

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2015-009595

10/10/2016

HON. ROGER E. BRODMAN

CLERK OF THE COURT  
M. Corriveau  
Deputy

MESA MAIN STREET L L C

MICHAEL W CARMEL

v.

MULBERRY BUSINESS PARK LIMITED  
PARTNERSHIP, et al.

MULBERRY BUSINESS PARK  
LIMITED PARTNERSHIP  
1941 S PIERPONT  
# 1076  
MESA AZ 85206

LISA J RANDALL  
1941 S PIERPONT  
# 1076  
MESA AZ 85206  
MELVIN DANIEL RANDALL  
1941 S PIERPONT  
# 1076  
MESA AZ 85206  
RANDAL L STOWELL

MINUTE ENTRY

The parties filed cross motions for summary judgment. The Court heard oral argument on October 7, 2016.

The simplified facts are as follows. Plaintiff Mesa Main Street has a judgment against Mulberry Business Park Limited Partnership for approximately \$3.9 million. Mulberry

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transferred certain property (the Property) to M&JR Properties, LLC, which is owned by Michael and Jacqueline Randall. The paperwork supporting this transfer is slight to nonexistent. Quit Claim Deeds dated December 5, 2014 and January 13, 2015 identify the “Grantee” as “M&JR Properties, LLC, Michael Randall, 1309 E. Halifax Street, Mesa, AZ 85203.” See defendants’ Exhibits E and F.

Mesa Main Street alleges that the transfer was fraudulent. As a result, Mesa Main Street sued Mulberry Business Park, M&JR and Michael and Jacqueline Randall for one count of fraudulent transfer.

Defendants argue that the Property was burdened by a loan and, as a result, the Property was underwater.

1. Can plaintiff sue Michael and Jacqueline Randall for fraudulent transfer?

In Warne Investments, Ltd. v. Higgins, 219 Ariz. 186, 197, ¶ 48 (App 2008), the Arizona Court of Appeals held that there is no independent cause of action for aiding and abetting fraudulent transfer liability. The court said that “we hold that the UFTA does not provide an independent cause of action for aiding-abetting liability against [the individual responsible for transferring the asset].” The Court agrees with defendants that Michael and Jacqueline have no personal liability for the transfer based solely on their positions as owners of M&JR Properties, LLC.

Plaintiff next alleges that Michael and Jacqueline are general partners of Mulberry. This argument is rejected. Even if the law supported an argument that general partners are subject to liability for a fraudulent transfer, there is no admissible evidence supporting the claim that Michael and Jacqueline are general partners of Mulberry.

Finally, plaintiff claims that Michael is an owner of the Property. The Quit Claim Deeds list Michael Randall along with M&JR Properties, LLC as the Grantee. Defendants claim this was a mistake made by individuals not represented by counsel. But there is no evidence supporting the mistake argument.

The Quit Claim deeds show “Michael Randall” as a Grantee. There is no indication on the deeds that the deeds were sent in his capacity as a manager of an LLC. The Court finds this document sufficient to establish an issue as to whether Michael Randall is an owner of the Property. As an owner of the Property, he is a proper defendant in a fraudulent transfer claim.

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2. Is there a triable issue of fact on the question of fraudulent transfer?

M&JR contend that the Property is encumbered by a \$455,000 mortgage, and that the Property is appraised at between \$323,000 and \$430,000. As a result, M&JR contends there is no equity in the Property and there is no fraudulent transfer as a matter of law.

A common component of laws relating to fraudulent or preferential transfers is that the liability is limited to the value of the assets transferred. Warne Investments, 219 Ariz. at 198, ¶ 53.

The Court finds that there is a triable issue of fact on the question of the Property's value. Admissible evidence supports defendants' claim that the Property is underwater and the value of the loan exceeds the Property's value. If the Property had no equity, a transfer of it to another party would not defraud creditors.

Plaintiff's position presents a more difficult question. Initially, plaintiff argued that a recently disclosed appraisal indicates the Property has a value of \$850,000. But this expert opinion was disclosed after the deadline for disclosure of expert witness opinions. It was disclosed after the deadline for completion of depositions as well as the deadline for the filing of dispositive motions. As a result, the Court disregards Michael Finch's opinion that the Property has a value of \$850,000.

On the other hand, the June 1, 2013 "letter of intent" shows a sale price of the property of \$550,000. See Exhibit C. The Court finds that this exhibit establishes evidence that the fair market value of the Property could be \$550,000 and therefore could exceed the debts against the Property. The Court cannot rule as a matter of law that the value of the Property is less than the encumbrances against it.

**ORDERS**

**IT IS ORDERED** that defendants' motion for summary judgment is denied.

**IT IS FURTHER ORDERED** that plaintiff's cross-motion for summary judgment is denied.