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Voidable Transfers At Issue In Sandy Hook Litigation: The Statute of Elizabeth Lives On

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The Sandy Hook school massacre is the subject of multiple pending litigations commenced by the families of students killed in the tragedy. Alt-right radio show host and prominent conspiracy theorist Alex Jones is the main target of these actions following years of broadcasting that the shooting was a hoax. The initial actions are based on allegations of defamation and intentional infliction of emotional distress.

Recently, a Texas jury ordered Jones to pay the parents of a child killed in the 2012 shooting nearly $50 million in compensatory and punitive damages for spreading the falsehood that they had assisted in staging the massacre.

Unfortunately, the entry of this judgment against Jones is not the end of the legal battle for the plaintiffs as they are now faced with the harsh reality that Jones and his company, Free Speech Systems LLC ("Free Speech"), which filed a voluntary chapter 11 bankruptcy in the Southern District of Texas on July 29, 2022, are believed to have transferred away the bulk of their assets in an attempt to place them outside the reach of their judgment creditors.

To counteract these efforts, on August 25, 2022, nine Sandy Hook victims' families filed a motion in the bankruptcy case seeking an order directing Jones to relinquish control of the company, asserting that he has "systematically transferred millions of dollars" to himself and others while claiming to be insolvent.

Specifically, it is alleged that Jones has siphoned millions from Free Speech into other ventures – namely, PQPR Holdings, a company owned and operated directly and indirectly by Jones and his parents - for the benefit of himself and his family since the first action by Sandy Hook parents was commenced in 2018. Should the families' motion be granted, it may aid them in accomplishing the ultimate goal of recovering assets improperly transferred by the debtor.

Although the Alex Jones cases have received much attention, situations where creditors find debtors claiming to be impecunious and unable to pay their debts are all too frequent. When this occurs, the seemingly-out-of-luck

creditor will want to consider whether the debtor has improperly transferred assets in an attempt to put them out of reach. This is an important exercise as such transfers are potentially voidable pursuant to both state law and federal bankruptcy law.

Mechanisms exist which allow creditors to recover assets transferred by debtors if done improperly or during certain time periods. Specifically, Section 548 of the bankruptcy code (the "Code") governs fraudulent transfers while Section 544 of the Code permits the use of relevant state law to further bolster a bankruptcy creditor's arsenal. Meanwhile, in New York, and more than twenty other states, the Uniform Voidable Transaction Act ("UVTA") is law while the Uniform Fraudulent Transfers Act ("UFTA") is still the governing law in many states, such as Texas.

The concept underlying these laws dates back centuries, having considerable roots in the English Fraudulent Conveyances Act of 1571, more commonly known as the Statute of 13 Elizabeth, Chapter 5, with its intent intact today: to recover transfers for the benefit of creditors when those transfers were made either with the intent to defraud and hinder creditors or at a time when the debtor was insolvent or the transfer would render them so.*

Individuals or companies seeking advice on how they may put some or all of their assets beyond the reach of their creditors may be disappointed to learn that transfers may be voidable under the provisions of state and federal law.

On the other hand, establishing clear boundaries between individuals and their businesses and maintaining the individual identity and integrity of each should be considered in advance of incurring debt. Even then, theories of piercing the corporate veil and alleging an alter ego relationship between companies and individuals may provide other avenues for creditors to seek satisfaction of debts owed to them.

Please note this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have questions regarding voidable transactions or fraudulent transfers, please contact Michael H. Traison (mtraison@cullenllp.com) at 312.860.4230 or Jocelyn E. Lupetin (jlupetin@cullenllp.com) at 516.296.9109.

Footnotes

*Prior client alerts discussing the topic of fraudulent conveyances include: **Tuition Payments by Parents as Fraudulent Conveyances - Cullen and Dykman LLP (cullenllp.com)**, **Corporate Executives & Bonuses on the Eve of Bankruptcy: Merely an Affront or a Fraud? - Cullen and Dykman LLP (cullenllp.com)**, and **When is a Bonus a Fraud? - Cullen and Dykman LLP (cullenllp.com)**.

Practices

- Bankruptcy and Creditors' Rights

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