

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

CHARLES JONES, TRUSTEE,)	
)	
Plaintiff-Appellant,)	
)	
vs.)	NO: 97-CV-4016-PER
)	
DONALD MEDLEY, SHIRLEY MEDLEY,))	BK. No. 93-40675
DELZELL MEDLEY, and)	
ARNOLD-DELZELL, INC.,)	Adv. No. 95-4058
)	
Defendants-Appellees.)	

MEMORANDUM AND ORDER

RILEY, District Judge:

1. Introduction

On September 1, 1993, Donald and Shirley Medley filed a proceeding under Chapter 7 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* In a Chapter 7 liquidation proceeding, the debtor's nonexempt assets are liquidated by a court-appointed trustee, and the proceeds are distributed to the creditors on a pro rata basis. Charles Jones was appointed Trustee of the Medleys' estate. In August 1995, Jones filed an "Amended Complaint to Avoid Fraudulent Transfer of Property" in the United States Bankruptcy Court. Jones' complaint challenged an October 1990 transfer of stock from Don Medley to his mother, Delzell Medley.¹

Delzell Medley moved for summary judgment on Jones' complaint. Jones cross-moved for

¹Jones filed a Second Amended Complaint in September 1996. The Second Amended Complaint is the document referred to herein as "Jones' complaint."

summary judgment. Don and Shirley Medley also moved for summary judgment. All motions were made pursuant to FEDERAL RULE OF BANKRUPTCY PROCEDURE 7056. On December 9, 1996, United States Bankruptcy Judge Gerald D. Fines issued an Opinion and Order denying Jones' motion and granting the Medleys' motions.²

On December 16, 1996, Jones filed a notice of appeal. That appeal was docketed in this Court on January 16, 1997. Briefs have been filed (Docs. 5 and 15). This Court has jurisdiction over the appeal pursuant to 28 U.S.C. § 158(a) and FEDERAL RULE OF BANKRUPTCY PROCEDURE 8001. One preliminary matter requires attention before this Court examines the merits of Jones' appeal.

**II. The Medleys' Motion to Dismiss The Trustee's Appeal
or Strike The Trustee's Brief**

On March 25, 1997, the Medleys moved to dismiss the appeal or strike Jones' brief. The Medleys argue that Jones' brief violates FEDERAL RULE OF BANKRUPTCY PROCEDURE 8010(a)(1), because Jones has not included the requisite references to the record or citations to authority.

The Court agrees that Jones' brief fails to comply with Rule 8010(a)(1). That Rule provides (emph. added):

The brief of the appellant shall contain under appropriate headings and in the order indicated:

. . . .

(D) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of the proceedings, and the disposition in the court below. There shall follow

²Judge Fines issued two separate documents on December 9, 1996, a 2-page Order (Record at Doc. 68) and a 6-page Opinion which included findings of fact and conclusions of law (Record at Doc. 67). The two documents will be referred to collectively as the "Order" but will be cited separately as "R-67" or "R-68".

a statement of the facts relevant to the issues presented for review, **with appropriate references to the record.**

(E) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes **and parts of the record relied on.**

Jones' statement of fact contains no references to the record. Citations to the record below are not readily apparent in Jones' argument section either. There is merit in the Medleys' argument that this lack of citation forces the reader to sort through Jones' statements, separating supportable facts from unfounded argument.

But the Court does not believe dismissal of the appeal is warranted based on this briefing deficiency. Nor is the Court convinced that the appropriate step is to strike Jones' brief. Rather, the Court will consider the lack of citation to the record in assessing the strength of Jones' arguments. The Medleys had the opportunity to properly reference *their* statement of facts with cites to the record and to respond -- where appropriate -- to any of Jones' arguments they believed unsubstantiated.

The Court **DENIES** the Medleys' motion to dismiss Jones' appeal (Doc. 9-1) and **DENIES** the motion to strike Jones' brief (Doc. 9-2). The Court **DENIES as moot** Jones' April 9, 1997 "Motion to Waive Bankruptcy Rule 8010" (Doc. 14). The Court now examines the merits of the Medleys' appeal, starting with a review of the proceedings in the Bankruptcy Court.

III. Proceedings in The Bankruptcy Court

A. Jones' Complaint Challenging the Medleys' Stock Transfer

The Medleys filed their Chapter 7 bankruptcy petition on September 1, 1993. Two years later, Jones filed the complaint challenging a stock transfer made by the Medleys on October 14, 1990. Jones filed the complaint on behalf of Don and Shirley Medley's creditors. Jones contended that Don and Shirley

intentionally set up the transfer to place certain assets beyond the reach of their creditors, and that they then "funneled back some of the value" of those assets for their own benefit (R-37 at p. -3).³

Jones' complaint alleged that the stock transfer was both fraudulent in fact and fraudulent in law. The sole issue addressed by the Bankruptcy Court in the December 9, 1996 Order was whether the October 1990 stock transfer violated the Illinois Uniform Fraudulent Transfer Act, 740 ILCS 160/5, et seq. Judge Fines found the following facts with regard to that transfer.

B. The Bankruptcy Court's Findings of Fact

In July 1990, Don and Shirley Medley formed a corporation called "Vacation Clearing House, Inc." All fifty shares in the corporation were issued in Don Medley's name. The corporation ceased doing business in September 1990. From September 1990 to October 1990, Vacation Clearing House had no ongoing business, no accounts receivable and no outstanding obligations. On October 14, 1990, the corporation's sole assets were equipment and furnishings with a total value of \$10,200.

In October 1990, Don and Shirley were in substantial debt. In an effort to reduce these debts, Don Medley asked his mother, Delzell Medley, to purchase all of the stock in Vacation Clearing House, Inc. On October 14, 1990, Delzell purchased all of the stock in the corporation for \$15,000. Don Medley returned his stock certificate. A new certificate was issued to Delzell Medley.

³Documents filed in this District Court appeal will be referred to only by "Doc." numbers. Documents from the Bankruptcy Court proceedings (*i.e.*, the record on appeal) will be referred to herein by "R" plus a document number (the docket numbers assigned the pleadings in Bankruptcy Court). Appellees have cited to the record with numbers other than those found in the record on appeal. Apparently, Appellees used the numbers listed in Appellant's "Designation of Items to Be Included in Record on Appeal."

In November 1991, a petition was filed with the State of Illinois to change the name of the corporation to Arnold-Delzell, Inc. The State authorized the name change. In February 1992, Arnold-Delzell, Inc. bought real estate and obtained an assignment of mining rights to "Burning Star No. 1 Mine." From February 1992 until April 1994, the corporation's business involved mining operations. In April 1994, Delzell sold back to Shirley Medley all shares in Arnold-Delzell, Inc. for \$15,000.

C. The Bankruptcy Court's Conclusions of Law

In his Order, Judge Fines differentiated transfers that are fraudulent in law from transfers that are fraudulent in fact. If a transfer is fraudulent in law, one party does not receive "a reasonable equivalent value" for the transfer. For a transfer to be declared fraudulent *in fact*, it must be shown that the transaction was made to disturb, delay, hinder or defraud one's creditors at the time of the transfer (R-67 at p. 4).

Judge Fines concluded that the facts of this case were "exactly" like the facts in *Scholes v. Lehman*, 56 F.3d 750 (7th Cir.), cert. denied, 116 S. Ct. 673 (1995). In *Scholes*, the Seventh Circuit explained that if a transfer is made for an *equal* exchange, the creditors cannot be defrauded by the transfer. This is because the creditors' position has not been harmed by the transfer. Judge Fines relied on *Scholes* to conclude that the October 14, 1990 transaction was neither fraudulent in law nor fraudulent in fact.

Judge Fines concluded that Delzell Medley paid her son \$15,000 in exchange for him transferring to her stock in a corporation having assets worth roughly \$10,200. "There is absolutely no evidence to suggest that the stock transferred in October 1990 was worth any more than what Delzell Medley paid for it" (R-67 at p. 5). The Court attributed no consequence to the fact that the corporation *later* increased its

assets, which led to an increase in the value of the corporate stock.

The only question was whether Delzell Medley paid adequate consideration for the stock transferred to her in October 1990. Judge Fines answered that question affirmatively and ruled on the parties' motions accordingly. Jones appeals those rulings. Appellees Donald Medley, Shirley Medley, Delzell Medley, and Arnold-Delzell, Inc. filed one consolidated brief on appeal.

IV. Standards Governing Bankruptcy Appeals

Pursuant to 28 U.S.C. § 158(a), the federal district courts have mandatory exclusive jurisdiction over appeals from final judgments, orders and decrees of bankruptcy judges. The district court may affirm, modify, or reverse the bankruptcy judge's judgment/order, or remand with instructions for further proceedings. **FEDERAL RULE OF BANKRUPTCY PROCEDURE 8013.**

A reviewing court must accept a bankruptcy court's factual findings unless those findings are clearly erroneous. **FEDERAL RULE OF BANKRUPTCY PROCEDURE 8013; *In re Excalibur Auto. Corp.*, 859 F.2d 454 (7th Cir. 1988).** A bankruptcy court's conclusions of law, however, are governed by *de novo* review. *Calder v. Camp Grove State Bank*, 892 F.2d 629, 631 (7th Cir. 1990). *Accord Magill v. Newman*, 903 F.2d 1150, 1152 (7th Cir. 1990).

The issue before this Court is whether Judge Fines erred in ruling on the cross-motions for summary judgment. The Court reviews *de novo* Judge Fines' denial of Trustee Jones' summary judgment motion and Judge Fines' grant of summary judgment on behalf of the Medleys. *See Betaco, Inc. v. Cessna Aircraft Co.*, 32 F.3d 1126, 1131-32 (7th Cir. 1994).

V. Analysis of Summary Judgment Motions

A. Summary Judgment Standard

Summary judgment is proper where the pleadings and affidavits, if any, "show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." **FED. R. CIV. P. 56(c); FEDERAL RULE OF BANKRUPTCY PROCEDURE 7056(c).**⁴ The movant bears the burden of establishing the absence of fact issues and entitlement to judgment as a matter of law. *Yorger v. Pittsburgh Corning Corp.*, 733 F.2d 1215,1218 (7th Cir. 1984).⁵ The Court must consider the entire record, drawing reasonable inferences and resolving factual disputes in favor of the non-movant. *Tregenza v. Great American Communications Co.*, 823 F. Supp. 1409, 1411 (N.D. Ill. 1993), aff'd, 12 F.3d 717 (7th Cir. 1993), cert. denied, 114 S. Ct. 1837 (1994).

Thus, as to Jones' motion for summary judgment, the Court views all facts in the light most favorable to the non-moving parties, the Medleys. The process is reversed as to the Medleys' motions. So viewing the facts, we examine the key statutory provisions.

B. Analysis of Medleys' Stock Transfer Under Illinois Law

The Illinois Uniform Transfer Act, 740 ILCS 160/5, *et seq.*, governs the issue at the heart of this appeal -- whether the Medley's 1990 stock transfer was fraudulent. The parties agree that under this Act, three elements must exist for a conveyance to be found fraudulent in law:

- (1)there must be a transfer made for no or inadequate consideration;
- (2)there must be existing or contemplated indebtedness against the transferor; and

⁴The fact that the Medleys and Jones filed cross-motions for summary judgment does not automatically render summary judgment for one party or the other appropriate. If a genuine issue of material fact remained, summary judgment was improperly granted, and this Court must reverse the Bankruptcy Court's ruling. *See Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voigt*, 700 F.2d 341, 349 (7th Cir. 1993).

⁵*Accord Matsusidta Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 588-89 (1986); *Jean v. Dugan*, 20 F.3d 255,259 (7th Cir. 1994).

(3)it must appear that the transferor did not retain sufficient property to pay his indebtedness.

740 ILCS 160/5(a)(2); *Regan v. Ivanelli*, 617 N.E.2d 808, 814 (Ill. App. 1993) *Gendron v. Chicago & North Western Transp. Co.*, 564 N.E.2d 1207 (Ill. 990)).

Donald Medley sold the Vacation Clearing House, Inc. stock to Delzell Medley for \$15,000. The *value of* the stock at the time *of* this sale was \$10,200. No evidence has been offered to support the Trustee's allegations that the value was anything other than \$10,200. There is no question that Delzell Medley actually paid her son the \$15,000. A microfilm copy of the check was produced at Delzell Medley's deposition. The face of the check was marked with words indicating that the amount was being paid "for VCH, Inc. stock." A stock certificate was issued to Delzell Medley in exchange for her \$15,000 check.

The Court is not persuaded by Trustee Jones' arguments that the transfer was a loan or gift, made for no consideration or inadequate consideration. Jones has not supported those assertions with sufficient evidence to discharge his burden on summary judgment. Jones had plenty of time (well over a year) to conduct discovery to gather evidence buttressing his theory and has presented no such proof. Indeed, the evidence before the Court indicates just the contrary. Delzell Medley gave Donald \$15,000 for the stock arguably worth only \$10,200. This exchange was supported by perfectly *adequate* consideration (maybe *better* than adequate consideration).

Jones relies on excerpts from Delzell Medley's deposition in which she described her purchase of the corporate stock for \$15,000 as follows. "I wasn't anticipating any royalties of any kind for it, and I was just happy that he was able to pay it back." Jones contends that this sentence "is enough evidence to find

that the \$15,000 was a loan from a mother to her son," and the transaction was "a gift for no consideration" (Appellant's Brief; Doc. 5 at p. 12). But Jones ignores the very next deposition answer given by Delzell in which she corrected herself and explained that she meant her son was later able to buy back the stock, not pay back the \$15,000.

Viewing the stock transfer from a practical standpoint, the transaction may have actually *helped* rather than *harmed* Don and Shirley Medley's creditors. Just prior to the transfer, the creditors had the right to obtain judgment and attempt to seize stock from a corporation with \$10,200 in assets. Just after the transfer, the debtors (Don and Shirley Medley) had \$15,000 in cash available to pay their creditors (which, the record reflects, they did).

This Court concludes that the debtors (Don and Shirley Medley) received a reasonably equivalent value in exchange for the stock sold to Delzell Medley. Thus, Jones has failed to establish one of the necessary elements for a conveyance to be declared fraudulent in law -- that the transfer was made for no consideration or inadequate consideration.

This Court also rejects Jones' claim that the transfer was fraudulent in fact. As is set forth in 740 ILCS 160/5(a)(1), a transfer is fraudulent in fact if it was made with "Intent to hinder, delay, or defraud any creditor of the debtor." In *Scholes*, the Seventh Circuit held that if a transfer is made "for commensurate consideration," the creditors are not disturbed, delayed, hindered or defrauded, because "all that happens is the equal exchange of an existing asset for the debtor for a different asset of equal value." *Scholes*, **56 F.3d at 753**. Trustee Jones has failed to establish that Don and Shirley Medley's creditors were in any way defrauded (or disturbed, delayed or hindered, for that matter). They traded a corporation worth \$10,200 for \$15,000 cash. This transfer resulted in either an even break or a \$4,800 benefit to the creditors. The

creditors got better than commensurate consideration for the stock Don sold. The record is absolutely devoid of evidence that the creditors were in any way defrauded by this conveyance.

Jones has not presented evidence that he is entitled to judgment as a matter of law. Accordingly, his summary judgment motion merits denial. Because no genuine issues of material fact remain, and the evidence establishes that Delzell Medley paid adequate consideration of the stock transfer (demonstrating that the Medley's *are* entitled to judgment as a matter of law), Delzell Medley's motion for summary judgment and Don and Shirley Medley's cross-motion for summary judgment should be granted.

VI. Conclusion

This Court **AFFIRMS** the Bankruptcy Court's December 9, 1996 Order which: (a) *granted* summary judgment on behalf of Delzell Medley, Donald M. Medley and Shirley K. Medley; (b) *denied* summary judgment on behalf of Trustee Charles E. Jones; and (c) *dismissed* Jones' September 1996 "Second Amended Complaint to Avoid Fraudulent Transfer of Property."

IT IS SO ORDERED.

DATED this 2ND day May, 1997.

/s/ PAUL E. RILEY
United States District Judge