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NOT FOR PUBLICATION

ENTERED 2/6/09
FILED
FEB 5 2009
CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY 28 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-JM7
Adversary No. 07-90191-JM

MEMORANDUM DECISION

I

Gregory Akers, Chapter 7 Trustee ("Plaintiff" or "Trustee") filed the complaint in this adversary proceeding to avoid a transfer of real property at 841-843 Euclid Avenue in San Diego, California. ("Property"). The Trustee alleged that the transfer of the Property on December 29, 2005, from the Debtor and his wife to Adolfo Castillo Jr. and Ana Castillo ("Defendants") was a fraudulent transfer as to

1 the creditors of the Debtor, and therefore avoidable under 11 U.S.C.
2 § 544. The Trustee sought to avoid the transfer and to recover and
3 sell the Property free of the interests of co-owners, or to recover
4 the value of the property. The Trustee also requested punitive
5 damages against the Defendants for knowingly and willfully
6 participating in a fraudulent transfer scheme. The Trustee submitted
7 an order to allow the filing of an amended complaint, which was
8 entered on June 19, 2007. The first proposed amended complaint was
9 attached as an exhibit to the order, but does not appear to have been
10 separately filed. The document added a claim against the Castillos
11 for money transfers of \$155,362.68, the amount of the check issued to
12 the Debtor and his wife from escrow for the sale of the Property.

13 The Trustee filed a motion for summary judgment, which was denied
14 in a written decision and order entered on September 25, 2007. The
15 Trustee filed a Stipulation which attached another document entitled
16 amended complaint on October 10, 2007 ("Amended Complaint"). This
17 Amended Complaint added a series of money transfers from the Joint
18 Account which were alleged to be made to or for the benefit of the
19 Castillos between February 3, 2006 and May 31, 2006. After mediation
20 and further pre-trial conferences, the Amended Complaint against the
21 Castillo Defendants was tried on October 22 and 23, 2008, at which
22 time the matter was taken under submission¹. For the following
23 reasons, the Court will enter judgment in favor of the Trustee in the
24 amount of \$65,321.83, against Ana Castillo.

25
26 ¹ Luis Gutierrez was also added as a defendant with a claim to
27 recover \$40,000.00, which was transferred to him. However, the
28 Trustee and the Castillos stipulated to sever the claims against the
Castillos from the claim against Mr. Gutierrez, and the trial was
limited to the claims against the Castillos.

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II

FACTS AND PROCEDURAL BACKGROUND

Defendant Ana Castillo is the daughter of Monica Juarez and the stepdaughter of the Debtor, William Juarez. Mr. and Mrs. Juarez are over seventy years of age. They receive monthly social security and disability payments in an amount sufficient to cover their ongoing living expenses. Monica Juarez did not join in the filing of the bankruptcy petition.

The initial complaint and the Trustee's motion for summary judgment focused on the transfer of the Property by the Debtor and his wife to the Defendants for \$400,000, with an \$80,000 gift credit. The Trustee sought to avoid the sale as a fraudulent transfer on the grounds that the Castillos failed to pay reasonably equivalent value for the property, because it was worth over \$500,000. There were net proceeds from the sale in the amount of \$155,362.68. On December 29, 2005, the proceeds were placed in accounts at San Diego County Credit Union ("SDCCU") in the names of the Debtor, his wife, and defendant Ana Castillo ("Joint Account"). The motion for summary judgment was denied on the grounds that the Trustee had not established the Debtor was rendered insolvent by the sale of the Property. He had access to \$155,362 and no more than \$70,000 in debt, and enough income to meet his monthly expenses.

Checks were issued from the Joint Account in January 2006, to pay the Debtor's obligations to Union Bank and American Express. The Debtor had a gambling problem. In an attempt to protect the Debtor and his wife, the Defendants bought the Property from them and intended to build another unit on the lot to rent to a third party to

1 cover the mortgage. The Debtor and his wife would have a place to
2 live and the Defendants hoped to receive enough rental income to pay
3 the expenses associated with the Property. During the first part of
4 2006, money in the Joint Account was used to make the monthly payments
5 to Countrywide of \$2,410.24, for the mortgage on the Property, to
6 begin work on the new unit and for some payments to another relative,
7 Luis Gutierrez. Ana Castillo was trying to help her mother and the
8 Debtor to control expenditures from the Joint Account. The Debtor
9 learned that he had access to the Joint Account, and withdrew some
10 money. To prevent the Debtor from using more money to gamble, Ana
11 Castillo transferred the remaining balance of \$92,041.45 from the
12 Joint Account to an account solely in her name on May 31, 2006. ("May
13 31 Transfer"). The May 31 Transfer depleted the Debtor's assets, and
14 rendered him insolvent. The Debtor owed Union Bank over \$10,000 at
15 that time, and remained indebted to Union Bank at the time he filed
16 his Chapter 7 petition. After the May 31 Transfer, Ana Castillo did
17 issue some checks on behalf of the Debtor in the following amounts:

18 \$3,000.00 to American Express on June 5, 2006,
19 \$ 125.00 to the US Treasury on November 14, 2006,
20 \$ 549.48 to the Franchise Tax Board on January 8, 2007,
21 \$8,062.47 to the IRS on January 8, 2007, and
22 \$1,000.00 to American Express on January 10, 2007.
23 \$12,736.95 - Total

24 The Debtor incurred some other debts on credit cards, and when
25 Ana Castillo refused to pay those creditors, he filed his Chapter 7
26 petition on March 8, 2007. The Debtor did not tell Ana Castillo that
27 he was planning to file a Chapter 7 petition. The schedules and
28 claims register indicate he owed three creditors just over \$52,000 on
the petition date, and had virtually no assets.

After the complaint was filed, the Trustee learned that Ana

1 Castillo was still holding the Debtor's money in her account, and she
2 wrote the Trustee a check for the remaining balance of \$13,982.67.
3 The Trustee acknowledges the Defendants are entitled to a credit for
4 the amount already turned over. The Defendants claim they are
5 entitled to offset the amounts paid on behalf the Debtor, including
6 those listed above, plus another \$10,650 to other family members, as
7 well as the amounts used for mortgage payments on the Property and
8 additional expenses they incurred for landscaping and engineering for
9 the Property. The new unit was not built, but the Debtor and his wife
10 still live at the Property and are now paying \$500/month rent to the
11 Defendants. During the trial, the Defendants attempted to itemize all
12 the expenses which they felt they were entitled to offset against the
13 May 31 Transfer. The Trustee tried to prove that the Defendants and
14 the Debtor engaged in a scheme with the actual intent to hinder, delay
15 or defraud creditors of the Debtor.

16
17 III

18 DISCUSSION

19 The Trustee seeks to avoid the transfer of the Property, the
20 deposit of the escrow proceeds to the Joint Account, and a series of
21 other transfers from the Joint Account under Cal.Civ.Code §§ 3439.04
22 or 3439.05, through the Trustee's strong arm power found in § 544.
23 Fraudulent transfers are subdivided into actually fraudulent transfers
24 which are avoidable under Cal.Civ.Code § 3439.04(a)(1), or
25 constructively fraudulent transfers avoidable under Cal.Civ.Code §§
26 3439.04(a)(2) or 3439.05. In re Cohen, 199 B.R. 709, 716 (9th Cir.
27 BAP 1996). "Fraud, in the sense of morally culpable conduct, need not
28 be present in either category of fraudulent transfer." Id. To find

1 a transfer was made with the intent to hinder, delay or defraud a
2 creditor, the Court is to focus on the intent of the Debtor, as
3 transferor. In re Beverly, 374 B.R. 221, 235 (9th Cir. BAP 2007),
4 adopted and aff'd, _F.3d_, 2008 WL 53282453 (9th Cir. Dec. 24, 2008).

5 The Court has considered the factors enumerated in Cal.Civ.Code
6 § 3439.04(b), and concludes that neither the sale of the Property to
7 the Defendants nor the deposit of the escrow funds in the Joint
8 Account constituted a fraudulent conveyance in which the Debtor had
9 the actual intent to hinder, delay or defraud a present or future
10 creditor. The evidence presented at trial leads to the conclusion
11 that the Debtor's intent regarding the sale of the Property, and the
12 deposit of escrow proceeds into the Joint Account reflected the
13 Debtor's acquiescence to his family's concerns about his gambling
14 problem. It was a decision by a family to try and improve their real
15 estate in a fashion to allow the Debtor and his wife to remain in the
16 Property, and to generate income to meet the mortgage payments. These
17 transfers were intended to hinder the Debtor from squandering his
18 assets on gambling rather than an attempt to hinder, delay or defraud
19 any creditor of the Debtor. He had agreed to stop gambling and wanted
20 help to overcome the problem.

21 To avoid a transfer as constructively fraudulent, the Trustee
22 bears the burden to prove that the Debtor transferred an asset without
23 receiving a reasonably equivalent value in exchange for the transfer,
24 and the Debtor either was (A) engaged or was about to engage in a
25 business or a transaction for which the remaining assets of the Debtor
26 were unreasonably small in relation to the business or transaction,
27 or (B) intended to incur, or believed or reasonably should have
28 believed that he would incur debts beyond his ability to pay as they

1 became due. Cal.Civ.Code § 3439.04(a)(2).

2 Defenses are available to transferees who received a transfer in
3 good faith and for value. Cal.Civ.Code § 3439.08; In re AFI Holding,
4 Inc., 525 F.3d 700, 704 (9th Cir. 2008).

5 After trial, the Court arrives at the same conclusion that it
6 reached after summary judgment; the sale of the Property by the Debtor
7 and his wife to the Defendants is not avoidable as a fraudulent
8 transfer. Although the sale price may have been somewhat below
9 market, it was not by any means an outright gift. The Defendants
10 became obligated on a secured debt of over \$320,000, and the Debtor
11 and his wife received net proceeds from the sale of \$155,362, after
12 creditors were paid. The remaining outstanding debts of the Debtor
13 were paid from the proceeds the following week. The Debtor and his
14 wife still had more than enough assets to pay all outstanding
15 liabilities, and continued to receive monthly income from social
16 security and disability. The Debtor was not rendered insolvent by the
17 transfer of the Property, and if he was able to control his gambling,
18 he would have had sufficient assets to pay his debts as they became
19 due. Similarly, the deposit of the escrow proceeds into the Joint
20 Account was not a transfer from the Debtor to the Defendants. Adolfo
21 Castillo was not even included on the account, and there was no
22 showing that he had access to those funds. Although Ana Castillo was
23 one of the three people whose name appeared on the account, she still
24 considered the money in the account to belong to the Debtor. She was
25 just providing additional oversight of the money. Until the May 31
26 Transfer, the Debtor had adequate money available to pay his bills in
27 full. Before that date, any transfers from the Joint Account did not
28 result in insolvency of the Debtor or inability to pay his bills.

1 However, the May 31 Transfer rendered the Debtor insolvent. That
2 transfer to Ana Castillo, in the amount of \$92,041.45 is avoidable as
3 a constructively fraudulent transfer. As the Trustee has
4 acknowledged, she is entitled to reduce that amount by the \$13,982.67
5 already delivered to the Trustee. In addition, the Court finds that
6 she is entitled to a further offset of the \$12,736.95, itemized above
7 on page 4 for checks she issued to non-insider creditors on the
8 Debtor's behalf.

9 The Court will not deduct the amounts she spent after the May 31
10 Transfer for payments on the Countrywide Loan secured by the Property.
11 The Defendants were the owners of the Property. They were liable for
12 the Countrywide debt. The payments made were of benefit to the
13 Defendants, not to the Debtor. They did not establish an entitlement
14 to rent for the Property from the Debtor in the \$2,410.24/month paid
15 to Countrywide. For the same reason, Ana Castillo is also not
16 entitled to deduct the disbursements to subcontractors to improve the
17 Property. The Defendants bought the Property. The Court is not
18 avoiding the sale of the Property as a fraudulent transfer. Any of
19 the Debtor's money used toward the Property after the May 31 Transfer
20 was of benefit to the Defendants, not the Debtor.

21 The Defendants are also not entitled to a credit for payments to
22 other insiders Denise Castillo and Silvia Gutierrez. Ana Castillo
23 unilaterally took control of the money in the May 31 Transfer. The
24 evidence was not adequate to show that these payments were for
25 legitimate obligations owing by the Debtor. To further compensate the
26 creditors of the estate for the time value of the funds, it is
27 appropriate to award interest on the judgment from October 10, 2007,
28 the date the order authorizing the filing of the Amended Complaint was

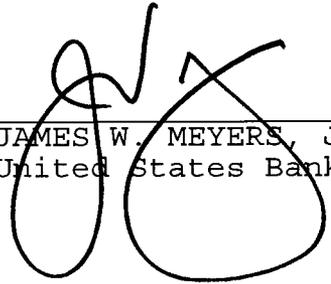
1 entered. See In re Slatkin, 525 F.3d 805, 820 (9th Cir. 2008).

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3 IV

4 CONCLUSION

5 The Trustee sustained his burden to prove that the May 31
6 Transfer to Ana Castillo was constructively fraudulent, and avoidable
7 under Cal.Civ.Code § 3439.04(a)(2)(B). After deducting the amount she
8 has already turned over to the Trustee, and the additional \$12,736.95
9 as credit for the amount she paid to creditors on the Debtor's behalf,
10 a judgment against Ana Castillo in the amount of \$65,321.83 is
11 appropriate to make the estate whole as a result of the May 31
12 Transfer. The Trustee did not establish conduct of a nature to
13 support an award of punitive damages. Counsel for the Trustee is
14 directed to submit a proposed judgment within 14 days of entry of this
15 Memorandum Decision.

16 Dated: **FEB 05 2009**

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20 JAMES W. MEYERS, Judge
21 United States Bankruptcy Court
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