

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE: *
*
LAURA MARIE STAFFORD, *
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* CASE NUMBER 04-42013
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Debtor. *
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ANDREW W. SUHAR, TRUSTEE, *
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* ADVERSARY NUMBER 05-4031
*
Plaintiff, *
*
*
vs. *
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*
JAMES M. STAFFORD, JR., *
*
*
et al., *
*
* THE HONORABLE KAY WOODS
*
Defendants. *
*

M E M O R A N D U M O P I N I O N

This cause is before the Court on a Motion for Summary Judgment (the "Motion") filed by defendant James M. Stafford, Jr. ("Defendant") with respect to an adversary proceeding commenced by Andrew W. Suhar ("Trustee"), the appointed trustee in this Chapter 7 case. Trustee commenced the adversary proceeding on February 9, 2005 by filing Complaint by Trustee to Determine the Validity, Priority and Extent of Liens, Encumbrances and Claims to Real Estate of Debtor (the "Complaint"). In addition to Defendant, National City Mortgage and National City Bank (also named as National City Mortgage) were named as defendants in the adversary proceeding and have filed Answers. Defendant seeks summary judgment on the grounds

that there is no equity in the subject property. Trustee filed Plaintiff Andrew Suhar's Response to Summary Judgment fo [sic] Defendant James Stafford ("Response") claiming Defendant did not address the issue of whether Defendant is a *bona-fide* purchaser as required by 11 U.S.C. § 549.

This Court has jurisdiction pursuant to 28 U.S.C. §§ 1334, 157 and 11 U.S.C. §§ 544, 548. Venue in this Court is proper pursuant to 28 U.S.C. § 1408. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(H). The following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

I. FACTS

Debtor petitioned for relief under Chapter 7 of the Bankruptcy Code on April 28, 2004. On Schedule A of the petition, Debtor identified 1725 McCollum Road, Youngstown, Ohio (the "Subject Property") as her residence. She also scheduled the Subject Property as having a fair market value of Eighty Thousand Dollars (\$80,000.00). On Schedule D of the petition, Debtor listed total secured claims against the Subject Property in the amount of Eighty-Seven Thousand One Hundred Twenty-One Dollars (\$87,121.00). "Ntl City Mtg"¹ was listed as having a "Mortgage account opened 9/98" in the amount of \$64,424.00. "Chart 1 Mtg" was listed as having a "Mortgage account opened 11/00" in the amount of \$22,697.00.

Trustee was duly appointed to the case. Debtor failed to appear at the first two meeting of creditors scheduled on June 22,

¹In Defendant's Motion, Defendant refers to this entity as National City Bank.

2004 and July 6, 2004. Debtor appeared at the third meeting of creditors on July 20, 2004, but the meeting was continued to August 17, 2004, pending Debtor's submission of tax records.

Sometime prior to the July 20 meeting of creditors and without the Court's authorization, Debtor sold the Subject Property to Defendant for Ninety-Eight Thousand Dollars (\$98,000.00). Defendant, who is Debtor's ex-husband, alleges that, during the termination of the marital relationship Debtor agreed to sell the Subject Property to Defendant if for any reason she was unable to keep it. The warranty deed transferring the Subject Property was executed on July 23, 2004.

On February 9, 2005, Trustee filed the Complaint seeking a determination that the warranty deed was void as a matter of law, pursuant to 11 U.S.C. § 549, or, alternatively, granting Trustee the equity in the property. (Complaint at 3.)

Defendant's Motion asserts that there was no equity in the Subject Property.² (Defendant's Motion at 4.) Defendant states that, prior to the transfer of the Subject Property, Defendant determined that it was subject to: (1) a first mortgage held by National City Bank in the amount of Seventy-One Thousand Two Hundred Thirty-One and 14/100 Dollars (\$71,231.14); (2) a second mortgage held by National City Bank in the amount of Twenty-Three Thousand Four Hundred Twenty-Four and 85/100 Dollars (\$23,424.85) and (3) real property taxes due to Mahoning County in the amount of One

²Based on Debtor's schedules and the transfer alone, there appears to be equity in the property in the amount of Ten Thousand Eight Hundred Seventy-Nine Dollars (\$10,879.00).

Thousand Two Hundred Thirty-Three and 67/100 Dollars (\$1,233.67). (*Id.* at 3-4.) Defendant claims that the proceeds of the sale were also used to pay settlement charges of One Thousand Two Hundred Thirty-Six Dollars (\$1,236.00). (*Id.* at 4.) As a consequence, Defendant contends that the equity left after payment of secured claims, taxes and settlement charges would be Eight Hundred Seventy-Four and 34/100 Dollars (\$874.34) and if the Debtor took the homestead exemption there would not be any equity.³ (*Id.*)

Trustee's Response counters that the Subject Property was transferred to Defendant while the Debtor was in bankruptcy and, as a result, the transfer is void as a matter of law pursuant to 11 U.S.C. § 549. (Trustee's Response at 3.) Trustee notes that Defendant references an agreement with Debtor, his ex-wife, for Defendant to purchase the Subject Property if the Debtor could no longer afford the Subject Property. Trustee argues it can be inferred that Defendant is not a *bona-fide* purchaser because he had knowledge of Debtor's financial situation and, thus, he also likely had knowledge of her bankruptcy. (*Id.*) Trustee contends that summary judgment is precluded because there are issues of material fact and law. (*Id.*)

II. DISCUSSION

A. Law

The procedure for granting summary judgment is found in FED. R. CIV. P. 56(c), made applicable to this proceeding through FED. R. BANKR. P. 7056, which provides in part that:

³Debtor did not elect the homestead exemption provided by O.R.C. § 2329.66(A)(1).

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

FED. R. BANKR. P. 7056(c). Summary judgment is proper if there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). A fact is material if it could affect the determination of the underlying action. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Tennessee Department of Mental Health & Retardation v. Paul B.*, 88 F.3d 1466, 1472 (6th Cir. 1996). An issue of material fact is genuine if a rational fact-finder could find in favor of either party on the issue. *Anderson*, 477 U.S. at 248-49; *SPC Plastics Corp. v. Griffith (In re Structurlite Plastics Corp.)*, 224 B.R. 27 (B.A.P. 6th Cir. 1998). Thus, summary judgment is inappropriate "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248 (1986).

In a motion for summary judgment, the movant bears the initial burden to establish an absence of evidence to support the nonmoving party's case. *Celotex*, 477 U.S. at 322; *Gibson v. Gibson (In re Gibson)*, 219 B.R. 195, 198 (B.A.P. 6th Cir. 1998). The burden then shifts to the nonmoving party to demonstrate the existence of a genuine dispute. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 590 (1992). The evidence must be viewed in the light most favorable to the nonmoving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158-59 (1970). However, in responding to a proper motion for summary judgment, the nonmoving party "cannot rely on the

hope that the trier of fact will disbelieve the movant's denial of a disputed fact, but must 'present affirmative evidence in order to defeat a properly supported motion for summary judgment.'" *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1476 (6th Cir. 1989) (quoting *Anderson*, 477 U.S. at 257). That is, the nonmoving party has an affirmative duty to direct the court's attention to those specific portions of the record upon which it seeks to rely to create a genuine issue of material fact. *Street*, 886 F.2d at 1479.

B. Analysis

In the instant case, there is a dispute about whether the Defendant is a *bona-fide* purchaser of the Subject Property, which is a material fact in determining if Trustee can avoid the transfer.

The Trustee has the power to avoid transfers pursuant to 11 U.S.C. § 549. Section 549 states:

(a) Except as provided in subsection (b) or (c) of this section, the trustee may avoid a transfer of property of the estate --

(1) that occurs after the commencement of the case; and

(2)(A) that is authorized only under section 303(f) and 542(c) of this title; or

(B) that is not authorized under this title or by the court.

. . .

(c) The trustee may not avoid under subsection (a) of this section a transfer of real property to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value

11 U.S.C. § 549.

In the instant case the Subject Property was transferred by Debtor to Defendant after the commencement of the case. Furthermore, the transfer of the Subject Property was not authorized by this Court. Therefore, the Trustee may avoid the transfer unless the purchaser was a *bona-fide* purchaser. 11 U.S.C. § 549(c).

The parties dispute whether Defendant is a *bona-fide* purchaser. Trustee claims that Defendant may have had knowledge of the commencement of Debtor's bankruptcy case due to his relationship with the Debtor. Defendant himself references an agreement, which provided that Debtor would sell the property to Defendant if Debtor encountered financial hardship. Trustee asserts that Defendant's knowledge of Debtor's bankruptcy can be inferred because of the agreement and the fact that the Subject Property was in foreclosure. Defendant does not address whether he is a *bona-fide* purchaser; however, since Defendant claims the transfer is a valid purchase, it appears that Defendant is holding himself out as a *bona-fide* purchaser. Pursuant to Section 549 of the Bankruptcy Code, whether Defendant is a *bona-fide* purchaser is a genuine issue of material fact regarding resolution of this adversary proceeding. Since the parties cannot agree on whether Defendant is a *bona-fide* purchaser, this is a factual determination for the trier of fact. Accordingly, summary judgment is not appropriate in this case.

III. CONCLUSION

Pursuant to 11 U.S.C. § 549, Trustee has the power to avoid certain transfers made by the Debtor, but not a transfer

to a *bona-fide* purchaser. The parties dispute whether Defendant is a *bona-fide* purchaser, which is a material fact in this case. Therefore, Defendant is not entitled to summary judgment as a matter of law and Defendant's Motion is denied.

An appropriate order will follow.

HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE

