UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:		
BILLY JASON HARWELL,	)	Case No: 05-41744-ABC-(Colorado) Chapter 7
Debtor.	)	
LYNN H. MARTINEZ, Chapter 7 Trustee,	)	
Plaintiff,	)	
vs.	)	Adv. Pro. No. 8:08-mp-00002-MGW
STEVEN D. HUTTON, and STEVEN D. HUTTON, P.L.	)	J.B. Vol 15 #2263
Defendants.	)	

FINAL JUDGMENT

THIS CAUSE came before the Court for hearing on September 7, 2011, on the Court's Order Scheduling *Hearing to Announce Ruling* [Doc. No. 103] on the trial in this matter. For the reasons stated orally and recorded in open Court, a transcript of which is attached hereto as **Exhibit A** and incorporated fully herein, the Court finds in favor of Plaintiff, Lynn H. Martinez, Chapter 7 Trustee on Counts I and II against Steven D. Hutton, P.L.

Accordingly, it is

ORDERED, ADJUDGED and DECREED as follows:

1. Judgment is entered for Plaintiff, Lynn Martinez and against Defendant, Steven D. Hutton, P.L. on Counts I and II in the amount of $342,396.17, which shall accrue interest at the statutory rate from this day forward, and for which let execution issue.

2. Judgment is entered for Defendant, Steven D. Hutton, P.L. on Counts III and IV.

3. Judgment is entered for Defendant Steven D. Hutton, individually, on all counts.

DONE AND ORDERED at Tampa, Florida on September 30, 2011.

MGWilliamson

MICHAEL G. WILLIAMSON
UNITED STATES BANKRUPTCY JUDGE

Copies Furnished To:

Lori V. Vaughan, Esq., Trenam Kemker, P. O. Box 1102, Tampa, Florida 33601-1102

Michael P. Brundage, Esq., Hill Ward & Henderson, 101 E. Kennedy Blvd., Suite 3700, Tampa, Florida 33602

Lynn H. Martinez, Trustee, 1123 N. Elizabeth Street, Pueblo, Colorado 81003-2259

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

IN RE:	
BILLY JASON HARWELL	Case No. 05-41744-ABC (Colorado)
Debtor	Chapter 7
LYNN H. MARTINEZ Chapter 7 Trustee	Adv. No. 8:08-mp-00002-MGW
Plaintiff	
vs.	
STEVEN D. HUTTON STEVEN D. HUTTON, P.L.	

Sam M. Gibbons
U.S. Courthouse
801 N. Florida Avenue
Tampa, Florida 33602
Held September 7, 2011

TRANSCRIPT OF HEARING
Continued Trial on Complaint - Judge's Ruling

BEFORE THE HONORABLE MICHAEL G. WILLIAMSON
UNITED STATES BANKRUPTCY JUDGE

PROCEEDINGS DIGITALLY RECORDED BY COURT PERSONNEL.
TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE
APPROVED BY ADMINISTRATIVE OFFICE OF U.S. COURTS.

EXH. A

A P P E A R A N C E S

For the Plaintiff, Trustee Martinez	LORI V. VAUGHAN, Esquire LINDSAY P. LOPEZ, Esquire Trenam Kemker 101 E. Kennedy Blvd. Suite 2700 Tampa, Florida 33602 813-223-7474 lvaughan@trenam.com llopez@trenam.com
For the Defendant, Steven D. Hutton, Steven D. Hutton, P.L.	MICHAEL P. BRUNDAGE, Esquire Hill Ward & Henderson, P.A. 101 E. Kennedy Blvd. Suite 3700 Tampa, Florida 33602 813-221-3900 mbrundage@hwhlaw.com
Also Present	Steven D. Hutton

1 P R O C E E D I N G S
2 (Proceedings commenced at 2:40 p.m.)
3 THE COURTROOM DEPUTY: All rise. This Honorable
4 Court is again in session.
5 THE COURT: Please be seated.
6 THE COURTROOM DEPUTY: Miscellaneous Proceeding
7 No. 08-2, Lynn Martinez versus Steven D. Hutton and Steven
8 D. Hutton, P.L.
9 THE COURT: Okay, let me take appearances.
10 MR. VAUGHN: Good afternoon, Your Honor. Lori
11 Vaughan and Lindsay Lopez, from Trenam Kemker, on behalf of
12 the Trustee.
13 THE COURT: Okay, thank you.
14 MR. BRUNDAGE: Good afternoon, Your Honor. Mike
15 Brundage on behalf of Steve Hutton, and Steve Hutton, P.A.,
16 and Mr. Hutton is here as well.
17 THE COURT: Okay, thank you.
18 MR. BRUNDAGE: Thank you.
19 THE COURT: Very well, the Court has before it the
20 conclusion of the trial in the adversary brought by the
21 Trustee in the bankruptcy case of Billy Jason Harwell.
22 The Court tried the adversary proceeding on
23 remand from the Eleventh Circuit and the District Court.
24 I requested the parties to submit their closing arguments in
25 writing, and have now had an opportunity to review those

1 arguments, and otherwise reflect on the facts that were in
2 evidence at trial, the various documents, and the case law
3 that the parties have cited, and will therefore announce my
4 findings of fact and conclusions of law here in open court
5 today.
6 The Defendants in this case are Steven D. Hutton
7 and Steven D. Hutton, P.L., which is a Florida limited
8 liability company. I'll refer to the Defendants
9 collectively as Hutton, unless the context otherwise
10 indicates.
11 Mr. Hutton is an attorney who represented the
12 Debtor on two matters in 2005. The first was with respect
13 to a shareholder dispute that the Debtor had with respect to
14 two corporations in which he was a minority shareholder.
15 They were the Center for Endoscopy, which is abbreviated as
16 CFE, and the Sarasota Endo Investors, or SEI.
17 Mr. Hutton was able to successfully assist the
18 Debtor, who I'll refer to either as the Debtor or Harwell,
19 in resolving the dispute over those two corporations and the
20 Debtor's minority shareholder interest.
21 In that respect, a settlement agreement was
22 entered into on August 11, 2005, under which the Debtor was
23 to receive substantial cash and a promissory note.
24 Specifically, under the settlement agreement, the
25 Debtor was to receive $100,000 in cash within 20 days of the

settlement agreement, and $400,000 in cash within 30 days of the settlement agreement, and a promissory note in the amount of $46,837.

The second matter that Mr. Hutton was retained to represent Mr. Harwell on concerned a substantial judgment which had been entered against Mr. Harwell in Colorado.

The judgment was in the amount of $1,396,076.53. It had been entered on July 12th, 2005 in favor of one, Thomas Clay Hill, who I will refer to as Hill.

On August 26, 2005, Mr. Harwell answered post-judgment interrogatories from Hill and did not disclose the settlement or that the funds would be received shortly.

The first $100,000 payment was timely made on September 1 and, pursuant to the settlement agreement, was sent to Mr. Hutton, who placed the money in his firm's trust account.

That same day, on the direction of Mr. Harwell, Mr. Hutton disbursed the money to the Debtor and third parties so that the money would not be available for seizure or garnishment by Mr. Hill.

On September 6, 2005, Mr. Hutton wrote a letter, at Mr. Harwell's direction, to the attorneys representing the settling parties, directing them to make the promissory note, that was coming out of the settlement, payable to the Debtor's wife.

On September 9, 2005, the second installment of $400,000 was sent to Mr. Hutton, who then placed that in his trust account as well.

On the same day, at the Debtor's direction, Mr. Hutton distributed the $400,000 in the form of 17 checks, which went to Mr. Harwell, Mr. Harwell's wife, his father and various other third parties.

On September 19, 2005, Mr. Hutton was served with a writ of garnishment with respect to the amounts that he held in trust for the Debtor. Mr. Hutton was able to get an order from the Florida State Court quashing the writ of garnishment.

Immediately after the State Court ruled, Mr. Hutton obtained a number of cashier's checks payable to Mr. Harwell, Mr. Harwell's relatives, and third parties as designated by Mr. Harwell, all in the amount of $125,000. They were cashier's checks drawn on a local bank using the funds that had been in Mr. Hutton's escrow account.

Now, at the time of these transfers, there's no question that Mr. Hutton was aware of the judgment that had been entered against the Debtor. He was aware that the use of the firm's trust account for purposes of distributing the money would result in the money not being available for garnishment or otherwise seized by Mr. Hill, and that the money would be paid through these checks to the Debtor, the

1 Debtor's wife, the Debtor's father, and other parties
2 including various creditors of the Debtor.
3 On October 10, 2005, the Debtor filed for
4 bankruptcy in Colorado. The Plaintiff Trustee in this case
5 brought a number of adversary proceedings in Colorado
6 against parties who had received payments from checks drawn
7 on Mr. Hutton's trust account.
8 The Trustee recovered a total sum of $276,893.93
9 with respect to those transfers. Not all of the money
10 recovered was money that came through Mr. Hutton's account,
11 although the majority of it was.
12 Previously in this case, I had before me a motion
13 for summary judgment. On January 20, 2009, I entered
14 summary judgment in favor of Mr. Hutton on the basis that
15 the transfers that were made to him were done through his
16 trust account and therefore Mr. Hutton was only a conduit
17 and not the initial transferee.
18 Because the case was before me in the context of a
19 summary judgment, I construed all facts in a light most
20 favorable to the non-moving party. In this case, that was
21 the Trustee. And therefore, I assumed that Mr. Hutton was
22 the mastermind of the fraudulent conveyance scheme to devise
23 to funnel Harwell's money into and out of Mr. Hutton's trust
24 account in a fashion that the money could not be reached by
25 Hill's judgment collection efforts.

The issue before the Court on summary judgment was whether or not Mr. Hutton or his law firm was the initial transferee. It was my view at the time that if the money never was actually paid to Mr. Hutton but instead was put into his escrow account, then he was never the initial transferee and I did not, as the Court deciding that summary judgment motion, even need to get to equitable considerations and the conduit defense.

On appeal, Judge Moody affirmed my decision. He concluded that Mr. Hutton and his law firm received the funds in question on behalf of his client, that he deposited those into a trust account. He also concluded that Mr. Hutton was acting in a fiduciary capacity and was obligated to disburse the funds only in accordance with instructions from his client. That Hutton disbursed the funds as directed and assisted by personally delivering the checks, did not alter his status as a fiduciary.

The reasoning was that the funds in the trust account belonged to the client, not to the lawyer. Therefore, Judge Moody concluded that under the control test followed by the Eleventh Circuit, Mr. Hutton and his law firm were not initial transferees under Section 550.

As the parties are well familiar, the Eleventh Circuit reversed Judge Moody's affirmance of my decision. In doing so, the Eleventh Circuit clarified the law in this

1 area, and distilled a two-part test.
2 That is, in order to take advantage of the
3 equitable exceptions to Section 550's statutory language,
4 the initial transferee must establish, one, that the initial
5 transferee did not have control over the assets, that is
6 that the initial transferee merely received the transfers as
7 a conduit for the assets that were under the actual control
8 of the Debtor transferor and, two, that the initial
9 transferee acted in good faith and as an innocent
10 participant in the fraudulent transfer.
11 The Eleventh Circuit concluded that based on those
12 facts, Mr. Hutton was an initial transferee under Section
13 550. The Court concluded that there was no dispute that
14 Hutton was the initial recipient of the Debtor's funds,
15 as stated by the Eleventh Circuit, quote, Hutton
16 undisputably received the funds and deposited them
17 into Hutton's trust account, close quote.
18 The Eleventh Circuit concluded that the lower
19 courts, meaning Judge Moody and this Court, had erred by
20 merely relying on the fact that Mr. Hutton lacked control
21 over Mr. Harwell's funds in his escrow account, or his trust
22 account.
23 Under the decision of the Eleventh Circuit
24 therefor, to take advantage of this equitable doctrine,
25 Hutton himself must have acted in good faith and have been

1 an innocent participant in the transfers in and out of the
2 trust account.
3 The Eleventh Circuit concluded that on remand both
4 parties shall be given the opportunity present evidence and
5 argument to the Bankruptcy Court as to whether Hutton had or
6 lacked control of the funds, and as to whether Hutton acted
7 in good faith or bad faith and was otherwise an innocent
8 participant in what were fraudulent transfers -- or what
9 were assumed to be fraudulent transfers.
10 That's the factual background and procedural
11 background that brought us back to trial in this case. And
12 based on those facts and other facts that I will highlight,
13 I make the following conclusions of law.
14 First of all, the Court has jurisdiction over this
15 matter under 28 U.S.C. Section 1334. This is a core
16 proceeding under 28 U.S.C. Section 157(b)(2)(F) and
17 (b)(2)(H).
18 The first issue before the Court is whether or not
19 the transfers were fraudulent. I assume that the transfers
20 were fraudulent for purposes of summary judgment. I did so
21 because I assume all facts in a manner most favorable to the
22 non-moving party.
23 And while it was assumed, for purposes of summary
24 judgment, that the transfers were fraudulent, the nature of
25 the transfers from the law firm holding the settlement funds

1 to Mr. Hutton in his trust account must still be determined
2 as fraudulent by this Court based on evidence, in order for
3 Mr. Hutton to be the initial transferee of a fraudulent
4 transfer.
5 Mr. Hutton in that regard argues that the
6 transfers of the settlement proceeds to him were not
7 fraudulent transfers.
8 The focus of Mr. Hutton's argument in that respect
9 is that the payment of the settlement proceeds by the
10 settling parties to Hutton's trust account was not done for
11 the purposes of hindering, delaying or defrauding any
12 creditor. Thus, under this argument, Mr. Hutton would have
13 the Court focus on the character of the underlying
14 settlement rather than upon what Mr. Harwell did with the
15 settlement proceeds.
16 Now, there's no question in this Court's mind that
17 the settlement with the unrelated parties was not a
18 fraudulent transfer. Those third parties funded the
19 settlement by placing with their lawyers the amount of
20 $500,000.
21 At that point, the attorneys for the settling
22 parties were holding $500,000 that belonged to Mr. Harwell.
23 It was the transfer of Harwell's money from those attorneys
24 to Hutton that was the first transfer in a two-step process
25 to remove the settlement proceeds from the reach of Hill's

1 judgment. That is when the fraudulent transfers began.
2 Under the settlement agreement that Harwell had
3 entered into, the attorneys for the settling parties were
4 directed to transfer those funds not to Harwell individually
5 but to Harwell's attorney, Mr. Hutton, who had instructions
6 from Mr. Harwell that the funds be immediately transferred
7 to Harwell, his family members, and selected creditors.
8 The testimony is clear that once the judgment was
9 entered on July 12th and Hill began his domestication
10 efforts on July 27th, all of Harwell's efforts were directed
11 toward rapidly concluding the settlement, which was done by
12 August 11th, and then disbursing the funds quickly and in a
13 manner that would put them beyond the reach of Hill's
14 judgment.
15 The transfers occurred shortly after the judgment
16 was entered in favor of Hill. Harwell concealed the
17 settlement and the transfers in interrogatory answers dated
18 August 26, 2011 and a deposition taken on September 12,
19 2005.
20 As directed by Harwell, the monies were
21 transferred in a fashion that Hill would not get the
22 settlement proceeds. As set forth in Plaintiff's Exhibit
23 108, Harwell has admitted facts that clearly show his
24 fraudulent intent, and it would not have been credible for
25 him to take any other position.

1 Clearly, these transfers and the entire method by
2 which the money was disbursed from the settling attorney's
3 trust account was done by Harwell with the intent to delay,
4 hinder or defraud Hill in his attempts to collect on a final
5 judgment.
6 And that brings us to Mr. Hutton's good faith. As
7 discussed previously, the Eleventh Circuit in its decision
8 in this case has clarified the law concerning what must be
9 shown in order for the initial transferee of a fraudulent
10 conveyance to avail itself of the mere conduit defense. The
11 required elements are, one, that the transferee did not have
12 control over the funds and, two, that the transferee acted
13 in good faith and as an innocent participant in the
14 fraudulent transfer.
15 Let me say at the outset of a discussion on Mr.
16 Hutton's good faith, the Court found Mr. Hutton to be a
17 credible and impressive witness, he has had a distinguished
18 career and appears to be an attorney of substantial stature
19 within the legal community in which he practices.
20 From his perspective, it's clear to the Court
21 that he certainly views that the actions that he took in
22 zealously representing his client with respect to Mr. Hill's
23 judgment were done in good faith and within the duties
24 imposed upon him by his profession.
25 In this respect, Mr. Hutton's focus at the time

1 was on his duty as an attorney to disburse funds, trust
2 funds, as directed by a client. Secondly, his focus with
3 respect to Mr. Hill's judgment and collection efforts was
4 strictly limited to Mr. Hill's garnishment action.
5 With respect to Mr. Hutton's duty as an attorney,
6 Mr. Hutton certainly had no discretion in picking and
7 choosing who would receive Mr. Harwell's money that was in
8 Mr. Hutton's trust account. As a general proposition, under
9 the rules regulating the Florida Bar, attorneys are bound to
10 follow the instructions of their clients in distributing
11 trust funds.
12 However, that did not mean that he needed to make
13 his trust account available to Mr. Harwell so that Mr.
14 Harwell could effect transfers intended to delay, hinder or
15 defraud a creditor. Certainly, Mr. Hutton, knowledgeable
16 that Mr. Harwell was doing whatever he needed to have done
17 to keep the settlement proceeds away from Mr. Hill's
18 collection efforts, could have simply refused to be the
19 recipient of the settlement proceeds and could have insisted
20 that the settlement agreement not make him the initial
21 transferee of those funds.
22 Secondly, he could have simply paid the money to
23 Mr. Harwell, rather than facilitating Mr. Harwell's efforts
24 to remove the funds from the reach of Mr. Hill. Certainly,
25 no one has argued here that the rules regulating the Florida

1 Bar mandate that an attorney follow the instructions of a
2 client in disbursing funds to accomplish fraudulent or
3 criminal purposes.
4 Now, as an aside, in several instances in the
5 closing arguments, the Defendants refer to Mr. Hill's
6 Colorado final judgment as a disputed claim. Let me deal
7 with that issue briefly.
8 Although the Bankruptcy Code does not define that
9 term, Courts have developed a number of different tests for
10 determining whether a claim is a disputed one, principally
11 in the context of Section 303, which governs involuntary
12 petitions.
13 Some judgments have -- some Courts have adopted a
14 summary judgment standard. That is, if there's material
15 issues of fact or law regarding the claim, it will be
16 considered disputed. Other Courts have adopted a multi-
17 factor test which takes into account the Debtor's subjective
18 state of mind. The majority of circuits, however, have all
19 adopted an objective standard, although the precise
20 articulation of that standard varies somewhat.
21 But regardless of the test used, the Court is
22 unaware of a single case holding that a final judgment is
23 subject to a bona fide dispute where the final judgment has
24 not been stayed or is not subject to a pending appeal. So
25 Mr. Hill's claim here that the claim -- that the judgment is

1 disputed, is solely one of his creation and is not supported
2 by the law. This was an undisputed judgment. It was owing,
3 and it was in the process of being collected.
4 Mr. Hutton's focus was principally upon his
5 obligation as the holder of client funds which were in the
6 process of being garnished by a judgment creditor. To his
7 credit, he retained legal counsel to advise him about his
8 obligations as a holder of garnished funds.
9 The advice he received from his counsel were
10 strictly limited to his obligations as the holder of
11 garnished funds. In that respect, the conclusion was that
12 so long as the garnishment existed, he had potential
13 liability to the garnishor, however once the garnishment
14 writ was quashed, he had no further legal obligation to hold
15 the trust funds but was under duty to distribute funds
16 pursuant to the client's instructions.
17 However, none of this analysis that was done by
18 Mr. Hutton or his counsel focused on the fact that the
19 entire mechanism of payment of Harwell's settlement funds to
20 his trust account and then to other persons was all being
21 done with the intent to delay and hinder Mr. Hill in his
22 collection efforts.
23 It appears that Mr. Hutton completely missed the
24 critical point that was before him. That is, his offices
25 and his efforts as an attorney were being used by Mr.

1 Harwell to effect a fraudulent transfer.
2 The question then is whether or not simply missing
3 the issue is enough to support a finding that he acted in
4 good faith and was an innocent participant in the fraudulent
5 transfers.
6 It should be noted in this regard that this is not
7 a situation of a bank, or for that matter an attorney, being
8 unwittingly involved as the initial transferee of funds used
9 as part of a scheme to defraud creditors under circumstances
10 that would put the bank or attorney on notice of the intent
11 to hinder or delay a creditor.
12 Clearly, there will be a multitude of situations
13 where attorneys receive funds from clients and disburse them
14 in the ordinary course of business under circumstances that
15 do not raise any concerns or put the attorney on notice that
16 the attorney is playing a critical role in accomplishing a
17 fraudulent transfer.
18 The Defendants cite two cases for the proposition
19 that an attorney receiving settlement funds is not an
20 initial transferee under Section 550. It's the *Gropper* or
21 *In re Fabric Buys* case, and the *Bridges Enterprises* case.
22 and both those cases involved actions to avoid preferential
23 transfers under Section 547 and to recover money judgments
24 under Section 550.
25 In *Fabric Buys*, Unitrac, which is one of the

1 Debtor's creditors, retained a law firm, the Hopgood firm,
2 to sue the Debtor to recover damages for goods sold. The
3 parties settled Unitrac's claim for $37,000. The settlement
4 check was made payable to Unitrac and a member of the
5 Hopgood firm.
6 The Hopgood firm deposited the check into its
7 escrow account. Eleven days later, the Hopgood firm issued
8 a $37,000 check to Unitrac. Unitrac later deposited the
9 settlement check. Two months later, the Debtor filed for
10 bankruptcy and the Trustee sued Unitrac and Hopgood to avoid
11 the transaction under Section 547 and recover a judgment
12 under Section 550.
13 The Court in that case held that the Hopgood firm
14 was not an initial transferee. According to the Court, the
15 Hopgood firm acted as a mere conduit. The fact that the
16 settlement payment was funneled through the trust account
17 did not make Hopgood an initial transferee. And even if it
18 did, the Court concluded that it was appropriate to exercise
19 its equitable powers to prevent an inequitable result
20 because the Hopgood firm merely acted as Unitrac's agent and
21 did not receive the benefit of the settlement payment.
22 *Bridges Enterprises* involved similar facts.
23 In that case, Fairmeadows and Armstrong Company sued the
24 Debtor to recover $200,000 for breach of contract. The
25 parties eventually settled for $10,000. Shortly after the

settlement, the Debtor sent a check to its attorney who deposited the settlement check, which was made payable to the Debtor's attorney, into his trust account.

The Debtor's attorney then sent a check made payable jointly to Fairmeadows' principal and its attorney, sent that check to Fairmeadows' attorney.

After Fairmeadows' attorney endorsed the check, Fairmeadows deposited the check into its checking account. That same day the Debtor filed for bankruptcy, the Trustee then brought an action to recover the $10,000 payment from Fairmeadows and its attorney, among others, as a preferential transfer.

The Court initially concluded that the $10,000 settlement payment was a preferential transfer. But the Court then concluded that neither Fairmeadows nor the Debtor's attorneys were initial transferees under Section 550 because both attorneys merely functioned as agents of their respective clients and served as conduits to effect the parties' settlement.

Like the Court in *Fabric Buys*, the *Bridges Enterprises* Court also concluded that it would exercise its equitable discretion to prevent the Trustee from recovering from either attorney, if the attorneys could somehow be deemed initial transferees.

Both of these cases are distinguishable from this

1 case. Neither *Fabric Buys* nor *Bridges Enterprises* involved
2 an alleged fraudulent transfer, nor did either of these
3 cases involve any allegations that the attorneys involved
4 were aware that the transfers were potentially preferential
5 transfers. There were no facts in either of these cases
6 that would suggest the attorneys did not act in good faith,
7 so there's no question that the attorneys in *Fabric Buys* and
8 *Bridges Enterprises* would satisfy the Harwell test.
9 Here, on the other hand, Mr. Hutton, a well-
10 respected commercial litigator, who has handled fraudulent
11 cases before, was aware at the time he received the $500,000
12 in settlement payments, that Mr. Hill had obtained a nearly
13 $1.4 million judgment against the Debtor in Colorado, and
14 that he was attempting to domesticate that judgment here in
15 Florida.
16 Mr. Hutton was also aware that nearly $250,000 of
17 the 500,000 in settlement funds was being paid to the Debtor
18 or other family members. These are facts completely
19 different from the cases cited by the Defendants.
20 Those cases, as cited, are all consistent with
21 the Eleventh Circuit standard announced in *Harwell*. That
22 is the recipient must act in good faith and be an innocent
23 participant in the fraudulent transfer.
24 That brings us to the standard to be applied
25 in judging good faith and innocent participation in a

fraudulent transfer case.

First of all, under the applicable case law, Mr. Hutton has the burden of proving that he acted in good faith. The term good faith is not defined in the Bankruptcy Code, however there is case law that provides the Court with guidance. The term arises in numerous other instances in the Bankruptcy Code.

Most pertinent to this situation is the good faith standard applicable to immediate and mediate transferees from initial transferees in the context of avoidable transferees in Section 550.

Again, the Court will note parenthetically that the assumption made for purposes of the motion for summary judgment was that Mr. Hutton was the mastermind of the fraudulent scheme. That assumption was only made to satisfy the requirement that the facts be viewed most favorably to the non-moving party. It is certainly not the standard that a finding of lack of good faith requires that the participant be the mastermind of the scheme.

The cases in this area make clear that good faith should be decided based on an objective test. The focus is on what the transferee knew or should have known.

If the transferee has sufficient knowledge to put him on inquiry notice that the transfer may be fraudulent, the transferor lacks good faith. In such instances,

1 knowledge or suspicious events should induce a reasonable
2 person to investigate, and if it is apparent that the
3 purposes of the transfer would hinder or delay a creditor
4 rather than being simply ordinary course of business
5 transactions, then the transferee cannot claim to be acting
6 in good faith and certainly would not be innocent if he then
7 participated in the fraudulent transfer.
8 In this case, Mr. Hutton can make no credible
9 argument that he was an unwitting or innocent participant in
10 the transfers made by Mr. Harwell. He knew that transfers
11 were intended to get the money away from Mr. Hill's
12 collection efforts. He knew a judgment had been entered.
13 He knew that the transferees were either Mr. Harwell himself
14 or family members or other third parties. The transactions
15 were unusual in his practice, as he and his office manager
16 testified.
17 In fact, in a sense, he went beyond the call of
18 duty when, on his own notion, he obtained cashier's checks,
19 something he'd never done before for any client, to ensure
20 that there would be absolutely no money left to be applied
21 toward Mr. Hill's judgment.
22 Nor is it any defense that Mr. Hutton in no way
23 benefitted professional or monetarily from the transfers.
24 Unfortunately, monetary benefit to an initial transferee is
25 not an essential element for liability. The case law is

clear in this regard as I have discussed, or I did discuss in my ruling, with respect to the initial transferees in the case of *McCarn's Allstate Finance*.

Absent a defense, such as the conduit defense being asserted here, an initial transferee is strictly liable for the property received, even if it was transferred on to others.

However, there is no question but that the settlement checks from the attorneys representing CFE and SEI in the respective amounts of $100,000 and $400,000 were made payable to Steven D. Hutton, P.L. trust account.

From the description of Mr. Hutton's office practices, based on his testimony and that of his bookkeeper, the Court infers that in the ordinary course of business, settlement checks such as these, upon receipt would be put into the firm's trust account. At no time did the funds actually go into Mr. Harwell's individual account. Accordingly, the only evidence is that the initial transferee of the fraudulent conveyance is Steven D. Hutton, P.L.

The complaint alleges and the answer admits that Steven D. Hutton, P.L. is a Florida limited liability company and thus has a separate legal existence under Florida law from Mr. Hutton individually.

Accordingly, Mr. Hutton was not individually a

1 transfer of the fraudulent transfers. Steven D. Hutton,
2 P.L. was the recipient of the fraudulent transfers.
3 Accordingly, the Court concludes that Mr.
4 Hutton -- and I refer to Mr. Hutton, again, collectively --
5 has failed to meet his burden in showing that he acted in
6 good faith and was an innocent participant in Mr. Harwell's
7 fraudulent actions to hinder and delay Mr. Hill's collection
8 efforts. Because the actual recipient of the funds was his
9 limited liability company, that Defendant company will be
10 solely liable as the initial transferee of the transfers
11 except to the extent of any other defenses that it may have
12 by way of setoff or otherwise.
13 Turning then to the setoff defense, this was the
14 first defense that Mr. Hutton raised. Specifically Mr.
15 Hutton argues that he is entitled to set off any -- against
16 the transfers, monies received from other transferees.
17 Indeed, Section 550 exists to restore the estate to the
18 financial condition it would have enjoyed if the transfers
19 had not occurred.
20 Accordingly, the Court must determine to what
21 extent the money that went through Mr. Hutton's hands was
22 later collected in settlements from the third party
23 transferees.
24 It appears that there were eleven adversary
25 proceedings brought in Colorado by the Trustee against these

1 third party transferees. The Trustee recovered a total of
2 $276,893.93 from these transferees. However, several of
3 these Defendants had been sued for amounts in excess of the
4 Hutton transfers based on other transfers.
5 Accordingly, the Court agrees with the Trustee
6 that a pro rata allocation must be made to apportion the
7 amount of the settlements that resulted from the Hutton
8 transfers and the amount of the settlement that would be
9 attributable to other transfers.
10 The Court will accept the Trustee's evidence in
11 this regard as set forth in actually Defendants' Exhibit 40.
12 This results in a credit against the total transfers made of
13 $157,603.83. This will be a deduction from the $500,000
14 that went through the Hutton P.L. trust account.
15 Turning to the Trustee's argument that the amounts
16 received from the other transferees should be reduced by the
17 cost of collection, the Court concludes as follows: The
18 Court rejects the Trustee's contention that the Court should
19 take into account the fees and costs that the Trustee had to
20 incur in order to pursuer the other Defendants in order for
21 the Trustee to recover the full value of the Hutton
22 transfers. There's no basis for allowing attorneys' fees in
23 actions to avoid fraudulent transfers or to seek recovery
24 under Section 550. It was simply a cost of administration
25 of the estate.

1 The Court will also deny relief to the Trustee
2 under either the aiding and abetting or civil conspiracy
3 counts. As previously ruled by this Court, there's no cause
4 of action for aiding and abetting a fraudulent transferee.
5 Hutton's liability arises as the initial transfer under
6 Section 550 and is limited to the liability of Mr. Hutton's
7 professional association.
8 Nor is there any liability under Florida law for
9 conspiracy to commit fraudulent transfers. In any event,
10 there was insufficient evidence to show that Hutton was in
11 fact the mastermind of Harwell's scheme to get his money
12 away from Mr. Hill.
13 While it is clear to the Court that Mr. Hutton
14 should have known that all of the transfers were being made
15 with the intent to delay or hinder Mr. Hill, or Mr. Hutton
16 did know it, more is required to prove an actual conspiracy.
17 There's no evidence that Hutton and Harwell
18 actually conspired to bring about the fraudulent transfers.
19 Indeed, it was clear Mr. Harwell at all times was acting to
20 get the money away from Mr. Hill. Certainly Mr. Hutton
21 facilitated that, but it wasn't part of a conspiracy.
22 In conclusion, the Court finds for the Trustee
23 and will enter judgment against the Defendant Steven D.
24 Hutton, P.L., a Florida limited liability company, for the
25 amount of $342,396.17 under Section 550. Judgment will be

entered in favor of the Defendants on all the other counts and requests for relief.

I'll ask Ms. Vaughan to do a form of final judgment consistent with my ruling. It can simply be for the reasons stated orally in open court. If you could get a transcript of my ruling and attach that as an exhibit, rather than have anything typed up.

That concludes my ruling, subject to entry of a final judgment. Is there anything else that I've overlooked or that the parties wish me to consider before we conclude the hearing here today?

MS. VAUGHAN: No, Your Honor.

THE COURT: Okay. Okay, very well, the Court will be in recess. This hearing is concluded. Thank you.

THE COURTROOM DEPUTY: All rise.

(Proceedings concluded at 3:21 p.m.)

C E R T I F I C A T E

I certify that the foregoing is the official verbatim transcript, prepared to the best degree possible from the digital audio recording and logs provided by the court.

I further certify that I am neither counsel for, nor related to, nor an employee of, any of the parties to the action in which this hearing was taken.

I further certify that I have no personal interest in the outcome of the action.

Dated this 8th day of September, 2011.

Cheryl Culver

Cheryl Culver, CCR, B-1281
Certified Court Reporter
State of Florida Notary Public

Administrative Office of U.S. Courts
Approved Transcriber