

In the United States Bankruptcy Court

for the Northern District of Iowa

RALPH E. STIEFEL

Bankruptcy No. 97-00839-W

Debtor(s).

Chapter 7

CAROL F. DUNBAR TRUSTEE

Adversary No. 97-9063-W

Plaintiff(s)

vs.

HOWARD J. STIEFEL and

MARY L. STIEFEL

Defendant(s)

On November 24, 1997, trial was held in the above-captioned matter. Plaintiff/Trustee Carol F. Dunbar was represented by Attorney Joseph Peiffer. Defendants Howard and Mary Stiefel were represented by Attorney Gary McClintock. Evidence was presented after which the Court took the matter under advisement. The time for filing briefs has passed and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(H).

FINDINGS OF FACT

In 1987, Debtor Ralph Stiefel purchased a farm on contract from his parents, Defendants Howard and Mary Stiefel, for the sum of \$144,000. The sale documents are found in Exhibit A. Debtor made payments for a time. Shortly before filing his petition in bankruptcy, however, Defendants forfeited the real estate contract for default in payments. The forfeiture documents are found in Exhibits B and C. The amount in default was \$77,011.82, including delinquent payments of \$43,200 and accrued interest of \$33,811.82. The remaining balance due on the contract was approximately \$177,811.

Trustee presented expert testimony that the value of the farm land and buildings was \$360,000 as of February, 1997 when the property was forfeited. Defendants provided an expert appraisal and testimony which valued the property as of February, 1997. He valued the land and buildings at \$302,710, including a 9-acre parcel containing the farm residence valued at \$51,300.

Trustee seeks to avoid the real estate contract forfeiture as a fraudulent transfer as defined in 11U.S.C.& sect;548(a)(2). The only real issue for determination is the impact of the purchase price. It is Defendants' position that when Debtor purchased the property from them, his parents, the sale price was extraordinarily low because of their family relationship. They argue that since the value of the property at that time was significantly higher, the current value should be reduced in determining whether Debtor received reasonably equivalent value from the transfer arising from the contract forfeiture.

The only testimony on this issue was provided by Debtor Ralph Stiefel. He testified that he purchased the land for \$144,000. He testified, "This was a fair value". He was later asked if the property was sold to him lower than it would have been to a stranger, and he testified, "I imagine so". There was no

testimony from either expert as to the value of the farm and buildings when the parties entered into the original real estate contract in 1987.

CONCLUSIONS OF LAW

Trustee asserts that Defendants' real estate contract forfeiture was constructively fraudulent under §548(a)(2). A fraudulent transfer contains five elements: (1) an interest of the debtor in property; (2) voluntarily or involuntarily transferred; (3) within one year of filing bankruptcy; (4) where debtor received less than reasonably equivalent value; and (5) debtor was insolvent at the time of the transfer or became insolvent as a result thereof. In re Grady, 202 B.R. 120, 123 (Bankr. N.D. Iowa 1996). The burden of proof is on the party seeking to avoid a fraudulent transfer to establish each of the five elements by a preponderance of evidence. Id. Forfeiture of a real estate contract can constitute a fraudulent transfer. Id.

The record proves, and the parties do not seriously dispute, that the forfeiture took place within one year prior to Debtor filing his bankruptcy petition and that Debtor was insolvent at the time of the forfeiture transfer. The critical issue is whether the forfeiture was a transfer for "reasonably equivalent value". The Code defines "value" as "property, or satisfaction or securing of a present or antecedent debt of the debtor". 11 U.S.C. §548(d)(2)(A). The contract forfeiture by Defendants satisfied a present debt of Debtor by canceling the remaining balance on the contract. Defendants argue further value was transferred based on the asserted discount in the original purchase price of the farm.

The Eighth Circuit has stated that "§548 contemplates a quid pro quo." In re Young, 82 F.3d 1407, 1415 (8th Cir. 1996), vacated sub nom. on other grounds, Christians v. Crystal Evangelical Free Church, 117 S. Ct. 2502 (1997). Courts are correct to examine "all aspects of the transaction and carefully measure the value of all benefits and burdens to the debtor, direct or indirect," including "indirect economic benefits." Id. (emphasis added) To the extent a debtor receives indirect, non-economic benefits, they do not constitute reasonably equivalent value. In re Bargfrede, 117 F.3d 1078, 1080 (8th Cir. 1997). In Bargfrede, the Eighth Circuit held that intangible, psychological benefits from release of a possible burden on the marital relationship and preservation of the family relationship did not constitute reasonably equivalent value. Id. Others types of such benefits include moral obligations, love and affection, and spiritual fulfillment. Id.(citations omitted).

Defendants assert that they discounted the original purchase price of the farm for Debtor's benefit, based on their family relationship. Such a discount must be categorized as a gift to Debtor of the value of the farm beyond the contract purchase price, if any. Under Iowa law, valid gifts are irrevocable. Frederick v. Shorman, 147 N.W.2d 478, 483 (Iowa 1966). A transfer constitutes a gift if it meets the following requirements: (1) donative intent, (2) delivery, and (3) acceptance. Gray v. Roth, 438 N.W.2d 25, 29 (Iowa App. 1989), cert. denied, 493 U.S. 825 (1989). The donor must have a clear intention to pass all right, title, and dominion over the gift to the donee. Id. Any act of a donor after a completed gift, not consented to by the donee, will not affect the donee's title. Kintzinger v. Millin, 117 N.W.2d 68, 77 (Iowa 1962).

If there is a condition to vesting of title of the gift, the gift fails. Gray, 438 N.W.2d at 29. The donor may recover the property or its value if a gift is made on a conditional basis, but conditions are not met. Id.; see 38 Am. Jur. 2d Gifts §81 (1995). Once property has been delivered and accepted, the burden of demonstrating the conditional nature of the gift falls upon the donor. Fierro v. Hoel, 465 N.W.2d 669, 671 (Iowa 1990). This requirement is met by a preponderance of the evidence. Id. Proving an implied condition of transfer may meet this burden as well as proving an explicit and

known condition. Id. (holding an engagement ring given in contemplation of marriage is an impliedly conditional gift).

Defendants argue that the discount given to Debtor at the time of sale added value to the later forfeiture transaction. This discount is not proven to exist. The parties did not introduce any evidence of the value of the farm land at the time of the contract sale to Debtor. There is no evidence in the record that the contract price was less than the fair market value at that time.

Assuming that Defendants did discount the contract price for their son, any reduction in price constitutes an irrevocable gift. Defendants state that the price they set for the contract was intended to bolster their son's success in the business of farming with as little cost as possible. This is sufficient to prove donative intent. Delivery and acceptance are evidenced by the contract. Absent a condition, the gift was complete at the time of the original sale and cannot be revoked.

There is no evidence that the gift through any reduction of the purchase price of the farm was expressly or impliedly conditional. Defendants must prove a condition exists by a preponderance of the evidence. They imply that the gift of the lower purchase price was conditional on Debtor succeeding in farming and being able to make the contract payments. Nothing in the record supports such an argument.

The value of the property at the time of the contract forfeiture was between \$360,000 and \$302,710, or, as conceded by Trustee to be a fair value, an average of \$331,500. Assuming Debtor could exempt the 9-acre parcel containing the farm residence valued at \$51,300 as his homestead, the value of the remaining property to the bankruptcy estate is \$280,200. The unpaid balance due on the contract at the time of the contract forfeiture was approximately \$177,811. The transfer effected by the contract forfeiture canceled this debt. Thus, Debtor received satisfaction of the \$177,811 debt in exchange for property valued at \$280,200, or 63% of the value.

Considering all aspects of the transaction and measuring the value of all benefits and burdens to Debtor, direct or indirect, including indirect economic benefits, the Court concludes that Debtor received less than reasonably equivalent value from the transfer. The forfeiture depletes the bankruptcy estate by more than \$100,000. Other than the satisfaction of the debt, Debtor received no quid pro quo through the forfeiture. Any benefit to Debtor's family relationship with Defendants through the forfeiture does not constitute the type of value which can be considered in determining reasonably equivalent value. Trustee has proven all the elements of §548(a)(2). The contract forfeiture may be avoided.

WHEREFORE, the forfeiture of the real estate contract is a fraudulent transfer under §548(a)(2).

FURTHER, the real estate contract forfeiture, evidenced by Affidavit in Support of Forfeiture of Real Estate Contract filed for record on March 28, 1997 in Buchanan County, Iowa, No. 1997R00876, is hereby avoided.

FURTHER, judgment shall enter accordingly.

SO ORDERED this 8th day of January, 1998.

Paul J. Kilburg
U.S. Bankruptcy Judge