

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re)
)
LOUIS J. PEARLMAN, *et. al.*,) Case No. 6:07-bk-00761-KSJ
) Chapter 7
Debtor.)
_____)

SONEET R. KAPILA,)
CHAPTER 11 TRUSTEE,)
)
Plaintiff,)
vs.) Adversary No. 6:09-ap-00743-KSJ
)
DE BEAUBIEN, KNIGHT, SIMMONS,)
MANTZARIS & NEAL, LLP,)
)
Defendant.)
_____)

ORDER DENYING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

The Chapter 11 Trustee, Soneet R. Kapila, filed this adversary proceeding to recover payments for legal fees the Defendant, de Beaubien, Knight, Simmons, Mantzaris & Neal, LLP, received from the Debtors. The Trustee alleges the transfers were constructively fraudulent pursuant to sections 548(a)(1)(B) and 550 of the Bankruptcy Code,¹ and sections 726.105(1)(b), 726.106(1), and 726.108 of the Florida Uniform Fraudulent Transfer Act (FUFTA).² The Defendant filed a Motion for Summary Final Judgment,³ raising various arguments that ultimately assert the estate received reasonably equivalent value. After reviewing the pleadings, the Court finds genuine issues of fact preclude granting the Defendant’s Motion as a matter of law.

¹ All references to the Bankruptcy Code refer to Title 11 of the United States Code.

² Via §§ 544(b)(1) and 550 of the Bankruptcy Code.

³ Doc. No. 42. *See also* Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment, Doc. No. 48; and Defendant’s Reply to Plaintiff’s Opposition to Defendant’s Motion for summary Judgment and Incorporated Memorandum of Law, Doc. No. 53.

The Trustee seeks to recover two different sets of transfers paid to the Defendant. First, Transcontinental Airlines, Inc. (“TCA”) paid the Defendant \$58,772.73 for legal services provided to F.F. Station, LLC, which is not a substantively consolidated debtor.⁴ I will refer to these payments as the F.F. Station Transfers. In its Motion for Summary Final Judgment,⁵ the Defendant argues that i) Louis Pearlman personally guaranteed repayment of F.F. Station’s debts, and ii) F.F. Station was an alter-ego of Pearlman.

The second set of transfers, involve a payment by Louis J. Pearlman Enterprises, Inc. (“LPJE”) of \$10,835.04 to the Defendant for legal services provided to substantively consolidated Debtors, Louis Pearlman, individually, and Trans Continental Records, Inc. (“TCR”). I will refer to these payments as the Backstreet Boy Transfers. In its Motion for Summary Final Judgment,⁶ the Defendant argues it provided reasonably equivalent value, i.e. legal services, in return for the Backstreet Boys Transfers.

Under Federal Rule of Civil Procedure 56, made applicable by Federal Rule of Bankruptcy Procedure 7056, a court may grant summary judgment where “there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.”⁷ The moving party has the burden of establishing the right to summary judgment.⁸ Conclusory allegations by either party, without specific supporting facts, have no probative value.⁹ In determining entitlement to summary judgment, “facts must be viewed in the light most favorable to the nonmoving party only if there is a ‘genuine’ dispute as to those facts.”¹⁰ “Where the record, taken as a whole could not

⁴ The Court notes that F.F. Station formerly was a debtor in another bankruptcy case. (Case No. 6:07-bk-00575, Final Decree entered April 3, 2013), but it was not substantively consolidated as a debtor *in this case*.

⁵ Doc. No. 42.

⁶ *Id.*

⁷ Fed. R. Civ. P. 56.

⁸ *Fitzpatrick v. Schlitz (In re Schlitz)*, 97 B.R. 671, 672 (Bankr. N.D. Ga. 1986).

⁹ *Evers v. General Motors Corp.*, 770 F.2d 984, 986 (11th Cir. 1985).

¹⁰ *Scott v. Harris*, 550 U.S. 372, 380, 127 S. Ct. 1769, 1776, 167 L. Ed. 2d 686 (2007).

lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.”¹¹ A material factual dispute precludes summary judgment.¹² “[A]t the summary judgment stage the judge’s function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.”¹³

To recover the transfers under Bankruptcy Code section 548(a)(1)(B) and FUFTA as constructively fraudulent transfers, the Trustee must prove the Debtors “received less than a reasonably equivalent value in exchange for [the] transfer.”¹⁴ Proving a debtor did not receive reasonably equivalent value for the transfer is an element of a plaintiff’s prima facie case.¹⁵ “Actions to set aside alleged fraudulent conveyances are fact intensive by nature.”¹⁶

F.F. Station Transfers

The F.F. Station Transfers were payments for legal fees assumedly incurred by F.F. Station but paid by TCA. Under the “wrong payor” theory of recovery, the Trustee argues that TCA did not receive reasonably equivalent value for its payment because the Defendant’s services benefitted F.F. Station. In defense, the Defendant argues the legal services benefitted the bankruptcy estate because Pearlman guaranteed repayment of the F.F. Station Transfers and also alleges F.F. Station was an alter-ego of Pearlman.

Defendant first asserts that Louis Pearlman was personally liable to for F.F. Station’s debts, and, therefore, TCA’s payment benefitted Pearlman. Defendant relies on deposition testimony of its representative, David H. Simmons, along with a letter the Defendant sent to Janet Hart, one of Pearlman’s employees, to prove the existence of a guarantee. The deposition testimony just shows Mr. Simmons believed Pearlman took responsibility for F.F. Station’s debts, but he does not assert

¹¹ *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986).

¹² *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 202 (1986).

¹³ *Anderson*, 477 U.S. at 249.

¹⁴ 11 U.S.C. § 548(a)(1)(B)(i); Fla. Stat. 726.105(1)(b) & 726.106.

¹⁵ See *Nordberg v. Arab Banking Corp. (In re Chase & Sanborn Corp.)*, 904 F.2d 588, 593-94 (11th Cir. 1990).

¹⁶ *In re Terry Mfg. Co., Inc.*, 358 B.R. 429, 434 (Bankr. M.D. Ala. 2006).

that any explicit agreement or guaranty was reached.¹⁷ As the Trustee points out, the letter the Defendant sent to Janet Hart is not signed by anyone and does not address the payments that are the subject of this transfer.¹⁸ The Defendant argues the letter by the Defendant's staff person evidences the "understanding" that Pearlman was personally liable for F.F. Station's debts. A material issue of fact exists as to whether Pearlman agreed to be personally liable for F.F. Station's legal fees.

Defendant also contends that Pearlman, TCA, LJPE, and F.F. Station were alter egos of each other and their corporate veils should be pierced. If the corporate veils were pierced, then any direct benefit received by F.F. Station also would be attributed to TCA—in effect eliminating the Trustee's "wrong payor" argument. To pierce the corporate veil under Florida law, the claimant must establish by a preponderance of the evidence that: "(1) the shareholder dominated and controlled the corporation to such an extent that the corporation independent existence, was in fact non-existent and the shareholder shareholders were in fact alter egos of the corporation; (2) the corporate form must have been used fraudulently or for an improper purpose; and (3) the fraudulent or improper use of the corporate form caused injury to the claimant."¹⁹

Material issues of fact remain as to whether F.F. Station's corporate veil should be pierced. Defendant relies on the findings presented in Gerard McHale's Initial Report²⁰ and Mr. McHale's deposition testimony.²¹ Mr. McHale was appointed as receiver for 21 days over some entities controlled by Pearlman, not including F.F. Station. From Mr. McHale's deposition, he reviewed some of F.F. Station's financial records to some extent.²² The Trustee argues that because Mr. McHale was appointed as receiver for only 21 days and his review of F.F. Station's financial records was limited, his deposition testimony is not conclusive. The Court agreed. A material

¹⁷ See Simmons Depo., Ex. D to Doc. No. 42 at 25:22-26:16.

¹⁸ Janet Hart Letter, Ex. F to Doc. No. 42.

¹⁹ *In re Hillsborough Holdings Corp.*, 166 B.R. 461, 468-69 (Bankr. M.D. Fla. 1994) (citing *Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So. 2d 1114 (Fla. 1984)), *aff'd*, 176 B.R. 223 (M.D. Fla. 1994).

²⁰ Ex. A to Doc. No. 42.

²¹ Ex. G to Doc. No. 42.

²² McHale Depo., Ex. G to Doc. No. 42 at 7:8-7:14.

factual dispute exists as to the probative value of Mr. McHale's deposition testimony and, more importantly, whether F.F. Station is an "alter ego" of the other substantively consolidated payor Debtors.²³

The Defendant failed to show how F.F. Station's corporate form was "used fraudulently or for an improper purpose" or how the "improper use of [F.F. Station's] corporate form caused injury" to the Defendant.²⁴ In his response, the Trustee presented some evidence to show that F.F. Station was not a part of Pearlman's Ponzi scheme; namely, that the State of Florida on behalf of the Office of Financial Regulation "did not assert and could not demonstrate" that F.F. Station engaged in the sale of unregistered securities or other investments.²⁵ Again, this is not conclusive, but material issues of fact clearly exist as to whether F.F. Station's corporate form was used fraudulently or the fraudulent use of F.F. Station's corporate form caused injury to the Defendant. Accordingly, as to the F.F. Station Transfers material factual disputes preclude summary judgment as a matter of law.

Backstreet Boys Transfers

LJPE paid the Defendant for alleged legal representation of Pearlman, LJPE, and TCR in in various cases against former members of the Backstreet Boys music group and their various entities. Here, both the payor and the beneficiaries of the transfers are substantively consolidated Debtors; thus, the "wrong payor" theory does not apply. Accordingly, the Trustee's constructive fraud claim requires a more traditional reasonably equivalent value analysis. In its motion, the Defendant argues the Debtors received reasonably equivalent value in the form of legal services and supports its argument with billing records and pleadings from the cases it allegedly worked on for the Debtors.

In his response, the Trustee however identifies substantial discrepancies in the Defendant's

²³ See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 202 (1986).

²⁴ *In re Hillsborough Holdings Corp.*, 166 B.R. 461, 468-69 (Bankr. M.D. Fla. 1994) (citing *Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So. 2d 1114 (Fla. 1984)), *aff'd*, 176 B.R. 223 (M.D. Fla. 1994).

²⁵ See Case Management Summary; F.F. Station, LLC, Case No. 07-bk-00575, Doc. No. 21 at ¶ 8.

billing invoices.²⁶ For example, in the Littrell Case,²⁷ the Trustee points out the Defendant's records indicate fees were paid for time incurred in 2006, but the case was voluntarily dismissed in 2005.²⁸ Similarly, the Trustee asserts that the Defendant's billing invoices contain fees charged for work on certain documents, such as a motion for injunction, but none of the dockets for the cases in which the Defendant referenced contain evidence of such a motion.²⁹ In reviewing the pleadings filed as the Defendant's Exhibit H to its motion for summary judgment, it simply is not clear how those documents relate to the charges.³⁰ And the deposition testimony offered by the Defendant does not adequately explain the value provided to the Debtors or explain these discrepancies.³¹

"Whether the payments were made in exchange for legal work of 'reasonably equivalent value' is necessarily a factual issue."³² The Trustee has raised factual discrepancies sufficient to show that material issues of fact remain and preclude summary judgment as a matter of law on the Backstreet Boys Transfers.

Defendant de Beaubien, Knight, Simmons, Mantzaris & Neal, LLP's Motion for Summary Judgment is denied. A pretrial conference is scheduled in this adversary proceeding for **3:15 p.m. on January 28, 2014**, in Courtroom A, Sixth Floor, 400 West Washington Street, Orlando, Florida 32801.

DONE AND ORDERED, in Orlando, Florida, on November 22, 2013.



KAREN S. JENNEMANN
Chief United States Bankruptcy Judge

²⁶ Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Doc. No. 48 at ¶¶ 16-27.

²⁷ Brian Littrell, et al. vs. Louis J. Pearlman and Transcontinental Records, Inc., Case No. 05-CA-9230 (Fla. 9th Cir. Court).

²⁸ See Ex. B to Doc. No. 48.

²⁹ The Trustee's specific arguments are laid out in Doc. No. 48 at ¶¶ 22-27. The "motion for injunction" is referenced in Ex. I to Doc. No. 42, at p. 4. The Trustee attached the dockets to the various cases de Beaubien alleges it incurred fees on in Ex. B-F to Doc. No. 48.

³⁰ Ex. H to Doc. No. 42.

³¹ See Simmons Depo., Ex. D to Doc. No. 42, 6:17-10:9.

³² *In re Terry Mfg. Co., Inc.*, 358 B.R. 429, 434 (Bankr. M.D. Ala. 2006).