

the assets of the debtor at a fair valuation; (2) A debtor who generally is not paying his debts as they become due is presumed to be insolvent.” Southdown is a New York Stock Exchange company and clearly has the financial ability to meet any financial orders made by the Court. The Plaintiff has not alleged any facts indicating that the alleged transfer of the land has made Southdown “insolvent.” The return of the property to Southdown is unnecessary in that Southdown does not need to be the owner or in possession of the property in order to be held financially responsible under the terms of the original Complaint, and therefore, the Court should deny the Plaintiff’s motion to amend the Complaint to add an additional claim of fraudulent transfer against Dirtvest.

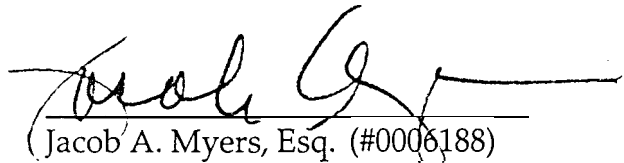
Furthermore, if Plaintiff were to prevail on its current Complaint, the Plaintiff could still obtain payment of its civil penalties against Southdown because Southdown is not insolvent. See 33 U.S.C. § 1365. In conclusion, Plaintiff’s motion to join a claim for fraudulent conveyance must be denied. Since Plaintiff cannot allege that Plaintiff is a “creditor” of Dirtvest; that Dirtvest is a “Debtor”; that Southdown is “insolvent” as a result of the transfer of the land to Dirtvest, Plaintiff cannot, as a matter of law, bring a claim for fraudulent conveyance against Dirtvest under Ohio law. Accordingly, this court must deny Plaintiff’s motion to join an additional claim.

C. CONCLUSION

For the foregoing reasons, Defendant Dirtvest respectfully requests that the Court deny Plaintiff’s motion to join additional parties, motion to join additional

claim and deny Plaintiff's motion for leave to file an amended complaint because Plaintiff cannot state a claim for fraudulent transfer under Ohio law. In the alternative, Dirtvest respectfully requests that the Court deny Plaintiff's motion due to Plaintiff's failure to attach a copy of the proposed amended pleading to the motion or stay disposition of these motions until Plaintiff submits a copy of said pleading.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jacob A. Myers', is written over a horizontal line.

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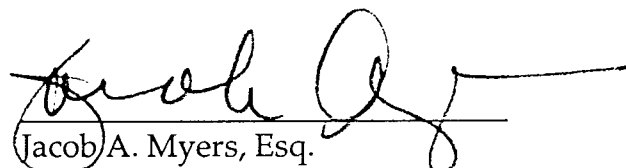
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Opposition of Dirtvest, Ltd. to Plaintiff's Motion to Join Party Dirtvest, Ltd. as Defendants under Rule 19; Motion to Join Claim Under Rule 18; and Motion to Amend Complaint Appropriately Under Rule 15 was served by U.S. Mail, postage prepaid, this 23rd day of March, 1998 upon the following:

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Dirtvest, Ltd./GEC
Memo In Opp to Motion to Join
3/23/98/5/jmc/atty1