

In the United States Bankruptcy Court

for the Northern District of Iowa

STEVEN R. BEHR

Bankruptcy No. Y88-01976D

Debtor.

Chapter 7

DANIEL P. ERNST, Trustee

Adversary No. Y89-0182D

Plaintiff

EAST DUBUQUE SAVINGS BANK

Intervenor

vs.

SPAHN & ROSE LUMBER COMPANY

Defendant.

MEMORANDUM AND DECISION RE: INTERVENOR'S MOTION FOR SUMMARY JUDGMENT

The matter before the court is a motion for summary judgment filed by East Dubuque Savings Bank (EDSB). EDSB asserts that \$12,245.44 recovered by the bankruptcy estate as a preference is not property of the estate and that the trustee should hold the money in constructive trust for the benefit of EDSB. The trustee, Daniel P. Ernst, contends that the \$12,245.44 is property of the estate, available for distribution to Behr's creditors. The parties have filed briefs and have orally argued. This is a core proceeding based on 28 U.S.C. 157 (b)(2)(0).

I.

On November 30, 1988, Behr obtained a \$32,808.97 loan from EDSB. The proceeds of the loan were to be used to pay various of Behr's creditors one-half of their claims. Behr was to pay the balances of the creditors' claims in periodic installments. One of Behr's creditors was the Spahn & Rose Lumber Co. to which he owed \$25,595.33. On November 30, 1988, after receiving the loan proceeds, Behr paid \$13,180.75 to Spahn & Rose. The remaining \$19,628.22 was deposited by Behr in an account with First National Bank.

On December 22, 1988, Behr filed bankruptcy. By that date, he had paid no creditor other than Spahn & Rose. On October 18, 1989, the trustee filed an adversary complaint against Spahn & Rose seeking to recover Behr's November 30, 1988 payment as a preferential transfer. On July 12, 1990, this court granted the trustee's motion for summary judgment thus allowing the trustee to recover \$13,180.75 from Spahn & Rose. The judgment was appealed. While the appeal was pending, the trustee and Spahn & Rose settled the dispute for \$12,180.75. The settlement was approved by this court. Based on the settlement, an amended judgment was entered directing Spahn & Rose to remit \$12,180.75 plus 7.78 per cent interest to the trustee. The appeal was dismissed.

On October 3, 1990, EDSB filed motion for summary judgment. It asks the court to impose a constructive trust in its favor on the returned funds and to direct the trustee to surrender the funds to EDSB. EDSB contends that Behr's use of "false pretenses and false representations" in obtaining the loan from EDSB precludes the trustee from treating the recovered money as property of the estate. EDSB claims that the loan to Behr was part of a "comprehensive plan" which Behr had presented to EDSB in an effort to reach accord with all his creditors, not only Spahn & Rose. As a result of Behr's failure to comply with the terms of the loan agreement, EDSB argues for the imposition of a constructive trust on the funds recovered from Spahn & Rose.

II.

Summary judgment is proper when no genuine issue of material fact exists, and the movant is entitled to judgment as a matter of law. Fed.R.Bankr.P. 7056(c); see also, *Barker v. Sac Osage Electric Co-on*, 857 F.2d 486, 487-88 (8th Cir. 1988). The court must consider the facts in the light most favorable to the nonmovant with the non-movant being entitled to all reasonable inferences drawn from the facts as presented by the pleadings, depositions and affidavits. *Barker*, 857 F.2d at 488. If the moving party initially fails to show the absence of a genuine issue of material fact, summary judgment will be denied even though there are no conflicting evidentiary matters. *Foster v. Johns-Manville Sales Corp.*, 787 F.2d 390, 393 (8th Cir. 1986).

The Bankruptcy Code's broad definition of property of a debtor's estate is limited by subsection (d) of 11 U.S.C. 541 which states:

Property in which the debtor holds, as of the commencement of the case, only legal title and not in equitable interest . . . becomes property of the estate under subsection (a) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

According to the Eighth Circuit, S 541(d) mandates that if a debtor acquires legal title without any equitable interest, the estate acquires legal title without any equitable interest. *In re N. S. Garrott & Sons*, 772 F.2d 462, 466 (8th Cir. 1985) (emphasis supplied).

The extent of the debtor's interest in property is determined by state law. *Butner v. U.S.*, 440 U.S. 48, 55 (1975). Thus, where state law provides for the imposition of a constructive trust upon a debtor's property, the true owner retains an equitable interest in the property superior to the interest of the trustee. *N. S. Garrott & Sons*, 772 F.2d at 467; *In re Flight Transportation Corp. Securities Litigation*, 730 F.2d 1128, 1132 (8th Cir. 1984), *cert. denied*, ___ U.S. ___, 105 S.Ct. 1169, 84 L.Ed.2d 320 (1985).

Under Iowa law, a constructive trust is a court-created remedy applied for purposes of restitution, to prevent fraud or unjust enrichment. *Regal Ins. Co. v. Summit Guaranty Corp.*, 324 N.W.2d 697, 704-5 (Iowa 1982); *Slocum v. Hammond*, 346 N.W.2d 485, 493 (Iowa 1984). Constructive trusts are generally classified into three categories: (1) those arising from actual fraud; (2) those arising from constructive fraud (misappropriation of property by fiduciary or others in confidential relationships); and (3) those based on equitable principles other than fraud. *Loschen v. Clark*, 256 Iowa 413, 419-20, 127 N.W.2d 600, 603 (1964). A party seeking the imposition of a constructive trust must establish the right by clear and convincing evidence. *Slocum*, 346 N.W.2d at 493.

EDSB asks the court to infer a fraudulent intent from Behr's failure to pay all of his creditors with the borrowed money. But there may have been no fraudulent intent when he obtained the loan. The failure to pay the creditors may have been a breach of the loan agreement brought about by factors of which the court has no knowledge. The evidence on which EDSB bases its motion does not convince the court that Behr acted either fraudulently in obtaining the loan or was unjustly enriched by its receipt. The loan documents have not been submitted to the court. There has been no evidence of how the balance of the loan was used by Behr once deposited in his bank account.

That Behr did not pay his remaining creditors after obtaining the loan and instead filed bankruptcy, in and of itself, does not support a finding that the loan was obtained through fraud. Based upon the undisputed facts, the court cannot conclude that EDSB is entitled to judgment as a matter of law.

Because the facts submitted do not warrant granting summary judgment in favor of EDSB, it is not now necessary for the court to reach the legal issue addressed in Research-Planning, Inc. v. Segal (In re First Capital Mortgage Loan Corn.), 917 F.2d 424 (10th Cir. 1990) reh'g. denied (1990).

ORDER

IT IS ORDERED that intervenor East Dubuque Savings Bank's motion for summary judgment is denied. Clerk of court shall set a telephone conference among the parties' counsel for the purpose of assigning a date for trial.

SO ORDERED ON THIS 9th DAY OF JANUARY, 1991.

William L. Edmonds
Bankruptcy Judge