDINGS, IBC
and BRADLEY C. STARK,

Plaintiff,

v.

JOHN W. STARK, JR and
BARBARA STARK,

Defendants.

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CIVIL ACTION NO: 3-05CV-1976B

MOTION TO DISMISS UNDER RULES 12(b)(2), 12(b)(6), and 9(b)
OF THE FEDERAL RULES OF CIVIL PROCEDURE

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants John W. Stark, Jr. and Barbara Stark (the "Defendants"), by and through their attorneys, The Curtis Law Firm, PC, and pursuant to Rules 12(b)(2), 12(b)(6), and 9(b) of the Federal Rules of Civil Procedure hereby file this Motion to Dismiss, and as grounds, show the following:

Failure to Establish Personal Jurisdiction (FRCP 12(b)(2))

- 1. Plaintiff Michael J. Quilling, as Receiver, brought this lawsuit by filing Plaintiff's Complaint (the "Complaint"), alleging claims against Defendants John W. Stark, Jr. and Barbara Stark (the "Defendants").
2. This Court does not have jurisdiction over the Defendants because the Defendants are not amenable to process issued by the courts in Texas because:
i. The Defendants are not residents of Texas and are not required to maintain and do not maintain a registered agent for service in Texas;

- ii. Defendants do not now engage and have not engaged in business in Texas or committed any tort, in whole or in part, within the State;
- iii. Defendants do not maintain a place of business in Texas and have no employees, servants, or agents within the State;
- iv. Defendants have no substantial connection with Texas arising from any action or conduct of the defendants purposefully directed toward Texas;
- v. Plaintiff's claims do not arise from and are not related to any activity conducted by the Defendants in Texas; and
- vi. Defendants have no continuing and systematic contacts with Texas.

3. Nowhere in the Complaint does Plaintiff allege any facts sufficient to establish that Defendants are subject to the jurisdiction of this Court.

4. The assumption of jurisdiction by the Court over Defendants would offend traditional notions of fair play and substantial justice, depriving the Defendants of due process as guaranteed by the Constitution of the United States.

5. Accordingly, Defendants hereby respectfully move that the Complaint be dismissed in its entirety as against each of the Defendants.

Alternatively, Failure to State a Claim upon which Relief can be Granted (FRCP 12(b)(6))

6. The Defendants incorporate each of the foregoing paragraphs as if set forth verbatim herein.

7. Alternatively, in the event the Court does not dismiss the Complaint in its entirety as against each of the Defendants under Rule 12(b)(2), Defendants move that Plaintiff's causes of action alleging constructive trust and disgorgement, fraudulent transfer, and fees, expenses, costs, and interest be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) for Plaintiff's failure

to state legally cognizable claims and because the claims were brought for an improper purpose and without proper factual or legal bases.

8. Accordingly, Defendants hereby respectfully move that the Complaint be dismissed in its entirety as against each of the Defendants.

Alternatively, Failure to State Claims with Particularity (FRCP 9(b))

9. The Defendants incorporate each of the foregoing paragraphs as if set forth verbatim herein.

10. Alternatively, in the event the Court does not dismiss the Complaint in its entirety as against each of the Defendants under Rule 12(b)(2), Defendants further move that Plaintiff's causes of action alleging constructive trust and disgorgement fraudulent transfer, and fees, expenses, costs, and interest be dismissed for failure to meet the requirements of Federal Rule of Civil Procedure 9(b). Pursuant to Federal Rule 9(b), the Plaintiff is required to allege *with particularity*, but has not so alleged, all averments of fraud, including the circumstances constituting fraud, and consequently, Plaintiff's fraud-based claims and remedies should be dismissed.

11. Alternatively, if such claims and remedies are not dismissed, the Plaintiff should be ordered to more-completely and sufficiently plead. The Complaint, in its current state, does not provide adequate notice of the claims asserted nor can it be construed so as to do substantial justice to Defendants as required by Federal Rule 8(e) and (f). Instead, the Complaint is replete with conclusory legal assertions without any factual foundation. Defendants, therefore, move, to the extent their motions to dismiss are not granted, that Plaintiff be required to amend the Complaint and provide proper notice to Defendants of its causes of action on all counts, so that Defendants can frame a meaningful response.

Prayer

For the foregoing reasons, the Defendants request that the Court dismiss all claims allegedly brought against the Defendants in this case for lack of jurisdiction and, alternatively, for cause as not being adequately stated.

Dated: December 27, 2005

Respectfully submitted,

THE CURTIS LAW FIRM, PC

/s/ Mark A. Castillo

Stephanie D. Curtis

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COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 27, 2005, a true and correct copy of the foregoing document was served via electronic mail through the Court's electronic service, if available, by first-class United States mail, postage prepaid, and, by facsimile on the following:

Michael J. Quilling

Michael D. Clark

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ATTORNEYS FOR RECEIVER

/s/ Mark A. Castillo

Mark A. Castillo