

In re CUSTOM CONTRACTORS, LLC, Debtor.
Deborah C. Menotte, Trustee, Plaintiff.
v.
United States of America, Defendant.

Bankruptcy No. 09-24404-PGH
Adversary No. 10-3455-PGH-A

Trustee filed a Complaint under 11 U.S.C. § 544 and the Florida Uniform Fraudulent Transfer Act ("FUFTA"), seeking to recover transfers the Debtor made to the IRS allegedly on account of the personal tax liability of the Debtor's principle. The United States moved to dismiss, arguing that the doctrine of sovereign immunity deprived the Court of subject matter jurisdiction, notwithstanding the abrogation of sovereign immunity for actions under § 544 set forth in 11 U.S.C. § 106. The United States argued that Florida's Voluntary Payment Rule ("VPR") precluded an unsecured creditor from bringing an action against the United States under FUFTA, and that the abrogation of sovereign immunity under § 106 did not extend to state law causes of action, such as an action under FUFTA. The Court rejected both arguments, finding that the VPR did not bar an action seeking to recover tax payments from the federal government, and that Congress intended the abrogation of sovereign immunity under § 106 to extend to state law causes of action, on which § 544 generally relies.