STATE OF RHODE ISLAND

KENT, SC. **SUPERIOR COURT**

(FILED: July 10, 2023)

MICHAEL B. FORTE, JR., In his Capacity as Receiver of ACE PROPERTY MANAGEMENT CORPORATION, CEN COMPANIES, LLC, DDM PROPERTIES, LLC, UNIVERSAL AUTO SALES, INC., ***Plaintiff,***	:	
v.	:	**C.A. No. KC-2021-1045**
MELISSA FARIA, FREDERICK A. DICKERSON, JR., JOHN W. STUDLEY, III, LEIGHAS LANE, LLC, 35 QUAKER LANE, LLC, WESTWOOD ESTATES I & II, INC., COVENTRY CENTER REALTY, LLC., ***Defendants.***	:	

DECISION

TAFT-CARTER, J. Before this Court for decision are Defendants, Leighas Lane, LLC (Leighas Lane); 35 Quaker Lane, LLC (35 Quaker Lane); and John W. Studley, III (Mr. Studley) (collectively referred to as the Studley Defendants), and Defendants, Westwood Estates I & II, Inc. (Westwood) and Coventry Center Realty, LLC (Coventry) (collectively referred to as the Westwood Defendants) (both collectively referred to as Defendants) Motions to Dismiss Counts 20-22 of Plaintiff's, Michael B. Forte, Jr. (Plaintiff), in his capacity as Receiver of Ace Property Management Corporation (ACE), CEN Companies, LLC (CEN); DDM Properties, LLC (DDM); and Universal Auto Sales, Inc. (UAS) Amended Complaint.[1] Plaintiff filed an objection to each

[1] As both Motions to Dismiss address the same Counts of Plaintiff's Amended Complaint and set forth the same arguments, this Court shall address both motions together in this Decision for the purposes of judicial economy.

of the Motions to Dismiss. Jurisdiction is pursuant to G.L. 1956 §§ 8-2-13 and 8-2-14, and Rules 4(l), 12(b)(1), 12(b)(6), and 17 of the Superior Court Rules of Civil Procedure.

I

Facts and Travel

A

Counts 20-22 of Plaintiff's Amended Complaint

Plaintiff has filed a forty-four-page, 423-paragraph Amended Complaint asserting a total of twenty-three causes of action, only three of which—Counts 20, 21, and 22—are against Defendants and are the focus of this Decision: Voidable/Fraudulent Transfer of 35 Quaker Lane (Count 20); Voidable/Fraudulent Transfer of 8 Leighas Lane (Count 21); and Voidable/Fraudulent Transfer of 12 Leighas Lane (Count 22). *See* Am. Compl. ¶¶ 398-419. Specifically, Plaintiff seeks to void the conveyances of properties located at 35 Quaker Lane in West Warwick, Rhode Island (the Quaker Lane Property) as well as 8 Leighas Lane and 12 Leighas Lane (the Leighas Lane Properties) in Coventry, Rhode Island which were previously transferred from DDM to 35 Quaker Lane and Leighas Lane, respectively. *Id*. ¶¶ 31-56, 74-82.

Plaintiff asserts that in early 2011, N. Cambio allegedly began to face "significant legal issues" in conjunction with alleged loan obligations made relating to the Centre of New England project (the Project), totaling over $100 million. *Id*. ¶¶ 17-18. Although N. Cambio defended the loans as usurious, the pendency of the lawsuits ultimately impaired his ability to obtain credit, leading him to petition this Court for receivership for several entities related to the Project in 2013. *Id*. ¶¶ 19-21.

It is further alleged that during the same timeframe, N. Cambio, with the assistance of Ms. Faria, allegedly formed various new business entities (the Faria Companies) in an effort to continue

operations "without interference from the lenders who were seeking to foreclose and collect against [N.] Cambio." *Id*. ¶¶ 22-23. In perpetration of this alleged scheme, Ms. Faria executed documents identifying herself as a "'sole member,' sole shareholder and/or sole officer" of the Faria Companies when, in reality, N. Cambio retained all of the decision-making authority. *Id*. ¶¶ 22-27. The assets and operations of the Cambio Entities would then be transferred to the Faria Companies, thereby "continuing income streams to the Cambios and/or their other entities." *Id*. ¶ 28.

Plaintiff further alleges that in some instances, N. Cambio would permit either the foreclosure or the tax sale of encumbered assets in which one of the Faria Companies would be the purchaser or ultimate transferee. *Id*. ¶ 29. In such circumstances, N. Cambio would work behind the scenes to secure a loan, which Ms. Faria would then execute and use to purchase the assets. *Id*. ¶ 30. Of relevance to the instant matter, Plaintiff asserts that this strategy guided the sales of the Quaker Lane Property and the Leighas Lane Properties. *Id*. ¶¶ 31-56, 74-82.

1

The Quaker Lane Property

N. Cambio allegedly purchased the Quaker Lane Property in 1987 and subsequently transferred it to Universal Truck & Equipment Leasing, LLC (UTE), one of the Cambio Entities. *Id*. ¶¶ 32-33. At some point in time, Interbay Funding, LLC assigned a mortgage in property held by UTE to Bayview Loan Servicing, LLC (Bayview) which subsequently foreclosed on the Quaker Lane Property in 2005. *See id*. ¶¶ 37, 43. Thereafter, Bayview conveyed the Quaker Lane Property by foreclosure deed to DDM[2] for $900,000 despite the property being valued at $2.4 million. *Id*.

[2] At the time the Quaker Lane Property was conveyed, Ms. Faria was allegedly listed as a registered officer for both UTE, the entity being foreclosed upon, and DDM, the purchaser of the foreclosed property. *Id*. ¶¶ 47-55.

¶¶ 45-46. On December 10, 2018, 35 Quaker Lane—a limited liability company recently formed by Mr. Studley's closing attorney—purchased the Quaker Lane Property from DDM for $850,000 via financing from Westwood. *Id*. ¶¶ 202, 207-09.

2

The Leighas Lane Properties

The Leighas Lane Properties[3] were also owned by one of the Cambio Entities, Commerce Park Realty, LLC. *Id*. ¶¶ 74, 76. Plaintiff alleges that, in 2016, DDM—after obtaining a mortgage executed by Ms. Faria but arranged by N. Cambio—purchased the Leighas Lane Properties free and clear of all liens and encumbrances pursuant to court approval. *Id*. ¶¶ 79-80. Thereafter, on November 8, 2018, Leighas Lane—another limited liability company recently formed by Mr. Studley's closing attorney—purchased the Leighas Lane Properties from DDM for the sum of $200,000 per unit, via financing from Coventry. *Id*. ¶¶ 193-95.

B

Travel

On July 1, 2019, this Court appointed Plaintiff as the Receiver of ACE; CEN; DDM; and UAS (collectively referred to as the Receivership Entities). *Id*. ¶ 1; *see* KC-2018-1325 Docket. On December 6, 2021, Plaintiff filed the instant action against Defendants asserting twenty-four counts. *See* Pl.'s Compl. Plaintiff subsequently filed an Amended Complaint on March 14, 2022 eliminating Count 20 for Declaratory Judgment for 395 Quaker Lane. *See* Am. Compl. Thereafter, Plaintiff sought three extensions of time to effectuate service of process—the first extension was due to settlement discussions between Plaintiff and Defendants, and the second and third

[3] N. Cambio and V. Cambio's daughters and grandchildren resided at the Leighas Lane Properties without paying any charges such as rent, homeowners' assessments, or municipal and fire district taxes. *Id*. ¶¶ 77-78.

extensions were due to the inability to locate Mr. Dickerson and Ms. Faria—all of which were granted, thereby extending the time to effectuate service of process until December 14, 2022.[4] *See* Docket.

On December 12, 2022, the Studley Defendants filed their Motion to Dismiss pursuant to Rules 12(b)(1), 12(b)(6), and 17 of the Superior Court Rules of Civil Procedure. *See* Docket. Plaintiff filed a timely objection on December 13, 2022 to which the Studley Defendants replied on March 21, 2023. *Id*. Thereafter, Plaintiff submitted a Sur-Reply on April 21, 2023. *Id*. On January 20, 2023, the Westwood Defendants filed a second and separate Motion to Dismiss pursuant to Rules 4(l), 12(b)(6), and 17 of the Superior Court Rules of Civil Procedure.[5] *Id*. Plaintiff filed a timely objection on February 9, 2023 along with a supplemental memorandum of law in support thereof on April 21, 2023. *Id*. This Court heard oral arguments on this matter on May 26, 2023.

II

Standard of Review

A

Rule 12(b)(6)

"'The sole function of a motion to dismiss is to test the sufficiency of the complaint.'" *EDC Investment, LLC v. UTGR, Inc.*, 275 A.3d 537, 542 (R.I. 2022) (quoting *Pontarelli v. Rhode Island Department of Elementary and Secondary Education*, 176 A.3d 472, 476 (R.I. 2018)). In ruling on a motion to dismiss, the trial justice is normally "confined to the four corners of the

[4] In their briefs, as well as at oral argument, the parties disagreed as to whether the second and third extensions were requested for all Defendants or just Mr. Dickerson and Ms. Faria.

[5] The Westwood Defendants refiled their January 2023 Motion to Dismiss on April 6, 2023. *See* Docket. The refiled Motion to Dismiss mirrors the same substantive arguments as the January 2023 Motion to Dismiss and, therefore, does not alter the analysis provided herein.

complaint and must assume all allegations are true, resolving any doubts in plaintiff's favor." *Narragansett Electric Co. v. Minardi*, 21 A.3d 274, 278 (R.I. 2011). "'A motion to dismiss may be granted only when it is established beyond a reasonable doubt that a party would not be entitled to relief from the defendant under any set of conceivable facts that could be proven in support of its claim.'" *Chase v. Nationwide Mutual Fire Insurance Co.*, 160 A.3d 970, 973 (R.I. 2017) (quoting *Tri-Town Construction Co. v. Commerce Park Associates 12, LLC*, 139 A.3d 467, 478 (R.I. 2016)).

B

Rule 12(b)(1)

"A motion under Rule 12(b)(1) questions a court's authority to adjudicate a particular controversy before it." *Boyer v. Bedrosian*, 57 A.3d 259, 270 (R.I. 2012). "[S]ubject-matter jurisdiction is 'an indispensable ingredient of any judicial proceeding[.]'" *Rogers v. Rogers*, 18 A.3d 491, 493 (R.I. 2011) (quoting *Paolino v. Paolino*, 420 A.2d 830, 833 (R.I. 1980)). "Accordingly, subject-matter jurisdiction cannot be 'waived nor conferred by consent of the parties.'" *Id*. (quoting *Paolino*, 420 A.2d at 833). "In ruling on a Rule 12(b)(1) motion, a court is not limited to the face of the pleadings." *Morey v. State of Rhode Island*, 359 F. Supp. 2d 71, 74 (D.R.I. 2005). "A court may consider any evidence it deems necessary to settle the jurisdictional question." *Id.*

C

Rule 4(l)

"Rule 4 sets forth the requirement that process be served and delineates the manner in which service must be accomplished." *Lindia v. Nobles*, 760 A.2d 1244, 1245 (R.I. 2000). "Rule 4(l) requires service of the summons and complaint to occur within 120 days after commencement

of the action." *Gucfa v. King*, 865 A.2d 328, 331 (R.I. 2005). "[I]f service is not made within 120 days the case *shall* be dismissed, unless good cause can be shown for why service was not made within that period." *Id.* "If good cause cannot be shown, Rule 4(l) requires dismissal, allowing the motion justice no discretion to do anything other than to dismiss the case without prejudice." *Id*. at 331-32.

D

Rule 17

Rule 17(a) requires that every action "be prosecuted in the name of the real party in interest." Super. R. Civ. P. 17(a). "The purpose of this rule is '. . .to protect the defendant against a subsequent action by the party actually entitled to recover, and to ensure generally that the judgment will have its proper effect as res judicata.'" *Esquire Swimming Pool Products, Inc. v. Pittman*, 114 R.I. 238, 239-40, 332 A.2d 128, 130 (1975) (quoting Advisory Committee Note to 1966 Amendment to Fed. R. Civ. P. 17(a)).[6]

III

Analysis

A

Motion to Dismiss

Defendants maintain that Plaintiff does not have standing to assert a claim under Rhode Island's Uniform Voidable Transactions Act (the RIUVTA), G.L. 1956 chapter 16 of title 6, and that the conveyance of the Quaker Lane Property and the Leighas Lane properties cannot be

[6] "Rule 17(a) [of the Rhode Island Superior Court Rules of Civil Procedure] is substantially the same as the Federal Rule except for the last sentence." Robert B. Kent et al., *Rules of Civil Procedure with Commentaries*, § 17:7 at 200 (2022 ed.).

rescinded under Rhode Island's Commercial Receivership Act (RICRA), G.L. 1956 chapter 21 of title 10. The Court will address each argument in *seriatim*.

1

Rule 12(b)(6)

Defendants argue that Counts 20-22 of Plaintiff's Amended Complaint should be dismissed because neither Plaintiff—in his capacity as Receiver of the Receivership Entities—nor the Receivership Entities themselves are creditors within the meaning of the RIUVTA. *See* Studley Defs.' Mem. of Law in Supp. Mot. to Dismiss (Studley Defs.' Mem.) at 1-2; *see also* Westwood Defs.' Mem. of Law in Supp. of Mot. to Dismiss (Westwood Defs.' Mem.) at 1-2; *see also* §§ 6-16-1-6-16-17. Rather, Defendants assert that Plaintiff merely "stands in the shoes of DDM[7][,]" and, therefore, does not have statutory standing to contest the conveyances of the Quaker Lane Property and the Leighas Lane Property. Studley Defs.' Mem. at 5; *see also* Westwood Defs.' Mem. at 3-4.

Plaintiff, on the other hand, asserts that he is a creditor pursuant to the July 1, 2019 Order appointing him as Receiver of the Receivership Entities. (Pl.'s Mem. in Supp. of Obj. to Studley Defs.' Mot. to Dismiss (Pl.'s Opp'n to Studley Mot.) at 7.) (Pl.'s Mem. in Supp. of Obj. to Westwood Defs.' Mot. to Dismiss (Pl.'s Opp'n to Westwood Mot.) at 7.) Specifically, he points to the language in the Order stating that his appointment comes "with all the powers conferred upon the Receiver by the Rhode Island General laws […] and with all powers incidental to the Receiver's said Office." *See* Pl.'s Opp'n to Studley Mot. at 7; *see also* Pl.'s Opp'n to Westwood

[7] Defendants focus their arguments around DDM, as opposed to all of the Receivership Entities, arguing that DDM is the "only entity germane to any claim" against Defendants because DDM is the entity which sold the Quaker Lane Property and the Leighas Lane Properties to 35 Quaker Lane and Leighas Lane. (Studley Defs.' Mem. at 2.)

Mot. at 7; *see also* Pl.'s Ex. 2 (July 1, 2019 Order). Therefore, Plaintiff concludes that because G.L. 1956 § 19-12-12(c) states that a receiver is "[deemed] a lien creditor" as defined in G.L. 1956 § 6A-9-301(3) and "a creditor" as defined in § 6-16-1, he has all the rights and powers accorded to a lien creditor or creditor by any provision of applicable law, including pursuing a fraudulent transfer claim under the RIUVTA. Pl.'s Opp'n to Studley Mot. at 7; *see also* Pl.'s Opp'n to Westwood Mot. at 7; *see also* § 19-12-12(c).

a

Statutory Standing

"A party acquires standing either by suffering an injury in fact or as the beneficiary of express statutory authority granting standing." *Tanner v. Town Council of Town of East Greenwich*, 880 A.2d 784, 792 (R.I. 2005). "In statutory standing cases . . . the analysis consists of a straight statutory construction of the relevant statute to determine upon whom the Legislature conferred standing and whether the claimant in question falls in that category." *Id*. n.6 (*Cf. Linda R.S. v. Richard D.*, 410 U.S. 614, 617 (1973)). As such, a court need "not look at the eventuality of success on the merits but, rather, at whether a party is arguably within the *zone of interests* to be protected or regulated by the statute in question." *Id*. (emphasis added) (citing *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 153–54 (1970)).

The RIUVTA creates a cause of action for creditors by establishing a mechanism to avoid a fraudulent transfer. *See* § 6-16-7. It is well settled that in order to set aside a conveyance as either fraudulent or voidable, the individual bringing the claim must be a creditor. *See* § 6-16-4; *see also Eberhard v. Marcu*, 530 F.3d 122, 129 (2d Cir. 2008); *see also In re Hamilton Taft & Co.*, 176 B.R. 895, 902 (Bankr. N.D. Cal. 1995). The RIUVTA defines a "creditor" as a "person who

has a claim" and a "claim" is defined, in pertinent part, as "a right to payment[.]" Sections 6-16-1(3)-(4).

The issue presented to this Court concerns whether a receiver is a creditor pursuant to § 6-16-1(4) thereby giving him or her statutory standing to assert a claim under chapter 16 of title 6. As this issue is one of first impression in Rhode Island, this Court will look to the Bankruptcy Code and Federal Court interpretations thereof for guidance. *See Reynolds v. E & C Associates,* 693 A.2d 278, 281 (R.I. 1997).

i

Bankruptcy Code

Section 544(b) of the Bankruptcy Code provides that:

> "[a] trustee may *avoid any transfer of an interest of the debtor in property* or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title." 11 U.S.C.A. § 544(b)(1) (emphasis added).

In interpreting the scope of § 544(b), Bankruptcy Courts have recognized that a trustee acts on behalf of the creditors, not a debtor, in exercising his or her avoidance powers. *See In re O.P.M. Leasing Services, Inc.*, 28 B.R. 740, 760 (Bankr. S.D.N.Y. 1983); *see also In re Zwirn*, 362 B.R. 536, 540 (Bankr. S.D. Fla. 2007). Moreover, Bankruptcy Courts have further construed § 544(b) as imbuing a trustee with the authority to exercise the rights of creditors by pursuing a state fraudulent transfer law. *Collier on Bankruptcy* ¶ 544.06[2]. Consequently, in practice, trustees file actions under § 544(b) thereby "stepping into the shoes of unsecured creditors with allowable claims who could have pursued causes of action against transferees whose transfers may have violated any one of those uniform acts." *Id*. ¶ 544.06[2A].

The Studley Defendants rely heavily on *In re Petters Co., Inc.*, 495 B.R. 887 (Bankr. D. Minn. 2013), in which the United States Bankruptcy Court for the District of Minnesota held that to establish standing to set aside a transfer as fraudulent, a trustee "must identify by name, in his complaint, at least one unsecured creditor with a claim allowable against the estate whose standing he uses to sue[.]" *In re Petters Co.*, 495 B.R. at 900-01. The Court explained that without a clear identification of the predicate creditor,

> "[t]he particular defendant could not determine . . . whether it was properly subject to suit in the first place, at the instance of the Trustee. All it really has is the nominal plaintiff's conclusory assertion, that he has the right to sue . . . that right to sue turns on extrinsic facts that go beyond the trustee's nominal status as steward of the estate. Those facts are immured in the situation of a third party, the predicate creditor, as it stood at a particular point in time." *Id*. at 899.

In other words, it appears that the Bankruptcy Court's concern with whether or not the predicate creditor was adequately identified is based on notice and the defendant's ability to defend itself. *Id*. at 900 ("To defend early on the issue of standing or even on the merits, defendants have a right to notice via pleading, of the identity of the predicate creditor.").

The Studley Defendants' reliance on *In re Petters* is misguided as, here, it is clear who Plaintiff is bringing suit on behalf of—the Receivership Entities in his capacity as Receiver. Furthermore, as will be discussed further in Section III, A, 1, a, ii, contrary to the Studley Defendants' assertion, this Court finds that the Receivership Entities are creditors and, therefore, Plaintiff has identified "at least one unsecured creditor with a claim allowable against the estate whose standing he uses to sue[.]" *See In re* Petters, 495 B.R. 900-01; *see also* Studley Defs.' Mem. at 12.

As such, this Court is persuaded that, like a trustee in a bankruptcy proceeding, a receiver acts on behalf of creditors and, therefore, falls within the "zone of interests to be protected or

regulated" by the RIUVTA. *See Tanner*, 880 A.2d at 792; *see also In re O.P.M.*, 28 B.R. at 760; *see also In re Zwirn*, 362 B.R. at 540.

ii

Federal Law

In addition to the Bankruptcy Code, this Court looks to federal courts for guidance on the particular issue of whether a receiver is a creditor and, therefore, has statutory standing to pursue fraudulent transfer claims.

As with bankruptcy courts, in some circumstances federal courts have recognized that receivers have the power to act on behalf of creditors based on the language of the order appointing them receiver. *See McGinness v. United States, Internal Revenue Service*, 90 F.3d 143, 145-46 (6th Cir. 1996). Here, the July 1, 2019 Order appointing Plaintiff as Permanent Receiver states that he has "all the powers conferred . . . by the Rhode Island General Laws, by this order, or otherwise, and with all powers incidental to the Receiver's said Office." Order, dated July 1, 2019, ¶ 2 (Keough, J.). Paragraph Four of the Order further provides that Plaintiff is

> "authorized, empowered and directed to take possession and charge of said estate, assets, effects, property and business of the Respondent . . . to collect and receive the debts, property and other assets and effects of said Respondent . . . with full power to prosecute, defend, adjust and compromise all claims and suits of, by or against said Respondent *and to appear, intervene or become a party in all suits, actions or proceedings relating to said estate, assets, effects and property as may in the judgment of the Receiver be necessary or desirable for the protection, maintenance and preservation of the property and assets of said Respondent.*" *Id*. (Emphasis added.)

According to the clear language of the July 1, 2019 Order, Plaintiff falls within the "zone of interests to be protected or regulated" by the RIUVTA and is entitled to pursue claims for monies owed to the Receivership Entities. *See id*.; *see also Tanner*, 880 A.2d at 792; *see also* § 6-16-1(4).

Moreover, "the strongest blend of constitutionality and equity appears when courts grant receivers standing to redress injuries to receivership entities—injuries that arise thanks to the entities' subjection to and separation from the wrongdoer." Jared A. Wilkerson, *In Whose Shoes?: Third-Party Standing and "Binding" Arbitration Clauses in Securities Fraud Receiverships*, 8 J.L. Econ. & Pol'y 45 (2011). In other words, courts have recognized that when receivership entities themselves are harmed in the course of a fraudulent scheme, they then become a party with a claim. *See Wing v. Dockstader*, 482 F.App'x 361, 362 (10th Cir. 2012) (holding that the receiver had standing to pursue a fraudulent conveyance claim because he represented the entity through which the Ponzi scheme was orchestrated); *see also Scholes v. Lehmann*, 56 F.3d 750, 753-55 (7th Cir. 1995); *see also Eberhard*, 530 F.3d at 132; *see also Ashmore for Wilson v. Owens*, No. 8:15-CV-2373-JMC, 2017 WL 5523039, at *3 (D.S.C. Nov. 17, 2017) (holding that a receiver does have standing to assert claims for fraudulent transfers because the Receivership entity was harmed by the diversion of the assets). As such, the entities become creditors themselves, entitled to recoup the money taken from them, and a receiver—in representing the entities—may bring claims on their behalves. Thus, "[a]s a very special type of creditor, the receiver will then distribute the funds to other creditors—almost as if the receivership entities are the de facto, equitable representatives of all classes of creditors." Wilkerson, *In Whose Shoes?*, at 72.

In addition, the issue of whether a receiver has standing to pursue claims on behalf of the entities in receivership has been addressed in *Scholes*. In *Scholes*, a receiver brought a fraudulent conveyance action against the principal scheme investor (the Principal) on behalf of the receivership entities, which the Principal used to perpetrate the Ponzi scheme. *Scholes*, 56 F.3d at 753-54. The receiver sought to recoup excess funds received by the investors above their investment. The *Scholes* court concluded that the receiver had standing to pursue his fraudulent

conveyance claims recognizing the corporations as the Principal's "robotic tools" that "were nevertheless in the eyes of the law separate legal entities with rights and duties." *Id*. at 754. Specifically, the *Scholes* court explained that the corporations,

> "[t]hough injured by [the Principal] . . . would not be heard to complain as long as they were controlled by him . . . The appointment of the receiver removed the wrongdoer from the [scheme]. The corporations were no more [the Principal's] evil zombies. Freed from his spell they became entitled to the return of the moneys—for the benefit not of [the Principal] but of innocent investors—that [the Principal] had made the corporations divert to unauthorized purposes." *Id*. at 754.

Accordingly, the *Scholes* court found that because the receivership entities were harmed in the execution of the fraud, the entities were therefore entitled to recoup the monies and the receiver could bring suit. *Id*

Notwithstanding, courts have been hesitant to stretch the laws of equity too far. The Second Circuit held that a receiver appointed to represent only individuals committing the fraud and his assets (Eberhard) lacks standing to set aside the transfer. *Eberhard*, 530 F.3d at 133. By representing only the transferor, the receiver "stands only in the shoes of" Eberhard—who was not harmed by the fraud—and may only pursue claims that he could assert, which does not include fraudulent conveyances. *See id*.

Here, Plaintiff has standing to pursue a fraudulent transfer claim on behalf of the Receivership Entities in their status as creditors. Similar to the receiver in *Scholes*, Plaintiff, here, was appointed to and represents the Receivership Entities which, at the time of the allegedly fraudulent conveyances, were under the control of N. Cambio. Thus, it was only through the authority of N. Cambio and subsequently Ms. Faria and Mr. Dickerson, that the Receivership Entities were divested of their assets, including the Quaker Lane Property and the Leighas Lane Properties.

Now that the Receivership Entities are "controlled by a receiver whose only object is to maximize the value of the corporations for the benefit of their investors and any creditors," this Court finds that the Receivership Entities are entitled to recover the assets they would have had but for N. Cambio, Ms. Faria, and Mr. Dickerson's diversion. *See Scholes*, 56 F.3d at 755. Accordingly, Plaintiff has standing to assert a claim against Defendants under the RIUVTA. As such, this Court finds that Plaintiff, in stepping into the shoes of the Receivership Entities, falls within the "zone of interests to be protected or regulated" by the RIUVTA and may pursue a claim for the fraudulent conveyances of the Quaker Lane Property and the Leighas Lane Properties. *See id*.; *see also Tanner*, 880 A.2d at 792.

2

Applicability of § 19-12-12

Plaintiff additionally asserts that § 19-12-12(c) indisputably instills him with "all rights and powers accorded to a creditor under the Rhode Island Uniform Voidable Transactions Act (§ 6-16-1, et. seq.) including the right to bring the instant action against the named Defendants." (Pl.'s Opp'n to Studley Mot. at 2-3; Pl.'s Opp'n to Westwood Mot. at 2-3.) Conversely, the Studley Defendants assert that Plaintiff's reliance on § 19-12-12(c) is misguided as Title 19 governs the appointment of a receiver for *financial institutions and/or credit unions*. *See* Studley Defs.' Reply in Supp. Mot. to Dismiss (Studley Defs.' Reply) at 3-4 (emphasis added). Thus, because the Receivership Entities are comprised of two corporations and two limited liability companies—none of which are financial institutions or credit unions—the Studley Defendants maintain that § 19-12-12 is inapplicable. *Id*. at 4.

Section 19-12-12(c) provides,

> "[w]ithout limiting the provisions of subsection (a), the receiver shall be deemed a lien creditor as that term is defined in § 6A-9-301-

> (3) and a *creditor as that term is defined in § 6-16-1* and shall have *all the rights and powers* accorded to the lien creditor or *creditor by any provisions of applicable law*." Section 19-12-12(c) (emphasis added).

Moreover, § 19-12-12(a) provides that "[a] receiver appointed pursuant to this chapter shall have . . . the rights and powers of, or may avoid any transfer of property of the *financial institution or credit union* or any obligation incurred by the *financial institution or credit union* . . ." Section 19-12-12(a) (emphasis added).

Our Supreme Court has consistently held that '"when the language of a statute is clear and unambiguous, [a court] must interpret the statute literally and must give the words of the statute their plain and ordinary meanings."' *Moore v. Ballard*, 914 A.2d 487, 490 (R.I. 2007) (quoting *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996)). Accordingly, because § 19-12-12(a) specifically addresses a court-appointed receiver's rights and powers *as to financial institutions or credit unions*—and the Receivership Entities are neither financial institutions nor credit unions—this Court is of the opinion that Plaintiff does not have standing under § 6-16-1 vis-à-vis § 19-12-12(c). Therefore, for the reasons stated above, § 19-12-12(c) is inapplicable.

3

RICRA

The Studley Defendants assert that RICRA is the appropriate statutory scheme to be applied in this matter. *See* Studley Defs.' Reply at 5-8. However, as this Court has determined that Plaintiff has statutory standing to pursue his fraudulent conveyance claims under the RIUVTA—the statute which Plaintiff raised in his Amended Complaint—this Court finds that it need not address the applicability of RICRA.

In summation, based on precedent set forth by both the Bankruptcy Code and federal law, it is not clear "beyond a reasonable doubt" that Plaintiff "would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim" and, therefore, Defendants' Motions to Dismiss Counts 20, 21, and 22 of Plaintiff's Amended Complaint is **DENIED**.

B

Motion to Dismiss Under Rule 12(b)(1)

1

Timely Effectuation of Service of the Amended Complaint under Rule 4(l) of the Superior Court Rules of Civil Procedure

The Studley Defendants[8] contend that this Court does not have jurisdiction to adjudicate the matter because Plaintiff did not properly effectuate service of his Amended Complaint upon Defendants. *See* Studley Defs.' Mem. at 5, 14-16. While the Studley Defendants concede that this Court did grant an extension of time to effectuate service through December 14, 2022, Defendants argue that the Court Order extending the time to serve was only applicable to codefendants, Mr. Dickenson and Ms. Faria. *Id*.; *see also* Westwood Defs.' Mem. at 2-3. Plaintiff, on the other hand, submits that he did properly serve Defendants pursuant to the Court Orders, which were granted based on a mutual agreement to toll the timing of service for *all* Defendants in lieu of settlement negotiations. *See* Pl.'s Opp'n to Studley Mot. at 8; *see also* Pl.'s Opp'n to Westwood Mot. at 8.

Rule 4(l) provides that a complaint must be served upon a defendant within 120 days after the commencement of an action unless the claimant/plaintiff establishes good cause for the failure

[8] While the Westwood Defendants did not explicitly raise Rule 12(b)(1) in their Motion to Dismiss, the Westwood Defendants do incorporate Section IV, B of the Studley Defendants' Motion to Dismiss which addresses Plaintiff's failure to effectuate service. *See* Westwood Defs.' Mem. at 2.

to effectuate service and thereby obtains an extension of time from the Court. *See* Super. R. Civ. P. 4(l). The Studley Defendants correctly assert that Plaintiff, in both his August 11, 2022 and November 4, 2022 Motions for Enlargement of Time, only addressed his inability to locate Mr. Dickerson and Ms. Faria. *See* August 11, 2022 Mot. to Extend Time; *see also* November 4, 2022 Mot. to Extend Time. However, neither of the corresponding Court Orders specify that the time for service is extended for only Mr. Dickerson and Ms. Faria; rather, the Orders simply state "the Defendants." *See* Order, Sept. 29, 2022 (Nugent, J.); *see also* Order, Nov. 17, 2022 (Van Couyghen, J.).

Thus, since the Defendants were party to this suit at the time in which each Court Order granting an extension of time was issued, this Court finds that Plaintiff had until December 14, 2022 to effectuate service of his Amended Complaint upon *all* Defendants. Accordingly, it is not clear "beyond a reasonable doubt" that Plaintiff "would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim," and, therefore, Defendants' Motions to Dismiss Counts 20, 21, and 22 of Plaintiff's Amended Complaint is **DENIED**.

IV

Conclusion

For the foregoing reasons, this Court **DENIES** Defendants' Motions to Dismiss Counts 20, 21, and 22 of Plaintiff's Amended Complaint.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Michael B. Forte, Jr. v. Melissa Faria, et al.**
CASE NO:	**KC-2021-1045**
COURT:	**Kent County Superior Court**
DATE DECISION FILED:	**July 10, 2023**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**

ATTORNEYS:

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For Defendant:	**Michael Resnick, Esq.** **Zachary Berk, Esq.**