

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

IN RE: ) In Proceedings  
) Under Chapter 7  
FRANK STEVENS, )  
) No. BK 90-31144  
)  
Debtor(s). )  
)  
DONALD SAMSON, Trustee, ) Adv. No. 91-3061  
)  
Plaintiff, )  
)  
VS. )  
)  
ELEVEN POINT CORP. and )  
JANIS DAVIS, )  
)  
Defendants. )

OPINION

The chapter 7 Trustee has filed a complaint to avoid certain transfers made by debtor, Frank Stevens, to defendants Eleven Point Corporation and Janis Davis. The first three counts are directed against Eleven Point Corporation. The fourth count alleges that debtor's transfer of certain real estate in November 1990 to Janis Davis constituted a fraudulent conveyance under section 548 of the Bankruptcy Code.<sup>1</sup> The Trustee asks that the Court "enter its order

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<sup>1</sup>Section 548 provides, in part, as follows:

(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

voiding said transfer or enter judgment for [the Trustee] in the amount of \$58,000 less consideration paid by defendant...." Count IV of plaintiff's Second Amended Complaint. Janis Davis filed a demand for a jury trial, which the Trustee has moved to strike. The Trustee contends that a fraudulent conveyance action to recover land is an equitable action and that defendant is therefore not entitled to a jury trial.

In Granfinanciera S.A. v. Nordberg, 492 U.S. 33, 109 S.Ct. 2782, 106 L.Ed.2d 26 (1989), the Supreme Court addressed the question of whether a person who has not filed a claim against the bankruptcy estate has a right to a jury trial when sued by the trustee in bankruptcy to recover an allegedly fraudulent monetary transfer. The Court held that "the Seventh Amendment entitles such a person to a trial by jury, notwithstanding Congress' designation of fraudulent conveyance actions as 'core proceedings' in 28 U.S.C. §157(b)(2)(H)." Granfinanciera, 109 S.Ct. at 2787.

In reaching its decision, the Court discussed the importance of determining whether an action is legal or equitable in nature. The Court held that fraudulent conveyance actions are legal in nature when brought by a bankruptcy trustee to recover money payments of ascertained and definite amounts. Id. at 2794. While Granfinanciera

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(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)(A).

involved allegedly fraudulent monetary transfers, the Court, in a footnote, reiterated its position that actions for the recovery of fraudulently conveyed real property, like actions for monetary damages, are actions at law. Specifically, the Court stated as follows:

Although there is scholarly support for the claim that actions to recover real property are quintessentially equitable actions ... in Whitehead we stated: "[W]here an action is simply for the recovery and possession of specific real or personal property, or for the recovery of a money judgment, the action is one at law. An action for the recovery of real property, including damages for with-holding it, has always been of that class ...."

Id. at 2792 n. 5 (citing Whitehead v. Shattuck, 138 U.S. 146, 11 S.Ct. 276, 277, 34 L.Ed. 873 (1891)).<sup>2</sup> See also In re Southeast Connectors, Inc., 113 B.R. 85 (S.D. Fla. 1990) (trustee's fraudulent conveyance action for the recovery of real property is action at law and defendant is entitled to jury trial); In re Lee Way Holding Co., 115 B.R. 586 (S.D. Ohio 1990) (in fraudulent conveyance action where the trustee seeks the recovery of real estate or the value thereof, defendant is entitled to jury trial).

In light of the Supreme Court's statements in Granfinanciera, the Court concludes that the Trustee's action against Janis Davis is an action at law and that she is therefore entitled to a jury trial.

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<sup>2</sup>In Granfinanciera, the Trustee relied on two cases, In re Graham, 747 F.2d 1383 (11th Cir. 1984) and Damsky v. Zavatt, 289 F.2d 46 (2d Cir. 1961), to support his argument that petitioner was not entitled to a jury trial. Both of those cases acknowledged the right to a jury trial with respect to monetary claims, but not with respect to fraudulent conveyance actions seeking the recovery of real estate. The Supreme Court expressly stated that "[b]oth of these holdings are questionable ... to the extent that they are in tension with our decision in Whitehead...." Granfinanciera, 109 S.Ct. at 2792 n.5.

Accordingly, IT IS ORDERED that the Trustee's motion to strike jury demand is DENIED.

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

ENTERED: JULY 1, 1992