

IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF
IOWA

IN RE:)

) Chapter 7

ROBERT W. PEPMEYER,)

)

Debtor.) Bankruptcy No. 00-02486

----- SHERYL YOUNGBLUT, Trustee,)

) Adversary No. 01-9207

Plaintiff,)

)

vs.)

)

QUAG'S EQUIPMENT, L.L.C.,)

)

Defendant.)

ORDER RE: MOTION FOR SUMMARY JUDGEMENT

This matter came on for hearing on March 29, 2002 on Trustee's Motion for Summary Judgment. Defendant Quag's Equipment, L.L.C. was represented by Attorney John Titler. Trustee Sheryl Youngblut was represented by Attorney Tim DeBoom. After oral argument, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(F).

FINDINGS OF FACT

On September 29, 2000, Debtor Robert Pepmeyer filed a Chapter 7 petition. Until September 12, 2000, Debtor owned an automotive equipment distributorship as a sole proprietorship under two different designations: Quagco and Quag's Equipment Co. Brenton Bank has a security interest in all accounts receivable of Quagco and Quag's Equipment Co.

On August 22, 2000, Quag's Equipment Co. issued an invoice to Kirkwood Community College for equipment in the amount of \$2,995. On August 25, 2000, a second invoice was issued to Kirkwood for equipment in the amount of \$7,290. The second invoice indicated that Kirkwood should remit payment to Quag's Equipment Co.

On September 13, 2000, an invoice was sent to Webb's Transmission for parts sold, in the amount of \$114.60. On September 19, 2000, an additional invoice in the amount of \$14,372 was issued to Webb's Transmission for equipment sold to them on March 17, 2000. Both invoices requested Webb's Transmission remit payment to Quag's Equipment Co.

On September 21, 2000, Webb's Transmission sent a check to Debtor in the amount of \$14,486.60 for payment on the two invoices. This check was made payable to Quagco Automotive Equipment. Debtor deposited this check in his own bank account at Guaranty Bank & Trust on September 25, 2000. Later that month, on the 29th, Kirkwood made payment on the two invoices for equipment through a check in the amount of \$10,285 made payable to Quag Equipment Company. Debtor also deposited this check in his own bank account at Guaranty.

Sometime between September 12 and September 26, 2000, Quag's Equipment L.L.C. opened a checking account at Guaranty Bank & Trust. Quag's Equipment L.L.C. was organized on September 12, 2000. On September 28, 2000, Debtor wrote a check drawn on his account to Quag's Equipment L.L.C. for the amount of \$11,900. This check was deposited into Quag's Equipment L.L.C.'s account on the 29th. Also on the 29th, Debtor wrote a second check drawn on his account to Quag's Equipment

L.L.C. for the amount of \$2,995. This check was deposited into Quag's Equipment L.L.C.'s account on October 2, 2000.

CONCLUSIONS OF LAW

Trustee asserts that payments made by Debtor Robert Pepmeyer to Defendant Quag's Equipment L.L.C. constituted either preferential or fraudulent transfers under §§ 547(b) and 548(a), respectively. Trustee further asserts that, as the transfers are avoidable and no issues of material fact are in dispute, the Court as a matter of law should grant Trustee's motion for summary judgment.

Summary judgment is a drastic remedy and must be exercised with extreme care. Wabun-Inini v. Sessions, 900 F.2d 1234, 1238 (8th Cir. 1990); see also Geiger v. Tokheim, 191 B.R. 781, 785 (N.D. Iowa 1996). In considering a motion for summary judgment, the Court must determine "whether the record, viewed in a light most favorable to the nonmoving party, shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Rabushka v. Crane Co., 122 F.3d 559, 562 (8th Cir. 1997).

ELEMENTS OF §§ 547(b) AND 548(a) (1) (B)

A trustee may avoid a preferential transfer when an interest in property of the debtor is transferred: (1) to a creditor; (2) for or on account of an antecedent debt; (3) while the debtor is insolvent; (4) within 90 days preceding commencement of the case; and (5) where the creditor receives a greater benefit than it would have received under the distribution provisions of the Bankruptcy Code. 11 U.S.C. § 547(b); In re Mason, 189 B.R. 932, 935 (Bankr. N.D. Iowa 1995).

A trustee may avoid a transfer as fraudulent if: (1) an interest of the debtor in property; (2) is voluntarily or involuntarily transferred; (3) within one year of filing bankruptcy; (4) where debtor did not receive reasonably equivalent value for the transfer; and (5) the debtor was insolvent at the time of, or made insolvent by, the transfer. 11 U.S.C. § 548(a)(1)(B); In re Bargfrede, 117 F.3d 1078, 1080 (8th Cir. 1997); In re Grady, 202 B.R. 120, 123 (Bankr. N.D. Iowa 1996).

INTEREST OF DEBTOR IN PROPERTY

The question of whether Debtor had an interest in the property transferred is an essential element in this case under either § 547(b) or § 548(a). The Court will first examine to what extent Debtor had an interest in the two checks he transferred to Defendant Quag's Equipment L.L.C. The Bankruptcy Code does not explicitly define what constitutes an interest of the debtor in property. In re Libby Int'l, Inc., 247 B.R. 463, 466 (B.A.P. 8th Cir. 2000). However, property of the estate includes all legal or equitable interests of the debtor in property. 11 U.S.C. § 541(a)(1).

The phrase "property of the debtor" and "property of the estate" are interchangeable in determining whether a preference is avoidable. In re Rine & Rine Auctioneers, Inc., 74 F.3d 854, 857 (8th Cir. 1996) (citing In re Bellanca Aircraft Corp., 850 F.2d 1275, 1279 (8th Cir. 1988)). The Supreme Court holds that "property of the debtor subject to the preferential transfer provision is best understood as that property that would have been part of the estate had it not been transferred before the commencement of bankruptcy proceedings." Begier v. Internal Revenue Service, 496 U.S. 53, 110 (1990). In other words, the fundamental inquiry is whether the transfer of the property diminished or depleted the debtor's estate. See Rine & Rine, 74 F.3d at 857.

Trustee claims that when Debtor deposited the Webb's Transmission and

Kirkwood checks in his personal account, and these funds became commingled with Debtor's assets, they became an interest of Debtor in property. When Debtor wrote checks payable to Defendant, drawn on the commingled funds in his account, property of the estate was diminished and preferential transfers occurred. Defendant argues that Debtor was acting solely as an agent in collecting payments for Defendant, and therefore Debtor had no interest in the property to transfer. Further, Defendant asserts, as the funds were continually the property of Defendant, albeit held in constructive trust by Debtor as agent, they never became part of Debtor's bankruptcy estate, and therefore no diminution of the estate occurred.

To decide whether an agency relationship existed between Debtor and Defendant for the purpose of deciding who had an interest in the property, the Court looks to state law. Rine & Rine, 74 F.3d at 857. In Iowa, to determine whether an agency relationship exists, the primary issue for a court to consider is the principal's right to control the agent. Benson v. Webster, 593 N.W.2d 126, 130 (Iowa 1999). If there is an understanding between the parties, as interpreted by the court, which creates a fiduciary relationship in which the fiduciary is subject to the direction of the one on whose account the fiduciary acts, then an agency relationship exists. "It is the element of continuous subjection to the will of the principal which distinguishes the agent from other fiduciaries and the agency agreement from other agreements." Id.

PREFERENTIAL TRANSFER

Trustee claims that the requisite elements of a § 547(b) preferential transfer are present as a matter of law, allowing the Court to grant summary judgment. Specifically, she argues that when Debtor deposited the Webb's Transmission and Kirkwood checks, a debtor-creditor relationship was created between Debtor and Defendant. Further, when Debtor transferred funds from his account to Defendant's account, a transfer for or on account of an antecedent debt occurred. Trustee relies upon In re Bellanca Aircraft Corp., 96 B.R. 913 (Bankr. D. Minn. 1989), and Rine & Rine.

The Court finds that the checks Debtor received for payment on the accounts receivable were an interest of Debtor in property, and therefore, property of the estate. The payments received from Webb's Automotive and Kirkwood Community College were on accounts receivable from Debtor's now defunct sole proprietorships, Quagco and Quag's Equipment Co. Brenton Bank has a security interest in all of Debtor's accounts receivable from inventory sold by Quagco or Quag's Equipment Co. Debtor, in his affidavit, states that any funds received on accounts receivable of Quagco or Quag's Equipment Co. were to be deposited in a separate account subject to the Bank's lien. Yet, these checks were deposited directly into Debtor's account and commingled with his own assets. The commingled funds, like those in Rine & Rine and Bellanca, were subject to Debtor's unrestricted use. Therefore, once these funds entered Debtor's account they became an interest of Debtor in property, and property of the estate.

The parties dispute whether an agency relationship existed between Debtor and Defendant. Trustee argues that Debtor had sole ownership of the funds when he received the payments from Webb's and Kirkwood which he deposited in his personal account. At that time, she asserts, Debtor was Defendant's creditor to the extent Defendant was entitled to a portion of the funds. When Debtor turned over the funds to Defendant, a payment on account of antecedent debt occurred.

Defendant argues Debtor was acting as its agent in receiving the payments and thus no debtor-creditor relationship arose. It asserts Debtor was merely performing a ministerial act to correctly separate the funds between Defendant and Debtor's then-defunct sole proprietorships. Thus, Defendant argues, there was no payment on account of antecedent debt under § 547(b).

Viewing the record in the light most favorable to Defendant, the Court must

conclude Trustee is not entitled to summary judgment as a matter of law on the § 547(b)(1) claim. The record does not conclusively establish that Defendant was directing Debtor's activities with regard to disbursement of the Webb's and Kirkwood funds. However, the timing of the payments in relation to the establishment of the L.L.C., the cessation of the sole proprietorship businesses and the creation of the L.L.C.'s bank account raise inferences which support Defendant's position. On the record presented, the Court cannot find, as a matter of law, that a debtor-creditor relationship existed between Debtor and Defendant, nor that an antecedent debt existed. Therefore, the elements of a § 547(b) preferential transfer have not been satisfied, and summary judgment cannot be granted pursuant to § 547(b)(1).

FRAUDULENT TRANSFER

Trustee asserts that for the reasons stated in her arguments for a preferential transfer, Debtor had an interest in the property transferred under § 548(a)(1)(B) which consist of the checks Debtor made payable to Defendant. She contends that the other elements of a fraudulent transfer are satisfied. Specifically, she argues that Defendant has admitted to being insolvent at the time of the transfer, as evidenced in Defendant's Answer to Complaint. Finally, she asserts that no reasonably equivalent value for the transfers was given to Debtor as established by Defendant's answers to Plaintiff's interrogatories which admits that no consideration was given to Debtor by Defendant for the transfer.

The Court must conclude that Trustee has established all the elements of fraudulent transfer under § 548(a)(1) and her Motion for Summary Judgment must be granted. When viewing the facts in the light most favorable to the nonmoving party, this Court must conclude that the Webb's Transmission and Kirkwood checks deposited into Debtor's bank account were commingled with Debtor's assets, and became property of the Debtor. Debtor voluntarily transferred these funds to Defendant within one year of filing for Chapter 7 relief and did not receive equivalent value in exchange for the transfer. Debtor was insolvent on the date of this transfer. Debtor's bankruptcy estate was diminished to the extent of the transfer. These findings satisfy all elements of a fraudulent transfer and mandate summary judgment. Thus, Trustee is entitled to judgment as a matter of law as no issues of material fact exist.

WHEREFORE, Trustee's Motion for Summary Judgment on a theory of fraudulent transfer under § 548(a)(1)(B) is GRANTED.

FURTHER, the transfers of checks from Debtor Robert Pepmeyer's account to Defendant Quag's Equipment L.L.C.'s account were fraudulent transfers.

FURTHER, Defendant Quag's Equipment L.L.C. is hereby ordered to return to Trustee the two payments it received from Debtor Robert Pepmeyer, in the amounts of \$11,900 and \$2,995 respectively.

SO ORDERED this 25th day of April, 2002.

PAUL J. KILBURG
CHIEF BANKRUPTCY JUDGE