

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

IN RE:)
)
VINCENT L. ROBEEN,) Bankruptcy Case No. 03-31805
)
Debtor.)
_____)
)
LAURA K. GRANDY, Trustee,)
)
Plaintiff,)
)
vs.) Adversary Case No. 04-3071
)
BANK OF KAMPSVILLE,)
)
Defendant.)

OPINION

This matter having come before the Court for trial on a Complaint filed by the Trustee/Plaintiff, Laura K. Grandy, requesting recovery of an alleged preference, pursuant to 11 U.S.C. § 547; the Court, having heard sworn testimony and 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.

Findings of Fact

The material facts in this matter are not in serious dispute, and the parties have stipulated to the following facts:

1. On April 25, 2003, an Involuntary Petition for Relief was filed against the Debtor, Vincent J. Robeen, and an Order of Relief was entered on June 11, 2003.
2. On January 29, 2003, the Debtor and his wife, Virginia Robeen, sold approximately 76 acres of farm ground (real estate) to their son, Gary Robeen and his wife, Mary Robeen, for the sum of \$100,000. Vincent J. Robeen and Virginia Robeen transferred

the real estate to Gary Robeen and Mary Robeen by a Quit Claim Deed, which was dated January 29, 2003, and recorded January 30, 2003.

3. At the time of the sale, the Debtor and his wife, Virginia Robeen, each owned a one-half undivided interest in the real estate.

4. The Bank of Kampsville (Bank) financed the purchase of the real estate by Gary Robeen and Mary Robeen from Vincent J. Robeen and Virginia Robeen by loaning \$100,000 to Gary Robeen and Mary Robeen.

5. At the time of the sale of the real estate, the Debtor was a partner in a general partnership known as Calhoun County Ford, which operated a local Ford dealership.

6. At the time of the sale, Calhoun County Ford owed the Bank an amount in excess of \$100,000.

7. At the time of the sale, the debt of Calhoun County Ford to the Bank was secured by a perfected security interest in the Calhoun County Ford's car inventory. The Debtor, Vincent J. Robeen, was personally obligated for Calhoun County Ford's debt to the Bank.

8. At the time of the sale, Calhoun County Ford's inventory included the following cars upon which the Bank had a lien:

1998 Ford, VIN 2FMDA5143WBA50620
1996 Ford, VIN 2FMDA514XTBC73331
2000 Ford, VIN 1FBSS31LXYHB68033

9. At the time of the sale, Virginia Robeen owed the Bank on a separate Note in the amount of \$29,260. The Note was dated December 8, 2002, and was payable on demand.

10. At the time of the sale, Vincent J. Robeen and Virginia Robeen owed the Bank \$90,020, pursuant to a Promissory Note dated January 16, 2003, which was fully secured by Certificates of Deposit owned by Vincent J. Robeen and Virginia Robeen. The January 16, 2003, Note was also payable upon demand.

11. On January 29, 2003, in conjunction with the sale of the real estate from Vincent J. Robeen and Virginia Robeen, the Bank issued a check in the amount of \$100,000 made payable to Vincent J. Robeen and Virginia Robeen, representing the proceeds from the mortgage loan the Bank had given to Gary Robeen and Mary Robeen.

12. The closing of the sale took place at the Debtor's home. The Bank loan officer, Norma Thomas, delivered the check to Vincent J. Robeen and Virginia Robeen, at which time Vincent J. Robeen and Virginia Robeen endorsed the check. The check was then tendered back to Norma Thomas to apply to the debt owed the Bank by Calhoun County Ford.

13. The Bank applied the check in payment of the debt of Calhoun County Ford and released the titles on the above-referenced vehicles to Calhoun County Ford. At the time of the sale, the N.A.D.A. loan value of the above-referenced vehicles was \$22,775. The Bank is entitled to new value credit for the release of the titles on said vehicles.

14. The Debtor was insolvent at the time of the aforementioned sale.

15. The \$100,000 check received by the Bank allowed the Bank to receive more than it would have received had it received funds in payment of its claim in this Chapter 7 bankruptcy proceeding, except that the parties dispute whether the Debtor's spouse's share of the proceeds are deemed to have been property of the Debtor.

Conclusions of Law

In this proceeding, the Trustee/Plaintiff seeks to avoid the January 29, 2003, payment of \$100,000 as a preferential transfer pursuant to 11 U.S.C. § 547. The Trustee/Plaintiff concedes that the Defendant Bank is entitled to a credit in the amount of \$22,775, pursuant to the new value exception under § 547. The Bank has no defense as to \$50,000 of the January 29, 2003, payment, representing the Debtor's share in the proceeds of a real estate sale. However, the Bank does assert that the \$50,000 representing Virginia Robeen's portion of the subject real estate sale cannot be avoided as a preference, as that \$50,000 was not a

part of the Debtor's bankruptcy estate, but rather it was the sole property of the Debtor's spouse, Virginia Robeen.

Title 11 U.S.C. § 547(b) states:

(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property -

- (1) to or for the benefit of a creditor;
- (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- (3) made while the debtor was insolvent;
- (4) made -
 - (A) on or within 90 days before the date of the filing of the petition; or
 - (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
- (5) that enables such creditor to receive more than such creditor would receive if -
 - (A) the case were a case under chapter 7 of this title;
 - (B) the transfer had not been made; and
 - (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

The undisputed facts adduced at trial clearly establish that \$50,000 out of the \$100,000 payment made on January 29, 2003, was money belonging to the Debtor's bankruptcy estate, and that that sum is avoidable as a preference. All of the elements of 11 U.S.C. § 547(b) are present as to the \$50,000 amount, with the Trustee/Plaintiff agreeing that the Defendant Bank should have a credit for \$22,775, pursuant to 11 U.S.C. § 547(c)(1).

There are two issues before the Court in this matter: (1) whether the \$50,000 paid from Virginia Robeen's share of the real estate sale should be excluded from the Trustee/Plaintiff's preference action by virtue of the "earmarking doctrine;" and (2) whether the \$50,000 representing Virginia Robeen's share of the real estate sale was gifted to the

Debtor such that it became property of his estate, and, thus, includable in the Trustee/Plaintiff's preference claim. As for the Defendant's argument concerning the earmarking doctrine, the Court finds that said doctrine is not applicable under the facts of this case. The case of In re Kelton Motors, Inc., 97 F.3d 28 (2nd Cir. 1996), upon which the Defendant relies is clearly distinguishable on its facts from the present case. It is clear that, in the Kelton case, there was a loan of money to the debtor for the purpose of paying a specific creditor. In the instant case, there is no such loan; and, thus, the earmarking doctrine cannot apply.

As for the question of whether Virginia Robeen gifted her share of the real estate sale proceeds to the Debtor, the Court concludes that, under the facts established at trial, there was such a gift. Under Illinois law, there are three elements to a valid gift: (1) donative intent; (2) parting with control and dominion over the subject matter of the gift; and (3) delivery. Moniuszko v. Moniuszko, 238 Ill.App.3d 523 (1st Dist. 1992); In re Marriage of Weiler, 258 Ill.App.3d 454 (5th Dist. 1994); and Dubisky v. U.S., 62 F.3d 182 (7th Cir. 1995). Applying these elements to the facts of this case, first, the Court finds that there was clearly donative intent on the part of Virginia Robeen in that she testified that she wanted her husband, the Debtor, to have the \$50,000 to pay down debt with the Defendant Bank. Second, the Court finds that Virginia Robeen clearly parted control and dominion over the \$50,000 in sale proceeds when she endorsed the check over to the Defendant Bank. Finally, the Court finds that there was delivery, in that Virginia Robeen, in effect, delivered the \$50,000 to the Defendant Bank for the benefit of her husband, the Debtor herein. Under these undisputed facts, it is clear that the Defendant Bank was, thus, acting as an agent on behalf of the Debtor such that delivery of the gift of \$50,000 was complete. See: Moniuszko, supra, at 525; In re Estate of Meyer, 317 Ill.App. 96 (2nd Dist. 1942); and In re Estate of Rinehart, 14 Ill.App.2d 116, 143 N.E.2d 398 (3rd Dist. 1957).

Given the finding that Virginia Robeen made a gift of her \$50,000 of sale proceeds to her husband, the Debtor herein, the Court must conclude that the Trustee/Plaintiff has proven all of the elements of 11 U.S.C. § 547(b) as to the subject \$50,000 transfer. Thus, the Court concludes that the Trustee/Plaintiff's Complaint should be allowed in the amount of \$100,000 less \$22,775, representing the new value exception, for a final judgment in the amount of \$77,225. This amount is determined as a preference under 11 U.S.C. § 547.

ENTERED: February _9_, 2005.

/s/Gerald D. Fines
GERALD D. FINES
United States Bankruptcy Judge

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IN RE:)
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LAURA K. GRANDY, Trustee,)
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BANK OF KAMPSVILLE,)
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Defendant.)

ORDER

For the reasons set forth in an Opinion entered on the _9th_ day of February 2005;

IT IS HEREBY ORDERED that judgment is entered in favor of the Trustee/Plaintiff against Defendant, Bank of Kampsville, in the amount of \$77,225, as a preference pursuant to 11 U.S.C. § 547(b).

ENTERED: February _9_, 2005.

/s/Gerald D. Fines _____
GERALD D. FINES
United States Bankruptcy Judge