

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 22-cv-02320

DAVID JOSHUA BARTCH,

Plaintiff,

v.

MACKIE A. BARCH, individually and in his capacity as Trustee of the Barch Family Enterprises Trust;
KIMBERLY BARCH, individually and in her capacity as Trustee of the Barch Family Resource Trust; and
JUSTIN BARCH, in his capacity as Trustee of the Barch Family Resource Trust,

Defendants.

COMPLAINT

PRELIMINARY STATEMENT

1. This case arises out of a civil conspiracy among Defendant Mackie Barch, his wife (Defendant Kimberly Barch), and his brother (Defendant Justin Barch) to hinder, delay, and defraud Plaintiff David Joshua “Josh” Bartch in his efforts to collect a civil judgment of \$6,400,000 against Mackie and his holding company, Trellis Holdings Maryland, Inc. (“Trellis”).¹ As described in detail herein, Mackie, with the knowledge and assistance of his wife and brother, undertook a concerted action to conceal and shield his assets against collection and to frustrate the civil justice system.

¹ Due to the entirely coincidental similarity between the parties’ last names, in the interest of avoiding confusion Plaintiff refers to himself as “Josh” and to each of the Barch defendants by their first names.

PARTIES, JURISDICTION, AND VENUE

2. Josh is a resident and citizen of Puerto Rico, where he moved in early 2021. Prior to 2021, Josh was a resident and citizen of the State of Colorado.

3. Mackie is a resident and citizen of the State of Maryland, who resides in Kensington, Maryland. Until the events described in this Complaint, Mackie was the sole owner, president, and director of Trellis. Today, Mackie remains the owner of all of Trellis's voting shares and directly or indirectly controls all Trellis shares, both voting and non-voting.

4. Mackie is the sole Trustee of the Barch Family Enterprises Trust ("Enterprises Trust"), an irrevocable trust organized under the laws of Maryland whose beneficiaries are Mackie and his three children.

5. Kimberly is a resident and citizen of Maryland who resides in Kensington, Maryland.

6. Justin is a resident and citizen of Maryland who resides in Kensington, Maryland.

7. Kimberly and Justin are the two Trustees of the Bartch Family Resource Trust (the "Resource Trust" and, collectively with the Enterprises Trust, the "Trusts"), an irrevocable trust organized under the laws of Maryland whose beneficiaries are Kimberly, Mackie's three children, and Mackie's parents.

8. Jurisdiction is proper under 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000 and there is complete diversity between, on the one hand, Josh, a citizen of Puerto Rico, and, on the other hand, Defendants, all of whom are

Maryland citizens.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this District. Specifically, pending litigation in this District gave rise to the fraudulent transfers at issue in this case. As explained in detail herein, Mackie, Kimberly, and Justin executed the fraudulent transfers at issue in this case for the purpose of evading a then-potential (and now actual) judgment issued by a court in this District. Additionally, Defendants conceived of and executed the transfers for the purpose of avoiding a debt incurred pursuant to a contract that was negotiated and formed in substantial part in Colorado, for which performance was due in Colorado, the non-performance of which caused injury to a Colorado citizen.

10. Jurisdiction is proper over Mackie because he transacted business within the State of Colorado and entered into a continuing contractual relationship with Josh, at that time a Colorado resident, with the expectation that the performance of those contractual obligations would be due in Colorado. Jurisdiction is also proper over Mackie because Mackie conceived of and executed the fraudulent transfers at issue in this case to evade a then-potential and now actual judgment to be issued by a court in this District.

11. Jurisdiction is proper over Kimberly and Justin because each of them accepted from Mackie transfer of the assets at issue in this case knowing that those assets were subject to an agreement with Josh, a Colorado resident when the agreement was made, the satisfaction of which was due in Colorado. Jurisdiction is also proper over Kimberly and Justin because they knew when they accepted the transfers at issue that

the transfers were for the purpose of shielding Mackie's assets from a potential judgment in this District and because they knowingly and willfully conspired with Mackie to effectuate the transfers.

GENERAL ALLEGATIONS

12. A trial to the Court was held on July 11-14, 2022 in the case *Bartch v. Barch et al.*, Case No. 18-cv-03016-RBJ-NYW ("*Bartch I*"). In *Bartch I*, Josh asserted claims against Mackie and Trellis for breach of contract, civil theft, conversion, and unjust enrichment. Earlier in the *Bartch I* litigation, Josh asserted claims for declaratory judgment and specific performance, though Josh voluntarily withdrew both claims before trial.

13. Josh's allegations in *Bartch I* related to an agreement between Josh and Mackie, formed in Colorado, to share equally any equity either of them acquired in Doctors Orders Maryland LLC, now known as Culta, LLC ("DOMD"). Plaintiff refers to this agreement as the "Equity Sharing Agreement."

14. In *Bartch I*, Josh alleged that Mackie repudiated the Equity Sharing Agreement (by refusing to acknowledge its existence) and, in so doing, refused to return 50% of the equity Mackie acquired in DOMD. Josh thus sought damages measured by the value of the wrongfully withheld equity.

15. At all relevant times, Mackie held his ownership interest in DOMD, including the portion he wrongfully refused to return to Josh, through Trellis, his holding company.

16. On September 7, 2022, the Court entered judgment in Josh's favor and against Mackie and Trellis on Josh's claim for breach of contract in the amount of \$6,400,000. See *Bartch I*, ECF No. 175.

17. More than a year before Judge Jackson's entry of judgment, and shortly after the Court (per Judge Krieger, who was presiding at the time) denied Mackie and Trellis's Motion for Summary Judgment in *Bartch I*, Mackie, working in concert with Kimberly and Justin, put in motion a plan to shield the vast majority of Mackie's personal assets from a potential adverse judgment in *Bartch I*.

18. Specifically, in February 2021, approximately two months after Judge Krieger denied Mackie and Trellis's Motion for Summary Judgment, Mackie transferred 99% of his Trellis shares to the Resource Trust and the Enterprises Trust (the "Transfers"). The Transfers were done with actual intent to hinder, delay, and defraud Josh in his efforts to pursue and, eventually, collect on his claims against Mackie and Trellis.

19. The Transfers took place simultaneously in a series of transactions that consisted of three primary steps:

- a. In step one, Mackie recapitalized Trellis's stock into two classes: 10 shares of Class A stock, representing 1% of all Trellis stock, and 990 shares of Class B stock, representing 99% of all Trellis stock. The Class A shares and Class B shares were identical in all respects except that Class A shares were voting shares and Class B shares were not.
- b. In step two, Mackie transferred 495 Class B shares to Kimberly, his wife, for no consideration. Kimberly thus became owner of 49.5% of Trellis, in the form of 495 non-voting Class B shares, with Mackie holding the remaining 495 Class B shares and the 10 Class A shares.

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