

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

WESTERN RESERVE LIFE ASSURANCE)
CO. OF OHIO,)
Plaintiff,)

vs.)

C.A. No. 09-470-S

JOSEPH CARAMADRE, RAYMOUR)
RADHAKRISHNAN, ESTATE PLANNING)
RESOURCES, INC., HARRISON CONDIT,)
and FORTUNE FINANCIAL SERVICES,)
INC.,)
Defendants;)

TRANSAMERICA LIFE INSURANCE)
COMPANY,)
Plaintiff,)

vs.)

C.A. No. 09-471-S

JOSEPH CARAMADRE, RAYMOUR)
RADHAKRISHNAN, ESTATE PLANNING)
RESOURCES, INC., ESTELA)
RODRIGUES, EDWARD MAGGIACOMO,)
JR., LIFEMARK SECURITIES CORP., and)
PATRICK GARVEY,)
Defendants;)

WESTERN RESERVE LIFE ASSURANCE)
CO. OF OHIO,)
Plaintiff,)

vs.)

C.A. No. 09-472-S

JOSEPH CARAMADRE, RAYMOUR)
RADHAKRISHNAN, ESTATE PLANNING)
RESOURCES, INC., ADM ASSOCIATES,)
LLC, EDWARD HANRAHAN, THE)
LEADERS GROUP, INC., and CHARLES)
BUCKMAN,)
Defendants;)

WESTERN RESERVE LIFE ASSURANCE)
CO. OF OHIO,)

Plaintiff,)

vs.)

C.A. No. 09-473-S

JOSEPH CARAMADRE, RAYMOUR)
RADHAKRISHNAN, ESTATE PLANNING)
RESOURCES, INC., DK LLC, EDWARD)
HANRAHAN, THE LEADERS GROUP,)
INC., and JASON VEVEIROS,)

Defendants;)

WESTERN RESERVE LIFE ASSURANCE)
CO. OF OHIO,)

Plaintiff,)

vs.)

C.A. No. 09-502-S

JOSEPH CARAMADRE, RAYMOUR)
RADHAKRISHNAN, ESTATE PLANNING)
RESOURCES, INC., NATCO PRODUCTS)
CORP., EDWARD HANRAHAN, and THE)
LEADERS GROUP, INC.,)

Defendants;)

TRANSAMERICA LIFE INSURANCE)
COMPANY,)

Plaintiff,)

vs.)

C.A. No. 09-549-S

LIFEMARK SECURITIES CORP., JOSEPH)
CARAMADRE, RAYMOUR)
RADHAKRISHNAN, ESTATE PLANNING)
RESOURCES, INC. and EDWARD)
MAGGIACOMO, JR.,)

Defendants; and)

in their memorandum) and (b) it is subject to a pending motion to vacate; and (2) Plaintiffs assume a likelihood of success on civil RICO claims and claims for civil liability for the crimes of civil conspiracy, mail fraud, and wire fraud – claims which (a) they have not yet asserted, (b) have not yet even been the subject of any motion for leave to add such claims, and (c) as Mr. Caramadre will vigorously argue, are untimely because Plaintiffs should not be permitted to add to these new civil claims at this late date (four years after filing their initial complaint) after having already amended their complaints on numerous previous occasions.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

Plaintiffs filed these actions in 2009, alleging multiple counts against numerous defendants, including Mr. Caramadre. The counts asserted against Mr. Caramadre included fraud, civil liability for crimes and offenses, and civil conspiracy. *W. Reserve Life Assur. Co. v. Conreal, LLC*, 715 F. Supp.2d 270, 275 (D.R.I. 2010) (“*Caramadre I*”). The counts asserted against Mr. Caramadre, however, were not uniform across all seven cases. For example, WRL did not assert a civil conspiracy claim against Mr. Caramadre in C.A. No. 09-470. *See* Complaint (ECF No. 1 in C.A. No. 09-470). Additionally, the claims for civil liability for crimes and offenses in the initial complaint (which Plaintiffs also failed to assert in each of the cases) alleged liability only for insurance fraud. *See Caramadre I*, 715 F. Supp.2d at 275.

Mr. Caramadre moved to dismiss the claims against him in the initial complaints, and on June 2, 2010, this Court entered an order that, among other things, dismissed the claims against Mr. Caramadre for civil liability for crimes and offenses based on alleged insurance fraud. *See id.* at 287.

Plaintiffs filed amended complaints following this Court’s decision on the motion to dismiss. *W. Reserve Life Assur. Co. v. Caramadre*, 847 F. Supp.2d 329, 333, 335-36 (D.R.I.

2012) (“*Caramadre II*”). The amended complaints added claims against Mr. Caramadre (and other defendants) for fraud in the factum and for civil liability for crimes and offenses based on forgery.¹ *Id.* at 335. Mr. Caramadre (and other defendants) again filed a motion to dismiss the claims in the second amended complaint. *Id.* at 333. Mr. Caramadre also asked this Court to reconsider the portion of its prior decision denying the motion to dismiss the fraud claims against him. *Id.* This Court issued its decision and order on the motions to dismiss the amended complaints on February 7, 2012. *Id.* That decision and order dismissed **all** claims against Mr. Caramadre except the claims for civil conspiracy with certain of the representatives and broker-dealer defendants, supposedly for conspiring with them to violate their agency contracts with Plaintiffs and certain claims for civil liability for the crime of forgery.² *Id.* at 340, 343-44, 347-50.

Before this Court decided the second round of dismissal motions, on November 17, 2011, the United States Attorney’s Office (the “U.S. Attorney”) issued a 66-count criminal indictment against Mr. Caramadre and Raymour Radhakrishnan. *See* Indictment (ECF No. *United States v. Caramadre*, CR 11-86). As a result of the criminal indictment, this Court entered an order staying this matter until the resolution of the criminal matter. *See* Stay Order (ECF No. 134 in C.A. No. 09-470). This Court entered the stay order on March 2, 2012. *Id.* The stay order includes only certain limited exceptions to a complete stay of the case: (1) document discovery in accordance with the terms of the initial case management order;³ (2) motions for entry of final

¹ Plaintiffs asserted claims for civil liability for crimes and offenses based of forgery in some, but not all, of the cases.

² Notably, WRL did not assert a claim against Mr. Caramadre for civil conspiracy in C.A. No. 09-470. Thus, there are no currently pending claims against Mr. Caramadre in that matter.

³ Earlier, this Court entered an initial case management order that instituted some protections for the defendants’ Fifth Amendment rights in connection with discovery and pleadings in this matter. *See* Initial Case Management Order (ECF No. 58 in C.A. No. 09-470).

judgment by defendants against whom no claims remained; and (3) appeals from the entry of any final judgments. *Id.*

When the stay order entered, no claims remained against Mr. Caramadre in C.A. No. 09-470, and Mr. Caramadre moved for entry of final judgment in his favor in that case.⁴ *See* Motion for Entry of Final Judgment (ECF No. 135 in C.A. No. 09-470). As part of its opposition to Mr. Caramadre's motion for entry of final judgment, WRL moved to amend its complaint in 09-470 to add Mr. Caramadre (and Mr. Radhakrishnan) as defendants to the pending claim of civil liability for crimes and offenses and to add a claim for civil conspiracy. *See* Motion to Amend Complaints (ECF No. 141 in C.A. No. 09-470). This Court allowed the motion to amend. *See* Text Order dated July 27, 2012 (attached as Exhibit A). To date, however, WRL has not filed an amended complaint in C.A. No. 09-470 to add those claims.

On November 19, 2012, Mr. Caramadre changed his plea to guilty in the criminal matter on two counts of the indictment – counts 9 and 33. *See* Minute Entry for proceedings held before Judge William E. Smith dated November 19, 2012 (Docket in *United States v. Caramadre*, CR 11-86) (attached as Exhibit B). Count 9 is a specific wire fraud count with regarding a specific transaction, and Count 33 is a broader criminal conspiracy count. *See* Indictment. After the entry of Mr. Caramadre's guilty plea, this Court conducted a chambers conference on December 5, 2012, at which time this Court determined that the stay order would remain in place until the criminal matter was completely resolved. *See* Minute Entry for proceedings held before Judge William E. Smith (attached as Exhibit C). At that time, it was anticipated that the stay would remain in place until after Mr. Caramadre's sentencing, which has not occurred to date. The only additional exception to the stay was the scheduling of settlement

⁴ Other defendants (against whom no claims remained in certain of the cases) also moved for entry of final judgment.

conferences in an attempt to resolve the civil matters. *See* Text Order dated December 5, 2012 (attached as Exhibit D). Mr. Caramadre has since obtained substitute counsel in the criminal matter and he has filed a motion to withdraw his guilty plea on February 28, 2013. *See* Docket (attached as Exhibit B); Motion to Withdraw Plea of Guilty (ECF No. 122 in *United States v. Caramadre*, CR 11-86). Thus, the criminal matter remains pending.

Now, without even moving to vacate the stay, much less persuading this Court to grant such a motion, Plaintiffs have filed this motion to attach. Mr. Caramadre's guilty plea (and the associated statement of agreed facts) forms the entire basis for Plaintiffs' argument that they have a likelihood of success on the merits of this matter on their claim against Mr. Caramadre for civil conspiracy. Plaintiffs also argue that the guilty plea creates a likelihood of success on their as yet unplead claims against Mr. Caramadre for: (1) civil liability for the alleged crime of criminal conspiracy; (2) civil liability for the alleged crimes of mail and wire fraud; and (3) civil RICO violations. Plaintiffs, however, have not yet even moved to vacate the stay so that they can bring such claims against Mr. Caramadre on any of these theories – much less have they been granted leave to amend their complaints to add these claims.

III. ARGUMENT

Plaintiffs are not entitled to a prejudgment attachment of Mr. Caramadre's assets for both procedural and substantive reasons. As a matter of procedure, the mere filing of the motion to attach violates the stay order, which remains in full force and effect. On substantive grounds, Plaintiffs have not and cannot show a likelihood of success on the merits.⁵ Accordingly, this Court should deny the motion to attach.

⁵ To succeed on a motion for prejudgment attachment, Plaintiffs must demonstrate: (1) a probability of obtaining a judgment in their favor, and (2) a need for security. Super. Ct. R. Civ. P. 4(m). Rhode Island courts interpret a probability of obtaining a judgment in their favor as a likelihood of success on the merits of a claim. *See, e.g., E.W. Burman v. Bradford Dyeing Ass'n*, 2011 R.I. Super. LEXIS 16, *11 (R.I. Super. Ct. Feb. 8, 2011).

A. The stay order precludes Plaintiffs' motion to attach.

It is undisputed that the stay order that this Court entered on March 2, 2012 remains in effect. The stay order expressly states that “these cases (C.A. Nos. 09-470, 09-471, 09-472, 09-473, 09-502, 09-549 and 09-564) are stayed pending the resolution of the criminal matter, *United States v. Caramadre, et al., Cr. No. 11-186.*” *See* Stay Order. The criminal matter remains pending, and therefore the plain language of the order bars this motion. Additionally, at the chambers conference on December 5, 2012, this Court considered whether it should lift the stay in light of the Caramadre and Radhakrishnan guilty pleas, but it declined to do so, deciding that the stay should continue until after sentencing Mr. Caramadre and Mr. Radhakrishnan. Accordingly, the current motion to attach is improper because the stay order precludes Plaintiffs from prosecuting such a motion.

The stay order contains only three exemptions from the stay: (1) document discovery pursuant to the restrictions in the initial case management order, (2) motions for entry of final judgment by defendants against whom no claims remain following the decision on the second motion to dismiss, and (3) appeals by the Plaintiffs from any entry of final judgment. *See* Stay Order. Since the entry of the stay, this Court permitted Plaintiffs to move to amend the complaint in connection with their opposition to a motion for entry of final judgment by Mr. Caramadre, Mr. Radhakrishnan, and Estate Planning Resources, Inc. in C.A. No. 09-470. *See* Exhibit A. Additionally, at the December 5, 2012 chambers conference, this Court also permitted settlement conferences to proceed during the pendency of the stay. *See* Exhibit D. This Court has approved no other exceptions to the stay, and Plaintiffs have not sought leave to file this motion or sought relief from the stay before filing this motion, nor would any such leave be warranted at this time.

Thus, this motion violates the stay, and, for this reason alone, this Court should deny the motion. “When a trial court is faced with a violation of a court order, it may choose from a ‘broad universe of possible sanctions.’” *Velazquez Linares v. United States*, 546 F.3d 710, 711 (1st Cir. 2008) (quoting *Tower Ventures, Inc. v. City of Westfield*, 296 F.3d 43, 46 (1st Cir. 2002)). At a minimum, this Court, therefore, should deny the Plaintiffs’ motion to attach because it is not permitted under the stay order, and because the Plaintiff has not obtained leave to file the motion or relief from the stay.

B. Plaintiffs have not and cannot establish a likelihood of success on the merits of their claims against Mr. Caramadre.

Currently, there are only two types of claims pending against Mr. Caramadre across these seven related cases: (1) civil conspiracy with the broker-dealer defendants for them to violate their contracts with Plaintiffs; and (2) civil liability for forgery. Plaintiffs’ motion to attach, however, asserts that plaintiffs have a likelihood of success on unasserted claims of: (1) civil liability for the crime of criminal conspiracy; (2) civil liability for the crime of wire fraud and mail fraud; (3) civil conspiracy; and (4) RICO claims. *See* Memorandum in Support of Plaintiffs’ Motion for Prejudgment Attachment (ECF No. 116 in C.A. No. 09-564) (“Plaintiffs’ Memorandum”) at 8-14. But the only claim that is actually pending for which Plaintiffs contend they have a likelihood of success on the merits is the civil conspiracy claim, yet they have not and cannot demonstrate a likelihood of success on such a claim. Additionally, Plaintiffs cannot properly show a likelihood of success against Mr. Caramadre on claims they have not as yet even asserted against him.

1. Plaintiffs are not likely to prevail on their claim against Mr. Caramadre for civil conspiracy.

This Court previously and properly concluded that Plaintiffs do not have a legally cognizable claim against Mr. Caramadre for civil fraud of any kind. *See Caramadre II*, 847 F. Supp.2d at 340, 343-44, 347-50. Accordingly, the Court determined that the only way that Mr. Caramadre could be liable for fraud in these matters is if he is liable as part of a conspiracy with the broker-dealer defendants and their representatives for alleged fraud committed by those other defendants to violate the broker-dealers' contracts with Plaintiffs. *Id.* at 340, 347. As this Court aptly pointed out in its Opinion and Order on the second round of motions to dismiss, there must be a valid underlying intentional tort theory to support a claim of civil conspiracy. *See id.* at 347. This Court's previous decisions definitively determined that the only valid underlying intentional tort claim that could trigger civil conspiracy liability for Mr. Caramadre is the potential liability for fraud faced by his alleged co-conspirators. *Id.* Accordingly, Plaintiffs' burden to establish a likelihood of success on the merits on the civil conspiracy claims against Mr. Caramadre is twofold: first, they must establish a likelihood of success on their fraud claims against alleged co-conspirators; and second, they must establish a likelihood of success in proving that Mr. Caramadre conspired with those co-conspirators to accomplish that fraud. Plaintiffs fail to meet this burden.

Plaintiffs rely entirely on Mr. Caramadre's plea agreement in their attempt to establish a likelihood of success on the merits; they note that Mr. Caramadre "already has admitted that he participated in a conspiracy with Radhakrishnan 'and others' to commit mail, wire and identity fraud . . . and 'executed a scheme to defraud financial institutions and terminally ill individuals . . . ,' including plaintiffs." *See* Plaintiffs' Memorandum at 11. From that statement, Plaintiffs conclude "there is no serious doubt that the Registered Representatives . . . worked in

conjunction with Caramadre” and that “it is likely that plaintiffs will prove the Registered Representatives knowingly and intentionally concealed information from plaintiffs in an effort to advance Caramadre’s admitted scheme.” *See id.* Thus, Plaintiffs attempt to use Mr. Caramadre’s plea agreement to achieve both their likelihood of proving that Mr. Caramadre’s alleged co-conspirators committed fraud, and that Mr. Caramadre conspired with those alleged co-conspirators to commit that fraud. This argument falls short in two respects.

First, Mr. Caramadre is in the process of seeking to vacate his plea. It is currently unknown whether Mr. Caramadre will be successful in that effort, but the lack of finality to the plea undercuts the impact of the factual statements made in connection with that plea. Those statements cannot be treated as conclusively established facts for purposes of assessing Plaintiffs’ likelihood of success on the merits. *See Fed. R. Evid. R. 410* (stating that a statement made in connection with a later withdrawn guilty plea is not admissible in a civil case except if in fairness it ought be considered in connection with other statements). Rather, if Mr. Caramadre is successful in vacating his plea, the most Plaintiffs will be able to do with the factual statements in the plea agreement is to use them to impeach any contradictory testimony Mr. Caramadre may give in this matter. *See id.* Mr. Caramadre maintains that he committed no wrongdoing in connection with any of the claims asserted in this case and that all his actions giving rise to both these civil cases and the criminal matter were legal and appropriate. It will be a credibility question for the jury to decide whether the facts in the plea agreement – if they survive a motion to vacate – are sufficient to overcome any such testimony. The statements in the plea agreement, therefore, cannot on their own establish a likelihood of success on the merits of the civil conspiracy claim.

Second, even if Mr. Caramadre was completely bound to the statements he made in connection with the plea agreement he now seeks to vacate, those statements would not be sufficient to establish a likelihood of success on the claims against his alleged co-conspirators for fraud. Rather, the jury would be presented with the likely conflicting testimony of those alleged co-conspirators denying the allegations of fraud against them. The jury would be left to assess the evidence and determine if it believed that a fraud had occurred. Mr. Caramadre's statements in connection with his plea agreement would be only one piece of evidence that entered into the calculus. Thus, Mr. Caramadre's factual statements made in connection with his plea agreement cannot alone establish a likelihood of success on Plaintiffs' claims that other defendants committed civil fraud. Therefore, the plea agreement cannot establish a likelihood of success on the claim that Mr. Caramadre was involved in a civil conspiracy to commit a fraud that other defendants allegedly committed, but as to which Plaintiffs have offered no proof whatsoever.

2. A motion to attach cannot be based on an alleged likelihood of success on claims that are not yet plead.

The rest of the claims for which Plaintiffs assert they have a likelihood of success are claims that Plaintiffs have not yet asserted or included in any pleading before this Court. The current active complaints in each of the cases do **not** assert any claims against Mr. Caramadre for: (1) civil liability for criminal conspiracy, (2) civil liability for wire fraud and mail fraud, or (3) violations of the RICO Act. In fact, Plaintiffs have not even sought leave to add these claims in any of these seven cases. Nevertheless, Plaintiffs now assert that they have established a likelihood of success on these unasserted claims that entitles them to a prejudgment writ of attachment. Plaintiffs are wrong.

For Plaintiffs to establish a likelihood of success on any of these claims, Plaintiffs first must demonstrate that they will be able to obtain leave to add these claims. Plaintiffs have not

yet sought such leave, but their ability to obtain such leave certainly is in doubt. Mr. Caramadre will vigorously oppose any attempt by Plaintiffs to obtain such leave. First, Plaintiffs already have amended their complaints in these matters numerous times. Although leave to amend is usually freely granted, Rule 15 of the Federal Rules of Civil Procedure is not intended to be a mechanism for Plaintiffs to continually amend their complaints to assert new claims until they find one that works. *See Grundy v. Skolnick*, 2012 U.S. Dist. LEXIS 178960, *3 (D. Nev. Dec. 18, 2012) (“There is a limit to the number of times the Court will permit a party to attempt to amend a complaint when his repeated efforts still fail.”); *Walder v. Paramount Publix Corp.*, 135 F. Supp. 228, 229 (S.D.N.Y. 1955) (denying leave to amend a complaint in the face of the dismissal of another claim).

Plaintiffs lost a motion to dismiss, then amended their complaint to assert new claims. Plaintiffs then lost a second motion to dismiss. Undeterred, they then sought leave to amend to add still more new claims. Now Plaintiffs want to add even more new claims. At some point a defendant is entitled to finality on the claims against which he must defend, and that time has long since passed in this matter. If Plaintiffs do in fact seek leave to amend their complaints to add a new claim of civil liability for criminal acts and RICO claims, this Court should deny those motions. But, at this time, Plaintiffs have failed to demonstrate a likelihood of success on any of those unasserted claims and this Court should deny the current motion to attach.

Additionally, Plaintiffs premise the substance of their argument that they have a likelihood of success on these claims on the statements Mr. Caramadre made in connection with his plea agreement. As set forth, *supra*, the plea agreement is insufficient to establish a likelihood of success on the merits of any pending claims. Mr. Caramadre is seeking to vacate that plea agreement, and at best it will be a single piece of evidence in the broad context of the

claims asserted against him. The conclusive weight Plaintiffs give to that plea agreement in their motion to attach is entirely inappropriate. Accordingly, Plaintiffs completely fail to meet their burden of establishing a likelihood of success on the merits, and this Court should deny the motion to attach.

IV. CONCLUSION

For the reasons set forth herein, this Court should deny Plaintiffs' motion to attach.

Dated: Providence, Rhode Island
March 4, 2013

JOSEPH CARAMADRE, RAYMOUR
RADHAKRISHNAN, ESTATE PLANNING
RESOURCES, INC., and HARRISON CONDIT,
By their Attorneys,

/s/ Robert G. Flanders, Jr. _____

Robert G. Flanders, Jr. (# 1785)

Adam M. Ramos (#7591)

HINCKLEY, ALLEN & SNYDER LLP

50 Kennedy Plaza, Suite 1500

Providence, RI 02903

Telephone: (401) 274-2000

Facsimile: (401) 277-9600

Email: aramos@haslaw.com

rflanders@haslaw.com

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2013, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF system.

/s/ Robert G. Flanders, Jr. _____