

IT IS SO ORDERED.

Dated: 03:42 PM September 18 2009



**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CASE NO. 07-50239
)	
KAREN J. COLLINS)	CHAPTER 7
)	
DEBTOR(S))	
)	
HAROLD CORZIN, TRUSTEE,)	ADVERSARY NO. 07-5135
)	
PLAINTIFF(S),)	JUDGE MARILYN SHEA-STONUM
)	
vs.)	
)	
ESTATE OF PATRICIA J. WELLS, ET)	
AL.)	MEMORANDUM OPINION RE:
)	PLAINTIFF-TRUSTEE'S MOTION FOR
DEFENDANT(S).)	SUMMARY JUDGMENT [DOCKET #43]

The chapter 7 trustee administering the bankruptcy case of Karen Collins initiated this adversary proceeding and seeks to avoid an allegedly fraudulent transfer of certain real property located at 285 Third Street in Barberton Ohio (the "Real Property") for the benefit of the bankruptcy estate. Only one defendant, The Estate of Patricia J. Wells (the "Estate") filed an answer. Given the failure of all other defendants to answer or otherwise respond, plaintiff-trustee's motion seeking

default judgment against them was granted [docket #42]. On July 16, 2009, plaintiff-trustee filed a motion seeking summary judgment against the Estate [docket #43] (the “Motion”). The Estate has not responded to the Motion.

This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984. It is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (H) over which this Court has jurisdiction pursuant to 28 U.S.C. §§ 1334(b), 157(a) and 157(b).

A court shall grant a party’s motion for summary judgment “if...there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c); FED. R. BANKR. P. 7056. The party moving for summary judgment bears the initial burden of showing the court that there is an absence of a genuine dispute over any material fact, *Searcy v. City of Dayton*, 38 F.3d 282, 286 (6th Cir. 1994) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)), and, upon review, all facts and inferences must be viewed in the light most favorable to the nonmoving party. *Searcy v. City of Dayton*, 38 F.3d 282, 285 (6th Cir. 1994); *Boyd v. Ford Motor Co.*, 948 F.2d 283, 285 (6th Cir. 1991), *cert. denied*, 503 U.S. 939 (1992). However, the ultimate burden of demonstrating the existence of a genuine issue of material fact lies with the non-moving party. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

Even though the Estate has failed to file a response to the Motion it cannot be granted simply for the Estate’s failure to respond. *See The Huntington Nat’l Bank v. Parton (In re Parton)*, 137 B.R. 902, 905 (Bankr. S.D. Ohio 1991). Instead, this Court must review the Motion to determine whether plaintiff-trustee has discharged his burden relative to that pleading. *Id.* However, where a non-moving party fails to respond to a motion for summary judgment, the court need not search the record to establish an absence of a genuine issue of material fact. *Street v. J.C. Bradford & Co.*, 886 F.2d

1472, 1479-80 (6th Cir. 1989). Rather, the court may rely upon the facts presented and designated by the movant, *Guarino v. Brookfield Township Trs.*, 980 F.2d 399, 404 (6th Cir. 1992), bearing in mind that any inferences drawn from these facts still must be considered in the light most favorable to the non-movant. *In re Parton*, 137 B.R. 902, 905 (Bankr. S.D. Ohio 1991).

Plaintiff-trustee is seeking summary judgment against the Estate for an allegedly fraudulent transfer of the Real Property from debtor to Patricia J. Wells. The following background facts are not disputed in this case: (1) Karen Collins became the owner of the Real Property on or about May 15, 2006 by means of an inheritance; (2) Karen Collins transferred the Real Property to Patricia J. Wells by means of a Quit Claim Deed executed on or about May 19, 2006 and recorded on or about June 14, 2006; (3) Patricia Wells was the sister of Ms. Collins' deceased husband; (4) Karen Collins filed a voluntary chapter 7 bankruptcy petition on January 26, 2007; (5) Patricia Wells died on July 19, 2007 and the Real Property (or proceeds from the sale thereof) are currently a part of Ms. Wells' probate estate.

Plaintiff-trustee is relying upon § 548(B) of the Bankruptcy Code which provides that the trustee may avoid any transfer of an interest of the debtor in property that was made within 2 years before the date of the filing of a bankruptcy petition if the debtor received less than a reasonably equivalent value in exchange for such transfer and if

(I) [debtor] 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; [or]

(II) [debtor] was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital; [or]

(III) [debtor] intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or

(IV) [debtor] made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

11 U.S.C. § 548(B). Plaintiff-trustee contends that § 548(B) have been satisfied because the transfer was made for less than a reasonably equivalent value and that debtor was insolvent when the transfer was made and/or that the transfer was made to an insider.

Receipt of Less Than a Reasonably Equivalent Value: Plaintiff-trustee has presented evidence which demonstrates that at the time of the transfer the Real Property was valued by the Summit County Auditor at \$53,530.00 and that it was not encumbered by any mortgage. *See* Motion, Exhibit C and Exhibit F at pg. 7. Notwithstanding such apparent value, debtor testified during her § 341 first meeting of creditors that she transferred the Real Property to Ms. Wells for no consideration. *See* Motion, Exhibit F at pg. 13. Based upon such undisputed evidence the Court finds that plaintiff-trustee has satisfied his burden of demonstrating that there exists no genuine issue of fact as to this element of § 548(B).

Debtor's Insolvency at the Time the Transfer was Made: Debtor will be deemed insolvent if, at the time of the transfer of the Real Property, the sum of her debts was greater than the fair value of all her then owned property. 11 U.S.C. § 102(32). On her Schedule I debtor lists Social Security as her only source of income which totaled \$2,226.00 per month and on her Schedule J debtor lists monthly expenses of \$2,331.50. On her Statement of Financial Affairs debtor indicates that she had received no income other than Social Security for the two years preceding the date of her bankruptcy.

On Schedule B debtor does not list any property of significant value and her Statement of Financial Affairs does not disclose the transfer of any property other than the Real Property. Although on Schedule A debtors lists ownership of her residence, during her § 341 first meeting of creditors debtor testified that the mortgage on that residence was in excess of the property's value. *See* Motion, Exhibit F at pg. 14. Debtor further testified that at the time she transferred the Real Property, she had debts in excess of \$50,000.00. *See Id.* Based upon such undisputed evidence the Court finds that plaintiff-trustee has satisfied his burden of demonstrating that there exists no genuine issue of fact as to this element of § 548(B).

Transfer Made to or for the Benefit of an Insider: Plaintiff-trustee also contends that because Ms. Wells was the sister of debtor's deceased husband the transfer was made to an insider. Pursuant to the Bankruptcy Code, an "insider" of an individual debtor includes a "relative" of the debtor which is defined as "[an] individual related by affinity or consanguinity within the third degree as determined by common law" 11 U.S.C. § 101(31) (defining "insider") and (45) (defining "relative). "Affinity" is any familial relationship resulting from marriage, BLACK'S LAW DICTIONARY 59 (6th ed. 1990) and, pursuant to Ohio law, it appears that the death of Ms. Collins' husband did not terminate the relationship by affinity between Ms. Collins and Patricia Wells. *See, e.g., Kest v State of Ohio*, 146 N.E.2d 755 (Ohio Prob. 1957). Accordingly, the Court finds that plaintiff-trustee has satisfied his burden of demonstrating that there exists no genuine issue of fact as to this element of § 548(B).

Based upon the foregoing the Court finds that plaintiff-trustee has demonstrated that no genuine issues of material fact exist as to whether debtor received less than a reasonably equivalent value in exchange for the transfer of the Real Property, whether debtor was insolvent on the date that

such transfer was made and whether that transfer was made to an insider. Accordingly, plaintiff-trustee is entitled to judgment in his favor as a matter of law and the Motion is hereby granted. A entry of judgment consistent with this Memorandum Opinion will be entered separately in this case.

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cc: (via electronic mail)
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