UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

DALE FREDERICK ALFORD, JR.,
and TERRI ANN ALFORD

Debtors.
_____/

Case No. 8:05-bk-25425-ALP
Chapter 7

SUSAN K. WOODARD,
Chapter 7 Trustee,

Plaintiff,

vs.

Adv. Proc. No. 06-00111

SYNOVUS BANK OF TAMPA BAY, as successor by assignment to United Bank and Trust Company, a Florida banking corporation and DALE F. ALFORD, SR., an individual

J.B.Vol.#14, #1778

Defendants.
_____/

FINAL JUDGMENT AGAINST DALE F. ALFORD, SR.

THIS CAUSE came before the Court on a Final Evidentiary Hearing held on September 15, 2008, and the Court having heard the testimony of the Plaintiff's witnesses, observed the demeanor of the witnesses, reviewed all documentary evidence submitted by Plaintiff, and being otherwise duly advised in the premises, the Court finds as follows:

Findings of Fact

The Bankruptcy Case

1. On October 13, 2005 (the "Petition Date"), the Debtors, Dale Frederick Alford, Jr. (the "Debtor") and Terri Ann Alford, filed their voluntary petition for relief under Chapter 7 of the Bankruptcy Code.

2. On October 14, 2005, Plaintiff, Susan K. Woodard, was appointed to serve as Chapter 7 Trustee in the Debtors' bankruptcy case.

3. On February 21, 2006, Plaintiff filed a Complaint to Avoid and Recover Preferential and Fraudulent Transfers, alleging, among other things, a preferential transfer under 11 U.S.C. § 547 and a fraudulent transfer under 11 U.S.C. § 548 against Defendant, Dale F. Alford, Sr. ("Alford, Sr.").

4. Alford, Sr.'s response to the Complaint was therefore due on or before March 13, 2006. Alford, Jr., however, failed to serve or file any paper in this matter as required by law. As a consequence, Plaintiff moved for, and was granted, a clerk's default on August 15, 2006.

Transfers of Debtor's Interests in Property

5. On February 12, 1993, Alford, Sr. transferred title to vacant real property in Pasco County, Florida, to Debtor and Alford, Sr., via Quit Claim Deed, held as tenants in common (the "Property").

6. On or about June 1, 2005, Alford, Sr. filed a lawsuit against the Debtor in the Circuit Court of Pasco County, Florida, case number 05-CA-1550-WS, which disputed the parties' respective rights to the Property (the "Alford Litigation").

7. On or about June 20, 2005, in order to settle the Alford Litigation, the Debtor and Alford, Sr. entered into a Mediation Agreement (the "Mediation Agreement") whereby the parties agreed that the Property would be sold and the proceeds, after deduction of the expenses of the sale (the "Sale Proceeds"), would be divided equally between the Debtor and Alford, Sr. with the condition that a Mortgage on the Property issued to United Bank & Trust, Co. (the predecessor-in-interest to Synovus Bank of Tampa Bay), limited on its face to $100,000.00 (the "Mortgage"), would be satisfied out of the Debtor's share of the Sale Proceeds. Additionally, the Mediation Agreement provided that an additional $10,000.00 was to be disbursed to Alford, Sr. from the Debtor's share of the proceeds of the sale.

8. Either prior to or upon execution of the Mediation Agreement, Alford, Sr. became a creditor of the Debtor in that the Debtor became obligated to satisfy the entire $100,000.00 Mortgage out of the Debtor's one-half of the proceeds of the sale. The Debtor also became obligated to pay Alford, Sr. $10,000.00 from the Debtor's share of the Sale Proceeds.

9. On or about August 30, 2005, the Property was sold for $410,000.00 (the "Closing"). After deducting settlement costs of $46,295.00, adjustments for taxes due in the amount of $1,978.80, $361,726.20 remained from which the $100,000.00 Mortgage would be satisfied, leaving net sales proceeds of $261,726.20 to be split evenly between the Debtor and Alford Sr., providing each with $130,863.10.

10. Instead, $170,863.10 was disbursed to to Synovus Bank to satisfy the $100,000.00 Mortgage and and Alford, Sr. received $190,863.10, some $60,000.00 more than his one-half interest in the net sales proceeds (the "Transfer").

11. As a result of the Mediation Agreement requiring the Debtor satisfy the entire Mortgage from his share of the Net Sale Proceeds, including the payment of an additional

$10,000.00 to Alford, Sr., Alford, Sr. received a disbursement of $60,000.00 over and above the amount he was to have received from the Sale Proceeds.

Conclusions of Law

12. By agreeing in the Mediation Agreement that the Mortgage would be satisfied out of the Debtor's share of the Sales Proceeds and by agreeing that Alford, Sr. would receive an additional $10,000.00 from the Sales Proceeds, the Debtor transferred an interest of the Debtor to Alford, Sr. in the amount of $60,000.00 (the "Mediation Agreement Transfer").

13. At the August 30, 2005 Closing, the Debtor transferred an interest of the Debtor to Alford, Sr. in the amount of $60,000.00 pursuant to the terms of the Mediation Agreement (the "Closing Transfer"), over an above the amount to which he was entitled to receive from the Sales Proceeds.

14. The Closing Transfer and the Mediation Agreement Transfer were to or for the benefit of Alford, Sr.

15. The Closing Transfer was made for or on account of an antecedent debt owed by Debtor to Alford, Sr. prior to the Closing Transfer in that the terms of the Mediation Agreement obligated the Debtor to satisfy the entire Mortgage from the Debtor's one-half of the Sales Proceeds and obligated Debtor to pay an additional $10,000.00 from his one-half interest in the Sales Proceeds.

16. To the extent the Debtor was indebted to Alford, Sr. prior to the Mediation Agreement, the Mediation Agreement Transfer was for or on account of an antecedent debt owed by the Debtor to Alford, Sr.

17. The Closing Transfer and the Mediation Transfers were made by the Debtor to Alford, Sr., an Insider, as that term is defined in 11 U.S.C. § 101(31)(A)(i), within the one year prior to the Petition Date.

18. Additionally, the Mediation Transfer was made within between ninety (90) days and one (1) year of the Petition Date.

19. The Closing Transfer and the Mediation Agreement Transfer enabled Alford, Sr. to receive more than he would have received if: (i) this case were a Chapter 7 case; (ii) the Closing Transfer and the Mediation Agreement Transfer had not been made; and (iii) Alford, Sr. had received payment of such debts to the extent provided by the Bankruptcy Code.

20. In addition, by agreeing in the Mediation Agreement that the entire $100,000.00 Mortgage would be satisfied out of Debtor's share of the Sale Proceeds and by agreeing that Alford, Sr. should receive an additional $10,000.00 from the Sale Proceeds, the Debtor voluntarily incurred an obligation within one year of the Petition Date (the "Obligation").

21. The Debtor received less than reasonably equivalent value in exchange for incurring the Obligation.

22. The Debtor was insolvent on the date of the Mediation Agreement Transfer, the Closing Transfer, and on the date that the Obligation was incurred.

Based upon the foregoing, it is **ORDERED AND ADJUDGED**:

(i) The Closing Transfer and the Mediation Agreement Transfer are hereby avoided pursuant to the provisions of 11 U.S.C. § 547; and

(ii) The Obligation incurred by Debtor is hereby avoided pursuant to the provisions of 11 U.S.C. § 548; and

(iii) The Plaintiff, Susan K. Woodard, the Chapter 7 Trustee of the bankruptcy estate of Dale Frederick Alford, Jr. and Terri Ann Alford, whose address is Post Office Box 7828 St. Petersburg, Florida, 33734-7828, pursuant to 11 U.S.C. § 550 hereby recovers from the Defendant, Dale F. Alford, Sr., whose last known address is 16809 Camille Street, Hudson, Florida, 34667, the principal sum of Sixty Thousand and 00/100 Dollars ($60,000.00), which shall bear interest at the legal rate from February 21, 2006, for all of which let execution issue forthwith; and

(iv) This Court reserves jurisdiction over this cause to determine both entitlement to and the amount of any attorney fees and costs to be awarded to date; and

(v) Additionally, this Court hereby retains jurisdiction over the enforcement of this Final Judgment.

Dated this 1st day of October, 2008

I CERTIFY THE FOREGOING TO BE A TRUE
AND CORRECT COPY OF THE ORIGINAL.
UNITED STATES BANKRUPTCY COURT
LEE ANN BENNETT, CLERK

Pat D - 10/1/2008

HONORABLE ALEXANDER L. PASKAY
BANKRUPTCY COURT JUDGE

Copies to:

Susan Woodard, PO Box 7828, St. Petersburg, FL 33734-7828
United States Trustee, 501 E. Polk St., Ste. 1200, Tampa, FL 33602
Andrew T. Jenkins, Esq., Bush Ross, P.A., P.O. Box 3913, Tampa, FL 33601-3913
Dale F. Alford, Sr., 16809 Camille Street, Hudson, FL 34667
Steven M. Berman, Esq., 101 E. Kennedy Blvd., Ste. 2800, Tampa, FL 33602