

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

Case No.3:10-bk-75-PMG

FULL OF FAITH MINISTRIES, INC.,

Debtor.

Chapter 7

GREGORY K. CREWS, as Trustee,

Plaintiff,

vs.

Adv. No. 3:10-ap-277-PMG

FULL OF FAITH MINISTRIES, INC.,
and BREONA B. COATS, an individual,
and JESUS IS REAL, INC., a Florida corporation,
and DARRELL L. COATS, an individual,
and GENNELL L. COATS, an individual,

Defendants.

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND MEMORANDUM OPINION**

THIS CASE came before the Court for a final evidentiary hearing in this adversary proceeding.

The Plaintiff, Gregory K. Crews, as Trustee, filed a Complaint to avoid and recover fraudulent transfers pursuant to §548(a)(1) of the Bankruptcy Code. Generally, the Trustee alleges that the Debtor, Full of Faith Ministries, Inc., transferred three parcels of real property to its insiders within two

years before the filing of the bankruptcy case, and that the transfers should be avoided as actually or constructively fraudulent. The Court finds that the transfers should be avoided.

Background

The Debtor is a Florida corporation which lists its street address as 2509 North Main Street, Jacksonville, Florida. Gennell L. Coats is the president of the Debtor. (Main Case, Doc. 1). The Debtor's directors are Darrell Coats, Gennell Coats, and Breona Coats. Breona Coats is the daughter of Darrell and Gennell Coats.

On September 10, 2007, Lantana Lakes Homeowners Association, Inc. filed a Complaint against the Debtor in the Circuit Court for Duval County, Florida, Case No. 16-2007-CA-7949 (the State Court Action). (Doc. 1, ¶ 5).

On September 9, 2008, while the State Court Action was pending, a Quitclaim Deed was recorded in the public records of Duval County. Pursuant to the Quitclaim Deed, the Debtor transferred to Breona B. Coats all of its interest in certain real property described as "4432 31-2S-28E Lantana Lakes Unit 01 Track I." (Tract I). (Trustee's Exhibit 5).

On October 22, 2008, a second Quitclaim Deed was recorded in the public records of Duval County, Florida. Pursuant to the second Quitclaim Deed, the Debtor transferred to Jesus is Real, Inc., all of its interest in certain real property described as "2-6901-25-26 E 16 New Springfield Lot 10 S 20 FT Lot 11 Blk 37." The street address for the transferred property is 2509 North Main Street, Jacksonville, Florida. (Trustee's Exhibit 6). Darrell Coats and Gennell Coats are directors of Jesus is Real, Inc. (Doc. 1, Complaint, ¶ 13; Doc. 9, Answer, ¶ 13).

On October 22, 2008, a third Quitclaim Deed was recorded in the public records of Duval County, Florida. Pursuant to the third Quitclaim Deed, the Debtor transferred to Darrell and Gennell Coats all

of its interest in certain real property described as “2-69-01 2S-26 E.10 New Springfield N46 FT Lot 12 Blk 37.” The street address for the transferred property is 2527 North Main Street, Jacksonville, Florida. (Trustee’s Exhibit 7).

On June 5, 2009, a Final Judgment was entered in the State Court Action in favor of Lantana Lakes Homeowners Association, Inc., and against the Debtor, in the amount of \$36,374.83. (Doc. 1, Exhibit B).

On January 6, 2010, the Debtor filed a petition under Chapter 11 of the Bankruptcy Code. On its original Schedule of Assets, the only property listed by the Debtor consisted of personal property with a value of \$110.00. On its Schedule of Liabilities, the only debt listed by the Debtor consisted of the Judgment in favor of Lantana Lakes Homeowners Association in the amount of \$36,374.83. (Main Case, Doc. 19).

On February 16, 2010, the Debtor amended its Schedule of Assets to add its fee ownership in real property described as “0 West Lantana Lakes Drive, Jacksonville, Florida 32246,” which it valued at \$6,410.00. (Main Case, Doc. 30). It appears that the Debtor may have transferred this property to Breona Coats in 2008, prior to the filing of the bankruptcy petition (Trustee’s Exhibit 4), and that Breona Coats later transferred the property back to the Debtor (Trustee's Exhibit 9).

On February 26, 2010, the Debtor converted its Chapter 11 case to a case under Chapter 7 of the Bankruptcy Code, and Gregory K. Crews was appointed as the Chapter 7 Trustee. (Main Case, Docs. 32, 33).

On March 9, 2010, the Debtor filed an Amended Statement of Financial Affairs in the Chapter 7 case. (Main Case, Doc. 40). Question 10 of the SOFA requires debtors to list property that was transferred within two years immediately preceding the commencement of the bankruptcy case, other

than property transferred in the ordinary course of business. In response to Question 10, the Debtor listed the following three transfers:

1. The transfer of Tract I to Breona Coats on August 8, 2008.
2. The transfer of property located at "2527 N. Main Street" in Jacksonville to Darrell and Gennell Coats on August 8, 2008.
3. The transfer of property located at "2509 N. Main Street" in Jacksonville to Jesus is Real, Inc. on August 8, 2008.

Breona, Darrell, and Gennell Coats were identified as directors of the Debtor. For each transfer, the Debtor stated that the "value received" was "0."

On May 27, 2010, the Trustee filed a Complaint to avoid the Debtor's transfer of the three parcels of real property as fraudulent transfers pursuant to §548(a)(1) of the Bankruptcy Code.

Discussion

Section 548(a)(1) of the Bankruptcy Code provides in part:

11 USC § 548. Fraudulent transfers and obligations

(a)(1) The trustee may avoid any transfer . . . of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or

(B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.

11 U.S.C. §548(a)(1)(Emphasis supplied). The purpose of the fraudulent transfer statute is to preserve assets of the estate for the benefit of creditors. In re Leneve, 341 B.R. 53, 56 (Bankr. S.D. Fla. 2006).

The statute is designed to prevent debtors from “engaging in transactions which have the effect of placing assets beyond the reach of legitimate creditors.” In re Leneve, 341 B.R. at 56(citing In re Summit Place, LLC, 298 B.R. 62 (Bankr. W.D.N.C. 2002)).

A. Transfers

In this case, the Defendants acknowledge that the Debtor made the transfers alleged by the Trustee. The transfers are disclosed in the Debtor’s Amended Statement of Financial Affairs. (Main Case, Doc. 40). Additionally, the Defendants admit that they are the owners of the transferred property by virtue of the respective Quitclaim Deeds. (Doc. 1, Complaint, ¶¶ 11-13; Doc. 9, Answer, ¶¶ 11-13).

B. Two years

Section 548(a)(1) permits a trustee to avoid transfers of a debtor’s interest in property that were made “within 2 years before the date of the filing of the petition.” Section 548(d)(1) provides:

11 USC §548. Fraudulent transfers and obligations

...

(d)(1) For the purposes of this section, a transfer is made when such transfer is so perfected that a bona fide purchaser from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee, but if such transfer is not so perfected before the commencement of the case, such transfer is made immediately before the date of the filing of the petition.

11 U.S.C. §548(d)(1)(Emphasis supplied). Under Florida law, transfers of real property are not effective against bona fide purchasers “unless the same be recorded according to law.” Fla. Stat. §695.01(1). Consequently, the date of a transfer for purposes of §548 is generally held to be the date that the deed is recorded in the public records. In re Mizrahi, 179 B.R. 322, 327 (Bankr. M.D. Fla. 1995); In re A.M. Operating Corporation, 32 B.R. 38, 39 (Bankr. S.D. Fla. 1983).

The Debtor in this case filed its bankruptcy petition on January 6, 2010. The Quitclaim Deed regarding Track I was recorded on September 9, 2008. The Quitclaim Deeds regarding 2509 North Main Street and 2527 North Main Street were recorded on October 22, 2008. For purposes of §548(a)(1) of the Bankruptcy Code, therefore, the transfers of the Debtor's real property were made within two years before the date of the bankruptcy petition.

C. Section 548(a)(1)(A)

“Under section 548(a)(1)(A), any transfer made by the debtor with actual intent to hinder, delay, or defraud creditors may be avoided whether or not the debtor received value in exchange for the transfer.” In re Rothstein Rosenfeldt Adler, P.A., 2010 WL 5173796, at 4 (Bankr. S.D. Fla.).

To avoid a transfer under §548(a)(1)(A), a plaintiff must establish that (1) the transfer of property occurred, (2) the property belonged to the debtor, (3) the transfer occurred within two years before the date of the bankruptcy petition, and (4) the transfer was made with actual intent to hinder, delay, or defraud creditors. In re Metro Sewer Services Inc., 374 B.R. 316, 324 (Bankr. M.D. Fla. 2007).

Of the four elements, the crucial issue is whether the debtor transferred the property with the actual intent to hinder, delay, or defraud creditors. In re Metro Sewer Services, Inc., 374 B.R. at 324.

“Fraudulent intent may be established through circumstantial evidence referred to as badges of fraud.”

Id. Common badges of fraud include (1) the inadequacy of consideration for the transfer, (2) the existence of a close relationship between the debtor and the transferee, (3) the debtor's retention of possession or control of the property after the transfer, (4) the adverse effect of the transfer on the debtor's financial condition, and (5) the timing of the transfer in relation to creditor activity. Id. at 324-25.

In this case, the Court finds that the Debtor transferred the three parcels of property with the intent to hinder, delay, or defraud its creditor. This conclusion is based on the following factors:

1. The transfers were made after Lantana Lakes Homeowners Association, Inc. had sued the Debtor in the State Court Action, and the State Court Action remained pending at the time of the transfers. A Final Judgment was entered against the Debtor in the State Court Action approximately eight months after the transfers were recorded.

2. The transfers were made to Darrell and Gennell Coats, Breona Coats, and Jesus is Real, Inc. The transferees are insiders or closely related to the Debtor. Gennell Coats, for example, is the president of the Debtor. Darrell, Gennell, and Breona Coats are all directors of the Debtor. Darrell Coats maintained the books and records of the Debtor, and signed the Quitclaim Deeds on behalf of the Debtor. Breona Coats is the daughter of Darrell and Gennell Coats. Darrell and Gennell Coats are directors of Jesus is Real, Inc. ((Doc. 1, Complaint, ¶¶ 11-13; Doc. 9, Answer, ¶¶ 11-13).

3. The Amended Statement of Financial Affairs filed in the Chapter 7 case indicates that the Debtor received no value in exchange for the transfers.

4. The Debtor retained control of the property after the transfers. On the Chapter 7 petition dated January 6, 2010, for example, the Debtor listed 2509 North Main Street as its street address, even though the property had been transferred to Jesus is Real, Inc. in 2008.

5. After the transfers, the Debtor was insolvent. The only assets listed by the Debtor on its schedules were a bank account worth \$10.00, and furniture valued at \$100.00. The Debtor later amended its Schedule of Assets to add real property on West Lantana Lakes Drive valued at \$6,410.00. The judgment debt owed by the Debtor, however, is in the original amount of \$36,374.83.

Even if the Lantana Lakes property is included as an asset, therefore, the Debtor's liabilities exceed its assets by more than \$29,854.83.

Under these circumstances, the Court finds that the Debtor transferred the real property known as Tract I, and the real property located at 2509 North Main Street and 2527 North Main Street, with the actual intent to hinder or delay Lantana Lakes Homeowners Association from collecting the debt owed to it.

D. Section 548(a)(1)(B)

To avoid a transfer under §548(a)(1)(B) of the Bankruptcy Code, a plaintiff must show (1) that the transfer occurred within two years before the bankruptcy petition was filed, (2) that the debtor was insolvent or near-insolvent at the time of the transfer, and (3) that the debtor did not receive reasonably equivalent value in exchange for the transfer. In re McDonald, 265 B.R. 632, 636 (Bankr. M.D. Fla. 2001).

The Court finds that the three elements of a constructively fraudulent transfer are present in this case. First, as shown above, the Debtor transferred the property known as Track I, and the two parcels of property on North Main Street, within two years before the date of the bankruptcy petition.

Second, the Debtor was insolvent at the time that the transfers were made, or became insolvent as a result of the transfers. The term "insolvent" is defined in §101 of the Bankruptcy Code. For corporations, the term "insolvent" means the "financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation," exclusive of property that was fraudulently transferred. 11 U.S.C. §101(32)(A).

In this case, the evidence does not show that the Debtor owned any assets of significant value, other than the transferred property, in 2008. As shown above, the only assets scheduled by the Debtor

in its bankruptcy case consisted of a bank account containing \$10.00, furniture valued at \$100.00, and real property on West Lantana Lakes Drive valued at \$6,410.00, for an aggregate value of \$6,520.00. The judgment debt scheduled by the Debtor is in the original amount of \$36,374.83. Accordingly, the Debtor's scheduled liability exceeds the value of its scheduled assets by more than \$29,854.83.

Additionally, on its Amended Statement of Financial Affairs, the Debtor disclosed that it had not received any income, either from the operation of its business or from any other source, in 2008 or 2009. (Main Case, Doc. 40). See In re Kronk, 2010 WL 745475, at 3 (Bankr. M.D. Fla.), in which the Court found that the insolvency requirement of §548(a)(1) was satisfied where the debtors conceded that they had debts that were beyond their ability to pay.

Finally, the Court finds that the Debtor did not receive reasonably equivalent value in exchange for the transfers. In determining whether reasonably equivalent value was received, Courts may consider the disparity between the fair value of the property and the amount actually received by the debtor, the good faith of the parties, and the arms-length relationship between the parties. In re Leneve, 341 B.R. at 56-57.

The Debtor acknowledged on its Amended Statement of Financial Affairs that it received "0" in exchange for the transfers. (Main Case, Doc. 40). There is no evidence in the record that any funds came into the Debtor's possession as a result of the transfers, or that the Debtor otherwise received any direct or indirect economic benefit as a result of the transfers. See In re McDonald, 265 B.R. at 636. Finally, in evaluating the transfers, the Court also considers the close relationship between the parties, and the fact that the transfers were not arms-length transactions.

Under these circumstances, the Court finds that the Debtor received less than a reasonably equivalent value in exchange for the transfers of the real property known as Track I, 2509 North Main Street, and 2527 North Main Street, and that the Debtor was insolvent on the date of the transfers.

Conclusion

The Trustee commenced this action to avoid and recover fraudulent transfers pursuant to §548(a)(1) of the Bankruptcy Code. The evidence establishes that three Quitclaim Deeds were recorded in the public records of Duval County, Florida, in September and October of 2008. Pursuant to the Quitclaim Deeds, the Debtor transferred certain real property in Jacksonville, Florida to Breona Coats, Jesus is Real, Inc., and Darrell and Gennell Coats, respectively.

The transfers occurred within two years before the date of the bankruptcy petition.

The Court finds that the transfers should be avoided pursuant to §548(a)(1)(A) of the Bankruptcy Code because they were made with actual intent to hinder, delay, or defraud a creditor of the Debtor.

Additionally, the Court finds that the transfers should be avoided pursuant to §548(a)(1)(B) of the Bankruptcy Code, because the Debtor received less than a reasonably equivalent value in exchange for the transfers and was insolvent on the date that the transfers were made.

Accordingly:

IT IS ORDERED that:

1. The transfer of property described as “4432 31-2S-28E Lantana Lakes Unit 01 Track I” from Full of Faith Ministries, Inc. to Breona Coats, as evidenced by a Quitclaim Deed recorded on September 9, 2008, is avoided.

2. The transfer of property described as “2-6901-25-26 E 16 New Springfield Lot 10 S 20 FT Lot 11 Blk 37” from Full of Faith Ministries, Inc. to Jesus is Real, Inc., as evidenced by a Quitclaim Deed recorded on October 22, 2008, is avoided.

3. The transfer of property described as “2-69-01 2S-26 E.10 New Springfield N46 FT Lot 12 Blk 37” from Full of Faith Ministries, Inc. to Darrell and Gennell Coats, as evidenced by a Quitclaim Deed recorded on October 22, 2008, is avoided.

4. A separate Final Judgment in favor of the Plaintiff, Gregory K. Crews, as Trustee, and against the Defendants, Full of Faith Ministries, Inc., Breona B. Coats, Jesus is Real, Inc., Darrell L. Coats, and Gennell L. Coats, shall be entered consistent with this Opinion.

DATED this 31 day of March, 2011.

BY THE COURT



PAUL M. GLENN
Chief Bankruptcy Judge