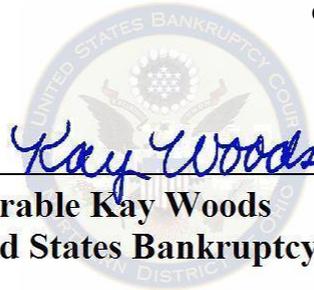


2008 Apr 04 PM 03:07

CLERK U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

IT IS SO ORDERED.



Honorable Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

| | | |
|---------------------------|---|---------------------------|
| IN RE: | * | |
| | * | CASE NUMBER 04-44333 |
| BOOKER T. WILLIAMSON, | * | |
| | * | |
| Debtor. | * | CHAPTER 7 |
| | * | |
| ***** | * | |
| ANDREW W. SUHAR, Trustee, | * | |
| | * | ADVERSARY NUMBER 06-04162 |
| Plaintiff, | * | |
| | * | |
| vs. | * | |
| | * | |
| THOMAS L. MCCAIN, | * | |
| | * | HONORABLE KAY WOODS |
| Defendant. | * | |
| | * | |

MEMORANDUM OPINION

Not intended for National Publication

The following Memorandum Opinion is not intended for national publication and carries limited precedential value. The availability of this opinion by any source other than www.ohnb.uscourts.gov is not the result of direct submission by this Court. The opinion is available through electronic citation

at www.ohnb.uscourts.gov pursuant to the E-Government Act of 2002 (Pub. L. No. 107-347).

The Court held a trial in this Adversary Proceeding on March 12, 2008. Pursuant to 11 U.S.C. § 549, Chapter 7 Trustee Andrew W. Suhar ("Trustee") seeks to avoid post-petition transfers of real estate and recover the value of the transferred property.¹ Trustee was present and represented himself, but Defendant Thomas McCain ("McCain") failed to appear and defend the case, despite having filed an Answer to the Complaint.²

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the general order of reference (General Order No. 84) entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (E). The following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

Having reviewed the entire record and considered all pleadings, arguments, testimony, and exhibits in this case (even if not specifically mentioned herein), the Court holds that Trustee is

¹Although the Complaint prays for recovery of either the property transferred or its value, Trustee clarified at trial that he seeks recovery of the value of the transferred property, not the property itself.

²McCain was originally represented by James M. Brutz, Esq.; however, on October 14, 2007, the Court granted the motion of Mr. Brutz to withdraw as counsel. McCain was provided notice of the scheduled trial and acknowledged the trial date in a voicemail message to the courtroom deputy on January 14, 2008.

entitled to recover the value of the transferred real estate.

I. LAW

Trustee alleges that McCain received unauthorized postpetition transfers of property of Debtor's estate. Section 549(a) of the Bankruptcy Code provides, with exceptions that are not applicable here, that "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) or 542(c) of this title; or (B) that is not authorized under this title or by the court." 11 U.S.C. § 549 (Lexis 2008). Accordingly, in order to successfully avoid the postpetition transfers of property alleged here, Trustee must show: (i) the transferred property was property of the bankruptcy estate, (ii) the transfers occurred after the commencement of the case, and (iii) neither the Court nor any provision of the Bankruptcy Code authorized the transfers. See *Sicherman v. Rivera (In re Rivera)*, Adv. Proc. No. 05-1629, 2007 Bankr. LEXIS 1304 (Bankr. N.D. Ohio April 10, 2007).

Moreover, § 550 authorizes Trustee to bring this Adversary Proceeding against McCain, as the initial transferee of the real estate.

[T]o the extent that a transfer is avoided under section . . . 549 . . . the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property from - (1) the initial transferee of such transfer or the

entity for whose benefit such transfer was made[.]

11 U.S.C. § 550 (Lexis 2008).

McCain bears the burden of proving the validity of the transfer. FED. R. BANKR. P. 6001 ("Any entity asserting the validity of a transfer under § 549 of the Code shall have the burden of proof.").

II. FACTS

Based on the testimony and the exhibits at trial, the Court makes the following findings of fact: (i) Debtor Booker T. Williamson ("Debtor") filed a voluntary petition pursuant to chapter 7 of Title 11 on September 3, 2004 ("Petition Date"); (ii) As of the Petition Date, Debtor owned two parcels of real estate in Warren, Ohio, known for street numbering purposes as 436 White Court and 444 White Court (collectively, the "Properties"); (iii) On March 9, 2006, Debtor transferred 436 White Court to McCain; (iv) On December 8, 2005, Debtor transferred 444 White Court to McCain; (v) A judgment lien in the amount of \$3110.07 attached to the Properties at the time of transfer; and (vi) Liens for accrued but unpaid real estate taxes in the amount of \$352.26 attached to the Properties at the time of transfer.

Debtor testified that he owned the Properties as of the Petition Date and that he thereafter transferred them to McCain for no consideration. When Trustee asked Debtor whether he received any money in exchange for the transfer of the Properties to McCain,

Debtor testified, "I didn't receive anything directly to me." When Trustee asked, "Did you receive any money at all?" Debtor responded, "Not to me."³

The record does not reveal any order of the Court that authorized Debtor to transfer the Properties to McCain. Neither does any section of the Bankruptcy Code provide for the transfers in question. Accordingly, the Court finds that Trustee established all elements under § 549, *i.e.*, that Debtor made unauthorized transfers of property of the estate after the commencement of Debtor's bankruptcy case.

III. VALUE OF PROPERTIES

Paul Mikula ("Mikula"), a licensed real estate broker and certified appraiser, provided expert testimony regarding the value of the Properties. Mikula testified that he viewed both Properties on March 11, 2008 (the day before trial), and that 444 White Court is currently only a vacant lot.⁴ Mikula testified that, based on the Trumbull County records, he was able to appraise and value the Properties as of the dates they were transferred to McCain.

Based on his research, Mikula valued 436 White Court at \$15,000 as of March 9, 2006, and valued 444 White Court at

³Debtor's testimony that his daughter "she might, she probably, I think she got some money. She borrowed some money from me[,] and that his daughter received "about \$6,000.00, something like that" was (i) vague, (ii) inconclusive, and (ii) irrelevant to the issue whether Debtor received any value in exchange for the postpetition transfer of the Properties to McCain.

⁴Mikula testified that he believed a structure on 444 White Court had been razed after a fire.

\$20,000.00 as of December 8, 2005. Mikula further testified that he was aware McCain obtained a loan for \$50,000.00 in 2007, which was secured by the Properties. As a consequence, Mikula stated that the Properties were likely appraised less than one year ago for at least \$50,000.00.

Based on the undisputed testimony of Mikula, the Court finds that the value of the Properties as of the dates of transfer to McCain to be: \$15,000.000 for 436 White Court and \$20,000.00 for 444 White Court.

IV. CONCLUSION

Trustee has met his burden of proof and established that Debtor made two post-petition transfers of property of the estate to McCain, which were not authorized under the Bankruptcy Code or by the Court, in violation of 11 U.S.C. § 549. The Court finds that the total value of the property transferred was \$35,000.00. Pursuant to 11 U.S.C. § 550(a), judgment is awarded to Trustee in the amount of \$31,537.67 (the combined value of the Properties less the applicable liens), plus Trustee's allowable costs associated with bringing this action, pursuant to BANKR. RULE 7054(b).

In addition, Trustee is entitled to prejudgment interest on the judgment amount. "[I]n an action to recover an unauthorized postpetition transfer made from property of the estate, a trustee is entitled to prejudgment interest, at the rate set forth in 28

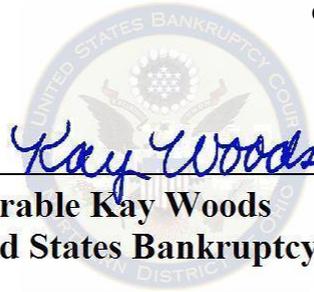
U.S.C. § 1961(a), from the . . . date the complaint was filed." *Rieser v. Randolph County Bank (In re Masters)*, 137 B.R. 254, 262 (Bankr. S.D. Ohio 1992); see also *Koonce v. McDonald (In re Koonce)*, 262 B.R. 850, 861 (Bankr. D. Nev. 2001) ("In actions to recover unauthorized post-petition transfers, parties are entitled to pre-judgment interest at the rate set forth in 28 U.S.C. § 1961(a) from the . . . date the complaint was filed."). The award of prejudgment interest "is compensatory, compensating the debtor's entire estate for the use of the funds for the period of time in which they were wrongfully withheld from the estate." *In re Masters*, 137 B.R. at 262. Accordingly, the Court awards Trustee prejudgment interest, at the statutory rate set forth in 28 U.S.C. § 1961, from September 9, 2006.

An appropriate Order will follow.

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2008 Apr 04 PM 03:10

CLERK U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN



Honorable Kay Woods
United States Bankruptcy Judge

IT IS SO ORDERED.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

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| IN RE: | * | |
| | * | |
| BOOKER T. WILLIAMSON, | * | CASE NUMBER 04-44333 |
| | * | |
| | * | CHAPTER 7 |
| Debtor. | * | |
| | * | |
| ***** | | |
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| ANDREW W. SUHAR, Trustee, | * | |
| | * | ADVERSARY NUMBER 06-04162 |
| | * | |
| Plaintiff, | * | |
| | * | |
| vs. | * | |
| | * | |
| THOMAS L. MCCAIN, | * | |
| | * | HONORABLE KAY WOODS |
| Defendant. | * | |
| | * | |

O R D E R

For the reasons stated in the Memorandum Opinion entered on this date, the Court finds that Debtor Booker T. Williamson made unauthorized post-petition transfers of property of the estate to Defendant Thomas L. McCain. The value of the transferred property,

at the time of transfer totaled \$31,537.67. Pursuant to 11 U.S.C. § 550, Trustee Andrew W. Suhar ("Trustee") is awarded \$31,537.67, plus interest from September 9, 2006, plus Plaintiff's costs.

Judgment in favor of Trustee and against Defendant.

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