

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

In re:

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

FULL OF FAITH MINISTRIES, INC.,

Debtors.

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.

**ORDER ON AMENDED MOTION FOR REHEARING/NEW TRIAL ON FINAL
JUDGMENT OR ALTERNATIVELY TO ALTER OR AMEND THE JUDGMENT**

THIS CASE came before the Court for hearing to consider an Amended Motion for Rehearing/New Trial on Final Judgment or Alternatively to Alter or Amend the Judgment. The

Amended Motion was filed by the Defendants, Full of Faith Ministries, Inc., Darrell Coats, Breona Coats, Gennell Coats, and Jesus is Real, Inc.

On March 31, 2011, the Court entered a Final Judgment avoiding three transfers of real property from the Debtor to the other Defendants pursuant to §548(a)(1) of the Bankruptcy Code. In the Motion for Rehearing, the Defendants ask the Court to reconsider the Final Judgment in order to prevent manifest injustice. According to the Defendants, key evidence was not presented to the Court at trial, and the additional evidence shows that the transfers were neither actually nor constructively fraudulent within the meaning of the statute. The Motion for Rehearing should be denied.

Background

The Debtor operates a ministry in Jacksonville, Florida. On January 6, 2010, the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code. On February 26, 2010, the Chapter 11 case was converted to a case under Chapter 7 of the Bankruptcy Code.

The Debtor acknowledges that it made the following transfers of real property prior to the filing of the bankruptcy petition:

1. On September 9, 2008, the Debtor transferred to Breona Coats the real property described as “4432 31-2S-28E Lantana Lakes Unit 01 Track I” (Tract I).
2. On October 22, 2008, the Debtor transferred to Darrell and Gennell Coats the real property located at 2527 North Main Street, Jacksonville, Florida.
3. On October 22, 2008, the Debtor transferred to Jesus is Real, Inc. the real property located at 2509 North Main Street, Jacksonville, Florida.

During the course of the Chapter 7 case, the Trustee filed a Complaint to avoid the transfers. (Doc. 1). Following an evidentiary hearing on the Complaint, the Court found that the Debtor made the transfers

with the intent to hinder, delay, or defraud its creditors, and that the Debtor did not receive reasonably equivalent value in exchange for the transfers. (Doc. 35).

In the Motion for Rehearing, the Defendants assert that key evidence was not presented at the evidentiary hearing. Specifically, the Defendants contend that the Court should consider evidence showing (1) that Tract I was transferred to Breona Coats pursuant to a public raffle that generated the sum of \$4,000.00 for the Debtor; (2) that 2527 North Main Street was transferred to Darrell and Gennell Coats to facilitate an existing contract to sell the property to a third party for the purchase price of \$200,000.00; and (3) that 2509 North Main Street was transferred to Jesus is Real, Inc. for the purpose of obtaining the financial assistance of the “overseeing” church. For these reasons, the Defendants assert that the Court should reconsider its Final Judgment to prevent a manifest injustice.

Standards for Reconsideration

The reconsideration of a judgment under Rule 59(e) of the Federal Rules of Civil Procedure is an extraordinary remedy that should be granted very sparingly because of the judicial interest in maintaining the finality of orders. In re Nofziger, 2006 WL 2828684, at 1 (Bankr. M.D. Fla.) (citing In re Mathis, 312 B.R. 912, 914 (Bankr. S.D. Fla. 2004)). Generally, a judgment should be reconsidered only to account for an intervening change in controlling law, to consider newly available evidence, or to correct clear error or prevent manifest injustice. In re Nofziger, 2007 WL 2828684, at 2 (citing In re Mathis, 312 B.R. at 914).

The concept of “manifest injustice” is not defined in specific terms. To obtain relief from a judgment on the grounds of manifest injustice the moving party must show that a “fundamental flaw” exists in the court’s decision “that without correction would lead to a result that is both inequitable and

not in line with applicable policy.” United States v. Jarnigan, 2008 WL 5248172, at 2 (E.D. Tenn.)(quoting In re Bunting Bearings Corp., 321 B.R. 420, 423 (Bankr. N.D. Ohio 2004)). “The movant must be able to demonstrate that the underlying judgment caused them some type of serious injustice which could be avoided if the judgment were reconsidered. Essentially, the movant must be able to show that altering or amending the underlying judgment will result in a change in the outcome in their favor.” In re Henning, 420 B.R. 773, 785 (Bankr. W.D. Tenn. 2009). The showing must be “of a strongly convincing nature to induce the court to reverse its prior decision.” In re Waczewski, 2008 WL 595926, at 1 (M.D. Fla. 2008).

Discussion

The Court acknowledges that the Debtor is a ministry, and appreciates the services that a ministry renders to the public. The Court also understands that the ministry involves unique concerns with fundraising and affiliated churches, and that these concerns and relationships may have entered into the Debtor’s decision to transfer the real property. The Court must, however, look to the provisions of the bankruptcy laws in its evaluation of this proceeding.

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

The Court found that the transfers should be avoided pursuant to §548(a)(1)(A) of the Bankruptcy Code. That section provides that a trustee may avoid any transfer that was made with actual intent to hinder, delay, or defraud a creditor. 11 U.S.C. §548(a)(1)(A).

It is well-established that the intent to hinder, delay, or defraud required by §548(a)(1)(A) “can be inferred from circumstantial evidence,” and that “some circumstances are presented to the courts with such repetition that they are characterized as ‘badges of fraud.’” Such badges include a close

relationship between the transferor and the transferee, the retention of possession by the transferor, the commencement of a lawsuit against the transferor before the transfer, and the general chronology of events surrounding the transfer. In re Eubanks, 444 B.R. 415, 423 (Bankr. E.D. Ark. 2010). Where a number of badges appear in the same transaction, courts have found that a presumption of fraud arises in the case. In re Eubanks, 444 B.R. at 422-23.

In this case, the transfers were made after Lantana Lakes Homeowners Association, Inc. (the Association) had sued the Debtor in state court, and the Association was pursuing its lawsuit against the Debtor at the time of the transfers. The transfers were of essentially all of the property of the Debtor, and were made for little or no consideration. The transfers were to insiders of the Debtor, and the Debtor retained control of the real property after the transfers. Apart from the transferred property, the Debtor owned virtually no other assets that could be used to satisfy the Association's claims. These circumstances are established by the record in this case and are not disputed by the Defendants.

In their Motion for Rehearing, the Defendants assert that other factors are also present which show that the transfers were not motivated by the Debtor's intent to hinder, delay, or defraud the Association. According to the Defendants, for example, the transfers were made in connection with the Debtor's efforts to raise funds for roof repairs and other operating expenses.

As stated, the Court acknowledges that the Debtor is a ministry, that the ministry involves unique concerns with fundraising and affiliated churches, and that these concerns and relationships may have entered into the Debtor's decision to transfer the real property. The Court also appreciates the services that a ministry renders to the public. The great weight of authority, however, directs courts to look to certain recognized indicia in evaluating a transfer under §548(a)(1)(A) of the Bankruptcy Code. In re

Wheeler, 444 B.R. 598, 605 (Bankr. D. Idaho 2011)(quoting In re Acequia, Inc., 34 F.3d 800, 805-06 (9th Cir. 1994)).

In this case, the “recognized indicia” or circumstantial evidence, as described above, requires the conclusion that the transfers were made with the “actual intent to hinder, delay, or defraud” a creditor as that phrase is applied in the statute. The Court finds, therefore, that its conclusion was not fundamentally flawed, and that reconsideration of the Judgment is not necessary to prevent a manifest injustice.

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

The Court also found that the transfers should be avoided pursuant to §548(a)(1)(B) of the Bankruptcy Code. Generally, that section provides that a trustee may avoid a transfer if the debtor “received less than a reasonably equivalent value in exchange” for the transfer. 11 U.S.C. §548(a)(1)(B).

In determining whether a debtor received a “reasonably equivalent value” in exchange for an asset, courts generally consider a number of factors, including “the disparity between the fair value of the property and what the debtor actually received” In re Vilsack, 356 B.R. 546, 553 (Bankr. S.D. Fla. 2006). The key inquiry “is a comparison of ‘what went out’ with ‘what was received.’” In re Leneve, 341 B.R. 53, 57 (Bankr. S.D. Fla. 2006)(citing In re Grabill Corp., 121 B.R. 983, 994 (Bankr. N.D. Ill. 1990)).

In this case, the Debtor disclosed on its Statement of Financial Affairs that it had received “0” in exchange for the transfers. (Main Case, Doc. 40). Additionally, no evidence was introduced at trial that any funds came into the Debtor’s possession as a result of the transfers. (Doc. 35, p. 9). Based on

the Debtor's representations, and the fact that the transfers were not arms-length transactions, the Court determined that the transfers were constructively fraudulent under §548(a)(1)(B).

In their Motion for Rehearing, however, the Defendants assert that the Debtor received consideration for the transfers in the form of (1) proceeds from the raffle that was associated with the transfer of Tract I, (2) payments from a third party who had an existing contract to purchase the property located at 2527 North Main Street, and (3) a promise to provide financial assistance for roof repairs to the property located at 2509 North Main Street. (Doc. 47).

No evidence of the consideration described by the Defendants was presented at trial. Instead, the evidence showed that the Debtor initially owned three parcels of real property, and transferred all of its interest in the property pursuant to three Quitclaim Deeds that were recorded in September and October of 2008, during the pendency of a trial that the Debtor ultimately lost. On January 6, 2010, approximately fourteen months after the property was transferred, the Debtor filed its bankruptcy petition. On its schedules filed in the bankruptcy case, the only assets listed by the Debtor consisted of \$10.00 held in a bank account, and \$100.00 of assorted furniture. (Main Case, Doc. 19).

Under these circumstances, the Court concluded that the Debtor did not receive reasonably equivalent value in exchange for the real property. The record reflects that the Debtor was left with assets of virtually no value after the transfers. The proffers tendered by the Defendants do not refute this conclusion. The Debtor has not shown that the Court's decision to avoid the transfers was fundamentally flawed, or that the Judgment should be reconsidered to prevent a manifest injustice.

Conclusion

On March 31, 2011, the Court entered a Final Judgment avoiding three transfers of real property from the Debtor to the other Defendants pursuant to §548(a)(1) of the Bankruptcy Code. The Defendants assert that key evidence was not presented in this proceeding, and ask the Court to reconsider the Judgment in order to prevent manifest injustice.

The Defendants' Motion for Rehearing should be denied. The Court reasonably concluded that the transfers were actually and constructively fraudulent within the meaning of §548(a)(1). The Defendants have not shown that the Judgment should be reconsidered in order to prevent manifest injustice.

Accordingly:

IT IS ORDERED that the Amended Motion for Rehearing/New Trial on Final Judgment or Alternatively to Alter or Amend the Judgment filed by the Defendants, Full of Faith Ministries, Inc., Darrell Coats, Breona Coats, Gennell Coats, and Jesus is Real, Inc., is denied.

DATED this 12 day of March, 2012.

BY THE COURT

Paul M. Glenn

PAUL M. GLENN

United States Bankruptcy Judge