

CIVIL ACTION COVER SHEET

04-1428

Superior Court Department
County: Middlesex



PLAINTIFF(S)
Vera Lee

DEFENDANT(S)
Jane Daniel, Robert Paul Nickse, Mt. Ivy Press, L.P. and Palmer & Dodge, LLP

ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE
Frank J. Frisoli, Esq.
Frisoli and Frisoli
797 Cambridge Street, Cambridge, MA 02141
Board of Bar Overseers Number: 180440

ATTORNEY (if known)
1

Origin code and track designation

- Place an x in one box only:
- 1. F01 Original Complaint
 - 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F)
 - 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)
 - 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X)
 - 5. F05 Reactivated after rescript; relief from judgment
 - 6. E10 Sum

TYPE OF ACTION AND TRACK DESIGNATION (See

CODE NO.	TYPE OF ACTION (specify)	TRACK	IS THIS A JUDGMENT?
<u>D02</u>	<u>Reach and Apply Fraudulent Transfer</u>	<u>()</u>	<u>(x) Yes</u>

PETER'S EXHIBIT PACKAGE

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

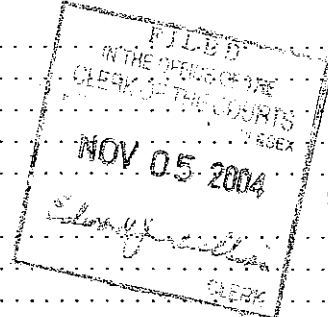
TORT CLAIMS

(Attach additional sheets as necessary)

- A. Documented medical expenses to date:
 - 1. Total hospital expenses \$
 - 2. Total Doctor expenses \$
 - 3. Total chiropractic expenses \$
 - 4. Total physical therapy expenses \$
 - 5. Total other expenses (describe) \$
- B. Documented lost wages and compensation to date \$
- C. Documented property damages to date \$
- D. Reasonably anticipated future medical and hospital expenses \$
- E. Reasonably anticipated lost wages \$
- F. Other documented items of damages (describe) \$
- G. Brief description of plaintiff's injury, including nature and extent of injury (describe)

Plaintiff is (or soon will be) judgment creditor of defendants in the amount of \$9,900,000.00. Plaintiff seeks recovery of judgment through Reach and Apply action and through voiding fraudulent conveyance.

\$9,900,000.00
TOTAL \$9,900,000.00



CONTRACT CLAIMS

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL \$

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record _____ DATE: 11/6/04

COMMONWEALTH OF MASSACHUSETTS
The Trial Court

Middlesex, ss

Superior Court
Docket No.

 COPY

VERA LEE,
Plaintiff

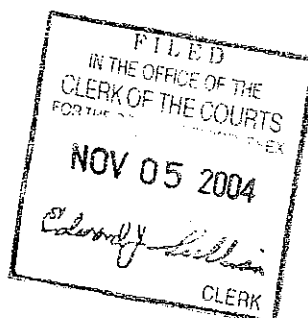
v.

JANE DANIEL and
ROBERT PAUL NICKSE,
Defendants

v.

JANE DANIEL,
ROBERT PAUL NICKSE,
MT. IVY PRESS, L.P. and
PALMER & DODGE, LLP,
Reach and Apply
Defendants

04-4428



**COMPLAINT
AND JURY DEMAND**

1. Plaintiff Vera Lee (hereinafter "Lee") is an individual residing at 15 Claremont Street, Newton, Middlesex County, Massachusetts.
2. Defendant Jane Daniel (hereinafter "Daniel") is an individual residing at Four Hovey Street Gloucester, Essex County, Massachusetts.
3. Defendant Robert Paul Nickse (hereinafter "Nickse") is an individual residing at Four Hovey Street Gloucester, Essex County, Massachusetts.
4. Defendant Mt. Ivy Press, L.P., (hereinafter "Mt. Ivy") is a limited partnership, with an office located at Four Hovey Street, Gloucester, Essex County,

Massachusetts, and purportedly having a principal office at 53 Split Rail Lane, Blue Bell, Pennsylvania.

5. Reach and apply defendant Palmer & Dodge, LLP is a Massachusetts limited liability partnership with a principal place of business at 111 Huntington Avenue, Boston, Suffolk County, Massachusetts.
6. On information and belief, Mt. Ivy Press, L.P. is insolvent and a non functional entity.
7. On information and belief, Defendant Daniel is married to Defendant Nickse.
8. On or about May 20, 1998, plaintiff commenced an action (hereinafter "the prior litigation") against defendant Daniel and Mt. Ivy in Middlesex Superior Court to recover damages against Daniel and Mt. Ivy (a limited partnership controlled by Jane Daniel) for damages related to, *inter alia*, breach of contract.
9. In the prior litigation, plaintiff alleged and subsequently proved at trial, *inter alia*, that Jane Daniel, acting as Publisher of Mt. Ivy Press, L.P. had retained plaintiff to co-author a memoir of holocaust survivor Misha Defonseca, that plaintiff fully performed pursuant to the contract of the parties, and that Mt. Ivy Press, L.P. and/or Jane Daniel failed, refused, and neglected to compensate plaintiff in accordance with the contract.
10. In the prior litigation, plaintiff further alleged, and subsequently proved at trial, that the actions of the defendants were fraudulent and unfair and deceptive pursuant to G.L.c. 93A.
11. On or about April 17, 2002, plaintiff secured a judgment against Jane Daniel in the prior litigation in the amount of \$9,900,000. A true and accurate copy of the docket entry noting the judgment is attached hereto as Exhibit A.
12. On or about July 23, 1998, Jane Daniel, individually, acquired real estate located at Four Hovey Street Gloucester, Essex County, Massachusetts (hereinafter "the Hovey House.") A true and accurate copy of the deed transferring the Hovey House to Jane Daniel is attached hereto as Exhibit B.
13. On or about January 27, 1999, while the prior litigation was pending and awaiting trial, defendant Jane Daniel transferred to defendant Robert Paul Nickse an interest in the Hovey House. A true and accurate copy of the deed transferring the Hovey House from Jane Daniel to Jane Daniel and Robert Paul Nickse is attached hereto as Exhibit C.

14. On information and belief the purpose of the transfer by Jane Daniel to defendant Robert Paul Nickse of an interest in the Hovey House was to prevent the plaintiff and other creditors of Jane Daniel from levying on and selling said property in the event plaintiff prevailed in the prior litigation which was awaiting trial.
15. On information and belief the defendants Jane Daniel and Robert Paul Nickse at time of said conveyance knew or should have known that the plaintiff had been defrauded by Jane Daniel, that a number of sham entities had been established by Jane Daniel in an attempt to insulate her from personal liability to plaintiff and others, and that there was a reasonable probability that the plaintiff would establish individual liability of Jane Daniel and recover judgment against her in the then pending prior litigation.
16. On information and belief the defendant Robert Paul Nickse conspired with the defendant Jane Daniel to defraud the plaintiff by accepting the title conveyed and agreeing to hold title for the benefit of Jane Daniel in furtherance of said fraud.
17. On information and belief the defendant Robert Paul Nickse furnished no consideration for the conveyance of the interest in the Hovey House transferred to him, furnished no part of the consideration for its acquisition, is not liable for and has paid no portion of the purchase money mortgage obligation encumbering said property, and has not taken any action consistent with his purported ownership interest in said property.
18. On information and belief the defendant Robert Paul Nickse has no economic interest in the property.
19. On information and belief, the Hovey House is used to run a bed and breakfast business by Jane Daniel.
20. Advertised rates for the Hovey House bed and breakfast (published on the internet) range from \$135.00 to \$275.00 nightly and \$3,500.00 to \$5,800.00 weekly.
21. The consideration recited in the deed from Jane Daniel to Robert Paul Nickse for the Hovey House is one dollar.
22. Defendant Jane Daniel did not receive reasonably equivalent value for the conveyance of an interest in the Hovey House to Robert Paul Nickse.
23. The conveyance from Defendant Daniel to Defendant Nickse was made at time when Defendant Jane Daniel was wholly insolvent and/or unable to pay a judgment to the plaintiff and her obligations to other creditors.

24. As a family member, Robert Paul Nickse is an insider as defined by G.L.c. 109A § 2.
25. The conveyance was made with the actual intent to hinder, delay and/or defraud plaintiff as a creditor of Jane Daniel.
26. On information and belief, Jane Daniel does not have any other accessible asset other than the Hovey House out of which the judgment in favor of the plaintiff can be satisfied.
27. The conveyance to Robert Paul Nickse was but one action in a series of actions by Jane Daniel to defraud plaintiff Vera Lee.
28. The actions of Jane Daniel to defraud the plaintiff were undertaken with the knowledge, approval, cooperation and assistance of the defendant Robert Paul Nickse.
29. The conveyance to Robert Paul Nickse violates the Uniform Fraudulent Transfer Act (G.L.c. 109A § 1 et seq.)
30. At the formation of Mt. Ivy Press, L.P., because she had been the target of lawsuits relative to business ventures in the past, and because she anticipated based on prior business practices that litigation would result from her subsequent unfair, deceptive and fraudulent business practices, defendant Jane Daniel established an elaborate and fraudulent corporate structure for Mt. Ivy Press (purportedly headed by her daughter) intended to personally insulate her and her personal assets from judgments secured by others in subsequent litigation relative to such business practices.
31. At all times material, Jane Daniel held herself out as a limited partner and employee of Mt. Ivy Press, L.P.
32. Nonetheless, Jane Daniel wholly controlled Mt. Ivy Press, L.P. and acted at all times material as the general partner of Mt. Ivy Press, L.P.
33. At trial in the previous litigation, the plaintiff successfully pierced the fraudulent corporate veil of Mt. Ivy Press to hold Jane Daniel personally accountable for the damages to the plaintiff.
34. The defendant Robert Paul Nickse, on information and belief, at divers times assisted the defendant Jane Daniel in defrauding others and concealing Jane Daniel's assets from her creditors and has personally benefited from such action.

35. In addition, during the pendency of the prior litigation, Jane Daniel, *inter alia*, established an off shore entity to conceal and shield from judgment monies properly due the plaintiff.
36. Before and during the pendency of the prior litigation, Jane Daniel was also assisted in defrauding the plaintiff by Brett Kates, a disbarred attorney and author of Keeping What's Yours and The Insider's Guide to Complete Asset Protection, who specialized in establishing offshore entities to hide assets from creditors.
37. Jane Daniel became acquainted with Brett Kates while she was researching mechanisms to shield or hide assets from creditors.
38. The judgment in the prior litigation issued on or about April 17, 2002 was appealed by Jane Daniel and allegedly by Mt. Ivy Press, L.P.
39. The appeal is currently pending before the Massachusetts Appeals Court.
40. Oral arguments were heard by the Appeals Court on or about October 18, 2004 and a decision is anticipated shortly by the plaintiff.
41. On or about June 10, 2004, Jane Daniel and Mt. Ivy Press, L.P. commenced an action against Palmer & Dodge, LLP., John Taylor Williams, Esq. and Elaine Rodgers, Esq. (hereinafter "the Palmer & Dodge litigation") for, *inter alia*, breach of contract, breach of fiduciary duty, legal malpractice, and negligence.
42. The Palmer & Dodge litigation is related to the prior litigation by plaintiff against Daniel and Mt. Ivy as Daniel and Mt. Ivy assert claims against the defendants in said action related to the interactions of said parties relative to the matters addressed in the prior litigation by Lee.
43. Daniel and Mt. Ivy have valued their claim against Palmer & Dodge in the amount of \$33,000,000.00.

COUNT I
UNJUST ENRICHMENT
(against Jane Daniel and Robert Paul Nickse)

44. Plaintiff restates and realleges the allegations of all the preceding paragraphs, and by this reference, incorporates them herein.

45. The transfer of the Hovey House from Jane Daniel individually ostensibly put the Hovey House out of reach of creditors of Jane Daniel, including the plaintiff.
46. The transfer of the Hovey House from Jane Daniel unjustly enriches Jane Daniel permitting her to continue to enjoy all the benefits of ownership of said real estate while avoiding her legal obligations.
47. Robert Paul Nickse was aware of the claims of the plaintiff at the time an interest in the Hovey House was transferred to him and was aware that the transfer of an interest in the Hovey House to him would deprive the plaintiff of the opportunity to access the Hovey House to satisfy the plaintiff's judgment.
48. Robert Paul Nickse has been unjustly enriched at the expense of the plaintiff by receiving an interest in the Hovey House without payment of any consideration by Nickse.
49. Equity and justice requires that the Hovey House be available to satisfy the judgment of the plaintiff.
50. Plaintiff Vera Lee has been damaged by the unjust enrichment of Jane Daniel and Robert Paul Nickse.

COUNT II
EQUITABLE LIEN
(against Jane Daniel and Robert Paul Nickse)

51. Plaintiff restates and realleges the allegations of all the preceding paragraphs, and by this reference, incorporates them herein.
52. The transfer of the Hovey House from Jane Daniel was intended to put the Hovey House out of reach of execution on judgment by the plaintiff.
53. Plaintiff anticipates that the judgment rendered in the prior litigation will be affirmed by the Appeals Court and that plaintiff will become a judgment creditor of Daniel and Mt. Ivy.
54. The plaintiff is unable to reach said asset on execution as an interest in the Hovey House was fraudulently conveyed to Nickse in order to place the asset out of reach of execution on judgment by the plaintiff.

55. Plaintiff is unable to reach the Hovey House to satisfy the judgment which has been awarded and which plaintiff anticipates will shortly be affirmed.

56. Plaintiff is entitled to an equitable lien on the Hovey House.

COUNT III
FRAUDULENT TRANSFER
AT COMMON LAW AND PURSUANT TO
G.L.c. 109A § 1 et seq.
(against Jane Daniel and Robert Paul Nickse)

57. Plaintiff restates and realleges the allegations of all the preceding paragraphs, and by this reference, incorporates them herein.

58. By virtue of judgment in the prior litigation, defendants Daniel and Mt. Ivy Press owe to the plaintiff \$9,900,000.00 not including interest.

59. The conveyance of the Hovey House from Jane Daniel individually to Jane Daniel and Robert Paul Nickse, tenants by the entirety, was made without consideration.

60. On information and belief, the conveyance was made when Defendant Daniel intended or believed that her debts were in excess of her ability to pay said debts as they matured.

61. On information and belief, the conveyance was for the purpose of hindering delaying and/or defrauding creditors, including the plaintiff.

62. On information and belief, the conveyance made the Defendant Daniel insolvent as to her creditors.

COUNT IV
FRAUD
(against Jane Daniel and Robert Paul Nickse)

63. Plaintiff restates and realleges the allegations of all the preceding paragraphs, and by this reference, incorporates them herein.

64. At trial in the prior litigation, the plaintiff proved a pattern and practice of fraud against plaintiff perpetuated by Jane Daniel and Mt. Ivy Press, L.P.

65. The transfer of the Hovey House from Jane Daniel individually to Jane Daniel and Robert Paul Nickse as tenants by the entirety is fraudulent with respect to the plaintiff.
66. The transfer of the Hovey House from Jane Daniel individually to Jane Daniel and Robert Paul Nickse, as tenants by the entirety, is part of the pattern and practice of fraud of defendant Jane Daniel and defendant Robert Paul Nickse and was done by said defendants to further perpetuate that fraud against the plaintiff which the plaintiff previously proved at trial in the prior litigation.

COUNT V
CONSPIRACY
(against Jane Daniel and Robert Paul Nickse)

67. Plaintiff restates and realleges the allegations of all the preceding paragraphs, and by this reference, incorporates them herein.
68. At all times material, Robert Paul Nickse was aware of the claims of Plaintiff Lee against Mt. Ivy Press, L.P. and Jane Daniel.
69. At divers times, Nickse attended proceedings in Court and depositions in the prior litigation.
70. Defendants Daniel and Nickse devised a common plan to effectively deprive the plaintiff an ability to recover judgment in the prior litigation by transferring assets from Defendant Daniel to the name of Defendant Nickse for no consideration.
71. Said plan was known by Daniel and Nickse and implemented by both Daniel and Nickse.
72. Defendants Daniel and Nickse conspired to deprive the plaintiff of assets available to plaintiff for the satisfaction of plaintiff's judgment.
73. Plaintiff has been damaged by said conspiracy as plaintiff is delayed in collecting judgment in the prior litigation by reason of the appeal by the defendants therein, and is unable to recover the transferred assets without further litigation and additional costs of litigation.

**COUNT VI
REACH AND APPLY
AT COMMON LAW AND PURSUANT TO
G.L.c. 214 § 3
(against Jane Daniel and Robert Paul Nickse)**

74. Plaintiff restates and realleges the allegations of all the preceding paragraphs, and by this reference, incorporates them herein.
75. The interest of Jane Daniel in the Hovey House is assignable.
76. Because the Hovey House was fraudulently conveyed to Defendants Jane Daniel and Robert Paul Nickse as tenants by the entirety, the interest of Jane Daniel in the Hovey House cannot be reached, attached or taken on execution by the plaintiff.
77. The defendant has no other assets known to plaintiff to satisfy the judgment plaintiff.
78. The plaintiff knows of no other available remedy at law to enforce payment of a judgment in its favor.
79. Plaintiff is entitled to reach and apply the Hovey House, the only known asset of defendant Jane Daniel, to satisfy her own claims against Jane Daniel and Mt. Ivy Press, L.P.

**COUNT VII
REACH AND APPLY
AT COMMON LAW AND PURSUANT TO
G.L.c. 214 § 3
(against Jane Daniel and Mt. Ivy Press, L.P., and
Palmer & Dodge, LLP)**

80. Plaintiff restates and realleges the allegations of all the preceding paragraphs, and by this reference, incorporates them herein.
81. Defendants Jane Daniel and Mt. Ivy have instigated the Palmer & Dodge litigation and are seeking \$33,000,000.00 in damages from Palmer & Dodge and the other defendants.

82. The interest of Jane Daniel and Mt. Ivy in said litigation is assignable.
83. Said litigation cannot be reached, attached or taken on execution by the plaintiff.
84. The defendant has no other assets known to plaintiff to satisfy the judgment plaintiff and plaintiff does not know when the defendant may recover from Palmer & Dodge.
85. The plaintiff knows of no other available remedy at law to enforce payment of a judgment in its favor.
86. To the degree that Jane Daniel recovers judgment or enters into a settlement in the Palmer & Dodge litigation, plaintiff is entitled to reach and apply the judgment or settlement proceeds to satisfy her own claims against Jane Daniel and Mt. Ivy Press, L.P.

JURY DEMAND

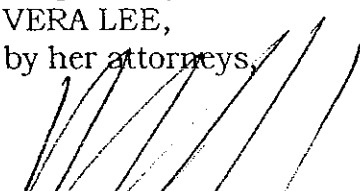
Plaintiff claims a jury trial on all issues triable of right by a jury.

WHEREFORE, plaintiff prays .

1. That after hearing, this Court enter a temporary restraining order enjoining Defendants Jane Daniel and Robert Paul Nickse from selling, encumbering, assigning, transferring or otherwise hypothecating their interest in the real estate located at Four Hovey Street, Gloucester, Essex County, Massachusetts and all of the contents therein;
2. That after trial on the merits, the Defendants Jane Daniel and Robert Paul Nickse be permanently restrained and enjoined from selling, encumbering assigning, transferring or otherwise hypothecating their interest in the real estate located at Four Hovey Street, Gloucester, Essex County, Massachusetts and all of the contents therein;
3. That this Court annul, void, vacate, and set aside the conveyance of an interest in the Hovey House from defendant Jane Daniel to Defendant Robert Paul Nickse;
4. That this Court grant an immediate attachment in favor of the plaintiff of the interest of Robert Paul Nickse in the real estate located at Four Hovey Street, Gloucester, Essex County, Massachusetts;
5. That this Court enter an order appointing a Special Master to be authorized, directed and empowered to sell, convey or otherwise dispose of the interest of Jane Daniel (and or Robert Paul Nickse) in the real estate located at Four Hovey Street, Gloucester, MA converting same to money, and further to do any and all necessary acts to reach and apply the proceeds of sale toward the satisfaction of the prior judgment of plaintiff;

6. That, after hearing on the matter, this Court issue a temporary order enjoining defendants Jane Daniel and Mt. Ivy Press, L.P. from disposing or otherwise assigning or transferring their interest in the proceeds of the judgment against Palmer & Dodge et al.;
7. That after trial on the merits, the Court issue a permanent injunction enjoining defendants Jane Daniel and Mt. Ivy Press, L.P. from disposing or otherwise assigning or transferring their interest in the proceeds of the judgment against Palmer & Dodge et al.;
8. That, after hearing on the matter, this Court issue a temporary order enjoining Reach and Apply Defendant Palmer & Dodge from paying the amount of the judgment or settlement, or any part thereof directly to Jane Daniel, Mt. Ivy Press, L.P. or their representative(s);
9. That, after trial on the merits, this Court issue a permanent injunction enjoining Reach and Apply Defendant Palmer & Dodge from paying the amount of the judgment or settlement, or any part thereof directly to Jane Daniel, Mt. Ivy Press, L.P. or their representative(s);
10. That the Court order that all proceeds due the plaintiffs Jane Daniel and Mt. Ivy Press, L.P. in the Palmer & Dodge litigation be escrowed with the Court pending further order of the Court;
11. That the Court permit the plaintiff to reach and apply any judgment or settlement in the Palmer & Dodge litigation towards the satisfaction of the plaintiff's judgment against Jane Daniel and Mt. Ivy Press, L.P.
12. That this Court assess and award to the plaintiff damages, costs, interest and attorneys fees;
13. That this Court grant such further relief as the Court deems meet and just.

Respectfully submitted,
VERA LEE,
by her attorneys,


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Dated: November 5, 2004