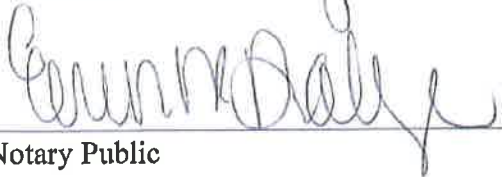


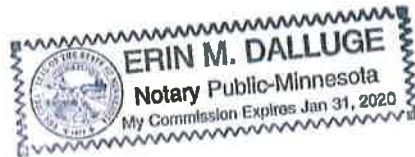
5. Attached hereto as Exhibit D is a true and correct copy of the unpublished decision Cf. Kerkinni v. Riehm, No. 27-CV-14-8647, 2014WL11279551, at *2 (Minn. Dist. Ct. June 27, 2014).

FURTHER YOUR AFFIANT SAITH NOT.


Molly K. Burke

Subscribed and sworn to before me
this 11 day of August, 2017.


Notary Public



Search tips

Property information search result

Search
By:

Parcel Data for Taxes Payable 2016

- [View map of property](#)
- [Current year taxes](#)
- [Print details](#)

The Hennepin County Property Tax web database is updated daily (Monday - Friday) at approximately 9:15 p.m. (CST)

The data listed below reflects information from December 31st of the payable year referenced above. Any adjustments made after that date will NOT be reflected.

Property ID: 24-029-24-43-0012

Address: 325 14TH AVE S E

Municipality: MINNEAPOLIS

School Dist: 001 **Construction year:** 1902

Watershed: 6 **Approx. Parcel Size:** 80.00 X 80.00

Sewer Dist:

Owner Name: JASON MCLEAN

Taxpayer Name & Address: JASON MCLEAN
1116 VINCENT AVE S
MPLS MN 55405

Sale Information

Sales prices are reported as listed on the Certificate of Real Estate Value and are not warranted to represent arms-length transactions.

Sale Date: November, 1999

Sale Price: \$815,000

Transaction Type: Warranty Deed



Tax Parcel Description

The following is the County Auditor's description of this tax parcel. It may not be the legal description on the most recent conveyance document recording ownership. Please refer to the legal description of this property on the public record when preparing legal documents for recording

Addition Name: "LOWRY'S SUBDIVISION OF BLOCK "C" IN TUTTLES ADDITION TO ST. ANTHONY"

Lot: 014

Block:**First Line Metes & Bounds:** SELY 80 FT OF NELY 80 FT**Full Metes & Bounds:****Note: To read full tax parcel description, [click here](#). For term abbreviations, [click here](#).****Abstract or Torrens:** ABSTRACT**Value and Tax Summary for Taxes Payable 2016
Values Established by Assessor as of January 2, 2015**

Estimated Market Value:	\$1,505,000
Taxable Market Value:	\$1,505,000
Total Improvement Amount:	
Total Net Tax:	\$58,989.38
Total Special Assessments:	\$6,315.22
Solid Waste Fee:	
Total Tax:	\$65,304.60

**Property Information Detail for Taxes Payable 2016
Values Established by Assessor as of January 2, 2015**

Values:	
Land Market	\$320,000
Building Market	\$1,185,000
Machinery Market	
Total Market:	\$1,505,000

Qualifying Improvements**Veterans Exclusion****Homestead Market Value
Exclusion****Classifications:**

Property Type	COMMERCIAL PREFERRED
Homestead Status	NON-HOMESTEAD
Relative Homestead	
Agricultural	
Exempt Status	

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Tax related questions: taxinfo@hennepin.us

Hennepin County, Minnesota

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Search tips

Property information search result

Search
By:

Parcel Data for Taxes Payable 2017

- [Current year taxes](#)
- [View map of property](#)
- [Current year values](#)
- [Prior year taxes](#)
- [Print details](#)

The Hennepin County Property Tax web database is updated daily (Monday - Friday) at approximately 9:15 p.m. (CST)

Property ID: 24-029-24-43-0012

Address: 325 14TH AVE S E

Municipality: MINNEAPOLIS

School Dist: 001 **Construction year:** 1902

Watershed: 6 **Approx. Parcel Size:** 80.00 X 80.00

Sewer Dist:

Owner Name: NYMAN HOLDINGS LLC

Taxpayer Name & Address: NYMAN HOLDINGS LLC
325 14TH AVE SE
MINNEAPOLIS MN 55414

Sale Information

Sales prices are reported as listed on the Certificate of Real Estate Value and are not warranted to represent arms-length transactions.

Sale Date: November, 1999

Sale Price: \$815,000

Transaction Type: Warranty Deed



Tax Parcel Description

The following is the County Auditor's description of this tax parcel. It may not be the legal description on the most recent conveyance document recording ownership. Please refer to the legal description of this property on the public record when preparing legal documents for recording

Addition Name: "LOWRY'S SUBDIVISION OF BLOCK "C" IN TUTTLES ADDITION TO ST. ANTHONY"

Lot: 014

Block:

First Line Metes & Bounds: SELY 80 FT OF NELY 80 FT

Full Metes & Bounds:

Note: To read full tax parcel description, [click here](#). For term abbreviations, [click here](#).

Abstract or Torrens: ABSTRACT

Value and Tax Summary for Taxes Payable 2017
Values Established by Assessor as of January 2, 2016

Estimated Market Value:	\$1,550,000	
Taxable Market Value:	\$1,550,000	
Total Improvement Amount:		
Total Net Tax:	\$58,977.68	Expand for details
Total Special Assessments:	\$6,328.66	
Solid Waste Fee:		
Total Tax:	\$65,306.34	Expand for taxes due

Property Information Detail for Taxes Payable 2017
Values Established by Assessor as of January 2, 2016

Values:	
Land Market	\$352,000
Building Market	\$1,198,000
Machinery Market	
Total Market:	\$1,550,000

Qualifying Improvements

Veterans Exclusion

Homestead Market Value
Exclusion**Classifications:**

Property Type	COMMERCIAL PREFERRED
Homestead Status	NON-HOMESTEAD
Relative Homestead	
Agricultural	
Exempt Status	

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Tax related questions: taxinfo@hennepin.us

Hennepin County, Minnesota

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2006 WL 2620618

Only the Westlaw citation is currently available.

United States District Court,
D. Minnesota.

Wanda Lee JONES, Plaintiff,

v.

Mary Ann STONEKING and
Robert J. Stoneking, Defendants.

Civil File No. 06-3369 (JMR/RLE).

|
Sept. 12, 2006.**Attorneys and Law Firms**Shannon M. O'Toole, Esq.; David Garelick, Larry
Leventhal & Associates, Counsel for Plaintiff.Daniel A. Beckham, Gislason & Hunter, LLP, Counsel for
Defendants.**ORDER**

MICHAEL J. DAVIS, District Judge.

I. INTRODUCTION

*1 This matter is before the Court on Plaintiff's Motion for Attachment or Preliminary Injunction [Docket No. 8]. The Court heard oral argument on September 11, 2006.

II. FACTUAL BACKGROUND

Plaintiff Wanda Lee Jones ("Jones") is a judgment creditor, following a trial in which she was awarded a judgment of \$346,143.11. Defendants are Robert J. Stoneking ("Stoneking"), the judgment debtor, and Mary Ann Stoneking ("MA Stoneking"), Stoneking's wife.

On October 28, 2002, Stoneking was convicted on felony criminal sexual conduct against Jones. (Garelick Aff. ¶ 4.) Jones brought a civil action against Stoneking in this Court pursuant to 42 U.S.C. § 1983 and state tort law claims. Following a jury trial as to Stoneking's liability before the Honorable Joan N. Ericksen, Jones was awarded actual damages in the amount of \$100,000 and punitive damages in the amount of \$60,000. Judge Ericksen awarded attorneys fees to Jones in the amount of

\$186,143.11. The trial judgment and amended judgment total \$346,143.11. (Garelick Aff. Exhs. A, A1.)

During the civil case, Stoneking transferred his interest in commercial resort property to MA Stoneking. The property originally consisted of two parcels ("Parcel I" and "Parcel II"). MA Stoneking purchased title to Parcel I in 1987, and both Stoneking and MA Stoneking purchased title to Parcel II in 1993. (Stoneking Aff. Exhs. A, B.) Defendants jointly sold the property for \$700,000 by a contract for deed ("Contract") to Partridge Point LLC ("Partridge Point"), executed June 22, 2000, on which \$483,067 is owing. They received a cash payment of \$150,000 earnest money with the remainder payable over several years with an annual payment of \$51,523.33. (Garelick Aff. Exh. C.) An annual payment of \$51,523.33 by September 15, 2006 is due under the Contract. (Garelick Aff. Exh. B.)

On or about December 10, 2003, Plaintiff served Stoneking with a Notice of Taking Deposition on December 22, 2003. (Garelick Aff. Exh. D.) On Dec. 19, 2003, Stoneking transferred his interest in the Contract via quit claim deed to MA Stoneking. (Garelick Aff. Exh. E.) During the December 22 deposition, Stoneking did not mention that he had just quit claimed his interest in the Contract, even though he was questioned about his interest in the Contract. (Garelick Aff. Exh. F.) Stoneking later executed an amendment to the Contract to correct the legal description, on July 15, 2005. (Garelick Aff. Exh. G.)

The Complaint alleges fraudulent transfer by Stoneking to his wife, MA Stoneking. Jones seeks either attachment pursuant to Federal Rule of Civil Procedure 64 and Minnesota Statutes § 571.01-14, or a preliminary injunction pursuant to Federal Rule of Civil Procedure 65 to enjoin Partridge Point from paying Defendants and require it to make the payment into the Court pending resolution of the action.

III. DISCUSSION

Federal Rule of Civil Procedure 64 provides:

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment



Jones v. Stoneking, Not Reported in F.Supp.2d (2006)

ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the state in which the district court is held ... remedies thus available include arrest, attachment ...

*2 Under Minnesota law, a claimant may “[a]s a proceeding ancillary to a civil action for the recovery of money ... have the property of the respondent attached in the manner and in the circumstances prescribed in sections 570.01 to 570.14, as security for the satisfaction of any judgment that [she] may recover.” Minn.Stat. § 570.01 (2000). An order for attachment may be issued if the claimant has demonstrated the probability of success on the merits, and the claimant has demonstrated facts that show the existence of at least one of the grounds stated in section 570.02. Minn.Stat. § 570.026. Minnesota Statute Section 570.02 states that there are grounds for attachment “when the respondent has assigned, secreted, or disposed of, or is about to assign, secrete, or dispose of, any of the respondent's nonexempt property, with intent to delay or defraud the respondent's creditors.” Minn.Stat. 570.02(1).

There is compelling evidence that Stoneking transferred his interest in the property to his wife with the intent to delay or defraud Jones. *See Morrison v. Doyle*, 570 N.W.2d 692 (Minn.Ct.App.1997) (finding evidence that defendant transferred money intended for, and money from, a trust of which he was a beneficiary to his family members and to his personal checking account was sufficient to infer intent to delay and defraud creditors and support an order of attachment), *rev'd on other grounds*, 582 N.W.2d 237 (Minn.1998). Stoneking quit claimed his interest in the Contract during the civil action to determine his civil liability to Jones, after his conviction on felony sexual assault against her. He transferred his interest in the Contract after he received notice of his deposition. During his deposition, he was asked about his interest in the property and the Contract. Although Stoneking was not directly asked if he had recently transferred his interest in the property to his wife, a fact Defendants' counsel finds significant, the Court finds that this argument is disingenuous. During the deposition, Stoneking was asked about his interest in the property and the Contract, and he specifically avoided mentioning his transfer by quit claim, which had occurred just days earlier.

In addition, the Court finds that Jones is likely to succeed on the merits of her claim brought under Minnesota's Uniform Fraudulent Transfer Act. Minn.Stat. §§ 513.41-.60 (2002) (“UFTA”). Under the UFTA, a transfer by a debtor is fraudulent if the debtor made the transfer “with actual intent to hinder, delay, or defraud any creditor.” Minn.Stat. § 513.44(a) (1). In determining actual intent, the statute contains a lengthy list of “badges of fraud” to aid the court in determining actual intent. Minn.Stat. § 513.44(b); *Citizens State Bank of Hayfield v. Leth*, 450 N.W.2d 923, 927 (Minn.Ct.App.1990). Among these factors are whether the transfer was to an insider; the transfer was concealed; the debtor had been sued or threatened with suit; and the transfer was of substantially all the debtor's assets. Stoneking transferred his interest to an insider-his wife. He also failed to disclose this transfer, and transferred his interest after the commencement of Jones's civil action, following his conviction for sexual assault against her. Finally, it appears that the transfer constituted a complete transfer of all Stoneking's assets, rendering him insolvent. Thus, many of the “badges of fraud” appear to be present in this case, and Jones is likely to succeed on the merits of her claim under the UFTA.

*3 **IT IS HEREBY ORDERED** that

- 1) The Motion for Attachment [Docket No. 8] is **GRANTED**.
- 2) The \$51,523.33 payment due from Partridge Point LLC on September 15, 2006 shall be paid into the Court by the party holding it. The Clerk of the Court shall place such monies so attached in an interest bearing account pending further order of the Court.
- 3) Plaintiff shall post with the Clerk of Court a bond or cash equivalent in the amount of \$500.00 for the payment of such costs or damages as may be allowed to Robert Stoneking or Mary Ann Stoneking.
- 4) Plaintiff's alternative motion for a Preliminary Injunction is **DISMISSED** as moot.

All Citations

Not Reported in F.Supp.2d, 2006 WL 2620618

Jones v. Stoneking, Not Reported in F.Supp.2d (2006)

End of Document

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2014 WL 11279551 (Minn. Dist. Ct.) (Trial Order)
District Court of Minnesota.
Fourth Judicial District
Hennepin County

Daniel N. KERKINNI, Plaintiff,

v.

Michael J. RIEHM, W Hotel Management, Inc., Starwood Hotels & Resorts Worldwide, Inc., Parasole Restaurant Holdings, Inc., Parasole Restaurant Holdings, LLC and Foshay Hotel, LLC, Defendants.

No. 27-CV-14-8647.

June 27, 2014.

Order Denying Motion to Attach Defendant Michael J. Riehm's Property

Philip D. Bush, Judge.

*1 The above-captioned matter came before the undersigned Judge of District Court on June 27, 2014 upon Plaintiff's motion to attach Defendant Michael J. Riehm's property.

David M. Bolt, Esq., appeared on behalf of Plaintiff.

Aaron M. Ponce, Esq., appeared on behalf of Defendant Michael J. Riehm.

Leslie A. Gelhar, Esq., appeared on behalf of Defendants Parasole Restaurant Holdings, Inc. and Parasole Restaurant Holdings, LLC

Patrick M. Biren, Esq., appeared on behalf of Defendants W Hotel Management, Inc. and Starwood Hotels & Resorts Worldwide, Inc.

Based upon all the files, records, and proceedings herein, the Court makes the following:

ORDER

1. Plaintiff's motion to attach Defendant Michael J. Riehm's property is **DENIED**.
2. The attached Memorandum is made a part hereof.

Dated: June 27, 2014

BY THE COURT:

Philip D. Bush

Judge of District Court



MEMORANDUM

In this personal injury action, Plaintiff Daniel N. Kerkinni ("Plaintiff") seeks recovery for injuries sustained when he was allegedly assaulted by Defendant Michael J. Riehm ("Riehm"). Plaintiff now moves, pursuant to Minn. Stat. § 570.026, to attach Riehm's property.

Under Minn. Stat. § 570.026, subd. 3, the Court may issue an order for attachment only if the moving party "show[s] the existence of at least one of the grounds stated in section 570.02." Plaintiff cites three provisions of Minn. Stat. § 570.02 in his effort to establish a statutory basis for attachment.

Plaintiff first cites Minn. Stat. § 570.02, subd. 1(6), which provides that an order for attachment may issue "when the respondent has violated the law of this state respecting unfair, discriminatory, and other unlawful practices in business, commerce, or trade, including but not limited to any of the statutes specifically enumerated in section 8.31, subdivision 1."

Plaintiff argues that subdivision 1(6) is applicable because Riehm, an attorney, has previously admitted to engaging in conduct in violation of Rule 8.4(c) of the Minnesota Rules of Professional Conduct. (Bolt Aff. Ex. C.) That argument fails for two reasons. First, the Court does not construe "the law of this state" as including the Rules of Professional Conduct because the language of other statutes establishes that the legislature recognizes a difference between laws and rules or regulations. *See, e.g.*, Minn. Stat. Ann. § 325F.693 (identifying "compliance with applicable federal law and regulation, or state law and rule, whichever is more stringent" as a defense).

Second, while subdivision 1(6) may not require a direct nexus between the unlawful business practices and the claim underlying the civil action, there must be some relation between the claim underlying the civil action and respondent's business, commerce, or trade. For example, if an attorney is found liable for civil theft for misappropriating a client's funds and a different client later brings a civil theft claim against the same attorney, subdivision 1(6) would likely apply even though the earlier instance of civil theft does not give rise to the present claim. In this case, however, there is no relation between Riehm's conduct as an attorney and the alleged conduct underlying Plaintiff's claim.

*2 Plaintiff next cites Minn. Stat. § 570.02, subd. 1(3), which provides that an order for attachment may issue "when the respondent has converted or is about to convert any of the respondent's nonexempt property into money or credits, for the purpose of placing the property beyond the reach of the respondent's creditors." Subdivision 1(3) does not warrant an order for attachment in this case because, even if Plaintiff has established that Riehm is converting nonexempt property into money¹, there has been no showing that Riehm is converting that property into money to put it beyond the reach of his creditors. Rather, by Plaintiff's own theory, Riehm is using the money to pay his criminal defense attorney or make payments on a settlement agreement in an unrelated action. Either way, the property is being used to satisfy creditors other than Plaintiff.

Lastly, Plaintiff cites Minn. Stat. § 570.02, subd. 1(5), which provides that an order for attachment may issue "when the respondent has committed any act or omission, for which the respondent has been convicted of a felony, giving rise to the claim upon which the civil action is brought." Subdivision 1(5) does not apply because Riehm has not been convicted of a felony.

Since Plaintiff has failed to establish a statutory basis for attachment under Minn. Stat. § 570.02, the motion for attachment is denied, and the Court need not determine whether the other requirements for attachment have been satisfied. The Court notes, however that the evidence presented on the other attachment requirements is weak.

PDB

Kerkinni v. Riehm, 2014 WL 11279551 (2014)

Footnotes

- 1 The evidence supporting Plaintiff's claim on this is weak but the Court is making no finding on this. Rather the Court is assuming, for analysis purposes, that even if this were proven Plaintiff argument fails.

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