ORDERED.

Dated: May 02, 2022

Grace E Robson
United States Bankruptcy Judge

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

In re Irasema Gort Valdes, Debtor.	)	Case No. 6:21-bk-02607-GER Chapter 7
Richard B Webber II, Trustee, Plaintiff, v. Mercedes Garcia, Defendant.	)	Adv. No. 6:21-ap-00126-GER

ORDER (1) GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND (2) DISMISSING COUNT II

The Plaintiff, Richard B. Webber II, Chapter 7 Trustee for the estate of Irasema Gort Valdes (the "Trustee"), filed a complaint[1] seeking to avoid and recover the Debtor's transfer of her interest in homestead property to the Defendant, Mercedes Garcia ("Ms. Garcia"); and presuming the transfer

[1] *Adversary Proceeding Complaint* (the "Complaint") (Doc. No. 1). All "Doc. No." citations refer to pleadings filed in the Adversary Proceeding No. 6:21-ap-00126-GER, unless otherwise noted.

was avoided, to sell the property pursuant to Section 363(h) of the Bankruptcy Code.[2] Ms. Garcia filed a motion for summary judgment arguing that exempt property is not subject to avoidance; she also argues that the Trustee does not have standing to avoid the transfer because there was no unsecured creditor that could force the sale of the property pursuant to the Florida Constitution.[3]

The material facts are not in dispute. For the reasons stated below, summary judgment will be granted in favor of Ms. Garcia.

Material Facts Not in Dispute

A. On August 5, 2016, the Debtor, Irasema Gort Valdes (the "Debtor"), and Ms. Garcia purchased real property located at 901 N. Solandra Drive, Orlando, Florida 32807 (the "Property").[4]

B. The Property was conveyed to the Debtor and Ms. Garcia, jointly, by General Warranty Deed.[5]

C. Contemporaneous with the purchase of the Property, on August 5, 2006, the Debtor and Ms. Garcia signed a mortgage as co-borrowers to secure a promissory note in favor of lender Columbus Capital Lending, LLC; the mortgage was subsequently assigned to U.S. Bank National Association, Not In Its Individual Capacity But Solely As Trustee of NRZ Inventory Trust.[6]

D. Immediately after the closing of the purchase of the Property, the Debtor and Ms. Garcia moved into and occupied the Property, with the intent to live there permanently.[7]

E. Shortly after the closing, on September 19, 2016, the Debtor entered into a personal loan agreement with Dade County Federal Credit Union (the "Credit Union") in the principal

[2] Unless otherwise stated, all references to the Bankruptcy Code refer to Title 11 of the United States Code.
[3] *Defendant, Mercedes Garcia's Motion for Summary Judgment* (the "Motion for Summary Judgment") (Doc. No. 11).
[4] Doc. No. 1, Ex. A; Doc. No. 11 Exs. A, B, and C.
[5] Doc. No. 1, Ex. A.
[6] Doc. No. 1, Exs. B and D.
[7] Doc. No. 11, Exs. B and C.

amount of $6,500.00.[8] On the loan application, the Debtor listed the purpose of the loan as "Home Repairs."[9]

F. In both 2016 and 2017, the Debtor and Ms. Garcia paid Orange County Ad Valorem Taxes & Non-Ad Valorem Assessments on the Property. For Ad Valorem Taxes and Assessments paid in 2017, both the Debtor and Ms. Garcia received a homestead exemption.[10]

G. On October 15, 2018, the Debtor and Ms. Garcia executed a Quit Claim Deed, transferring the Debtor's one-half joint interest in the Property to Ms. Garcia for $10.00 as consideration.[11]

H. From 2018 to 2021, Ms. Garcia paid Orange County Ad Valorem Taxes & Non-Ad Valorem Assessments on the Property and declared the homestead exemption with each filing.[12]

I. On June 7, 2021 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code.[13]

J. Since closing on the Property in 2016, the Debtor and Ms. Garcia have continuously resided in the Property.[14]

K. The Trustee was appointed as Chapter 7 Trustee of the Bankruptcy Estate.

L. The Debtor's petition lists the address of the Property as the address where she resides,[15] and there is no dispute that the Debtor actually resides at the Property.[16]

[8] Doc. No. 13, Ex. B.
[9] Doc. No. 13, Ex. B.
[10] Doc. No. 11, Ex. B.
[11] Doc. No. 1, Ex. C; Doc. No. 11, Ex. D.
[12] Doc. No. 11, Ex. B.
[13] Main Case, No. 6:21-bk-02607-GER, Doc. No. 1.
[14] Doc. No. 11, Exs. B and C.
[15] Doc. No. 1, ¶ 14.
[16] Doc. No. 13, ¶ 12.

M. The Credit Union filed a proof of claim (Claim No. 7-1) asserting it was owed $3,757.59 as of the Petition Date. The Credit Union classified its claim as "unsecured," and the basis of the claim was described as a "Charge off personal loan."[17]

N. On August 26, 2021, the Trustee filed the Complaint.[18] In Count I, the Trustee seeks to avoid the Debtor's transfer of her one-half joint interest in the Property to Ms. Garcia pursuant to Sections 544(b)(1), 550, and 551 of the Bankruptcy Code and Chapter 726 of the Florida Statutes, titled the Uniform Fraudulent Transfer Act (the "UFTA"). In Count II, "assuming this Court avoids the fraudulent transfer to Defendant, Mercedes Garcia," the Trustee seeks to sell the Property pursuant to Section 363(h) of the Bankruptcy Code.[19]

O. On February 9, 2022, Ms. Garcia filed the Motion for Summary Judgment.[20]

P. On March 3, 2022, the Trustee filed a Response[21] and a supporting Affidavit.[22]

Q. On March 10, 2022, Ms. Garcia filed her Reply.[23]

Legal Standard for Summary Judgment

Federal Rule of Civil Procedure 56(a), made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7056, provides that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."[24] The moving party must demonstrate "the absence of a genuine dispute as to material fact."[25] A "material" fact is one that "might affect the

[17] Doc. No. 13, Ex. B.
[18] Doc. No. 1.
[19] Doc. No. 1.
[20] Doc. No. 11.
[21] *Plaintiff/Trustee's Response in Opposition to Defendant, Mercedes Garcia's Motion for Summary Judgment (ECF No. 11)* (the "Response") (Doc. No. 12).
[22] *Affidavit of Richard B. Webber II, Trustee* (the "Affidavit") (Doc. No. 13).
[23] *Reply to Plaintiff/Trustee's Response in Opposition to Defendant, Mercedes Garcia's Motion for Summary Judgment* (the "Reply") (Doc. No. 14).
[24] Fed. R. Civ. P. 56(a); *accord Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552 (1986).
[25] *Find What Investor Grp. v. FindWhat.com*, 658 F.3d 1282, 1307 (11th Cir. 2011) (citing *Celotex*, 477 U.S. at 323, 106 S. Ct. at 2553).

outcome of the suit under the governing law."[26] A "genuine" dispute means that "the evidence is such that a reasonable jury could return a verdict for the nonmoving party."[27] Once a moving party "adequately supports its motion, the burden shifts to the nonmoving party to show that specific facts exist that raise a genuine issue for trial."[28] 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."[29]

Discussion

There is no dispute that the Debtor transferred her interest in the Property without receiving any monetary value in exchange.[30] There is also no dispute that the Property was entitled to homestead protection at the time of the transfer.[31]

Ms. Garcia argues that the Trustee cannot avoid the transfer because the Property was protected from the claims of unsecured creditors as a homestead under the Florida Constitution. The Trustee argues that the Debtor's unsecured home improvement loan with the Credit Union allows the avoidance of the transfer because the debt was an obligation contracted for improvement or repair of the homestead, which is a recognized exception to the homestead protection afforded under the Florida Constitution.[32]

The Court concludes that the Trustee cannot avoid the transfer. A creditor that loaned money that was used to pay for home improvements or repairs, i.e., the Credit Union, could not

[26] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986).
[27] *Id.*
[28] *James River Ins. Co. v. Ultratec Special Effects Inc*, 22 F.4th 1246, 1251 (11th Cir. 2022) (quoting *Dietz v. Smithkline Beecham Corp.*, 598 F.3d 812, 815 (11th Cir. 2010)).
[29] *Scott v. Harris*, 550 U.S. 372, 380, 127 S. Ct. 1769, 1776 (2007).
[30] *See* Doc. No. 1, Ex. B; Doc. No. 11, Ex. D.
[31] *See* Doc. 11, Ex. B; Doc. No. 12.
[32] Doc. No. 12, at 4-5.

have avoided the transfer of the Property because the Property was exempt as homestead at the time of the transfer, and exempt assets are excluded from the definition of "asset" under the UFTA.

The Trustee Lacks Standing Because a Creditor Holding an Unsecured Home Improvement Loan Could Not Have Avoided the Transfer of a Valid Homestead

The strong-arm powers afforded under the Bankruptcy Code allow a trustee to avoid a "transfer of an interest of the debtor in property . . . that is voidable" under applicable law by a creditor holding an allowed unsecured claim."[33] Here, there is no dispute that the Credit Union holds an allowed unsecured claim.[34]

The Court must also determine whether "applicable law" would allow the Credit Union, an unsecured creditor, to avoid the transfer. The "applicable law" that the Trustee seeks to utilize is sections 726.105(1)(b) and 726.106(1) of the Florida Statutes. These provisions allow a creditor to avoid a transfer of an asset where the transfer was made without the debtor receiving reasonably equivalent value in exchange for the property.[35] As to whether the Debtor received value, there is no dispute that the transfer was made for no monetary consideration, as the Debtor received nominal monetary consideration.[36]

The Court must also determine whether there was a "transfer" of an "asset" subject to the UFTA. In interpreting any statute, a court must first look to the plain language of the statute.[37] The UFTA defines "transfer" as "every mode . . . of disposing of or parting with an ***asset*** or an interest

[33] 11 U.S.C. § 544(b)(1).
[34] *See* Doc. No. 11; Doc. No. 12.
[35] Fla. Stat., Chapter 726.
[36] *See* Doc. No. 1, Ex. B; Doc. No. 11, Ex. D.
[37] *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 539 (2019) (alterations in original) (quoting *Wis. Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2074 (2018)) ("[I]t's a fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary . . . meaning . . . at the time Congress enacted the statute.").

in an ***asset***."[38] "Asset" is defined as "property of a debtor, ***but the term does not include*** . . . [p]roperty to the extent it is generally exempt under nonbankruptcy law."[39]

There can be no "transfer" pursuant to the UFTA if the property is exempt. "A transfer of property that is exempt from creditors may not be the subject of an action to avoid a fraudulent transfer under either the fraudulent transfer provisions of the Bankruptcy Code or the Florida Uniform Fraudulent Transfer Act . . . ."[40] "Under Florida law, property that is absolutely exempt cannot be reached by creditors . . . because the creditors never had the right to look at such property in the first place."[41]

Here, there is no dispute that the Property was the Debtor's homestead at the time of the transfer. A homestead is exempt from process under the Florida Constitution with 3 exceptions: (1) unpaid property taxes and assessments on the homestead itself, (2) obligations contracted for the purchase, improvement, or repair of the homestead, and (3) obligations contracted for labor performed on the homestead.[42] "Whereas the homestead exemption is interpreted broadly by Florida courts, the three exceptions to the homestead exemption are interpreted narrowly."[43]

The Trustee argues that because the stated purpose of the underlying loan with the Credit Union was for home improvement, such debt is one of the exceptions to the Florida Constitution and therefore the Credit Union could avoid the transfer of the Property.[44]

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[38] Fla. Stat. § 726.102(14) (2021) (emphasis added).
[39] Fla. Stat. § 726.102(2)(b) (2021) (emphasis added).
[40] *Tardif v. McCuan (In re McCuan)*, 569 B.R. 511, 518 (M.D. Fla. 2017) (citing *Jensen v. Anderson (In re Anderson)*, 561 B.R. 230, 240-41 (Bankr. M.D. Fla. 2016)).
[41] *Id.* (citing *Sneed v. Davis*, 184 So. 865, 868 (Fla. 1938)).
[42] Fla. Const. art. X, § 4(a).
[43] *In re Hendricks*, 237 B.R. 821, 825 (M.D. Fla. 1999) (citing *Butterworth v. Caggiano*, 605 So. 2d 56 (Fla. 1992)).
[44] Doc. No. 12.

While the stated purpose of the loan with the Credit Union was to make improvements to the Property,[45] the loan was not intended by the parties to be secured by the Property.[46] Further, there is no allegation that the Credit Union provided the labor to improve or repair the Property. While the Trustee is not the first to make the argument that a lender whose loan proceeds were used to pay for labor or materials should be recognized as an exception to the homestead exemption, such position has not prevailed before the courts addressing the issue[47] - for good reason. The repair and improvement exception to the homestead exemption applies narrowly to debt incurred by entities who perform the services that improve or repair the homestead - not to entities providing loans to pay for such improvements and repairs.[48]

In sum, the Credit Union does not hold a claim that is an exception to the homestead protection afforded under the Florida Constitution; therefore, the Trustee does not have standing under Section 544(b) of the Bankruptcy Code to avoid the transfer of the Property. Further, since "a homestead cannot be fraudulently transferred" under Florida law,[49] there was no "transfer" of an "asset" subject to avoidance under the UFTA.

Conclusion

For the foregoing reasons, the Court grants summary judgment in favor of Ms. Garcia. Additionally, because Count II of the Complaint is dependent on the Court finding in favor of the

[45] Doc. No. 13, Ex. B.
[46] Doc. No. 13, Ex. B. A security agreement attached to the Credit Union's proof of claim states that the security for the loan would be identified "in the 'Security' section of the Truth in Lending Disclosure section of the Closed End Loan Disclosure Statement"; the section of that document describing the collateral is blank.
[47] *See, e.g.*, *In re Coss*, No. 91-9056-9P7, 1992 WL 40691 (Bankr. M.D. Fla. Jan. 29, 1992); *Perry v. Beckerman*, 97 So. 2d 860, 863 (Fla. 1957) ("An advance of money borrowed to purchase materials or to pay off labor is not within the scope of the exception to the homestead exemption. In such case the contract is to repay money loaned or expended and it is not in the nature of a contract to pay for the erection of the improvements or for the labor.").
[48] *Edward Leasing Corp. v. Uhlig*, 652 F. Supp. 1409, 1418-19 (S.D. Fla. 1987) (citing *Perry*, 97 So. 2d at 863) ("It is patently clear from the language of Art. X, § 4(a) that the exception to the homestead exemption cited by Plaintiff only applies when a lien is imposed *for unpaid obligations pertaining to improvements or repairs on homestead realty*.").
[49] *Bakst v. Levenson (In re Goldberg)*, 229 B.R. 877, 884 (Bankr. S.D. Fla. 1998) (quoting *Gennet v. Docktor (In re Levy)*, 185 B.R. 378, 386 (Bankr. S.D. Fla. 1995)).

Trustee on Count I (Constructive Fraud – Avoidance and Recovery of Fraudulent Transfers), the Court will dismiss Count II.

Accordingly, it is

ORDERED:

1. Ms. Garcia's Motion for Summary Judgment (Doc. No. 11) is **GRANTED**.

2. Count II of the Complaint (Doc. No. 1) is **DISMISSED**.

3. A separate Final Judgment consistent with this Order shall issue.

# # #

Attorney Aldo G. Bartolone, Jr., is directed to serve a copy of this Order on interested parties and file a proof of service within 3 days of entry of the Order.