

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-009595

01/18/2017

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

RULING ON FRAUDULENT TRANSFER CLAIM

On January 12, 2017, the trial in this matter was held to the Court. The Court heard testimony from Michael Randall, Melvin Daniel Randall, and Noel Allen. The Court reviewed the exhibits in this case.

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I. BACKGROUND

Plaintiff Mesa Main Street has a judgment against Mulberry Business Park Limited Partnership for approximately \$3.9 million.

Mulberry is an Arizona limited partnership with M. Grant Randall and Melvin David Randall as partners.

Michael Randall is M. Grant Randall's son and Melvin David Randall's brother.

Mulberry 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 Exhibits 4 and 5.

On April 1, 2015, plaintiff obtained a judgment against Mulberry for approximately \$3.9 million. The judgment has not been paid in full.

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

Any claims against Melvin Daniel Randall are stayed by bankruptcy court order.

M&JR, Michael and Jacqueline Randall contend that the Property is encumbered by a \$455,000 mortgage to American Savings Life Insurance Co., and that the Property is appraised at between \$323,000 and \$430,000. As a result, defendants contend there is no equity in the Property and there is no fraudulent transfer as a matter of law.

The Court adopts the Statement of Uncontested Issues of Material Fact and Law set forth on pages 2:6 - 3:22 in the Joint Pretrial Statement.

II. ANALYSIS

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, Ltd. v. Higgins, 219 Ariz. 186, 198, ¶ 53 (App 2008).

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Michael Randall testified that he took over payments for the mortgage because one of his companies, Arizona Boat Store, has conducted business on the Property since 2003. He did not want a foreclosure because it could mean the loss of his business location.

Persuasive evidence demonstrated that the current amount of the mortgage was approximately \$455,000. Thus, the issue is whether the preponderance of evidence demonstrates that the Property is worth more than \$455,000.

The Court finds that plaintiff failed to demonstrate by a preponderance of the evidence that the Property had a positive equity. Michael Randall testified that the Property was underwater and had a value less than the amount owed on the mortgage. Melvin Daniel Randall testified that, at the time of the bankruptcy filing in September 2014, he believed the Property had a value of \$450,000. Melvin Daniel Randall also testified that there was no equity in the Property at the time of transfer.

Defendants also presented the testimony of Noel Allen, a licensed real estate broker. Mr. Allen's analysis was cursory at best, and he readily admitted that his analysis was not an appraisal. Mr. Allen estimated the fair market value of the Property to be between \$323,000 and \$430,000. His analysis was based primarily on sales comparables. As a real estate broker, Mr. Allen has experience in setting the price for clients selling commercial property. In the absence of controverting expert testimony, the Court found Mr. Allen's testimony that the fair market value of the Property was below the amount of the mortgage to be persuasive.

Although defendants' evidence of value was not overwhelming, it was more compelling than plaintiff's evidence. Plaintiff offered no expert testimony of its own. As a result, plaintiff's evidence of value took two forms. First, plaintiff presented Exhibit 13 which is a letter of intent dated June 1, 2013. The letter, signed by Melvin Daniel Randall, listed a sales price of \$550,000 for the Property. However, both Michael Randall and Melvin Daniel Randall testified that the transaction was never performed in accordance with the letter of intent. There was no evidence that Michael Randall or any of his entities paid anything more than the value of the mortgage. In other words, Michael Randall did not pay money to Jim Speck, Riggs Electrical or any balance to Mulberry as proposed in the letter of intent. The testimony was that, at most, Michael Randall took the Property subject to the mortgage.

Plaintiff also argues that the value of the Property should be based on an average cost per acre for comparable properties. Plaintiff used comparable numbers in Mr. Allen's report, see Exhibit 18, to calculate an average value per acre. But Mr. Allen did not adopt this analysis, and no persuasive evidence supported the claim that the cost per acre was a proper measure to determine the value of the Property.

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The Uniform Fraudulent Transfer Act, A.R.S. §44-1004, describes when a transfer is fraudulent as to present and future creditors. Section A provides that a transfer is fraudulent if the debtor made the transfer “with actual intent to hinder, delay or defraud any creditor of the debtor” or “without receiving a reasonably equivalent value in exchange for the transfer of the obligation.” Here, plaintiff failed to demonstrate that the Property had any significant equity at the time of transfer. Therefore, the transfer of the Property to Michael Randall or any of his entities could not have been with actual intent to hinder, delay or defraud any creditor. Since the Property had no net equity, plaintiff also failed to demonstrate that Mulberry failed to receive a reasonably equivalent value in exchange for the transfer.

The Court agrees with plaintiff that defendants’ conduct is extremely suspicious and that defendants’ conduct satisfies many of the factors set forth in §44-1004(B). But in the absence of persuasive evidence that the Property had positive equity, there is no violation of the Fraudulent Transfer Act.

IT IS ORDERED that plaintiff failed to show a violation of the Uniform Fraudulent Transfer Act.

IT IS ORDERED finding in favor of defendants MJ&R, Michael Randall and Jacqueline Randall and against plaintiff on the allegations in plaintiff’s complaint.

IT IS FURTHER ORDERED that, within 20 days from the filed date of this Order, defendant is to submit a proposed form of judgment.