

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Northern Division

In re:) Bankr. No. 01-10088
)
JACK RAY-HENRY HEYD) Chapter 7
Soc. Sec. No. 503-84-8297)
)
Debtor.)
)
WILLIAM J. PFEIFFER, TRUSTEE) Adv. No. 01-1010
)
Plaintiff,)
)
-vs-) DECISION RE:
) PLAINTIFF-TRUSTEE'S MOTION
ALBERT C. HEYD) FOR JUDGMENT ON THE PLEADINGS
ARDITH HEYD)
)
Defendants.)

The matter before the Court is Plaintiff-Trustee William J. Pfeiffer's Motion for Judgment on the Pleadings and Defendants' response. This is a core proceeding under 28 U.S.C. § 157(b)(2). This Decision and accompanying Order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052. As set forth below, the Court concludes that Plaintiff-Trustee's Motion shall be granted.

I.

Jack Ray-Henry Heyd ("Debtor") filed a Chapter 7 petition. on April 4, 2001. On his schedule of real property, Debtor listed

640 Acres, Section 9, 125-68
or C of D
McPherson County, SD

He valued the property at \$125,000 with a secured claim of \$105,000 against it. He declared \$30,000 of it exempt as his homestead.

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Debtor also stated on Schedule G that he had an executory contract with Albert Heyd. Debtor described the contract as "Dec. 1994-RE Contract for \$130,000.00 principal, \$30,000.00 down, interest at 7%." It was not clear whether Debtor was the buyer or seller on the land contract and the land subject to the contract was not described. No other information about the contract was disclosed in Debtor's statement of financial affairs.

On May 14, 2001, the case trustee, William J. Pfeiffer, moved for an extension of time in which to assume or reject the contract for deed. Trustee Pfeiffer stated:

At the first meeting of creditors held on May 3, 2001, the debtor advised the trustee that sometime in March, 2001, he deeded back to his father, Albert Heyd, approximately 640 acres of land he was purchasing from him on a contract for deed because in the debtor's opinion it had no equity and he was in default and he was unable to pay it. [I]t appears that there is equity for the trustee and more than adequate protection available to Albert Heyd....

The Trustee stated that the subject land was the same as that described by Debtor on his schedule of real property. The Trustee requested some extra time to investigate the matter before assuming or rejecting the contract. He was granted an extension to September 24, 2001.

Trustee Pfeiffer also objected to Debtor's claimed homestead exemption in the McPherson County land. He stated that Debtor's "quitclaim deed back to his father, Albert Heyd, constituted a preference payment, or was a fraudulent conveyance, but in either

event, the property was deeded away prior to filing and therefore the debtor is estopped from claiming any interest whatsoever in the ... property."

Debtor responded to the objection to exemptions. He argued that Debtor's homestead claim in the contract for deed property was appropriate. He also said the value had decreased due to a government easement that precluded some farming practices.

A hearing on Trustee Pfeiffer's objection to claimed exemptions was held June 12, 2001. The objection was sustained since Debtor had voluntarily transferred the property back to his father pre-petition and because Debtor would be prohibited under 11 U.S.C. § 522(g)(1)(A) from later declaring the land exempt if the Trustee recovers it for the estate through an avoidable transfer action.

On June 6, 2001, Trustee Pfeiffer commenced an avoidable transfer action against Debtor's parents, Albert C. and Ardith Heyd. Trustee Pfeiffer alleged that Debtor preferentially transferred the subject McPherson County land to his parents on February 16, 2001, because the transfer was within 90 days before his petition was filed, the transfer was for less than the property's fair market value, and the transfer was made while Debtor was insolvent. Alternatively, Trustee Pfeiffer alleged that the February 16, 2001, transfer of the real property from Debtor back to his parents for less than full value was an avoidable

fraudulent transfer under 11 U.S.C. § 548.

Defendant Albert C. Heyd timely answered the complaint.¹ He acknowledged that he and his wife had entered into a contract for deed for the McPherson County land with Debtor on December 30, 1996; that Debtor had paid them \$29,000 as a down payment; and that Debtor had made no further contract payments. He stated that as of February 16, 2001, Debtor owed them \$132,286.25. He also stated that his son, Debtor, had quit claimed the property back in good faith so that he, Albert Heyd, would not incur the costs of foreclosure. Albert Heyd denied that the transfer was intended to allow him to receive more than other general creditors. He also stated:

That the Defendants [Albert and Ardith Heyd] assert that the property was sold to the Debtor pursuant to the Contract for Deed for the sum of \$129,000.00 due to the fact that Debtor was their son. The Defendants would not have sold the property to someone else for such a low cost, but would have a[sic] required more money. Likewise, any creditors of the Debtor should not be unjustly enriched at this point in time due to the Defendants' sale to their son, the Debtor, at a lesser price and the Defendants' reluctance to foreclose on the Debtor when he first became delinquent on his payments.

Albert Heyd asked the Court to "approve" the February 16, 2001 transfer of real property from Debtor to him and his late wife.

On July 6, 2001, Plaintiff-Trustee Pfeiffer moved for a

¹ Defendant Ardith Heyd passed away April 24, 2001. Albert Heyd will be seeking appointment as the personal representative of her estate.

judgment on the pleadings. He argued that Defendants had essentially admitted his allegations for a voidable transfer by not disputing any key facts.

Defendant Albert Heyd objected to the Trustee's motion. He disputed the Trustee's conclusions regarding a fraudulent transfer. Foremost, he argued that he "should not be punished by his failure to act upon the debtor's delinquency [on the contract for deed] when the same originally occurred."

II.

Under 11 U.S.C. § 547(b), a trustee may avoid a transfer of the debtor's property if the transfer would give preferential treatment of favored creditors. *Lindquist v. Dorholt (In re Dorholt, Inc.)*, 224 F.3d 871, 873 (8th Cir. 2000). The statute is designed to "discourage creditors from racing to dismember a debtor sliding into bankruptcy and to promote equality of distribution to creditors in bankruptcy." *Id.* (quoting *Jones Truck Lines, Inc. v. Central States Southeast and Southwest Area Pension Fund (In re Jones Truck Lines, Inc.)*, 130 F.3d 323, 326 (8th Cir. 1997)). A transfer is preferential under § 547(c) when it is made within 90 days before the petition date, if the transfer was for a debt that preceded the transfer, if the debtor was insolvent at the time of the transfer, and if the transfer enabled the creditor to receive more than it would have under a Chapter 7 liquidation. 11 U.S.C. § 547(b); *Buckley v. Jeld-Wen, Inc. (In re Interior Wood Products*

Co.), 986 F.2d 228, 230 (8th Cir. 1993). The trustee bears the burden of proof on each element of an avoidable preference. 11 U.S.C. § 547(g).

Exceptions. Section 547(c) sets forth several specific exceptions to the avoidable preference rule. The transferee-creditor bears the burden of proof to show that one of the exceptions applies. 11 U.S.C. § 547(g); *Jackson v. K.A.S. Enterprises, Inc. (In re Jackson)*, 260 B.R. 473, 477 (Bankr. E.D. Mo. 2001).

III.

The present record shows that a preferential transfer has occurred. Debtor owed his parents \$132,286.25 in February 2001 for the subject real estate. At the same time, the property had an assessed value of \$188,073.00, which value Defendant has not disputed. When Debtor deeded the property back to his parents on February 16, 2001, in satisfaction of the contract for deed debt, he returned to them property that was worth more than the debt. The property was transferred back within 90 days of Debtor's bankruptcy petition, and Debtor was deemed by 11 U.S.C. § 547(f) to have been insolvent at the time of the transfer. Further, had the property been liquidated in a Chapter 7 proceeding, Defendants would not have received more than \$132,286.25 owed to them. Accordingly, Trustee Pfeiffer has established all the elements necessary for this transfer to be avoided under § 547(b) as a

preferential transfer.

Defendants have not claimed an exception to a preferential transfer as provided by § 547(c). Therefore, the transfer must be avoided and the real property must be returned to the bankruptcy estate.

The Court is not "punishing" Defendants for not foreclosing sooner on their contract for deed with their son nor has the Court reached any conclusion that the transfer was intended to harm other creditors. The purpose of avoiding preferential transfers under § 547(b) is to insure that all creditors are treated fairly. By paying Defendants what they are owed on the contract for deed and by using the equity in the land to pay other creditors' claims, Trustee Pfeiffer will fulfill that objective.

An order will be entered granting Trustee Pfeiffer's Motion for Judgment on the Pleadings.

Dated this 20 day of July, 2001.

I hereby certify that a copy of this document was mailed, hand delivered, or faxed this date to the parties on the attached service list.

BY THE COURT:

JUL 20 2001

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota

By _____



Irvin N. Hoyt
Bankruptcy Judge

ATTEST
Charles L. Nail, Jr., Clerk
 Leinhard
Deputy Clerk

NOTICE OF ENTRY
Under F.R. Bankr.P. 9022(a)
Entered

JUL 20 2001

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

Case: 01-01010 Form id: 122 Ntc Date: 07/20/2001 Off: 3 Page : 1

Total notices mailed: 3

Plaintiff Pfeiffer, William J. P. O. Box 1585, Aberdeen, SD 57401

Aty Beck, Vaughn P. PO Box 326, Ipswich, SD 57451-0326

Aty Kettering, Douglas R. PO Box 668, Yankton, SD 57078-0668