

**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

**ORDER ON MOTION TO ALLOW POST-PETITION INTEREST,
FEES AND COSTS AS AN OVERSECURED CREDITOR**

THIS CASE came before the Court for hearing to consider the Motion of Lantana Lakes Homeowners Association, Inc. to Allow Post-Petition Interest, Fees and Costs as an Oversecured Creditor. (Doc. 99).

Lantana Lakes Homeowners Association, Inc. (the Association) is a judgment creditor of the Debtor. In its Motion, the Association asserts that its recorded judgment constitutes a lien on certain real property that the Debtor had transferred to related entities before the judgment was entered.

Under Florida law, the legal title to fraudulently-transferred property never passes from the transferor. In this case, the Court has previously determined that the Debtor's transfer of the property was fraudulent, and the transfers were avoided by the Trustee in a separate proceeding. Because the transfers were fraudulent, legal title to the property never passed from the Debtor, and the Association's recorded judgment attached to the property as a lien under §55.10 of the Florida Statutes. For these reasons, the Court finds that the Association's judgment debt is a secured claim in the Debtor's Chapter

7 case, and the Association is entitled to interest, attorneys' fees, and costs on its secured claim in accordance with §506(b) of the Bankruptcy Code.

Background

The Debtor, Full of Faith Ministries, Inc., filed a petition under Chapter 11 of the Bankruptcy Code on January 6, 2010. On February 26, 2010, the Debtor converted its Chapter 11 case to a case under Chapter 7, and Gregory K. Crews was appointed as the Chapter 7 Trustee.

The Trustee filed an adversary proceeding to avoid the Debtor's transfer of three parcels of real property as fraudulent transfers under §548(a)(1) of the Bankruptcy Code. (Adv. 10-277).

After an evidentiary hearing, the Court entered its Findings of Fact, Conclusions of Law, and Memorandum Opinion in the adversary proceeding on March 31, 2011. (Adv. Doc. 35). In the decision, the Court made the following factual findings:

1. The Debtor is a Florida corporation which listed its street address as 2509 North Main Street, Jacksonville, Florida. Gennell Coats was the president of the Debtor. The Debtor's directors were Darrell Coats, Gennell Coats, and Breona Coats. Breona Coats is the daughter of Darrell and Gennell Coats.
2. On September 10, 2007, the Association filed a state court action against the Debtor.
3. On September 9, 2008, the Debtor transferred certain property in Jacksonville, Florida, identified as Tract I, to Breona Coats.
4. On October 22, 2008, the Debtor transferred certain property located at 2509 North Main Street, Jacksonville, Florida, to an entity known as Jesus is Real, Inc. Darrell and Gennell Coats were directors of Jesus is Real, Inc.
5. On October 22, 2008, the Debtor transferred certain property located at 2527 North Main Street, Jacksonville, Florida, to Darrell and Gennell Coats.
6. On June 5, 2009, a Final Judgment was entered against the Debtor in the Association's state court action in the amount of \$36,374.83.

In the Findings of Fact, Conclusions of Law, and Memorandum Opinion in the Trustee's fraudulent transfer action, the Court also made the following legal conclusions:

1. The three transfers of real property in September and October of 2008 were made with the intent to hinder, delay, or defraud a creditor of the Debtor.
2. The Debtor received less than reasonably equivalent value in exchange for the three transfers, and the Debtor was insolvent on the date that the transfers were made.

The legal conclusions were based on the facts that: (1) the transfers were made after the Association had sued the Debtor in state court, and while the state court action remained pending; (2) the transferees were insiders or closely related to the Debtor; (3) the papers filed by the Debtor in its bankruptcy case indicated that it received no value in exchange for the transfers; (4) the Debtor retained control of the property after the transfers; and (5) the Debtor was insolvent after the transfers. (Adv. Doc. 35, pp. 7-8). Consequently, the Court avoided the transfers and entered a Final Judgment in favor of the Chapter 7 Trustee. (Adv. Doc. 36).

The Debtor filed a Motion for Reconsideration of the Final Judgment, and the Motion was denied on March 12, 2012. (Adv. Docs. 42, 67).

The Judgment avoiding the transfers is final. On July 25, 2012, the Trustee entered into a contract to sell the property located at 2727 N. Main Street and 2509 N. Main Street for the total sale price of \$170,000.00. The sale was projected to close in July or August of 2013. (Main Case Doc. 117).

Discussion

In the Motion currently before the Court, the Association contends that its Judgment was recorded in the public records of Duval County, Florida, in June of 2009, and that the recorded Judgment therefore constitutes a lien on the Debtor's real property pursuant to §55.10 of the Florida Statutes.

(Doc. 99). Accordingly, the Association asserts that the Proof of Claim that it filed in the Debtor's Chapter 7 case is a secured claim, and seeks the allowance of interest, attorneys' fees, and costs on its secured claim pursuant to §506(b) of the Bankruptcy Code.

In response, the Trustee asserts that the Association's lien did not attach to the Debtor's real property, because "the properties were not titled to the Debtor at the time that . . . the judgment was entered," and that the "automatic stay prevents the judgment lien from attaching to the properties when . . . the transfers were avoided." (Transcript, p. 10).

Under Florida law, the legal title to fraudulently-transferred property never passes from the transferor. In this case, the Court previously determined that the Debtor's transfer of its property was fraudulent, and the transfers were avoided by the Trustee in a separate proceeding. Because the transfers were fraudulent, legal title to the property never passed from the Debtor, and the Association's recorded Judgment attached to the property as a lien under §55.10 of the Florida Statutes. For these reasons, the Court finds that the Association's Judgment debt is a secured claim in the Debtor's Chapter 7 case, and the Association is entitled to interest, attorneys' fees, and costs on its secured claim in accordance with §506(b) of the Bankruptcy Code.

A. Title to fraudulently-transferred property remains with the transferor.

"Under Florida law the legal title to fraudulently transferred property never passes from the transferor." Florida Land Title Co. v. Martinez, 1995 WL 644217, at 6 (M.D. Fla.)(citing In re Romano, 51 B.R. 813, 814 (Bankr. M.D. Fla. 1985)).

In Romano, for example, a Chapter 11 debtor had transferred certain real property to members of his family before the recordation of several judgments by a creditor. The creditor later filed a proof of

claim in the Chapter 11 case, and the debtor objected to the secured status of the claim. In re Romano, 51 B.R. at 813-14. In Romano, as in the case before the Court, the issue was whether the recordation of the judgment created a lien on the debtor's property, even though the property had already been transferred to third parties at the time that the judgment was recorded. Id. at 814. The Court found that "the Debtor did have an interest in the property" at the time of the recordation:

Under Florida law the legal title to fraudulently transferred property never passes from the transferor. *George E. Sebring v. O'Rourke*, 101 Fla. 885, 134 So. 556 (1931). Therefore, contrary to the Debtor's position, although record title was in the name of the [family members], at the time the judgments in question were recorded, legal title remained at all times with the Debtor subject to all valid liens which might have attached to the properties.

Id. at 814. The theory underlying the rule, as expressed in the decision cited by Romano, is that a judgment creditor should be permitted to treat a "transfer by connivance" as a nullity to the extent of the creditor's enforcement of its judgment. George E. Sebring Co. v. O'Rourke, 101 Fla. 885, 134 So. 556, 559 (Fla. 1931).

More recently, the Court reached the same conclusion in In re Broward Kitchens & Baths, Inc., 429 B.R. 350 (Bankr. S.D. Fla. 2010). In Broward Kitchens, as in this case, a chapter 7 debtor had transferred virtually all of its real property to third parties "in anticipation of" the entry of a judgment against it. In re Broward Kitchens & Baths, Inc., 429 B.R. at 351. The trustee in the Chapter 7 case subsequently objected to the judgment creditor's claim, and asserted that the creditor's judgment lien did not attach to the debtor's property because the judgment was not recorded until after the transfers had occurred "and the Debtor no longer had an interest in such property." Id. at 351-52. The Court rejected the trustee's general premise:

It is well settled under Florida law that “[t]he legal title to property involved in a fraudulent conveyance so far as the judgment creditor is concerned, may never pass from the grantor . . .” (Citations omitted).

Id. at 352. According to the Court, the rule preserves the rights that secured creditors possess outside of bankruptcy, including the right to recover transferred property to satisfy their claims. Id.(quoting In re Veterans Choice Mortgage, 291 B.R. 894, 897 (Bankr. S.D. Ga. 2003)).

B. For a subsequent judgment lien to attach to the property, there must be a determination that the transfer was fraudulent.

The Association contends that its judgment constitutes a lien on the Debtor’s property because it was recorded pursuant to §55.10 of the Florida Statutes. Section 55.10(1) of the Florida Statutes generally provides that a judgment becomes a lien on real property when a certified copy of the judgment is recorded in the county where the judgment debtor’s property is located. Fla. Stat. §55.10(1).

In this case, the Debtor had transferred its property to insiders and related entities before the Association’s judgment was recorded.

As shown above, title to fraudulently-transferred property never passes from the transferor under Florida law. For the subsequent recordation of a creditor’s judgment to create a lien on the transferred property under §55.10(1), however, there must be a determination that the transfer was fraudulent.

In Romano, for example, the Court had made a determination in a separate proceeding that the debtor’s transfer of property to his family was fraudulent. Consequently, the Court concluded that title to the transferred property had remained with the debtor, and that the creditor’s later recordation of its judgment created a lien on the property. Id.

In Broward Kitchens, on the other hand, the trustee's action to avoid the challenged transfers had been settled and dismissed without an adjudication that the transfers were fraudulent. Accordingly, the Court found that the post-transfer recordation of the creditor's judgment did not create a lien on the property, because "there has been no determination that the Alleged Fraudulent Transfer was, in fact, fraudulent." In re Broward Kitchens & Baths, Inc., 429 B.R. at 352. See also In re Lowenstein, 361 B.R. 326, 334 (Bankr. D. Mass. 2007)(Judgment creditor could not assert secured claim in litigation proceeds, where the Court had made no determination that the debtor's transfer of assets was fraudulent.).

For a judgment lien to attach to property that the judgment debtor had transferred before the judgment was recorded, there must be a determination that the debtor's transfer of the property was fraudulent.

C. Application

In this case, the Association filed a Proof of Claim in the Debtor's Chapter 7 case in the petition-date amount of \$56,334.81. (Claim No. 3-1). The Claim is based on the Judgment entered against the Debtor and in favor of the Association on June 5, 2009. According to the Association, the Claim is a secured claim because the recorded Judgment constitutes a lien on the Debtor's real property under §55.10 of the Florida Statutes. Consequently, the Association contends that it is entitled to interest, attorneys' fees, and costs on the secured claim pursuant to §506(b) of the Bankruptcy Code.

Section 506(b) of the Bankruptcy Code governs the treatment of oversecured claims. HSBC Bank USA, National Association v. Calpine Corporation, 2010 WL 3835200, at 6 (S.D.N.Y.). The section provides:

11 USC §506. Determination of secured status

...

(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose.

11 U.S.C. §506(b)(Emphasis supplied). “The purpose of section 506 is to determine what amounts may be recovered from the value of the collateral” with respect to a secured claim. In re Holden, 491 B.R. 728, 739 (Bankr. E.D.N.C. 2013).

The issue in this case is whether the Association’s Claim is a secured claim within the meaning of §506(b). The Trustee asserts that the Claim is not secured because the Debtor had already transferred its real property at the time that the Association’s Judgment was recorded.

As shown above, the Debtor transferred three parcels of real property in 2008. In 2009, the Association obtained and recorded a judgment against the Debtor. The Court has determined in a separate proceeding that the transfer of the Debtor’s property was fraudulent.

Under these circumstances, the Court finds that title to the transferred property remained with the Debtor at the time that the Judgment was entered, and that the Association’s recordation of the Judgment created a lien on the property under §55.10 of the Florida Statutes. Consequently, the Association’s judgment debt is a secured claim in the Debtor’s Chapter 7 case, and the Association is entitled to interest, attorneys’ fees, and costs on its claim under §506(b) of the Bankruptcy Code. See In re Veterans Choice Mortgage, 291 B.R. 894, 897-98 (Bankr. S.D. Ga. 2003)(The Court found that a creditor’s claim was secured by property recovered in a fraudulent transfer action, where the creditor

was “a creditor at the time of the fraudulent transfer and thereafter reduce[d] his claim to a judgment lien.”); and In re Romano, 51 B.R. at 815(The creditor’s claim was secured even though he recorded his judgment after the debtor had transferred certain real property, since the Court had determined that the transfer was fraudulent.).

D. Conclusion

The Association is a judgment creditor of the Debtor. In its Motion, the Association asserts that its recorded judgment constituted a lien on certain real property that the Debtor transferred to related entities before the judgment was entered.

Under Florida law, the legal title to fraudulently-transferred property never passes from the transferor. In this case, the Court previously determined that the Debtor’s transfer of the property was fraudulent, and the transfers were avoided by the Trustee in a separate proceeding. Because the transfers were fraudulent, legal title to the property never passed from the Debtor, and the Association’s recorded judgment attached to the property under §55.10 of the Florida Statutes. For these reasons, the Court finds that the Association’s judgment debt is a secured claim in the Debtor’s Chapter 7 case, and the Association is entitled to interest, attorneys’ fees, and costs on its secured claim in accordance with §506(b) of the Bankruptcy Code.

Accordingly:

IT IS ORDERED that the Motion of Lantana Lakes Homeowners Association, Inc. to Allow Post-Petition Interest, Fees and Costs as an Oversecured Creditor is granted, and Lantana Lakes Homeowners Association, Inc. is entitled to interest, fees, and costs on its Claim in accordance with §506(b) of the Bankruptcy Code.

DATED this 27 day of January, 2014.

BY THE COURT

Paul M. Glenn

PAUL M. GLENN
United States Bankruptcy Judge