

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
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In re: Case No. 8:11-bk-01927-CED
Chapter 7

Frank Michael Mongelluzzi,

Debtor.

Angela Welch, as Chapter 7 Trustee
for the bankruptcy estate of
Frank Michael Mongelluzzi,

Plaintiff,

vs. Adv. Pro. No. 8:14-ap-653-CED

Regions Bank,

Defendant.

**ORDER GRANTING REGIONS BANK'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT ON CLAIMS ASSERTED BY
TRUSTEE ANGELA WELCH AND
DENYING IN PART PLAINTIFF'S
MOTION FOR TERMINAL SANCTIONS
(Doc. Nos. 601 and 362)**

THIS PROCEEDING came before the Court to consider *Regions Bank's Motion for Partial Summary Judgment on Claims Asserted by Trustee Angela Welch* (Doc. No. 601) (the "Summary Judgment Motion").

¹ A more complete recitation of the facts is set forth in the Court's *Memorandum Opinion and Order Granting in Part Defendant Regions Bank's Motions for Partial Summary Judgment*, Doc. No. 591.

² Doc. No. 1.

³ Doc. No. 31.

⁴ Doc. No. 156.

A. Procedural History

Debtor, Frank Mongelluzzi ("Debtor"), filed a Chapter 11 case in 2011, and shortly thereafter converted the case to a case under Chapter 7.¹ In January 2014, Angela Welch, the Chapter 7 Trustee ("Plaintiff"), commenced this adversary proceeding by filing a complaint against Regions Bank ("Regions") in the United States District Court for the Middle District of Florida.² The District Court referred the proceeding to this Court.³

Plaintiff filed her Second Amended Complaint on April 7, 2016.⁴ In its sixteen counts, Plaintiff seeks to avoid and recover certain transfers from Regions. Plaintiff describes these transfers as "Overdraft Loan Repayment Transfers," "Deposit Transfers," and "Other Loan Repayment Transfers."

Plaintiff defines "Overdraft Loan Repayment Transfers" as payments by Debtor to repay overdrafts of his account at Regions identified as Account No. 4648.⁵ "Deposit Transfers" are defined as deposits by Debtor to Account Nos. 4648 and 9671, totaling \$12,893,805.97, that were made within the four-year period preceding the filing of the bankruptcy petition.⁶ And Plaintiff defines "Other Loan Repayment Transfers" as payments to Regions that were used to repay Debtor's outstanding loan obligations in "a currently unknown amount."⁷

Nine of the counts of the Second Amended Complaint seek to avoid transfers made by Debtor to Regions as constructively fraudulent transfers under § 548(a)(1)(B)⁸ and §§ 726.105(1)(b) and 726.106(1) of the Florida Statutes.⁹

Six of the counts of the Second Amended Complaint seek to avoid transfers made by Debtor to Regions as actually fraudulent transfers under

⁵ Doc. No. 156, Ex. 9.

⁶ Doc. No. 156, Ex. 10.

⁷ Doc. No. 156, ¶ 51.

⁸ Unless otherwise stated, statutory references are to the United States Bankruptcy Code, 11 U.S.C. § 101, et seq.

⁹ Counts II, III, V, VI, VIII, IX, XI, XIII, and XV.

§ 548(a)(1)(A) and § 726.105(1)(a) of the Florida Statutes.¹⁰

The last count of the Second Amended Complaint seeks to recover the avoided transfers pursuant to § 550.¹¹

Regions previously filed two motions for summary judgment.¹² On July 18, 2018, the Court entered its order granting these motions in part (the “July 18, 2018 Order”).¹³ In the July 18, 2018 Order, the Court granted summary judgment in Regions’ favor on the constructive fraud counts of the Second Amended Complaint, primarily on the basis that (1) the Deposit Transfers were not “transfers” subject to avoidance, (2) Debtor received reasonably equivalent value in exchange for the Overdraft Loan Repayment Transfers, and (3) Plaintiff had not identified any Other Loan Repayment Transfers.

B. Regions’ Motion for Partial Summary Judgment

The Summary Judgment Motion relates to the six counts of the Second Amended Complaint in which Plaintiff seeks to avoid transfers as actually fraudulent, and also relates to the last count for recovery of the avoided transfers.

Under § 548(a)(1)(A), a trustee may avoid any transfer of an interest of the debtor in property that was made two years before the petition date, if the debtor made the transfer “with actual intent to hinder, delay, or defraud” any entity to which the debtor was indebted. Section 726.105(1)(a) of the Florida Statutes provides that a transfer is fraudulent as to a creditor if the debtor made the transfer “with actual intent to hinder, delay, or defraud any creditor of the debtor.” Under § 726.110 of the Florida Statutes, actions to avoid fraudulent transfers must be filed within four years of the transfer.

Under Rule 56 of the Federal Rules of Civil Procedure, as made applicable to this proceeding by Rule 7056 of the Federal Rules of Bankruptcy Procedure, the court shall grant summary judgment if the moving party shows “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”¹⁴

In this case, Plaintiff “bears the burden of proof at trial to establish each element of her fraudulent transfer and recovery claims. Therefore, as the moving party on summary judgment, Regions has the burden to show that there is an absence of record evidence to support Plaintiff’s case or to show affirmative evidence that Plaintiff will be unable to prove her claims.”¹⁵

1. Deposit Transfers

Regions seeks summary judgment as to three of the seven alleged Overdraft Loan Repayment Transfers from Account No. 4648:

- a. A deposit in the amount of \$150,000.00 on February 18, 2010;
- b. A deposit in the amount of \$600,000.00 on February 25, 2010; and
- c. A deposit in the amount of \$200,000.00 on May 20, 2010.

Regions contends that these three deposits were actually “regular deposits” (i.e., “Deposit Transfers”) into Account No. 4648 and that no portion of these deposits was used to repay any overdrafts. In support, Regions submits bank statements for Account No. 4648 for February and May 2010.¹⁶ Regions contends that these statements show that the deposits were made after Regions had returned any checks that had created an overdraft in Account No. 4648. Consequently, Regions asserts that Debtor retained “complete autonomy” over the deposited funds such that the

¹⁰ Counts I, IV, VII, X, XII, and XIV.

¹¹ Count XVI.

¹² Doc. Nos. 428 and 476.

¹³ Doc. No. 591.

¹⁴ Fed. R. Civ. P. 56(a).

¹⁵ July 18, 2018 Order, p. 10.

¹⁶ Doc. No. 615, Exs. 1 and 2 (filed under seal pursuant to the Court’s *Order Granting Regions Bank’s Motion to Seal Exhibits to Regions Bank’s Motion for Partial Summary Judgment on Claims Asserted by Trustee Angela Welch* (Doc. No. 614)).

deposits were not “transfers” within the meaning of the Bankruptcy Code, as previously determined in the July 18, 2018 Order.¹⁷

In her response to the Summary Judgment Motion, Plaintiff does not dispute Regions’ request for a summary judgment in its favor with respect to the three deposits, stating:

The Court’s July 18, 2018 partial summary judgment ruling determined that deposits to Regions are recoverable “transfers” only to the extent they were applied to repay overdrafts. [Plaintiff] recognizes that transfers (identified in [Plaintiff’s] Exhibit 9 or otherwise) that were not applied to overdrafts are not recoverable under the Court’s July 18 ruling.¹⁸

Therefore, Regions’ Summary Judgment Motion should be granted on this issue; the Court finds that the deposits to Account No. 4648 on February 18, 2010, February 25, 2010, and May 20, 2010, are not avoidable as actually fraudulent transfers.

2. Other Loan Repayment Transfers

Plaintiff alleges that the Other Loan Repayment Transfers were made to Regions to repay Debtor’s loans within the four years prior to Debtor’s bankruptcy petition in an unknown amount.¹⁹

Regions asserts that Debtor was a borrower on three loans with Regions that were evidenced by promissory notes: (1) a Promissory Note dated May 28, 2008, in the original principal amount of \$2,000,000.00, (2) a renewal Promissory Note dated March 6, 2009, in the original principal amount of \$1,000,000.00, and (3) a Promissory

Note dated May 19, 2010, in the original principal amount of \$1,000,000.00 (referred to by Regions as the “Loan 7012/7020 Notes.”).²⁰

Regions also asserts that the Loan 7012/7020 Notes were secured by the sum of \$1,000,000.00 in a deposit account maintained by Debtor at Regions, identified as Account No. 9671. Regions’ security interest in the account is evidenced by an Assignment of Deposit Account signed by Debtor on May 28, 2008.²¹

Finally, Regions asserts that Debtor was in default under the Loan 7012/7020 Notes as of July 15, 2010, and that the balance owed under the Notes on that date was \$1,000,768.00. Based on the default, and pursuant to a Forbearance Agreement signed by Debtor on July 15, 2010,²² Regions applied the \$1,000,000.00 on deposit in Account No. 9671 to the balance owed on the Loan 7012/7020 Notes on July 22, 2010.

The transfer of the \$1,000,000.00 appears to be the only transfer meeting Plaintiff’s definition of Other Loan Repayment Transfers.²³ Regions contends that this transfer is not avoidable as a transfer made with actual fraudulent intent, because it was made in satisfaction of a secured antecedent debt owed to Regions.²⁴

As a general rule in Florida, the inference of fraudulent intent does not arise in a case where the debtor made a transfer in payment of a secured obligation. For example, in *Absolute Trading Corp. v. PDVSA Services, Inc.*, the court held that if a debt is secured, no inference arises that repayment of the debt was actually fraudulent.²⁵ And a debtor’s payment to a secured creditor is not fraudulent,

¹⁷ Doc. No. 591, pp. 14-16.

¹⁸ Doc. No. 618, p. 13.

¹⁹ Doc. No. 156, ¶ 51.

²⁰ Doc. No. 428, Exs. G and H (filed under seal at Doc. No. 480 pursuant to the Court’s *Order Granting Regions Bank’s Motion to Seal Exhibits to Regions Bank’s Motion for Partial Summary Judgment on Claims Asserted by Trustee Angela Welch* (Doc. No. 445)).

²¹ Doc. No. 428, Ex. N (filed under seal at Doc. No. 480 pursuant to the Court’s *Order Granting Regions Bank’s*

Motion to Seal Exhibits to Regions Bank’s Motion for Partial Summary Judgment on Claims Asserted by Trustee Angela Welch (Doc. No. 445)).

²² Doc. No. 601, Ex. 11.

²³ Doc. No. 156, ¶ 51.

²⁴ Doc. No. 601, pp. 12-19.

²⁵ 2015 WL 12748031, at *4 (S.D. Fla. July 28, 2015)(quoting *Johnson v. Dowell*, 592 So. 2d 1194, 1197 (Fla. 2d DCA 1992).

even if it has the effect of hindering other creditors.²⁶

In her response to the Summary Judgment Motion, Plaintiff does not dispute that Debtor owed Regions a debt pursuant to the Loan 7012/7020 Notes, or that Regions held a valid security interest in the funds contained in Account No. 9671 under the Assignment of Deposit Account. Instead, Plaintiff asserts only that (1) the transfer should not be deemed unavoidable as a matter of law, because even a payment on a secured debt may be made with the actual intent to defraud creditors, that (2) “the evidence will show that the Debtor made the transfers at issue to perpetuate a check kiting scheme,”²⁷ and that (3) Regions’ arguments concerning its security interests raise an affirmative defense that is the subject of Plaintiff’s pending *Motion for Terminal Sanctions Striking All Regions Bank’s Defenses* (the “Sanctions Motion”), scheduled to be tried with this adversary proceeding.²⁸

The Sanctions Motion, filed in June 2017, arises from Plaintiff’s assertions of discovery abuses by Regions over the first several years of this adversary proceeding.²⁹ Plaintiff requests that the Court, as a terminal sanction, find that “no other sanction short of striking Regions’ affirmative defenses and entering a default judgment would ensure compliance with court orders and adequately punish Regions’ willful disobedience.”³⁰ The Court initially set the Sanctions Motion for trial on January 8, 2018, but it was deferred, at Plaintiff’s unopposed request, to the trial of this adversary proceeding.³¹ Over the nearly two years since the Sanctions Motion was filed, the parties have continued with discovery and the filing of dispositive motions.

The Eleventh Circuit has stated that “the severe sanction of a dismissal . . . is appropriate only as a

last resort, when less drastic sanctions would not ensure compliance with the court’s orders.”³² Given the present posture of this proceeding and the amount of recovery sought by Plaintiff, the Court is not inclined to grant Plaintiff’s request that Regions’ affirmative defenses be stricken and judgment entered in Plaintiff’s favor. However, the Court will reserve ruling on the Sanctions Motion and consider a less drastic sanction, if appropriate.

Debtor’s fraudulent intent is an element of Plaintiff’s case. As the Court held in its July 18, 2018 Order, “[i]n order to establish a prima facie case of actual fraud a plaintiff must prove that there was a creditor to be defrauded, there was a transfer of property, and there was a debtor intending fraud.”³³ Here Plaintiff has failed to make any factual showing that Debtor intended to defraud his creditors by paying the secured debt, or that the payment was related to a check-kiting scheme.³⁴

Regions has shown that there is an absence of record evidence to support an essential element of Plaintiff’s claims under § 548(a)(1)(A) and § 726.105(1)(a) of the Florida Statutes. Accordingly, the Summary Judgment Motion should be granted on this issue; the Court finds that the transfer of \$1,000,000.00 to Regions on July 22, 2010, is not avoidable as an actually fraudulent transfer.

3. Overdraft Loan Repayment Transfers

Plaintiff seeks to recover seven transfers to Account No. 4648 as Overdraft Loan Repayment Transfers.³⁵ As discussed above, the Court has determined that three of the alleged Overdraft Loan Repayment Transfers were actually Deposit Transfers. The other four Overdraft Loan Repayment Transfers in Account No. 4648 are:

²⁶ *Wiand v. Wells Fargo Bank, N.A.*, 86 F. Supp. 3d 1316, 1326-27 (M.D. Fla. 2015).

²⁷ Doc. No. 618, pp. 4-5.

²⁸ See Doc. Nos. 362, 363, 406, 463, and 464.

²⁹ Doc. No. 362.

³⁰ *Id.* at p. 23.

³¹ Doc. Nos. 463 and 464.

³² *Malautea v. Suzuki Motor Co., Ltd.*, 987 F.2d 1536, 1542 (11th Cir. 1993).

³³ July 18, 2018 Order, p. 23 (citing *Branch Banking & Trust Co. v. Hamilton Greens, LLC*, 2016 WL 3365270, at *8 (S.D. Fla. Jan. 13, 2016)).

³⁴ *In re Rollaguard Security, LLC*, 591 B.R. 895, 918 (Bankr. S.D. Fla. 2018).

³⁵ Doc. No. 156, Ex. 9.

a. A transfer in the amount of \$37,528.88 on April 5, 2010;

b. A transfer in the amount of \$213,561.88 on April 26, 2010;

c. A transfer in the amount of \$107,596.88 on April 28, 2010; and

d. A transfer in the amount of \$251,893.28 on May 17, 2010.

Regions acknowledges that these four transfers were used to repay overdrafts (the “Overdraft(s)”) that existed at the time of the deposits into the account.³⁶ Regions contends, however, that the transfers were not made with actual fraudulent intent, because (1) the transfers were not related to or made in furtherance of a check-kiting scheme, and (2) the transfers were not made with the intent to defraud the Debtor’s unsecured creditors.³⁷

For the following reasons, the Summary Judgment Motion should be granted with respect to the four Overdraft Loan Repayment Transfers.

a. No relation between the transfers and the check kiting scheme

First, the record does not show that the four Overdraft Loan Repayment Transfers, made in April and May 2010, were connected to Debtor’s check-kiting activity. In prior orders, the Court has found that Regions had actual knowledge of the check-kiting scheme as of at least June 28, 2010.³⁸ But even if the check-kiting scheme had commenced prior to June 28, 2010, the record evidence does not show that Debtor intended to

facilitate the scheme by making these specific transfers in April and May of 2010.

In opposition to the Summary Judgment Motion, Plaintiff has submitted the report of her expert, Catherine Ghiglieri (the “Expert Report”).³⁹ The Expert Report traces a number checks drawn on Account No. 4648, including the checks related to the Overdrafts, and the related covering deposits (the “Covering Deposits”).⁴⁰ The Covering Deposits were made by checks drawn on Synovus Bank Account No. 9801, an account maintained by an entity related to Debtor. Each Covering Deposit was in an amount that substantially exceeded the amount of the Overdraft. For example, the April 5, 2010 Overdraft Loan Repayment Transfer in the amount of \$37,528.88 arises from an Overdraft in that amount that was covered by the deposit of a \$300,000.00 check drawn on Synovus Bank.⁴¹ There is no evidence before the Court that the Covering Deposits themselves resulted in overdrafts at Synovus Bank, and thus no evidence that the Covering Deposits were related to a check-kiting scheme.

In *In re Rollaguard Security, LLC*,⁴² the Chapter 7 debtor’s principal had manipulated the debtor to defraud investors and obtain funds for himself. On remand from the district court, the bankruptcy court determined that it would be futile to allow the Chapter 7 trustee to amend his complaint to allege that the debtor’s payments to satisfy overdrafts were actually fraudulent transfers.⁴³ In reaching this conclusion, the Court stated:

In prosecuting a fraudulent transfer claim based on actual intent, it is typically not sufficient to show that the debtor intended

³⁶ Doc. No. 601, pp. 6-7; Doc. No. 601, Ex. 3 (filed under seal at Doc. No. 615 pursuant to the Court’s *Order Granting Regions Bank’s Motion to Seal Exhibits to Regions Bank’s Motion for Partial Summary Judgment on Claims Asserted by Trustee Angela Welch* (Doc. No. 614)).

³⁷ Doc. No. 601, pp. 20-24.

³⁸ Doc. No. 591, p. 18; Doc. No. 577.

³⁹ Doc. No. 620 (filed under seal pursuant to the Court’s *Order Granting Motion to File Exhibits to Trustee Welch’s Response to Regions Bank’s Motion for Partial Summary Judgment Under Seal* (Doc. No. 619)).

⁴⁰ *Id.* at pp. 211 and 212.

⁴¹ The Covering Deposit for the April 26, 2010 Overdraft Loan Repayments Transfer of \$213,561.88 was a check for \$300,000.00; the Covering Deposit for the April 28, 2010 Overdraft Loan Repayment Transfer of \$107,596.88 was a check for \$200,000.00; and the Covering Deposit for the May 14, 2010 Overdraft Loan Repayment Transfer of \$251,893.28 was two checks totaling \$374,231.72.

⁴² 591 B.R. 895 (Bankr. S.D. Fla. 2018).

⁴³ *Id.* at 905.

to defraud someone and the debtor also made a transfer. Just because a debtor is involved in a fraudulent scheme does not mean that every transfer made by that debtor is made with fraudulent intent. *In order to prosecute a claim based on actual intent to hinder, delay, or defraud a creditor, the plaintiff must show that the alleged fraudulent intent is related to the transfers sought to be avoided.*(citations omitted).

...

That the Debtors, through Mr. Simpson, were obtaining investments they never intended to repay, and moving funds among themselves and for the benefit of Mr. Simpson, does not mean that when they put their own funds in their own bank accounts, or satisfied their own overdrafts, that those actions were taken with actual intent to hinder, delay or defraud creditors. In other words, there is no connection between the alleged transfers at issue here and the Debtors' collective intent, acting through Mr. Simpson, to fraudulently obtain investments they did not intend to return.⁴⁴

In this case, as in *Rollaguard*, Plaintiff alleges that Debtor was engaged in a fraudulent or improper scheme (in this case, a check-kiting scheme), and that he used his bank accounts at Regions to further the scheme. But in response to the Summary Judgment Motion, Plaintiff contends only that she "intends to present evidence at trial, through expert testimony and otherwise, of all deposits that repaid overdrafts in connection with the check kiting scheme."⁴⁵ But the only evidence Plaintiff has offered in opposition to the Summary Judgment Motion is the analysis set forth in the Expert Report, and, as set forth above, the Expert Report does not establish that Overdraft Loan Repayment Transfers were made in connection with a check-kiting scheme.⁴⁶

In order to prevail at trial, Plaintiff must show as an essential element of her case that Debtor's alleged fraudulent intent is related to the specific Overdraft Loan Repayment Transfers that she seeks to avoid. Regions has shown that there is an absence of record evidence to support this element of Plaintiff's case because Plaintiff has not made any factual showing of a connection between Debtor's check-kiting scheme and the specific Overdraft Loan Repayment Transfers that are at issue.

b. No intent to defraud unsecured creditors

Second, the record does not show that the four alleged Overdraft Loan Repayment Transfers were made to defraud Debtor's unsecured creditors.

Section 548(a)(1)(A) generally provides that a trustee may avoid transfers that were made with the actual intent *to defraud any entity to which the debtor was indebted*.⁴⁷ And § 726.105(1)(a) of the Florida Statutes provides that a transfer is fraudulent as to a creditor, if the debtor made the transfer with the actual intent *to defraud any creditor of the debtor*.⁴⁸

Here, Plaintiff contends that Debtor was engaged in a check-kiting scheme at the time that the payments were made, and that the Overdraft Loan Repayment Transfers were therefore transfers made with fraudulent intent, even if no unsecured creditors were harmed by the payments.⁴⁹ However, to the extent that Debtor was involved in a check-kiting scheme at the time of the payments, Regions was a potential victim of that scheme.⁵⁰

Plaintiff must show as an essential element of her case that Debtor intended to defraud creditors, but she has not made any factual showing that Debtor targeted or intended to defraud his unsecured creditors by repaying the Overdrafts. And Plaintiff has failed to identify a single creditor

⁴⁴ *Id.* at 918-20 (emphasis supplied).

⁴⁵ Doc. No. 618, p. 14.

⁴⁶ Doc. No. 620.

⁴⁷ 11 U.S.C. § 548(a)(1)(A)(emphasis supplied).

⁴⁸ Fla. Stat. § 726.105(1)(a)(emphasis supplied).

⁴⁹ Doc. No. 618, pp. 8-13.

⁵⁰ July 18, 2018 Order, p. 12. ("The bank left holding dishonored checks is the victim of the scheme as it is the bank who suffers the loss – not the creditors of the check-kiter.")(citations omitted).

who was harmed as a result of any of the four Overdraft Loan Repayment Transfers. The Court finds that Regions has shown that there is an absence of record evidence to support this element of Plaintiff's case.

4. Section 550

Under § 550, a trustee may recover any property transferred, to the extent that a transfer was avoided under § 544 or § 548 of the Bankruptcy Code.⁵¹ In this case, the Court has determined that the transfers identified in the Summary Judgment Motion are not avoidable, and the subject transfers therefore may not be recovered under § 550.

C. Conclusion

In its Summary Judgment Motion, Regions seeks the entry of a summary judgment determining that three Deposit Transfers, one Other Loan Repayment Transfer, and four Overdraft Loan Repayment Transfers are not avoidable as transfers made with the actual intent to defraud Debtor's creditors. Regions' Summary Judgment Motion should be granted.

The three Deposit Transfers in February and May of 2010 were "regular deposits" into Debtor's Account No. 4648, and therefore were not "transfers" within the meaning of the Bankruptcy Code.

The Other Loan Repayment Transfer in the amount of \$1,000,000.00 on July 22, 2010, was a transfer in payment of a secured debt, with no record evidence that Debtor intended to defraud creditors by making the payment.

And finally, the four Overdraft Loan Repayment Transfers in April and May of 2010 were transfers to repay overdrafts in Debtor's own account, with no record evidence that the specific payments were connected to any check-kiting activity, and no record evidence that the payments were intended to defraud Debtor's unsecured creditors.

Accordingly, it is

ORDERED:

1. Regions Bank's *Motion for Partial Summary Judgment on Claims Asserted by Trustee Angela Welch* (Doc. No. 601) is GRANTED as set forth in this Order.

2. Summary judgment is GRANTED in Regions' favor on Counts I, IV, X, and XII of Plaintiff's Second Amended Complaint with respect to the deposit in the amount of \$150,000.00 on February 18, 2010, the deposit in the amount of \$600,000.00 on February 25, 2010, and the deposit in the amount of \$200,000.00 on May 20, 2010.

3. Summary judgment is GRANTED in Regions' favor on Counts VII and XIV of Plaintiff's Second Amended Complaint with respect to the transfer in the amount of \$1,000,000.00 on July 22, 2010.

4. Summary judgment is GRANTED in Regions' favor on Counts I and X of Plaintiff's Second Amended Complaint with respect to the transfer in the amount of \$37,528.88 on April 5, 2010, the transfer in the amount of \$213,561.88 on April 26, 2010, the transfer in the amount of \$107,596.88 on April 28, 2010, and the transfer in the amount of \$251,893.28 on May 14, 2010.

5. Summary judgment is GRANTED in Regions' favor on Count XVI of Plaintiff's Second Amended Complaint with respect to the transfers subject to this Order.

6. Plaintiff's *Motion for Terminal Sanctions Striking All Regions Bank's Defenses* (Doc. No. 362) is DENIED in part to the extent that it requests the Court to strike Regions' affirmative defenses and enter a default judgment in Plaintiff's favor and is RESERVED on the issue of a lesser sanction.

DATED: March 4, 2019.

/s/ Caryl E. Delano
Caryl E. Delano
United States Bankruptcy Judge

⁵¹ 11 U.S.C. § 550(a).