

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

PLAINTIFF,

v.

Case No. 11CV 4090-JTM-JPO

BENJAMIN B. KIRTLAND, III,  
AND MARY JEAN KIRTLAND,

DEFENDANTS.

**COMPLAINT**

The United States of America, by and through Barry R. Grissom, United States Attorney for the District of Kansas, and Tanya Sue Wilson, Assistant United States Attorney for the District, hereby states and alleges as follows:

1. This is a civil action brought by the United States of America seeking avoidance of fraudulent transfers, and this Court has jurisdiction pursuant to 28 U.S.C. § 1345.

2. This action is brought pursuant to 28 U.S.C. §§ 3301-3308 which provides the procedure for the United States to seek relief against a fraudulent transfer as to a debt owed to the United States.

3. The District of Kansas has jurisdiction over the parties and the subject matter of this action.

4. Venue is proper in the District of Kansas pursuant to 28 U.S.C. § 1391.

5. Defendant Benjamin B. Kirtland, III, is presently incarcerated at Devens FMC, Ayer, Massachusetts, outside the district. Prior to incarceration defendant Benjamin B. Kirtland lived in Connecticut for a few months, and prior to that he was a resident of Kansas for several years.

6. Defendant Mary Jean Kirtland now resides at 102 Sky Rose Ct., Cary, North Carolina, 27513-3580-2, outside the district. She moved from the District of Kansas, where she had been a resident for several years, sometime after May 12, 2011.

7. The defendants became aware of the underlying criminal investigation of the activities of defendant Benjamin B. Kirtland, III, during mid to late summer, 2010.

8. On November 17, 2010, the United States filed its one count indictment against defendant Benjamin B. Kirtland, III, in the United States District Court, District of Kansas, Case No. 10CR10178-03-WEB, charging him, and his co-defendants, with violations of Title 18, U.S.C. §§ 371 and 1349, conspiracy to commit wire and tax fraud. This indictment also contained a Forfeiture Notice and Allegation and requested judgment including, but not limited to a money judgment between \$3 million and \$5 million.

9. On or about January 25, 2011, defendant Mary Jean Kirtland filed for divorce from defendant Benjamin B. Kirtland, III, in Johnson County District Court, District of Kansas, Case No. 11CV00712.

10. On February 24, 2011, defendant Benjamin B. Kirtland, III, filed a Petition To Enter Plea, Doc. 66, in the criminal case and entered his guilty plea to count one of the indictment, Conspiracy To Defraud The United States Through Wire Fraud, Tax Obstruction And Interstate Transportation Of Stolen Property, 18 U.S.C. §§ 371 and 1343. The Change of Plea acknowledged that the plea of guilty could subject him to liability for a Special Assessment of \$100.00 per count; a fine of NMT \$250,000.00; a maximum term of imprisonment of over 20 years followed by a term of supervised release; and acknowledged significant loss to the victim Kansas Athletics, Inc. Further, defendant Benjamin B. Kirtland consented to a monetary forfeiture judgment in the amount

of \$2 million, joint and several with co-defendants. A filed copy of the Change Of Plea is attached hereto as Exhibit A.

11. The Final Order Of Forfeiture And Imposition Of Forfeiture Judgment, Doc. 71, was entered in the criminal case by Judge Wesley E. Brown on March 15<sup>th</sup>, 2011, in the amount of \$2 million. A filed copy of the Final Order Of Forfeiture And Imposition Of Forfeiture Judgment is attached hereto as Exhibit B.

12. An Abstract of Judgment on the \$2 million final forfeiture order was filed in Johnson County, Kansas, on April 13, 2011, in Book 201184 at Page 3236.

13. On or about April 13, 2011, defendant Benjamin B. Kirtland, III, and defendant Mary Jean Kirtland each executed the Property Settlement Agreement in the divorce case. This agreement purports to transfer certain property interests in real and personal property owned by defendant Benjamin B. Kirtland, III, some held individually and some held jointly with defendant Mary Jean Kirtland, to Mary Jean Kirtland. The Property Settlement was filed in the state court divorce action on April 15, 2011. A filed copy of the Property Settlement Agreement and attachment A is attached hereto as Exhibit C.

14. To the best knowledge of the United States, the transfers in the Property Settlement Agreement included certain real property located in Johnson County, Kansas, and certain personal property including financial accounts, insurance policies, vehicles, and household furniture and appliances.

15. The United States believes the value of the property transferred is in excess of \$400,000.00.

16. The United States is uncertain of the status of the proposed transfers, or the location of certain of the items transferred.

17. On April 25, 2011, defendant Benjamin B. Kirtland, III, and his counsel executed a Sentencing Agreement, which was then executed by the United States on April 26, 2011. In the Sentencing Agreement the parties agreed not to appeal a sentence containing the following:

- a. Imposition of a Special Assessment of \$100.00;
- b. No fine;
- c. A monetary Forfeiture Judgment in the amount of \$2 million, joint and several with co-defendants; and,
- d. Restitution of \$1,296,230.00, of which \$1,197,084.00 was due to Kansas Athletics, Inc., joint and several with co-defendants; and \$85,090.00 to the Internal Revenue Service individually.
- e. Payment of restitution to be made immediately, unless ordered otherwise by the Court.
- f. Agreed not to contest forfeiture allegations.

A copy of the Sentencing Agreement is attached hereto as Exhibit D.

18. The Sentencing Agreement also provided that Defendant Kirtland further agreed to cooperate fully and truthfully with the United States as follows:

- A. Defendant agrees to cooperate fully with the United States Attorneys Office in the disclosure of assets and specifically to:
  - I) Provide a financial statement on a form approved by the USAO that discloses all assets in which defendant has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee or other third party, as well as any transfer of assets that has taken place since 2005.
  - ii) Submit to an examination, which may be taken under oath and may include a polygraph examination.

- iii) Acknowledge that any waivers, consents, or releases signed by the defendant for purposes of the Presentence Investigation Report extends to the USAO.
- iv) Not encumber, transfer, or dispose of any monies, property or assets under defendant's custody or control, without approval from the USAO.

19. An Abstract of Judgment for the \$2 million order of forfeiture judgment was filed in Connecticut, Ellington County Land Records, on April 26, 2011, in volume 424, at page 0298, no. 0895.

20. On May 12, 2011, defendant Benjamin B. Kirtland, III, was sentenced to 57 months imprisonment and ordered to pay a special assessment in the amount of \$100.00; restitution in the amount of \$1,293,167.00, joint and several to the amount of \$1,197,084.00 with co-defendants Thomas Ray Blubaugh, Charlette Blubaugh, Rodney Dale Jones and Kassie Liebsch; and restitution in the amount of \$85,090.00 to the Internal Revenue Service individually. Defendant Kirtland was ordered to begin payments immediately. A copy of the criminal judgment entered on May 20, 2011, Doc. 136 in the criminal case, is attached hereto as Exhibit E.

21. The Notice of Lien For Fine And/Or Restitution against defendant Benjamin B. Kirtland, III, was filed in Johnson County, Kansas, Register of Deeds, on May 27, 2011, in Book 20115 at Page 7553. A second Notice Of Lien For Fine And/Or Restitution was filed in Connecticut, Ellington County Land Record, on June 9, 2011, in volume 425, at page 0285, no. 1254.

22. As of the date of the filing of this complaint, the Special Assessment against Defendant Benjamin B. Kirtland has not been paid. However, \$81,025.00, collected from defendant

Kirtland's co-defendants, has been credited to the restitution judgment, leaving a balance due of \$1,212,242.00.

23. Since the criminal investigation of the criminal activities of defendant Benjamin B. Kirtland, III, began in the summer of 2010, while the parties were still living together as husband and wife, defendants Benjamin B. Kirtland, III, and Mary Jean Kirtland both knew, or should have known, at that time that defendant Benjamin B. Kirtland, III, could be subject to incarceration and/or monetary impositions when the criminal case was finally decided.

24. Defendant Benjamin B. Kirtland, III, was indicted on November 17, 2010, some two (2) months prior to defendant Mary Jean Kirtland filing for divorce in Johnson County, Kansas, on February 24, 2011.

25. Defendants Benjamin B. Kirtland, III, and Mary Jean Kirtland knew, at the time she filed for divorce on January 25, 2011, that defendant Benjamin B. Kirtland, III, was facing a term of imprisonment and substantial monetary impositions upon disposition of the criminal case.

26. Prior to executing the Property Settlement Agreement on or about April 13, 2011, defendant Benjamin B. Kirtland, III, had pled guilty to criminal charges which had resulted in the entry of a \$2 million forfeiture judgment, and which he knew would result in a criminal conviction and an order to pay an assessment, substantial restitution, and a possible fine.

27. Prior to executing the Property Settlement Agreement on or about April 13, 2011, defendant Mary Jean Kirtland knew, or reasonably should have known, that defendant Benjamin B. Kirtland, III, had pled guilty to criminal charges which had resulted in the entry of a \$2 million forfeiture judgment, and which would result in a criminal conviction and an order to pay an assessment, substantial restitution, and a possible fine.

28. The Abstract of Judgment on the order of forfeiture judgment was filed in Johnson County on the same date the agreement was executed by the defendants Kirtland, and two (2) days prior to the date the Property Settlement Agreement was filed in state court.

29. The Property Settlement Agreement in the divorce case was filed with the Johnson County District Court on April 15, 2011, only ten (10) days prior to defendant Benjamin B. Kirtland, III, executing the Sentencing Agreement in his criminal case.

30. Defendant Benjamin B. Kirtland, III, made the transfers to defendant Mary Jean Kirtland described above with the actual intent to hinder, delay or defraud the United States.

31. Defendant Benjamin B. Kirtland, III, made the transfers to defendant Mary Jean Kirtland described above without receiving a reasonably equivalent value in exchange for the transfers, and he knew or should have known that he had or would incur debts beyond his ability to pay.

32. Defendant Benjamin B. Kirtland, III, made the transfers described above to an insider, Defendant Mary Jean Kirtland, his wife.

33. Defendant Benjamin B. Kirtland, III, became substantially insolvent prior to making the transfers to defendant Mary Jean Kirtland in this case. At each step of the criminal process he recognized, or should have recognized, that his liability for the forfeiture judgment and restitution order pursuant to the criminal charges would be substantially more than his net worth and his ability to pay those judgments.

**WHEREFORE**, the United States respectfully requests that this Court enter a judgment in its favor providing the following relief:

1. Order that the conveyances set forth in the Property Settlement Agreement from defendant Benjamin B. Kirtland, III, to defendant Mary Jean Kirtland, are adjudged fraudulent and void;
2. Award the plaintiff a judgment against the transferee, the defendant Mary Jean Kirtland, setting aside the transfers and allowing the United States to execute on the property;
3. Award the plaintiff a judgment against the transferee, defendant Mary Jean Kirtland, for an amount equivalent to the value of property that cannot be recovered and executed on by the United States; and,
4. Award the United States such other relief as may be appropriate and just.

Respectfully submitted,

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