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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re:

Project Playlist, Inc., a Delaware Corporation and Playlist, Inc.,

Debtors.

Official Committee of Unsecured Creditors of Project Playlist, Inc., and Playlist, Inc.,

Plaintiffs,

v.

Quinn Emanuel Urquhart & Sullivan, LLP

Defendant.

CHAPTER 11

Case No.: 2:10-bk-42927-TD
Adv No: 2:13-ap-01665-TD

MEMORANDUM DECISION DENYING DEFENDANT'S MOTION TO DISMISS

Date: October 24, 2013
Time: 10:00 AM
Courtroom: 1345

On July 3, 2013, Plaintiff, the Official Committee of Unsecured Creditors of Project Playlist, Inc., and Playlist, Inc. (Committee), filed a *Complaint for Avoidance and Recovery of Preferential and Fraudulent Transfer* (Original Complaint).

In the Original Complaint, the Committee alleges eight separate causes of action against Defendant, Quinn Emanuel Urquhart & Sullivan, LLP (Quinn). The Committee cites to each federal or state statute under which the Committee seeks relief. The prayer for relief requests relief under each cause of action alleged in the Original Complaint.

In the Original Complaint, the Committee also alleges that,

> Defendant received a transfer of the Debtors' property (the "Transfer") before the Debtors filed for bankruptcy that are [*sic*] avoidable as both/either preferential and/or fraudulent under the Bankruptcy Code and under the California Civil Code as set forth below. The exact amount and date of the Transfer is detailed in the "Schedule of Transfer," attached herein as Exhibit "A."

Original Complaint at 2:16-20. Exhibit A states as follows:

Date	Number	Name	Amount
08/04/10		Quinn Emanuel Urquhart & Sullivan, LLP	$50,000.00

Original Complaint, Ex. A.

On August 8, 2013, Quinn filed *Quinn Emanuel's Notice of Motion and Motion to Dismiss* (the Motion). In its Motion, Quinn seeks an order dismissing the Original Complaint under Federal Rule of Civil Procedure (Civil Rule) 12(b)(6).[1]

On August 29, 2013, the Committee filed a *First Amended Complaint for Avoidance and Recovery of Preferential and Fraudulent Transfer* (the "Amended Complaint"). The Amended Complaint seeks relief under the same causes of action alleged in the Original Complaint. The factual allegations of the Amended Complaint relate to the same transfer described in the Original Complaint.

The primary difference between the Original Complaint and the Amended Complaint is the addition of supplemental allegations regarding communications made

[1] Civil Rule 12(b)(6) is made applicable to adversary proceedings in bankruptcy by Federal Rule of Bankruptcy Procedure (Rule) 7012.

by Quinn. These alleged communications relate to the terms of Quinn's retention and Quinn's awareness of Debtors' financial status.

Quinn contended, in supplemental briefing on the Motion, that the Original Complaint did not meet the pleading requirements set forth in Civil Rule 8 and 9(b).[2] As a result, Quinn alleged that the Original Complaint was insufficiently pled to constitute a complaint; therefore, the Amended Complaint, whether properly pled or not, did not relate back to the Original Complaint for statute of limitations purposes.[3]

Quinn did not file a motion to dismiss the Amended Complaint nor did it file an answer to the Amended Complaint.

A document must meet the minimum pleading requirements provided under Civil Rule 8 to constitute a complaint that may be amended. Rule 7008; Markus v. Gschwend (In re Markus), 313 F.3d 1146, 1149 (9th Cir. 2002).

"In the bankruptcy context, we construe a deficient pleading liberally, if the pleading substantially complies with the requirements of a complaint by giving the [defendant] 'fair notice of what the plaintiff's claim is and the grounds upon which it rests.'" Dominguez v. Miller (In re Dominguez), 51 F.3d 1502, 1508 (9th Cir. 1995) (quoting Classic Auto Refinishing, Inc. v. Marino (In re Marino), 37 F.3d 1354, 1357 (9th Cir. 1994)). The dispositive question is whether the document puts the defendant on notice of the claim and the factual basis upon which the claim rests. See Markus, 313 F.3d at 1150.

[2] Civil Rule 8 and 9 are made applicable to adversary proceedings in bankruptcy by Rule 7008 and 7009, respectively.

[3] The Original Complaint was assertedly time-barred; however, at the first hearing on the Motion, and in later briefing, the Committee and Quinn conceded that the statute of limitations was tolled to July 3, 2013 by prior written agreement of the parties. A finding that the Amended Complaint does not relate back to the Original Complaint would effectively require dismissal of the Amended Complaint on statute of limitations grounds.

In Markus, the Ninth Circuit Court of Appeals found that a Motion Objecting to Discharge based on fraud was not a complaint. The Court of Appeals found that the motion (1) did not identify any code section or criteria for nondischargeability, (2) the motion aimed to convert the debtor's case rather than find a debt nondischargeable, (3) the motion did not set forth any facts regarding the nature of the conduct that caused the debt, and (4) the motion did not assert a claim for relief based on nondischargeability. Id.

Here, the Original Complaint sufficiently meets the requirements of Civil Rule 8 to constitute a complaint. The Original Complaint references each statute under which the Committee seeks a recovery. The Original Complaint includes a prayer for relief, which seeks relief under each cause of action pled by the Committee. Most significantly, the Original Complaint includes factual allegations that gave Quinn fair notice that the Committee's fraudulent transfer and preferential transfer claims arose from a $50,000.00 transfer from Debtor to Quinn on August 4, 2010.

The Amended Complaint was filed as a matter of right. As stated in Civil Rule 15(a)(1)(B), "A party may amend its pleading once as a matter of course within . . . (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b) . . . whichever is earlier." Civil Rule 15(a)(1)(B) (applied to adversary proceedings in bankruptcy by Rule 7015). The Committee was not required to seek leave of the court to file its Amended Complaint 21 days after Quinn filed the Motion.

Civil Rule 15(c)(1)(B) states: "An amendment to a pleading relates back to the date of the original pleading when . . . (B) the amendment asserts a claim or defense that arose out of the conduct, transaction or occurrence set out — or attempted to be set out — in the original pleading . . . ." Civil Rule 15(c)(1)(B); see also Eichman v. Fotomat Corp., 880 F.2d 149, 159 (9th Cir. 1989) (finding that a breach of contract claim related back to antitrust allegations in original complaint because each cause of action arose from the same transaction or occurrence).

In the context of preferential transfers, the proper inquiry is "whether the preferential transfer claim in the amended complaint arose out of the conduct, transaction, or occurrence set forth . . . in the original pleading." Mann v. GTCR Golder Rauner, L.L.C., 351 B.R. 714, 720 (D.Ariz. 2006). Amendment is appropriate where the amended complaint merely " . . . spells out details of the transaction originally alleged . . . ." Golden v. The Guardian (In re Lenox Healthcare, Inc.), 343 B.R. 96, 105 (Bankr.D.Del. 2006).

Here, the Amended Complaint merely supplements the allegations concerning the transfer described in the Original Complaint. The Amended Complaint does not allege new claims for relief and does not add new parties; therefore, the Amended Complaint relates back to the Original Complaint.

In light of the foregoing, the Motion is denied.

IT IS SO ORDERED.

Date: November 7, 2013

Thomas B. Donovan
Thomas B. Donovan
United States Bankruptcy Judge

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*): MEMORANDUM DECISION DENYING DEFENDANT'S MOTION TO DISMISS was entered on the date indicated as Entered on the first page of this judgment or order and will be served in the manner stated below:

1. <u>SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)</u> B Pursuant to controlling General Orders and LBRs, the foregoing document was served on the following persons by the court via NEF and hyperlink to the judgment or order. As of (*date*) October 28, 2013, the following persons are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email addresses stated below.

Caroline Djang cdjang@rutan.com
United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov
Eric D Winston ericwinston@quinnemanuel.com

☐ Service information continued on attached page

2. <u>SERVED BY THE COURT VIA UNITED STATES MAIL:</u> A copy of this notice and a true copy of this judgment or order was sent by United States mail, first class, postage prepaid, to the following persons and/or entities at the addresses indicated below:

Project Playlist, Inc., a Delaware Corporation
PO Box 191982
San Francisco, CA 94119-1982

Playlist, Inc., Attorney For Playlist, Inc.
PO Box 191982
San Francisco, CA 94119-1982

☐ Service information continued on attached page

3. <u>TO BE SERVED BY THE LODGING PARTY</u>: Within 72 hours after receipt of a copy of this judgment or order which bears an Entered stamp, the party lodging the judgment or order will serve a complete copy bearing an Entered stamp by United States mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following persons and/or entities at the addresses, facsimile transmission numbers, and/or email addresses stated below:

☐ Service information continued on attached page