

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIYAHU MIRLIS,

Plaintiff,

Case No.3:19-cv-00700 (CSH)

v.

EDGEWOOD ELM HOUSING, INC.,
F.O.H., INC., EDGEWOOD VILLAGE,
INC., EDGEWOOD CORNERS, INC.,
AND YEDIDEI HAGAN, INC.

October 15, 2021

Defendants.

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS'
MOTION TO MODIFY TEMPORARY RESTRAINING ORDER**

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Plaintiff, Eliyahu Mirlis (“Mr. Mirlis”), through his undersigned counsel, respectfully submits his Memorandum in Opposition to Defendants’, Edgewood Elm Housing, Inc. (“Edgewood Elm”), F.O.H., Inc. (“FOH”), Edgewood Village, Inc. (“Edgewood Village”), Edgewood Corners, Inc. (“Edgewood Corners”), and Yedidei Hagan, Inc. (“YH” and collectively, “Defendants”), Motion to Modify Temporary Restraining Order (“Motion to Modify”).

I. PRELIMINARY STATEMENT

On August 25, 2020, this Court entered a Temporary Restraining Order (“TRO”) enjoining Defendants from “(a) transferring or encumbering any of their personal property, other than to pay any of their employees, with the exception of D. Greer, and perform reasonable maintenance on real property they own; or (b) transferring or encumbering any of their real property.” Temporary Restraining Order, docket index (“D.I.”) 43. The TRO was entered to maintain the status quo pending a hearing on Mr. Mirlis’s application for prejudgment remedy (the “PJR”). There has yet to be a hearing on the PJR application and the TRO remains in effect.

Defendants now move to modify the TRO to pay unstated and unknown sums to attorneys who have purportedly provided legal services, not to the Defendants, but to non-parties Daniel Greer (“D. Greer”) and the Yeshiva of New Haven, Inc. (the “Yeshiva”). Defendants seek to reduce their assets and to pay the legal fees and expenses of D. Greer and the Yeshiva both retroactively and prospectively in litigating with the Plaintiff in his collection efforts on his underlying judgment against the Yeshiva and D. Greer, and for D. Greer’s related incarceration and criminal matter, with neither oversight nor any limit on amounts that may be paid for their respective benefit. In short, the Defendants move to resume their funding of the litigation effort to thwart the collection of the underlying judgment.

Defendants also move to modify the TRO to provide the Yeshiva with the funds to purportedly satisfy Mr. Mirlis's judgment lien on the Yeshiva's real property located in New Haven which is the subject of a pending foreclosure action in Connecticut Superior Court, presumed by attempting to post a bond in substitution of the lien. Again, Defendants do not identify the amount of money that the Defendants seek to pay on behalf of the Yeshiva, but assuming the Connecticut Superior Court even allowed the Yeshiva to substitute a bond at this point, a dubious proposition at best, the bond would presumably be no less than \$620,000, a substantial amount of money for non-profits that generate revenue via the rental of affordable housing, and through grants which, as a result of D. Greer's abuse of Mr. Mirlis, have substantially dried up.

Not surprisingly, in addition to failing to inform the Court of the substantial amounts that Defendants seek to pay for the benefit of D. Greer and the Yeshiva, Defendants also fail to inform the Court of their respective cash position, how the payment of the obligations they seek to pay will impact that cash position and ability to maintain the real properties they own in New Haven, and how many properties they intend to sell to raise the necessary additional cash to pay the obligations. Of course, if Defendants have to sell properties now to pay these obligations they will also have to sell properties in the future to be able to pay D. Greer's and the Yeshiva's prospective attorneys' fees and expenses, or use their limited revenue from rental income to pay those fees and expenses and thus have to forgo maintenance of their respective rental properties, thereby allowing the properties to fall into further disrepair.

Significantly for purposes of this motion, Defendants recently lost a source of donated funds that allowed them to make improvements to their rental properties when the Connecticut Department of Revenue Services banned the Defendants from participating in a tax credit program

that had previously brought them millions over 20 years. The ban appears to stem from D. Greer's abuse of Mr. Mirlis. Likewise, Mr. Mirlis also expects, though the lack of discovery to date has prevented him from obtaining evidence to confirm his expectation, that D. Greer's criminal conviction and refusal to voluntarily pay any portion of Mr. Mirlis's \$22 million judgment has resulted in a substantial decline in private donations to the Defendants. Unable to participate in the tax credit program, and with likely declining private donations, the Defendants will need to rely on their rental income to pay their expenses and maintain their properties. Obviously, using their rental income for the benefit of D. Greer and the Yeshiva will cause maintenance to be neglected or deferred, reducing the potential value of the assets that could be available to Mr. Mirlis to recover, thereby materially prejudicing his chances at any meaningful recovery on the judgment.

D. Greer has shown again and again that he is determined to prevent Mr. Mirlis from collecting any material part of the more than \$22 million judgment that remains outstanding. Through the Motion to Modify D. Greer seeks to use his admitted dominance and control over the Defendants to once again harm Mr. Mirlis by using the Defendants' available cash, and apparently cash to be generated by the sale of Defendants' real properties, for his own benefit, both now and going forward, by making what amount to constructive fraudulent transfers. Moreover, by allowing the Defendants to bankroll the substantial, on-going, multi-front, litigation against the collection of the underlying judgment, D. Greer will siphon assets that are a primary source of recovery in the instant action to use to thwart Plaintiff's collection of the underlying district court judgment. Indeed, it underscores that D. Greer, a Yale educated lawyer and incarcerated felon, will pay all of his various lawyers in their individual and representative capacities and shield the Yeshiva property from collection, but will continue to flaunt the import, effect and meaning of the underlying district court judgment. D. Greer knows that using all of the Defendants' available cash

will cause their real properties to fall into disrepair, and lose value, but that is apparently what he wants and is exactly what the TRO is intended to prevent. The Motion to Modify should be denied.

II. ARGUMENT

a. The Defendants are Judicially Estopped from Indemnifying D. Greer and the Yeshiva

Defendants argue that Edgewood Elm is required to pay D. Greer's legal fees and go so far as to say that "there can be no dispute that the criminal and civil matters relating to Greer's alleged sexual abuse of Plaintiff - in which Greer incurred attorneys' fees and costs – "arose out of" or were/are 'related to' his activities as an officer and employee of Edgewood Elm Housing." Motion to Modify, at 8. Regardless of what the Plaintiff's view is or may be on this issue, the Court need look no further and focus on the Defendants' evolving but inconsistent position to understand the Defendants' cavalier but meritless contention that there is no dispute. Indeed, Defendants themselves have previously disputed in this very case that D. Greer's sexual abuse of Mr. Mirlis was within the scope of his activities as a director, officer or employee of Edgewood Elm:

. . . the non-profit Defendants also had nothing to do with, nor any knowledge of Greer's alleged sexual abuse of Plaintiff, an alleged minor at the time. Greer's alleged abuse was clearly of his own doing and obviously beyond the scope of his authority as a director of Edgewood Elm. Accordingly, as a matter of law the Defendants would not be charged with knowledge of such acts nor liability under the doctrine of respondeat superior.

Defendants' Memorandum of Law in Support of Motion for Summary Judgment ("Summary Judgement Memo"), at 24. *See also, Id.*, at 2 ("[Greer] allegedly commit[ed] a criminal act outside the scope of his employment by sexually abusing [Mr. Mirlis].").

Defendants cannot change their position as to whether D. Greer was acting within the scope of his authority when he sexually abused Mr. Mirlis to suit their argument *de jour*. Indeed, it is well settled that a "party's assertion of fact in a pleading is a judicial admission by which it

normally is bound throughout the course of the proceeding.” *Belefonte Re Ins. Co. v. Argonaut Ins Co.*, 757 F.2d 523, 528-29 (2nd Cir. 1985). *See also Setevage v. Dep’t of Homeland Security*, 539 Fed. Appx. 11, 13 (2nd Cir. 2013); *Censor v. ASC Techs. Of Conn., LLC*, 900 F.Supp.2d 181, 206 (D.Conn. 2012); *Pulaski v. Stratford Bd. Of Educ.*, 2006 LEXIS 56735, *18 (D.Conn. 2006). “A court can appropriately treat statements in briefs as binding judicial admissions of fact.” *Purgess v. Sharrock*, 33 F.3d 134, 144 (2nd Cir. 1994) (“Counsel’s statement of fact constituted an admission of a party. It was made in a legal brief filed with the court subject to the penalty of sanctions. There can be little dispute, therefore, that defendants’ counsel was acting in an authorized capacity when making the assertion.”). *See also Censor*, 900 F.Supp.2d at 206; *Pulaski*, 2006 LEXIS 56735, *18. Thus, Defendants are bound by the statements in the Summary Judgment Memo that D. Greer’s criminal acts were outside the scope of his authority as a director, officer or employee of Edgewood Elm, and judicially estopped from taking the exact opposite position as they seek to do in the Motion to Modify. Since D. Greer’s attorneys’ fees and expenses admittedly did not arise out of or relate to activities performed for Edgewood Elm, D. Greer is not entitled to indemnity from Edgewood Elm. Thus, the branch of the Motion to Modify seeking to Pay D. Greer’s attorneys’ fees and expenses based on an alleged indemnity obligation should be denied.

b. An Independent Entity Would Refuse D. Greer’s Request for Indemnification

The law does not require a corporation to indemnify its officers and directors for acts that are undertaken for their personal benefit. *See Bensen v. American Ultramar*, 1996 U.S. Dist. LEXIS 10930, *8-*9 (S.D.N.Y., Aug. 2, 1996) (corporate officer not entitled to indemnity under New York corporate indemnity statute, NYBCL §722(c), which is substantially similar to Connecticut’s corporate indemnity statute, Conn. Gen. Stat. § 33-771(a), because the actions for which he was sued were undertaken not for the corporation’s benefit but for his own personal

benefit). Surely, D. Greer's abuse of Mr. Mirlis was undertaken for D. Greer's own benefit, but Edgewood Elm does not challenge D. Greer's non-existent right to indemnity. Instead, it embraces it and advocates for it because D. Greer is Edgewood Elm.¹ Indeed, Defendants have not proffered any board resolution from Edgewood Elm authorizing the payment of D. Greer's legal fees, and offer no evidence that the board of Edgewood Elm ever even considered whether it was obligated to, or even should, indemnify D. Greer. In fact, there is no evidence that Edgewood Elm even has a functioning board of directors. Likewise, there is no argument that any of the other defendants owe D. Greer an indemnity obligation and no evidence that the boards of directors of any of the other defendants, assuming they have functioning boards or any boards, authorized their funds to be used for such a purpose. Of course, board approval would be irrelevant anyways because what D. Greer says is what is done. Indeed, if this Court modifies the TRO to permit Edgewood Elm to pay D. Greer's attorneys' fees and expenses, it will be sanctioning D. Greer's use of the Defendants' liquid assets to his benefit and to Mr. Mirlis's detriment.²

¹ Defendants inform this Court at note 3 of the Motion to Modify that included within the attorneys' fees that D. Greer seeks to pay are fees related to a second motion to set aside (the "Second Motion to Set Aside") the judgment entered in *Eliyahu Mirlis v. Daniel Greer et al.*, 3:16-cv-00678 (D.CT) (the "Underlying Action"). The Second Motion to Set Aside was filed more than a year after the Second Circuit affirmed Mr. Mirlis's judgment and more than four years after it entered in the Underlying Action. The Second Motion to Set Aside is completely frivolous, and does not actually seek to set aside the judgement, but instead seeks an evidentiary hearing to test some implausible theory based on facts that were known to counsel and the District Court at the time of the trial in the Underlying Action. Indeed, the Second Motion to Set Aside is a classic fishing expedition through which Defendant and D. Greer hope to find some basis to set aside the judgment, they will not. Moreover, if D. Greer and his counsel believed that the Second Motion Set Aside had any merit whatsoever, and was not just another monumental waste of time designed to punish Mr. Mirlis, he would have moved for a stay of the enforcement of the judgment in the Underlying Action with the Second Motion to Set Aside. The fact that he did not speaks volumes about the merits of that motion.

² Despite a lack of discovery, Mr. Mirlis has every reason to believe, and does believe, that Edgewood Elm lacks the resources to pay the obligations Defendants seek to pay and therefore all of the Defendants would contribute all of their liquid assets, *i.e.*, cash, to pay the obligations.

c. Defendants Have No Legal Obligation to Pay the Yeshiva's Attorneys' Fees or Provide it with Funds to Satisfy Mr. Mirlis's Judgment Lien and there is no Legitimate Basis for the Defendants to use Their Limited Assets for Either Purpose

There is no basis for Defendants to pay the Yeshiva's unknown attorneys' fees and expenses it incurred defending D. Greer's abusive, pedophilic conduct, and resisting Mr. Mirlis's efforts to recover the judgment intended to compensate him for years of abuse at the hands of D. Greer. Likewise, there is no basis for the Defendants to provide the Yeshiva with an unstated amount of money to substitute a bond for Mr. Mirlis's existing judgment lien on the Yeshiva's New Haven property.³ Indeed, Defendants do not argue that Edgewood Elm is legally obligated to indemnify the Yeshiva. Instead, they argue that the Defendants were established to support the Yeshiva. *See* Motion, at 2. That is not true. The only Defendant that was "established to support" the Yeshiva was YH. *See* April 8, 2021, Declaration of Rabbi Daniel Greer ("D. Greer Dec.'1"), D.I., 53, at ¶10.⁴ The other Defendants were established to own and maintain rental housing in the Edgewood Park neighborhood of New Haven and would donate "some of the profits to financially support the Yeshiva." *Id.*, at ¶21. Moreover, in a complaint filed to commence an unrelated lawsuit in April 2021, Edgewood Elm, Edgewood Village, and YH, as plaintiffs, state in their complaint that the "primary mission of the Non-Profits is to acquire, restore and maintain housing for low and moderate-income tenants and families and to support and maintain the character of New

³ Throughout the Motion to Modify Defendants state that they seek to provide the Yeshiva with the funds to satisfy Mr. Mirlis's judgment lien. Mr. Mirlis assumes that what the Defendants are requesting is to provide funds to the Yeshiva to post a bond in the amount of the property's value, whatever that may be, to substitute for the judgment lien. If Defendants truly desire to satisfy the more than \$22 million judgment lien, Mr. Mirlis will consent.

⁴ Defendants celebrate this Court's statement in its September 9, 2021, Memorandum and Order on Defendants' Motion for Summary Judgment [Doc. 51], and Rulings on Plaintiff's Motion to Deny Summary Judgment Pending Discovery [Doc. 56] and Defendants' Motion to Stay Discovery [Doc. 61] (the "56(d) Ruling"), D.I. 68 at 9, that the Court accepts as accurate Greer's "account of how and when the Defendants came into being." Not surprisingly, Defendants ignore the Court's preface to that statement that "Greer's credibility is obviously suspect." *Id.*

Haven's vibrant and diverse neighborhoods.” See *Edgewood Elm Housing, Inc, et al v. Selective Ins. Co. of the Southeast*, Case No. 21-cv-00457 (VAB) (the “CNATCP Action”), complaint, at ¶5. That is a far different purpose than simply providing financial support to the Yeshiva.

Even if the Defendants were established to support the Yeshiva, they could not have been established to support the Yeshiva in every endeavor, including avoiding judgments obtained by victims of sexual abuse during their time attending the Yeshiva. Indeed, there is obviously a huge difference between the Defendants donating some “profits” to support the Yeshiva and spending all of their respective liquid assets, which they would clearly be doing as they state that it may be necessary to sell real property to pay the obligations they seek to pay, in order to pay, *inter alai*, the Yeshiva’s attorneys’ fees and expenses, both historically and going forward, and an undisclosed amount to substitute a bond for the judgment lien.⁵

As with the payment of D. Greer’s attorneys’ fees and expenses, there is no evidence that the board of directors of any of the Defendants, assuming again that any of them have a functioning board, even considered whether the Defendants should pay i) the Yeshiva’s attorneys’ fees and expenses or ii) provide funds to substitute a bond, rather than using their likely limited funds to maintain the low income rental properties they own, which for all of the entities, save for YH, was the primary purpose for their formation. Instead, it is D. Greer who has unilaterally determined that the Defendants, his dominated and controlled entities, would pay the attorneys’ fees and expenses of the Yeshiva and provide it with funds to post a bond, thereby dissipating the liquid assets of the Defendants and further frustrating Mr. Mirlis’s efforts to enforce his judgment.

⁵ See Motion to Modify, at 3, n. 2.

As the Court is aware, Mr. Mirlis has not yet had an opportunity to conduct any discovery in this case. Mr. Mirlis has been able to glean from publicly available tax forms that in 2017 the Defendants that own real property realized the following net revenue:

Edgewood Corners: \$17,317.00;

Edgewood Village: (\$412,820.00);

FOH Inc. (\$324,524.00); and

YH: (\$46,859.00).⁶

Thus, in 2017, the most recent data available to Mr. Mirlis without discovery, the Defendants that own real property realized aggregate net revenue of (\$766,886.00).⁷ The Defendants' revenue includes not only rental income, but also contributions, gifts and grants. One of the largest sources of contributions, or so it seems based on publicly available information, came from the Defendants' participation in Connecticut's Neighborhood Assistance Tax Credit Program ("CNATCP"). According to publicly available information Defendants and the Yeshiva received an aggregate of \$3.9 million over 20-years through participation in CNATCP. See Subsidy OK'd for Sex Predator's Companies, New Haven Independent, June 8, 2021, at pgs. 13-15, a copy of which is attached hereto as Exhibit B.⁸ There is a \$150,000 CNATCP cap per entity annually; with the 5 Defendants and the Yeshiva, D. Greer's entities had at least an opportunity to receive an

⁶ Attached hereto as Exhibit A is a table showing the total revenue, total expenses, and net revenue generated for the year 2017 by Edgewood Elm, Edgewood Corners, Edgewood Village, FOH and YH. The information was obtained from the respective entities' 2017 Form 990 obtained from GuideStar which accumulates and makes available tax filings of not-for-profit entities.

⁷ According to the Forms 990 filed by Edgewood Elm for tax years 2017 and 2018, in 2017 Edgewood Elm, which appears to provide property management services to the Defendants, realized net revenue of (\$59,231.00) and in 2018 realized net revenue of (\$226,574.00).

⁸ Mr. Mirlis's counsel has reviewed CNATCP records for the period 2000 through 2020 and confirmed the aggregate funds received over 20-years was \$3.935 million, when the Yeshiva is included. The Defendants, less the Yeshiva, received an aggregate of \$3,660,263.28 over that same 20-year period.

aggregate of \$900,000 per year under the program. *See* Neighborhood Assistance Tax Credit Program, available at <https://portal.ct.gov/DRS/Credit-Programs/Neighborhood-Assistance/Neighborhood-Assistance-Act-Tax-Credit-Program>, last visited October 9, 2021.

Each of the Defendants and the Yeshiva submitted a CNATCP application for grant year 2021 seeking the maximum \$150,000 grant in each application. The Department of Revenue Services denied the application and Defendants will not receive any CNATCP funds this year. *See* State Bars Subsidies for Greer's Companies, New Haven Independent, September 17, 2021, a copy of which is attached hereto as Exhibit C. Moreover, Edgewood Elm, Edgewood Village, and YH are currently involved in litigation with a CNATCP participant concerning \$150,000 in funds they claim are owed to them under CNATCP from a prior year's grant. *See* CNATCP Action. There is no guarantee that those funds will ever be paid.⁹

D. Greer has no intention of ever paying anything to Mr. Mirlis in satisfaction of the judgment, and modifying the TRO to permit the Defendants to pay his and the Yeshiva's attorneys' fees and expenses and/or provide the Yeshiva with funds to substitute a bond for Mr. Mirlis's judgment lien would only enable and embolden D. Greer.

Defendants argue that even if the Court allows D. Greer to suck out all of their cash, Mr. Mirlis's judgment will still be secured by the value of the Defendants' real property. Defendants do not identify where they will obtain the funds to maintain the properties they claim will serve as on-going security for Mr. Mirlis. Indeed, Defendants will expend all of their cash in support of D.

⁹ According to the complaint filed in the CNATCP Action, "The [CNACTP] is designed to assist municipal and tax-exempt organizations with fund-raising. It does so by providing corporation business tax credits to municipal or tax-exempt organizations which may be used by businesses who agree to make, and do make, cash contributions to those organizations." The CNATCP Action alleges that the defendants agreed to make and were therefore bound to make cash contributions to the plaintiffs, but defendants refused to make the contribution when they learned that D. Greer was imprisoned.

Greer and the Yeshiva, thereby dissipating all liquid assets that could be recovered by Mr. Mirlis, and then will have no cash to maintain the real properties they own, or the Yeshiva's property which it will need to maintain presumedly at the expense of the Defendants, and the properties will fall into further disrepair thereby further dissipating the assets available to satisfy Mr. Mirlis's judgment. D. Greer, and by extension the Yeshiva and the Defendants, do not care and seem willing to allow the Defendants assets to continue to waste rather than allowing Mr. Mirlis to recover. *See Decline at Greer's Edgewood Village*, New Haven Independent, June 29, 2018, a copy of which is attached hereto as Exhibit D.

D. Greer's unilateral control over the Defendants, and resulting harm to Mr. Mirlis, is also evident in the way that the Defendants propose to pay D. Greer's and the Yeshiva's attorneys' fees and expenses, and the funds to post the Yeshiva's bond. Indeed, the suggestion that the payments would be made directly by the Defendants rather than first to D. Greer and the Yeshiva so they could pay their own expenses seems innocuous, but in reality, D. Greer is asking this Court to allow him and the Yeshiva to have their cake and eat it to.

D. Greer knows that any funds in his personal bank account or the Yeshiva's account could be executed against by Mr. Mirlis to satisfy the judgment. Indeed, after the judgment entered and prior to going to prison D. Greer structured his financial life so that he would not have funds in his personal bank account. Rather than deposit his paycheck from Edgewood Elm into his checking account and write checks against the deposited funds to pay his expenses, as he did prior to the entry of the judgment, D. Greer would cash his paycheck and then immediately obtain bank checks or money orders to pay his expenses. (July 27, 2020, continued deposition of D. Greer, cited excerpts of which are attached hereto as Exhibit E, at 282(7)-(20)). D. Greer engaged in this time-

consuming process for the express purpose of ensuring that Mr. Mirlis could not execute against his bank account:

7 Okay. So you go -- just so I understand, you
8 take your paycheck -- we're talking about the one a month
9 ago. You take it to New Haven Bank. You get cash for it?
10 You actual get cash; correct?

11 A. Correct.

12 Q. And then how do you then use that cash to pay
13 bills that you're not paying using cash?

14 A. A personal money order or a bank check.

15 Q. Okay. So you sometimes take the money and you
16 go to the post office and get a money order; is that right?

17 A. Correct.

18 Q. And then other times you take the cash and you
19 have it turned into a bank check; is that right?

20 A. Correct.

21 Q. Do you ever deposit any of that cash in an
22 account belonging to any other person or entity?

23 A. No.

24 Q. And none of the cash that you've ever -- and
25 none of the cash from your most recent paycheck, let's

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1 stick with that one, were deposited into your wife's
2 account?

3 A. Correct.

4 Q. And none of it was deposited into any bank
5 account that the Yeshiva has?

6 A. Correct.

7 Q. So my question is why do you cash the check
8 rather than deposit it into your bank account?

9 A. Because I want to ensure that the fee gets paid.

10 Q. In other words, you don't want an execution from
11 my client to remove money from your bank account?

12 MR. SKLARZ: Objection.

13 A. Yes.

(*Id.*, at 282(7)-283(13)). Defendants, or more accurately D. Greer, now invite this Court to permit Defendants to pay the amounts they seek to pay in the same manipulative, judgment avoiding way that D. Greer paid his personal expenses. The Court should refuse that invitation and deny the Motion to Modify.

d. Defendants ask this Court to Approve Constructive Fraudulent Transfers

Defendants attitude throughout this litigation has been that they can do whatever they want with their funds, including using them for the benefit of D. Greer and the Yeshiva. Defendants fail to recognize, or don't care, that every transfer made for the benefit D. Greer and the Yeshiva at least since the commencement of this action constitutes a constructive fraudulent transfer under the Connecticut Uniform Fraudulent Transfer Act ("CUFTA"). Defendants now ask this Court to effectively bless what will undoubtedly be hundreds of thousands of dollars in constructive fraudulent transfers by granting their motion to modify the TRO; the Court should refuse to do so.

Section 52-552f(a) of CUFTA provides that "[a] transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation." CUFTA defines the term "Debtor" as "[a] person who is liable on a claim. Conn. Gen. Stat. § 52-552b(6). A "claim" is defined as "a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured," *id.*, at (3), and "creditor" is defined as "a person having a claim." *Id.*, at (4). In this case, Mr. Mirlis has a \$22 million claim against the Defendants, he is a creditor and they are debtors. Mr. Mirlis's claim clearly arose before the transfers were made because they have yet to be made.

Conn. Gen. Stat. § 52-552d(a) provides that "[v]alue is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, . . .". Nothing is being transferred to the Defendants in exchange for the transfers they seek to make, and there is no claim that Defendants owe an antecedent debt to D. Greer or the

Yeshiva—if they did Mr. Mirlis would have garnished that debt.¹⁰ Thus, no value will be given for the transfers Defendants seek to make.

Lastly, Conn. Gen. Stat. § 52-552c(a) provides that “[a] debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.” “Debt means liability on a Claim.” Conn. Gen. Stat. § 52-552b(5). The CUFTA defined term Claim includes unliquidated and contingent rights to payment. *Id.*, at 552b(3). Thus, Mr. Mirlis’s \$22 million judgment must be included when assessing the Defendants’ solvency. *Coan v. Xin Chen (In re LXEng, LLC)*, 607 B.R. 67, 96-97 (Bankr. D. Conn. 2019) (“Since claims may be disputed or contingent they must be included when calculating total indebtedness for purposes of determining insolvency.”).¹¹

Defendants represent to the Court that the value of the combined real property they own is \$10 million “based on the City of New Haven tax assessor’s records”. Motion to Modify, at 6. Mr. Mirlis’s judgment is now more than \$22 million. Thus, unless Defendants have other assets with substantial value, which does not appear to be the case, when Mr. Mirlis’s judgment that he seeks to enforce against the Defendants is taken into account, as it must be, the Defendants are insolvent. Thus, all of the elements of a fraudulent transfer claim will exist if the Court modifies the TRO to

¹⁰ Should the Court find that: i) Edgewood Elm has an obligation to indemnify D. Greer and pay his attorneys’ fees and expenses; ii) the other defendants may properly provide funds to Edgewood Elm to permit it to meet its indemnity obligation; and iii) the TRO should be modified to permit the payment of D. Greer’s attorney’s fees and expenses, Mr. Mirlis will garnish the obligation from Edgewood Elm to D. Greer and demand that the funds be paid to him instead of D. Greer. Thus, to the extent the Court makes the above findings and authorizes the payment of D. Greer’s attorneys’ fees and expenses pursuant to the indemnity provision in Edgewood Elm’s bylaws, Mr. Mirlis requests that the Court direct that payments cannot be made for forty-five (45) days from the entry of the order authorizing the payments to provide Mr. Mirlis with sufficient time to obtain and serve a garnishment order on Edgewood Elm.

¹¹ The quoted language from *Xin Chen* uses the Bankruptcy Code’s definitions of Debt and Claim. However, *Xin Chen* involved claims under CUFTA via 11 USC § 544 which “provides relief under applicable state [fraudulent transfer] law.” *Xin Chen*, at 88. Moreover, the Court notes that there are only minor differences between CUFTA and the Bankruptcy Code’s fraudulent transfer provisions and none of those noted differences are definitional. *Id.*

authorize the payments the Defendants seek to make, and the Court should thus refuse to modify the TRO to countenance such transfers. Indeed, permitting the transfers will likely lead to only more litigation as Mr. Mirlis pursues claims against the transferees, *i.e.*, a number of law firms, to recover the transfers.

III. CONCLUSION

Defendants, or more accurately D. Greer, effectively asks this Court to permit D. Greer to loot the Defendants to pay what is likely at least \$1 million for his and the Yeshiva's benefit. Incredibly, these payments will be made to continue to fight Mr. Mirlis's efforts to enforce the final judgment entered in his favor after a jury trial more than four years ago. In addition, the payments will drain the Defendants of available cash and cause the rental properties owned by the Defendants to fall into further disrepair, depleting the available assets available for recovery by Mr. Mirlis. This Court should refuse to contenance D. Greer's request to loot the Defendant entities and should deny the Motion to Modify.

THE PLAINTIFF,
ELIYAHU MIRLIS

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIYAHU MIRLIS,

Plaintiff,

Case No.3:19-cv-00700 (CSH)

v.

EDGEWOOD ELM HOUSING, INC.,
F.O.H., INC., EDGEWOOD VILLAGE,
INC., EDGEWOOD CORNERS, INC.,
AND YEDIDEI HAGAN, INC.

October 15, 2021

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2021, a copy of foregoing Plaintiff's Memorandum in Opposition to Defendants' Motion to Modify Temporary Restraining Order 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 system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

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