

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

IN RE:

Case No. 05-13351-3P7  
Chapter 7

WILLIAM J. REVELS, III

Debtor.  
\_\_\_\_\_ /

GORDON P. JONES, as Trustee

Plaintiff,

v.

Adv. No. 06-00154

MICHAEL O. REVELS, SR.,

Defendant.  
\_\_\_\_\_ /

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

This proceeding is before the Court upon the complaint filed by Plaintiff seeking to avoid the transfer of properties of the Debtor, pursuant to 11 U.S.C. § 544(b) and Florida Statutes §§ 726.105(1) and 726.106(1). Plaintiff also seeks to recover Debtor's interest in the properties from Defendant, pursuant to 11 U.S.C. § 550, for the bankruptcy estate. After a trial held on November 16, 2006, the Court makes the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

1. On October 13, 2005 (the "Petition Date"), William J. Revels, III ("Debtor"), filed for Chapter 7 relief under the Bankruptcy Code.

2. Prior to filing bankruptcy, Debtor and his four brothers (Michael, Ronald, Anthony and Jon Revels) inherited real property in St. John's County, Florida, in 1992. The property, which has a house on the premises, is located one block from the ocean and is known as the "Beach" property. Each brother inherited a one-fifth (1/5) interest in the Beach property. (Tr. 32-33).

3. In 1992, Debtor and his four brothers purchased an 8.5 acre tract of land with a house in Putnam County, Florida, known as the "Kerr" property, with each brother owning a one-fifth (1/5) interest. (Tr. 30-31).

4. In 1998, Michael O. Revels, Sr. ("Defendant") purchased Anthony and Jon Revels' interests in the Kerr property, which resulted in him owning a three-fifths (3/5) interest in the property. (Tr. 62).

5. In December 2003, Defendant was informed by his father that Debtor and his brother, Ronald, were having financial difficulties. Their father suggested that Defendant either purchase Debtor's interests in the Kerr and Beach properties, or sell the properties to generate cash. (Tr. 34). Thus, Defendant was on inquiry notice of Debtor's possible insolvency beginning in December 2003.

6. In January 2004, Debtor, Defendant and Ronald Revels (collectively, the "Sellers") entered a contract to sell the Kerr property for \$1,125,000.00 to John Williams (the "Buyer"). (Pl. Ex. 3). After accounting for the associated fees and costs related to the sale, the Sellers wanted to net \$1,000,000.00. (Tr. 66).

7. The original closing date of the contract to sell the Kerr property was July 6, 2004. (Tr. 41). Defendant testified, as a condition of the contract, Buyer was required to obtain rezoning for the property by closing. (Tr. 63). On May 4, 2004, the parties to the contract agreed to extend the closing date to September 6, 2004. (Pl. Ex. 3, Tr. 41). On May 11, 2004, Buyer's rezoning application was withdrawn; however, Defendant did not learn of this until August 2004. (Tr. 64).

8. The sale of the Kerr property did not occur by September 6, 2004, and the Buyer has filed an action for specific performance which is currently pending in the Circuit Court of Putnam County.

9. On June 11, 2004, Defendant purchased Debtor's one-fifth (1/5) interests in the Kerr and Beach properties by delivering two checks, one for \$200,000.00, the other for \$50,000.00, to attorney Ronald Clark ("Clark"), payable to his escrow account.<sup>1</sup> (Tr. 42). The \$200,000.00 check was for Debtor's one-fifth (1/5) interest in the Kerr property and the \$50,000.00 check was for Debtor's one-fifth (1/5) interest in the Beach Property.

10. After deducting fees and costs, the amount forwarded by Clark to Debtor was \$198,481.50 for the Kerr property and \$49,540.00 for the Beach property (\$248,021.50 total). (Tr. 79). Clark also prepared quit-claim deeds on behalf of Defendant, signifying Debtor's transfer of the two one-fifth (1/5) interests to Defendant. (Tr. 43).

<sup>1</sup> The contract for sale of the Kerr property was pending at the time.

11. Defendant testified that the reason he decided to buy Debtor's interest in the Kerr property prior to the pending sale on September 6, 2004, was because Debtor, a farmer, (i) needed money for bills and Defendant wanted to help, and (ii) in case the sale did not go through, he wanted to accumulate Debtor's share of the property. (Tr. 33, 41). Defendant also testified that he knew Debtor's financial condition was so bad that it necessitated selling both properties. (Tr. 101).

12. As of January 2004, Debtor owed over \$1,000,000.00 in unpaid farming bills, in addition to substantial back due child support. (Tr. 73-75, 88). Debtor's former wife filed a proof of claim for \$126,273.25, which represents the amount Debtor owes for child support. (Tr. 73). Further, Debtor testified that from January 2004 through the filing of his petition for relief, his liabilities exceeded his assets. (Pl. Ex. 32 at 9).

13. At the time of the transfers in June 2004, Debtor testified that he still owed at least \$1,000,000.00 in farming bills, as well as overdue child support and federal income taxes. (Tr. 73-75, 86, 88).

14. On June 14, 2004, just three days after selling his interests in the Kerr and Beach properties, Debtor wrote three checks totaling \$217,995.96; two of the checks were payable to his father's trust (totaling \$142,995.96), and the third check was payable to his father and stepmother. (Tr. 82-83). Debtor testified that the three checks for \$217,995.96, all came from the \$248,021.50 he received from Defendant for his one-fifth (1/5) interests in the two properties. (Tr. 84). Thus, Debtor *actually* received less than \$33,000.00 for his interests in the properties. Debtor testified that he transferred the \$217,995.96 because he had judgments against him and wanted to protect the money from creditors. (Tr. 85-86). Debtor's father negotiated the three checks later that same day. The propriety of these three transfers is the subject of a separate adversary proceeding before the Court.

15. In order to purchase Debtor's interest in the Kerr and Beach properties, Defendant borrowed \$250,000.00 from his father.<sup>2</sup> (Tr. 45). The terms of the loan were memorialized in a promissory note (the "Note") payable to Defendant's father's trust on or before June 11, 2006. (Tr. 45-46). Although the Note's terms required repayment by Defendant on or before June 11, 2006, Defendant and his father orally agreed that Defendant would repay the loan once he sold the Kerr property. Defendant has made no payments to his

<sup>2</sup> Defendant's father obtained the \$250,000.00 he loaned to Defendant by borrowing it from Putnam State Bank, where he formerly served as director. Defendant's father paid back the loan in full by July 2, 2004, less than three weeks after receiving over \$217,000.00 from Debtor on June 14, 2004. (Tr. 24-25).

father on the Note, nor has his father demanded such payments. (Tr. 47). Further, Defendant did not sign or deliver any other documents related to the loan, such as a mortgage, to his father. (Tr. 47).

16. According to Debtor's bankruptcy schedules, he owes over twice the value of his homestead as well as a substantial amount on two (2) vehicles listed as assets. Debtor's schedules also indicate that he owes over \$75,000.00 to Deere and Co., for two (2) tractors and farming equipment. Other than a vehicle trade-in, Debtor's Statement of Financial Affairs shows that he made no transfers of property or other assets outside the ordinary course of business in the year prior to filing bankruptcy.

## **CONCLUSIONS OF LAW**

### **A. Determination of whether an Avoidable Transfer occurred pursuant to 11 U.S.C. § 544(b) and Florida Statutes §§ 726.105(1) and 726.106(1)**

Plaintiff brought this suit pursuant to 11 U.S.C. § 544(b) which provides in pertinent part:

(b)(1) [T]he trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 ...or that is not allowable only under section 502(e).<sup>3</sup>

11 U.S.C. § 544(b)(1).

The applicable law Plaintiff seeks to apply in this proceeding is Florida Statutes, § 726.105(1), which states:<sup>4</sup>

(1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

<sup>3</sup> This Court has previously held that for the Trustee to prevail under 11 U.S.C. § 544(b), he must show that a creditor holding an unsecured claim existed at the time of the transfer(s) in question. In re Steele, 79 B.R. 503, 504 (Bankr. M.D. Fla. 1987). According to Debtor's testimony, he had over \$1,000,000.00 in unpaid farming bills as of January 2004 and most, if not all, of the debt remained unpaid when he filed bankruptcy in October 2005. (Tr. 89). The transfers in question occurred during June 2004.

<sup>4</sup> Under 11 U.S.C. § 544(b)(1), "[a]pplicable law has consistently been held to include state law." In re Davis, 138 B.R. 106, 108 (Bankr. M.D. Fla. 1992).

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

1. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

2. Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

Fla. Stat. § 726.105(1).

In assessing the merits of a state fraudulent conveyance claim, courts are guided in their determination of whether actual intent to hinder, delay or defraud creditors exists by the factors outlined in Florida Statutes, § 726.105(2), which states:

(2) In determining actual intent under paragraph (1)(a), consideration may be given, among other factors, to whether:

(a) The transfer or obligation was to an insider.

(b) The debtor retained possession or control of the property transferred after the transfer.

(c) The transfer or obligation was disclosed or concealed.

(d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.

(e) The transfer was of substantially all the debtor's assets.

(f) The debtor absconded.

(g) The debtor removed or concealed assets.

(h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

(i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

(j) The transfer occurred shortly before or shortly after a substantial debt was incurred.

(k) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

Fla. Stat. § 726.105(2).

This Court has previously stated that the above factors, commonly known as the badges of fraud, are non-exclusive and it may weigh additional factors in determining a debtor's intent. In re Bosonetto, 271 B.R. 403, 407 (Bankr. M.D. Fla. 2001); See also In re Jennings, 332 B.R. 465, 469 (Bankr. M.D. Fla. 2005); In re Stewart, 280 B.R. 268, 279 (Bankr. M.D. Fla. 2001). Also, the Eleventh Circuit has clearly stated that courts should examine, "the particular facts surrounding the conveyance," in addition to the badges of fraud. General Trading, Inc. v. Yale Materials Handling Corp., 119 F.3d 1485, 1498 (11th Cir. 1997).

Upon applying the badges of fraud to the instant case, the Court finds that six of the factors show the transfers were made with actual intent to hinder, delay, or defraud Debtor's creditors. See Fla. Stat. §§ 726.105(1)(a) and 726.105(2).

First, Debtor's transfer of his one-fifth (1/5) interests in the Kerr and Beach properties were to his brother, Defendant, an insider.<sup>5</sup>

Second, this Court has previously stated that one factor which confirms a debtor's intent to commit a fraudulent transfer is the presence of "imminent" lawsuits by his creditors at the time of the transfer(s) in question. In re Davis, 138 B.R. 106, 109 (Bankr. M.D.

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<sup>5</sup> 11 U.S.C. § 101(31) defines the term "insider," and provides in pertinent part:

(31) The term "insider" includes---  
(A) if the debtor is an individual---  
(i) [a] relative of the debtor.

11 U.S.C. § 101(31)(A)(i).

Fla. 1992). In the instant case, from January 2004 through the time the transfers were made in June 2004, Debtor owed over \$1,000,000.00 in unpaid farming bills and a substantial amount of past due child support. (Tr. 88-89). Debtor's former wife filed a proof of claim seeking over \$120,000.00 in past due child support. (Tr. 73). Thus, lawsuits by Debtor's farming creditors and/or his child's mother were imminent at the time of the transfers.

Third, this Court has ruled that one factor which indicates the occurrence of a fraudulent transfer is when the value of the debtor's post-transfer assets is insignificant, as compared to the value of the debtor's transferred asset(s). In re Davis, 138 B.R. 106, 109 (Bankr. M.D. Fla. 1992). In the instant case, the transfers of Debtor's interests in the Kerr and Beach properties, worth at least \$250,000.00, were of substantially all the Debtor's assets. Debtor's bankruptcy schedules indicate that he owes over twice the amount of his homestead's value. Debtor's schedules also indicate that he owes over \$75,000.00 in unsecured debt to Deere and Co., for two (2) tractors and farming equipment worth \$40,000.00. Further, Debtor owes a substantial amount on two (2) of the vehicles he lists as assets on his bankruptcy schedules.<sup>6</sup> According to Debtor's Statement of Financial Affairs, he made no transfers of property or other assets outside the ordinary course of business in the year prior to filing for bankruptcy protection, other than a vehicle trade-in. Thus, post-transfer the value of Debtor's remaining assets were insignificant as compared to the value of his interests in the Kerr and Beach properties.

Fourth, this Court has previously found that the removal of a "major asset" from the reach of a debtor's creditors is one factor which indicates a fraudulent conveyance occurred. Id. By transferring his one-fifth (1/5) interests in the Kerr and Beach properties, Debtor removed his only major assets from the reach of his creditors. See In re Knapp, 146 B.R. 294, 297 (Bankr. M.D. Fla. 1992).

Fifth, the value of the consideration received by Debtor was not reasonably equivalent to the value of his interests in the two properties. This Court has previously stated, "[w]hat constitutes reasonably equivalent value must be determined on a case-by-case basis as determined by the unique facts in each case. In re CJW Ltd., 172 B.R. 675, 680 (Bankr. M.D. Fla. 1994). Although Debtor initially received approximately \$250,000.00 for his one-fifth (1/5) interests in the two properties, he proceeded to transfer over \$217,000.00 three days later to his father, who had loaned Defendant \$250,000.00 to purchase Debtor's interests in the properties. Further, their father paid back his

\$250,000.00 loan to Putnam State Bank just weeks after receiving and negotiating the three checks for over \$217,000.00 from Debtor. (Tr. 24-25). Thus, after deducting the amount Debtor immediately forwarded to his father (\$217,995.96), Debtor *actually* received less than \$33,000.00 for his interest in the Kerr and Beach properties, far less than reasonably equivalent value.

Sixth, Debtor was insolvent at the time the transfers were made, in June 2004. According to the Florida Statutes, "a debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation." Fla. Stat. § 726.103(1). At the time of the transfers, Debtor owed over \$1,000,000.00 in farming debts and a substantial amount of past due child support. (Tr. 73-75, 88-89). Further, Debtor testified that his liabilities exceeded his assets from January 2004 through the Petition Date, and therefore, Debtor was insolvent when the transfers in question occurred. (Pl. Ex. 32 at 9); Fla. Stat. § 726.103(1).

Based upon the above, the Court finds that Debtor's transfer of his interests in the Kerr and Beach properties are avoidable pursuant to 11 U.S.C. § 544(b) and Florida Statutes § 726.105(1)(a).

Furthermore, Florida Statutes § 726.105(1)(b) provides additional grounds for avoiding a fraudulent transfer, it states:

(1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

1. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

2. Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

Fla. Stat. § 726.105(1)(b).

The Court has previously determined that Debtor did not receive reasonably equivalent value, as he *actually* received less than \$33,000.00 for his interests in the Kerr and Beach properties. Additionally, given Debtor's poor financial condition prior to and at the time

<sup>6</sup> The other five (5) vehicles listed as assets on Debtor's bankruptcy schedules have a *combined* value of \$1,050.00.

of the transfers, he should have reasonably believed that he would incur debts beyond his ability to pay as they became due.

Finally, Florida Statutes § 726.106(1) provides another basis to avoid a fraudulent conveyance, it states:

(1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

Fla. Stat. § 726.106(1).

As previously discussed, Debtor did not receive reasonably equivalent value for his interests in the Kerr and Beach properties, and at the time of the transfers he was insolvent. As a result, Debtor's transfer of his interests in the two properties are avoidable pursuant to § 726.106(1).

#### **B. Whether Defendant Acquired Debtor's Interest in the Properties in Good Faith and for a Reasonably Equivalent Value**

Florida Statutes § 726.109(1) provides an affirmative defense to a fraudulent transfer committed under § 725.105(1)(a) in limited circumstances. Section 726.109(1) states:

(1) A transfer or obligation is not voidable under s. 726.105(1)(a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

Fla. Stat. § 726.109(1).

Consequently, the Court must determine whether Defendant took Debtor's one-fifth (1/5) interests in the Kerr and Beach properties in good faith, and if so, whether Defendant paid reasonably equivalent value for the interests.

This Court has previously determined that a person who possesses knowledge regarding the transferor's "poor financial condition at the time of the transfer," is not a good faith transferee. In re O'Connell, 119 B.R. 311, 317 (Bankr. M.D. Fla. 1990).<sup>7</sup> Further,

<sup>7</sup> While the O'Connell case dealt with "good faith" in the context of 11 U.S.C. § 550, the Court finds its discussion of good faith applicable to the issues presently before it. In re O'Connell, 119 B.R. at 317.

several courts in the Middle District of Florida have held that good faith must be determined using an objective standard. In re Evergreen Sec., Ltd., 319 B.R. 245, 254 (Bankr. M.D. Fla. 2003); In re World Vision Entertainment, Inc., 275 B.R. 641, 659 (Bankr. M.D. Fla. 2002). Additionally, courts in the Middle District of Florida have stated, "[c]ircumstances putting the transferee on inquiry notice as to a debtor's insolvency..... will preclude a transferee from asserting a good faith defense." In re Evergreen Sec., Ltd., 319 B.R. at 255; In re World Vision Entertainment, Inc., 275 B.R. at 659. Thus, a transferee may not put on "blindness" before entering a transaction with a debtor if circumstances exist putting him on inquiry notice of the debtor's possible insolvency. In re Evergreen Sec., Ltd., 319 B.R. at 254.

As of December 2003, Defendant was on notice, through his father, that Debtor was having financial difficulties. (Tr. 34-35). Defendant testified that he knew that Debtor "was having financial problems," when he purchased Debtor's interests in the Kerr and Beach properties in June 2004. (Tr. 40). Further, Defendant testified that the reason he decided to purchase Debtor's one-fifth (1/5) interest in the Kerr property just prior to the closing date on the sale was because he knew that Debtor needed money for outstanding bills, and that Debtor's financial condition was so bad that it necessitated selling both the Kerr and Beach properties. (Tr. 41, 101). Thus, Defendant possessed knowledge of Debtor's "poor financial condition," at least six months before the transfers in question, and therefore, was on inquiry notice of Debtor's possible insolvency when the transfers were subsequently made. Consequently, Defendant is not a good faith transferee under Florida Statutes § 726.109(1).<sup>8</sup>

As the Court has determined that Defendant is not a good faith transferee under Florida Statutes § 726.109(1), the Court need not address the question of whether Defendant paid reasonably equivalent value for Debtor's one-fifth (1/5) interests in the Kerr and Beach properties. The finding that Defendant is not a good faith transferee precludes his use of the affirmative defense contained in Florida Statutes § 726.109(1).

#### **C. Recovery of Assets for the Bankruptcy Estate pursuant to 11 U.S.C. § 550(a)**

Finally, Plaintiff seeks to recover Debtor's one-fifth (1/5) interests in the two properties from Defendant for the bankruptcy estate, pursuant to 11 U.S.C. § 550(a), which provides:

<sup>8</sup> The evidence demonstrates that Defendant put on "blindness" after learning of Debtor's financial problems through his father; Defendant testified that after learning of Debtor's financial difficulties he never asked his father or Debtor about the extent of Debtor's poor financial condition. (Tr. 102).

(a) Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from---

- (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or
- (2) any immediate or mediate transferee of such initial transferee.

11 U.S.C. § 550(a)

In the case at bar, Plaintiff is entitled to recover from Defendant a one-fifth (1/5) interest in the Kerr and Beach properties for the benefit of the bankruptcy estate because the transfers to Defendant are avoidable under § 544(b)(1), and Defendant was the initial transferee of Debtor's (1/5) interests in the properties. See 11 U.S.C. § 550(a)(1); IBT Int'l., Inc. v. Northern (In re Int'l. Admin. Servs.), 408 F.3d 689, 703 (11th Cir. 2005) (stating that plaintiffs in avoidance actions can recover from the initial transferee, pursuant to § 550(a)).

**CONCLUSION**

Based upon the above, Plaintiff is entitled to avoid the transfers of Debtor's interest in the Kerr and Beach properties pursuant to 11 U.S.C. § 544(b) and Florida Statutes §§ 726.105(1)(a), 726.105(1)(b) and 726.106(1). Further, Plaintiff may recover Debtor's one-fifth (1/5) interests in the properties from Defendant, as the initial transferee, pursuant to 11 U.S.C. § 550(a)(1). The court will enter a separate Judgment that is consistent with these Findings of Fact and Conclusions of Law.

**ORDERED** on January 31, 2007, in Jacksonville, Florida.

/s/ George L. Proctor  
George L. Proctor  
United States Bankruptcy Judge

**Copies to:**

Debtor  
Defendant  
Gordon P. Jones, Plaintiff  
Lance P. Cohen  
Raymond R. Magley  
Chapter 7 Trustee  
United States Trustee  
Richard G. Rumrell