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NOT FOR PUBLICATION

ENTERED SEP 26 2007
FILED
SEP 25 2007
CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re
WILLIAM JUAREZ,

Debtor.

GREGORY A. AKERS, Chapter 7
Trustee,

Plaintiff,
v.
ADOLFO CASTILLO JR., ANA
CASTILLO, and LUIS GUTIERREZ,

Defendants.

Bankruptcy No. 07-01129-M7
Adversary No. 07-90191-M7

NOTICE OF INTENDED DECISION
REGARDING TRUSTEE'S MOTION FOR
SUMMARY JUDGMENT

The Trustee's motion for summary judgment was heard on September 12, 2007, and taken under submission. For the following reasons, the Court is unable to grant the Trustee's motion for summary judgment as filed. However, the record appears to support summary judgment as to a transfer of funds to Ana Castillo on May 31, 2006, in the amount of \$92,041.45 ("May 31, 2006 Transfer").

The complaint and the Trustee's motion focused on a transfer in

1 which the Debtor and his wife sold their house to the Castillo
2 Defendants for \$400,000, with an \$80,000 gift credit. The Trustee
3 sought to avoid the sale as a fraudulent transfer on the grounds that
4 the Castillos failed to pay reasonably equivalent value for the
5 property. A review of the evidence presented does not support a
6 finding of insolvency as a result of that transfer.

7 The documents attached to the declaration of Nanette Farina filed
8 on July 19, 2007, show that there were net proceeds from the sale in
9 the amount of \$155,362.68. Those proceeds were placed in an account
10 at San Diego County Credit Union ("SDCCU") in the names of the Debtor,
11 his wife, and defendant Ana Castillo ("Joint Account"). At least some
12 of those funds were used over time to pay debts of the Debtor. There
13 is no evidence that the Debtor was insolvent as a result of the sale.
14 He had access to \$155,362 and no more than \$70,000 in debt.

15 The Trustee filed several evidentiary objections to strike
16 information contained in the declarations submitted by the Defendants.
17 The Trustee also argues that the Court cannot consider the \$155,362
18 in proceeds because there is no evidence the Debtor had control of the
19 funds, and that they were not disclosed on his schedules and statement
20 of affairs. The SDCCU statements were submitted as exhibits by the
21 Trustee. If the Trustee is going to rely on them to support a
22 reference to Ana Castillo as having control of the account and
23 receiving funds from the account, he must also acknowledge the
24 Debtor's name was listed on the same account. The SDCCU statements
25 also show that the money was withdrawn on May 31, 2006. Without a
26 balance left, there was nothing for the Debtor to disclose in the
27 bankruptcy schedules, which were not filed until March 8, 2007.

28 Even using a "retrojection analysis", rather than the Debtor's

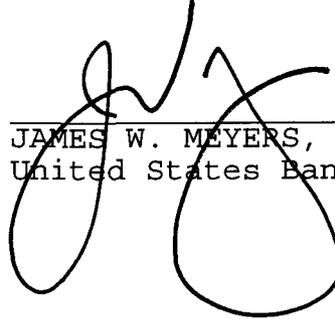
1 declaration, there is no evidence that the Debtor's debts exceeded his
2 assets as a result of the transfer of the house to the Castillos.
3 The Debtor's name appears on the SDCCU statements which contained the
4 proceeds of the sale of the house. The Trustee has submitted nothing
5 to show that the Debtor could not walk into any branch of SDCCU and
6 withdraw the full amount in the account at any time, or that his
7 creditors could not execute on the accounts to collect their debts.
8 Without a showing that the transfer resulted in the Debtor's
9 insolvency, the Trustee's motion for summary judgment fails.

10 However, the record does indicate that the Trustee may be
11 entitled to summary judgment to avoid the transfer of \$92,041.45 from
12 the SDCCU Joint Account to an account solely in the name of Ana
13 Castillo. The May 31, 2006 Transfer was a unilateral diversion of the
14 funds by Ana Castillo to her own account. The record shows the Debtor
15 admits he owed at least \$10,000 to Union Bank at that time, a debt
16 which remains unpaid and supports standing by the Trustee to avoid the
17 May 31, 2006 Transfer. The Debtor also owed approximately \$8,000 to
18 the I.R.S. at that time, which was later paid in January 2007. The
19 May 31, 2006 Transfer apparently depleted the balance of the Debtor's
20 assets, and rendered him insolvent. There is no indication of any
21 consideration provided for the May 31, 2006 Transfer.

22 While the record provided could support judgment in favor of the
23 Trustee for \$92,041.45, the Court recognizes that the May 31, 2006
24 Transfer was not the alleged basis for the complaint, or the motion
25 for summary judgment. So, at this point, the Court will enter an
26 order denying the Trustee's motion for summary judgment and set this
27 matter for further status conference. Counsel are instructed to meet
28 and confer at least a week before the next conference, and at that

1 status conference should be prepared to report how they wish to
2 proceed: whether by trial on the present complaint; through amended
3 pleadings; or if the parties would like to consider mediation of this
4 matter.

5 Dated: **SEP 25 2007**



JAMES W. MEYERS, Judge
United States Bankruptcy Court

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