

ORDERED.

Dated: January 24, 2022



Caryl E. Delano
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
www.flmb.uscourts.gov

In re:

Case No. 2:19-bk-05580-FMD
Chapter 7

Louis Alan Maier,

Debtor.

Robert E. Tardif, Jr., Chapter 7 Trustee,

Plaintiff,

v.

Adv. Pro. No. 2:20-ap-630-FMD

71 Rutgers Street, LLC,
Louis A. Maier, Jr. a/k/a
Louis A. Maier II; and
Grenell, LLC,

Defendants.

**ORDER DENYING PLAINTIFF'S
VERIFIED MOTION FOR PARTIAL SUMMARY JUDGMENT
(COUNT XVI)**

THIS PROCEEDING came before the Court for hearing on November 9, 2021, on *Plaintiff's Verified Motion for Partial Summary Judgment on Counts (1) XV (Avoidance of Unauthorized Post-Petition A/R Transfer); (2) XVI (Turnover of Property of the Estate); and (3) XXIII (Recovery of Avoidable Transfers) of Amended Complaint against Defendants, Louis A. Maier, Jr. a/k/a Louis Maier II and Grenell, LLC* (the "SJ Motion").¹ Plaintiff Robert E. Tardif, Jr., as Chapter 7 Trustee (the "Trustee") has withdrawn his request for partial summary judgment under Count XV and Count XXIII,² leaving only his request for partial summary judgment as to Count XVI. Louis A. Maier, Jr., and Grenell, LLC, (together, "Defendants") filed a response, the Trustee filed a reply, and both parties filed supplemental authority.³

The Court, having carefully considered the record and the arguments of counsel, will deny the SJ Motion.

I. RELEVANT FACTS

Prior to filing his bankruptcy petition, Louis Alan Maier ("Debtor") owned real property located at 16272 Grenell Island, Clayton, New York (the "Grenell Property").

In August 2016, Debtor sold the Grenell Property to Blue Marcellus, LLC, ("Marcellus") for \$226,000. In connection with the purchase, Marcellus signed a

¹ Doc. No. 24.

² Doc. No. 30, n. 1.

³ Doc. Nos. 27, 28, 30, 31.

promissory note (the “Marcellus Note”) for \$226,000, secured by a mortgage on the Grenell Property (the “Marcellus Mortgage”). Under the Marcellus Note, Marcellus was required to make monthly payments to Debtor commencing in September 2016, and continuing for a term of 25 years.⁴

On June 12, 2019, (the “Petition Date”) Debtor filed a Chapter 7 bankruptcy petition in the Middle District of Florida.

On January 24, 2020—seven months after the Petition Date—Debtor and Marcellus entered into a Loan Modification Agreement (the “Modification Agreement”). In the Modification Agreement, Debtor and Marcellus agreed that, as of the date of the Modification Agreement, the unpaid principal amount owed on the Marcellus Mortgage was \$118,672.13.⁵

One week after entering into the Modification Agreement, on January 31, 2020, Marcellus transferred the Grenell Property to Defendant Grenell, LLC, a New York limited liability company (“Grenell”). In connection with the transfer, Marcellus and Grenell executed an “Assumption Deed.” The Assumption Deed states that the transfer of the Grenell Property to Grenell was subject to the Marcellus Mortgage and

⁴ Doc. No. 24, pp. 12-23. Nicholas Jerge signed the Marcellus Mortgage on behalf of Marcellus as its member and manager. On his Statement of Financial Affairs filed in the bankruptcy case, Debtor identifies “Nick Jerge” as a friend. (Main Case, Doc. No. 15, p. 32.)

⁵ Doc. No. 24, pp. 24-28.

the Modification Agreement.⁶ Debtor's adult son, Defendant Louis A. Maier, Jr., ("Maier") is the sole owner of Grenell, having formed it in May 2019.⁷

II. ANALYSIS

In Count XVI of the Trustee's Amended Complaint (the "Complaint"),⁸ the Trustee alleges that the amounts owed to Debtor on the Marcellus Note are property of the bankruptcy estate and, therefore, subject to turnover under § 542.

A. Summary Judgment Standard

Under Federal Rule of Civil Procedure 56(a), a party "may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought." Summary judgment is appropriate when the moving party shows that there is no genuine dispute as to any material fact and that it is entitled to judgment as a matter of law.⁹

For issues on which the movant bears the burden of proof, the movant must come forward with credible evidence that, if not controverted at trial, would entitle the movant to a directed verdict. But for issues on which the nonmovant bears the burden at trial, the moving party may either show that there is an absence of evidence to support the non-moving party's claim or may come forward with affirmative

⁶ Doc. No. 24, pp. 29-33.

⁷ Doc. No. 24, pp. 34-35.

⁸ Doc. No. 18.

⁹ Fed. R. Civ. P. 56(a), made applicable to this proceeding by Fed. R. Bankr. P. 7056.

evidence showing that the non-moving party will be unable to prove its claim or defense at trial. If the moving party carries its initial burden, the responsibility shifts to the non-moving party to show the existence of a genuine issue of material fact.¹⁰

Here, the Trustee bears the burden of proof on his claim for turnover under § 542.¹¹

B. Turnover Under § 542

Section 542(b) provides that “an entity that owes a debt that is property of the estate and that is matured, payable on demand, or payable on order, shall pay such debt to, or on the order of, the trustee.”¹² But courts in the Eleventh Circuit generally follow the majority rule that for a debt to be subject to turnover, the debt must be undisputed.¹³ As the bankruptcy court stated in *In re Fontainebleau Las Vegas Holdings, LLC*, “[t]he turnover provision of the Bankruptcy Code applies only to tangible property and money due to debtor *without dispute* which are fully matured and payable on demand.”¹⁴

In Maier’s declaration in opposition to the SJ Motion, he states that: (1) Debtor and Marcellus approached him in May 2019 about purchasing the Grenell Property

¹⁰ *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115-16 (11th Cir. 1993); *In re Fields*, 2018 WL 1616840, at *2 (Bankr. M.D. Fla. Mar. 30, 2018).

¹¹ *In re Tate*, 535 B.R. 914, 920 (Bankr. S.D. Ga. 2015) (“Generally, the party requesting turnover under § 542 bears the burden of proof.”).

¹² 11 U.S.C. § 542(b).

¹³ *In re White*, 555 B.R. 883, 888 (Bankr. N.D. Ga. 2016).

¹⁴ *In re Fontainebleau Las Vegas Holdings, LLC*, 417 B.R. 651, 666 (S.D. Fla. 2009) (emphasis in original).

for the existing balance owed on the Marcellus Mortgage; (2) he believed the proposed purchase price was too high and therefore declined to purchase the Grenell Property for that amount; (3) he was “informed” that Debtor and Marcellus entered the Modification Agreement as part of a separate transaction involving other property; and (4) he agreed to purchase the Grenell Property for the reduced amount of the mortgage stated in the Modification Agreement.¹⁵

In the Complaint and SJ Motion, the Trustee seeks an order directing Defendants to turn over the “actual” amount owed under the Marcellus Note and Marcellus Mortgage, not the amount that is due under the Modification Agreement. But Defendants, who were not parties to the original Marcellus Mortgage, acquired the Grenell Property subject to the reduced mortgage amount stated in the Modification Agreement. Because the Court finds that the amount claimed by the Trustee is in dispute, it is not subject to turnover under § 542.

III. CONCLUSION

For the foregoing reasons it is

ORDERED that the Trustee’s SJ Motion on Count XVI (Turnover of Property of the Estate) (Doc. No. 24) is **DENIED**.

Clerk’s office to serve on interested parties via CM/ECF.

¹⁵ Doc. No. 27-1, ¶¶ 5-7.