

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

IN RE: )  
)  
WILLIAM YORK, ) Bankruptcy Case No. 93-30992  
)  
Debtor. )  
----- )  
)  
AGRIBANK, FCB, as Successor )  
to DONALD HOAGLAND, Trustee, )  
)  
Plaintiff, )  
)  
vs. ) Adversary Case No. 94-3084  
)  
WILLIAM YORK, THOMAS YORK, )  
BILL D. YORK, and YORK )  
ENTERPRISES, INC., )  
a Corporation, )  
)  
Defendants. )

OPINION

This matter having come before the Court on Motions for Summary Judgment filed by Defendants, William York, Thomas York, and York Enterprises, Inc.; Response to Motion for Summary Judgment filed by Plaintiff; and Motion to Dismiss Amended Complaint filed by Defendants, Thomas York and York Enterprises, Inc.; 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.

On May 15, 1995, a Motion to Dismiss Amended Complaint was filed by Defendants,  
Thomas York and York Enterprises, Inc.. In addressing this Motion, the Court finds that its findings in an Opinion and Order entered in

January 1995, concerning Motions to Dismiss the original Complaint filed in this matter pertain to the instant Motion to Dismiss the Amended Complaint, although the Court does note that there is a statute of limitations which may, in fact, bar relief for the Plaintiff in this matter. As noted in this Court's earlier Opinion, it may be possible for the Defendant to circumvent the statute of limitations by either asserting the "discovery rule" or by proving that the Defendants have in some manner fraudulently concealed the transfers which are at issue in the Amended Complaint. As stated in this Court's earlier Opinion and Order of January 19, 1995, the Court finds that the case of In re Josephik, 72 B.R. 393 (Bankr. N.D. Ill. 1987) sets forth grounds upon which the Plaintiff may, in fact, be able to prove that the five-year statute of limitations did not start to run until sometime subsequent to the actual transfers in question. As such, the Plaintiff may be able to show a grounds for recovery under the Amended Complaint. On this basis, the Court finds that the Motion to Dismiss Amended Complaint filed by the Defendants, Thomas York and York Enterprise Inc., should be dismissed at this time.

As for the Motions for Summary Judgment and the Response thereto, the Court finds that summary judgment is proper where there are no issues of material fact in dispute and the matters before the Court may be determined as a matter of law. See: Rule 7056, F.R.B.P., and Matsushita Electric Industrial Company v. Zenith Radio Corp., 475 U.S. 574 (1986). In considering the arguments of counsel in the instant case, the Court finds that there are material facts which remain at issue such that summary judgment is not appropriate in the instant case. The Plaintiff has properly asserted two alternatives in which to

circumvent the five-year statute of limitations concerning fraudulent conveyances. One avenue that the Plaintiff seeks to use to avoid the five-year statute of limitations concerns the "discovery rule." The "discovery rule" is a judicial doctrine which would allow the Plaintiff to avoid the five-year statute of limitations if it can be shown that the Plaintiff did not discover the alleged fraudulent transfer until some time after the transfer actually occurred and that the statute of limitations did not begin to run until after discovery of the transfer by Plaintiff. Pratt v. Sears, Roebuck & Co., 71 Ill.App.3d 875 (1st Dist. 1979). The elements under the "discovery rule" are fact intensive, and, as such, a ruling under the Motions for Summary Judgment would be inappropriate in that there are numerous factual issues which must be determined by the Court to determine whether the Plaintiff, in fact, can invoke the "discovery rule" such as to circumvent the five-year statute of limitations which was in effect as to fraudulent conveyances at the time of the alleged transfers in this case. In re Martin, 142 B.R. 260 (Bankr. N.D. Ill. 1992).

In addition to the Plaintiff's argument concerning the use of the "discovery rule," the Plaintiff has also asserted that the statute of limitations may be circumvented if it can be shown that the Debtor fraudulently concealed the transfers in question such that the statute of limitations did not begin to run until such time as the Plaintiff actually discovered the fraudulent conveyance. See: 735 ILCS 5/13-215. Fraudulent concealment requires that the defendant/debtor took affirmative steps to conceal the facts surrounding the cause of action at issue. Here again, the Court finds that, in order for the Plaintiff to show that there was fraudulent concealment, numerous factual issues

must be dealt with. As such, there are material fact questions which remain to be determined by the Court such that summary judgment is not appropriate in this case.

In conclusion, in examining the arguments of counsel and in thoroughly reviewing the written material submitted by the parties, the Court finds that there are material issues of fact which must be resolved concerning the Plaintiff's theories asserted to avoid the statute of limitations defense raised by the Defendants herein. As such, the Court is unable to grant the Motions for Summary Judgment for the reasons set forth above.

ENTERED: July 19, 1995.

/s/ GERALD D. FINES  
United States Bankruptcy Judge