

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

IN RE: )  
 )  
DONALD M. MEDLEY and ) Bankruptcy Case No.  
93-40675 )  
SHIRLEY K. MEDLEY, )  
 )  
Debtors. )  
\_\_\_\_\_ )  
 )  
CHARLES E. JONES, Trustee, )  
 )  
Plaintiff, )  
 )  
vs. ) Adversary Case No. 95-4058  
 )  
DONALD M. MEDLEY, )  
SHIRLEY K. MEDLEY, and )  
DELZELL MEDLEY, )  
 )  
Defendants. )

OPINION

This matter having come before the Court on a Motion for Summary Judgment filed by Defendant, Delzell Medley, Cross-Motion filed by the Plaintiff, and a Response and Cross-Motion filed by Defendants, Donald M. Medley and Shirley K. Medley; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Pursuant to Rule 7056 of the Federal Rules of Bankruptcy Procedure, making applicable Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, show that there is no genuine issue of material fact and that

the moving party is entitled to judgment as a matter of law. Troutvetter v. Quick, 916 F.2d 1140 (7th Cir. 1990). The use of summary judgment as a way of disposing of factually unsupported claims and defenses has been encouraged by the Supreme Court in three seminal cases issued in 1986. Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); and Matsusita Electric Industrial Company v. Zenith Radio Corp., 475 U.S. 574 (1986). In the instant case, the parties agree that there are no material facts in dispute, and, having reviewed the pleadings before it and the record of the instant adversary proceeding, the Court agrees that this matter is ripe for summary judgment.

#### Findings of Fact

The sole issue before the Court is whether a certain transfer of 100% of the authorized and outstanding shares of the corporation known as Vacation Clearing House, Inc. by the Debtors to Mr. Medley's mother, Delzell Medley, on or about October 14, 1990, violates the Illinois Uniform Fraudulent Transfer Act found at 740 ILCS 160/5, *et seq.* In this regard, the Court finds the following undisputed facts in support of its decision:

1. In July 1990, Debtors/Defendants, Donald M. Medley and Shirley K. Medley, formed a corporation entitled "Vacation Clearing House, Inc." All of the then authorized and outstanding shares of the corporation, a total of 50, were issued in the name of the Debtor, Donald M. Medley.

2. The corporation known as Vacation Clearing House, Inc. was formed for the purpose of commercially selling vacation plans through telemarketing. However, by September 1990, due to

inadequate initial financing, the corporation ceased doing business.

3. From September 1990 through October 1990, Vacation Clearing House, Inc. had no ongoing business of any kind and no outstanding obligations. Further, at this time, the corporation had no accounts receivable.

4. On October 14 and 15, 1990, the corporation had, as its sole assets, certain business equipment and furnishings having a total value of \$10,200, with said value being based upon the purchase price of the assets then held by the corporation.

5. In October 1990, the Debtors, Donald M. Medley and Shirley K. Medley, had a substantial amount of debt, part of which was secured by their home. The Debtor, Donald M. Medley, asked his mother, Delzell Medley, to purchase all of the stock in Vacation Clearing House, Inc. for the sum of \$15,000 in an attempt to reduce certain personal debts of Donald M. Medley and Shirley K. Medley.

6. On October 14, 1990, Delzell Medley purchased all of the stock in Vacation Clearing House, Inc. for the requested price of \$15,000. The \$15,000 purchase price amounted to \$4,800 more than the actual value of the assets then held by Vacation Clearing House, Inc.

7. In conjunction with the \$15,000 purchase price, the Debtor, Donald M. Medley, returned his stock certificate to the corporate secretary and a new stock certificate was issued dated October 14, 1990, transferring all shares in Vacation Clearing House, Inc. to Delzell Medley. The check which Delzell Medley issued in the amount of \$15,000 indicates on its face that it was for the purchase of the stock in the subject corporation.

8. Subsequent to October 1990, no corporate action was taken in Vacation Clearing House, Inc. or under the name of Vacation Clearing House, Inc. until November 14, 1991, when a petition was filed with the Secretary of State of Illinois to change the name from Vacation Clearing House, Inc. to Arnold-Delzell, Inc. Said name change was authorized by the State in November 1991.

9. In February 1992, the corporation, then named Arnold-Delzell, Inc., purchased certain real estate and obtained an assignment of certain mining rights to a mine known as the Burning Star No. 1 Mine. From February 1992 until April 1994, the corporation had, as its business, mining operations.

10. In April 1994, Defendant, Delzell Medley, sold to Defendant/Debtor, Shirley K. Medley, all of her shares in Arnold-Delzell, Inc. for a total price of \$15,000.

11. Subsequent to the transfer of stock in Vacation Clearing House, Inc. to Delzell Medley, the corporation filed no tax returns for the years 1990 or 1991. Following the name change to Arnold-Delzell, Inc. in late 1991, the newly named corporation filed a tax return in 1992, showing Delzell Medley as the sole shareholder with a loss resulting in that year.

12. Arnold-Delzell, Inc. additionally filed a tax return for the year 1993, again showing Delzell Medley as the sole shareholder of the corporation.

13. On September 1, 1993, Debtors filed for relief under Chapter 7 of the Bankruptcy Code with the instant adversary proceeding being filed on August 30, 1995, seeking to avoid the stock transfer of October 14, 1990, as a fraudulent transfer under 740 ILCS

Conclusions of Law

The parties are in agreement as to the applicable law to be applied to the facts in this matter. As stated above, the Complaint is brought pursuant to the Illinois Uniform Transfer Act found at 740 ILCS 160/5, *et seq.* Under this Act, there are two types of fraud, which, if proven, can result in the avoidance of a fraudulent transfer. In order for a transfer to be determined fraudulent in law, it must be shown that the transfer was made without receiving a reasonable equivalent value in exchange for said transfer. 740 ILCS 160/5(a)(2). In order for a transaction to be declared void under a fraud in fact theory, it must be shown that the transaction was made to disturb, delay, hinder, or defraud creditors at the time of the transfer. 740 ILCS 160/5(a)(1); Lindholm v. Holtz, 221 Ill.App.3d 330 (2nd Dist. 1991); Scholes v. Lehman, 56 F.3d 750 (7th Cir. 1995). In the Scholes decision, the Seventh Circuit Court of Appeals stated that, if a transfer in question is for an equal exchange, the creditors cannot be disturbed, delayed, hindered, or defrauded by the transfer in that the creditors position is not damaged by such a transfer. This is exactly the case that we have at bar.

The Plaintiff, in his Cross-Motion for Summary Judgment, seeks to have the Court characterize the transaction between the Debtor, Donald M. Medley, and his mother, Delzell Medley, on October 14, 1990, as a gratuitous transaction wherein two events actually took place. First, the Plaintiff seeks to have the Court infer from the facts that the Debtor, Donald M. Medley, was in need of money and, as such, sought a loan from his mother in the amount of \$15,000.

Second, that, in a separate transaction, the Debtor, Donald M. Medley, also gratuitously transferred stock in a corporation then known as Vacation Clearing House, Inc. to his mother, thereby resulting in a transfer of the stock in exchange for no value. In reviewing the facts before it and the inference sought by the Plaintiff, the Court finds that inferences to be drawn from the underlying facts must be viewed in the light most favorable to the parties opposing the motion. See: Anderson, supra, at 255; Matsusita, supra, at 586; and Karazanos v. Navistar International Transportation Corp., 948 F.2d 332, at 335 (7th Cir. 1991). The undisputed facts in this case do not support the inference sought by the Plaintiff. Rather, the undisputed facts show that the October 14, 1990, transaction was one transaction wherein Delzell Medley paid her son \$15,000 in exchange for which he transferred to her stock in a corporation then having assets worth approximately \$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. The fact that the corporation may have increased its assets, thereby increasing the value of the stock subsequent to transfer in 1990, is of no consequence to the issue presently before the Court. The sole question before this Court concerns whether adequate consideration was paid by Delzell Medley for the stock at the time of the transfer in October 1990. Having found that Delzell Medley paid adequate consideration for the transfer of the stock, the Court finds that the Trustee's Cross-Motion for Summary Judgment as to all Defendants must be denied under both the fraud in law and fraud in fact inquiries pursuant to the Seventh Circuit decision in Scholes. For the same reasons, the Court also

finds that the Motion for Summary Judgment filed by Delzell Medley and the Cross-Motion for Summary Judgment filed by Defendants, Donald M. Medley and Shirley K. Medley, should be allowed and the Second Amended Complaint to Avoid Fraudulent Transfer of Property filed by the Trustee on September 13, 1996, should be dismissed rendering moot the Trustee's Motion for Appointment of Receiver *Pendente Lite*.

ENTERED: December 9, 1996.

/s/ GERALD D. FINES  
United States Bankruptcy Judge