

In the Court's Memorandum Opinion addressing the Defendants' motion to dismiss (Adv. D.I. 84), the Court concluded that at the motion to dismiss stage, the Trustee had adequately pled that Alchemy received a lack of reasonably equivalent value from the transaction reflected in the Asset Purchase Agreement in which it paid nearly \$30 million and assumed obligations in excess of \$16 million. The Motion is premised on the Court's ruling on the Virgo Individual Defendants' motion to dismiss (Adv. D.I. 83). There, the Court held that the Trustee had failed to allege any fact showing that Alchemy overpaid and did not receive reasonably equivalent value for its cash payment for the Asset Purchase Agreement with Defendants. The Court dismissed the claims against the Virgo Individual Defendants. In contrast, the Court did not dismiss similar claims that the Trustee brought against ANConnect and Anderson. In the Motion, Defendants focus the Court's attention on what they argue is an anomaly.

In its decision directed to the Virgo Individual Defendants' motion to dismiss, the Court had ruled that "the Trustee fails to demonstrate any specific fact to show overpayment. Rather, the Trustee merely makes [sic] conclusive statement alleging that Alchemy overpaid." While it appears that the two decisions are inconsistent, the inconsistency does not require the Court to grant reconsideration. The fact is that the quoted language from the opinion on the Virgo Individual Defendants' circumstances addressed a claim of a breach of fiduciary duties. In the opinion on the Defendants' motion to dismiss the Court was ruling on allegations concerning transfers, particularly fraudulent transfers. The Court was not addressing breach of fiduciary duty claims. The Court considered the "totality of circumstances" and concluded after a thorough and

careful review and analysis that the Court could not make the necessary determination at the motion to dismiss stage.

For these reasons, ANConnect and Anderson have failed to establish that the Court committed “manifest errors of law or fact...” *Howard Hess Dental Labs Inc. v. Dentsply Int’l, Inc.*, 602 F.3d 237, 251 (3d Cir. 2010). The Defendants have not met the requirements for the Court’s reconsideration, namely, (1) a change in the law, (2) new evidence, or (3) showing that manifest injustice would result from a clear error law or fact. *Blystone v. Horn*, 664 F.3d 397, 415 (3d Cir. 2011). Accordingly, the Court denies the Motion.

SO ORDERED.

Dated: November 1, 2019



Kevin Gross, United States Bankruptcy Judge