

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:) In Proceedings
) Under Chapter 7
ABDUL and SAMINA KAZI,)
) No. BK 90-30166
Debtor(s).)
)
STEPHEN CLARK, Trustee,) Adv. No. 92-3019
)
Plaintiff,)
)
vs.)
)
SHOUKAT KAZI,)
)
Defendant.)

OPINION

On February 27, 1992, the Trustee filed a fraudulent conveyance action against Shoukat Kazi, debtor Abdul Kazi's brother, alleging that during the twelve months preceding the filing of the bankruptcy petition, debtor conveyed in excess of \$10,000.00 to defendant. The parties agreed to submit the case to the Court on stipulated facts. The relevant facts agreed to by the parties are as follows:

1. The debtors filed a chapter 7 petition on February 28, 1990.
2. During the twelve months preceding the filing of the bankruptcy petition, Abdul Kazi "conveyed sums of money in the total amount of \$5,000.00, as needed throughout the year, to the defendant, Shoukat Kazi, as a gift, for no consideration."
3. The transfer of \$5,000.00 from the debtor

to his brother was made at a time when the debtor was insolvent.

4. The transfer of \$5,000.00 from the debtor to defendant was not done with any intent to defraud, and was an innocent gift from brother to brother.

In the complaint, plaintiff first alleges that debtor's transfer of money is voidable pursuant to 11 U.S.C. §544(b) and Ill. Rev. Stat. ch. 59, ¶4. Under section 544(b),¹ "[v]oidability ... is not automatic but must be asserted, and is to be determined wholly by ... applicable law, federal or state." 4 Collier on Bankruptcy, ¶544.03 at 544-20. Plaintiff in the instant case relies on Ill. Rev. Stat. ch. 59, 14, which provides that "[e]very gift, grant, conveyance, assignment or transfer ... made with the intent to disturb, delay, hinder or defraud creditors ... shall be void as against such creditors...." Ill. Rev. Stat. ch. 59, ¶4.² Plaintiff, however, has since conceded that the transfer of money from debtor to defendant was not done with any intent to defraud, and was an innocent gift from brother to brother. See Stipulation of Facts at ¶7. Accordingly, the Court will not grant plaintiff's request that the transfer be avoided pursuant to 11 U.S.C. §544(b) and Ill. Rev. Stat. ch. 59, ¶4.

¹Section 544(b) provides, in part, that "[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...." 11 U.S.C. §544(b).

²The Court notes that Ill. Rev. Stat. ch. 59, 14 was repealed by the Uniform Fraudulent Transfer Act, Ill. Rev. Stat. ch. 59, ¶101 et. seq., effective January 1, 1990.

Likewise, section 548(a)(1) requires plaintiff to establish that debtor "made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became ... indebted...." 11 U.S.C. §548(a)(1). Again, because plaintiff has conceded that there was no "intent to defraud," the Court will not grant plaintiff's request that the transfer be avoided pursuant to section 548(a)(1).

Plaintiff also seeks relief under 11 U.S.C. §548(a)(2), which provides, in relevant part:

(a) 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 one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily....

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

(B)(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)(2). "If the two conditions [set forth in sections 548(a)(2)(A) & (B)(i)] are present, viz., 'less than reasonably equivalent value' and insolvency or resulting insolvency, there is a conclusive presumption of fraud, any intent to the contrary notwithstanding." 4 Collier on Bankruptcy, ¶548.03 at 548-51. In the present case, defendant has stipulated that debtor received no consideration in exchange for the transfer of \$5,000.00. Defendant has further stipulated that the transfer was made at a time when the debtor was insolvent. Based on these stipulations, the Court can only

conclude that the transfer was fraudulent under section 548(a)(2) and that plaintiff is therefore entitled to avoid said transfer.³

For the reasons stated, the Court finds that debtor's transfer to defendant of \$5,000.00 is voidable under section 548(a)(2) of the Bankruptcy Code. Accordingly, judgment is entered in favor of plaintiff and against defendant in the amount of \$5,000.00.

_____/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: JULY 23, 1992

³Plaintiff has also sought relief under section 550(b) of the Bankruptcy Code, which limits the trustee's right of recovery under section 550(a)(2). Specifically, section 550(b) provides:

(b) The trustee may not recover under section (a)(2) of this section from--

(1) a transferee that takes for value ... in good faith, and without knowledge of the voidability of the transfer avoided; or

(2) any immediate or mediate good faith - transferee of such transferee.

11 U.S.C. §550(b). Clearly, this provision of the Bankruptcy Code does not entitle the trustee to avoid the transfer at issue.