IN THE UNITED STATES BANKRUPTCY COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

IN RE:	)	
	)	
KENT A. FLORA and SHARON J. FLORA,	)	Bankruptcy Case No. 98-91242
	)	
Debtors.	)	
	)	
STEVE MILLER, Trustee,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adversary Case No. 99-9070
	)	
KENT A. FLORA, SHARON J. FLORA, and JEFFERY B. WAMPLER,	)	
	)	
Defendants.	)	

OPINION

This matter having come before the Court for trial on the Complaint filed by the Trustee, Steve Miller, alleging a violation of the Illinois Uniform Fraudulent Transfers Act; the Court, having heard sworn testimony and arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

The Debtors/Defendants, Kent A. Flora and Sharon J. Flora, purchased a home in Champaign, Illinois, commonly known as 2606 Woodridge Road, in 1992 for the purchase price of $140,000. The Debtors occupied the subject home as their personal residence until

September 1998. In order to purchase the home, the Debtors gave a first mortgage to Community Bank of Greater Peoria, in the original sum of $112,000. In 1996, the Debtors gave a second mortgage on the subject home to Central Finance Loan Corporation to secure a loan in the amount of $10,227.

During the year of 1997, Debtors became several months in arrears on the payment of their first mortgage obligation, and foreclosure was threatened by the first mortgage holder. In the Summer of 1997, the Debtors contacted several lending institutions in an attempt to refinance both the first and second mortgage against the subject home. The Debtors were unsuccessful in their attempts to obtain refinancing. In August 1997, Mr. Flora met with Burt Leach, of Central Finance, informed him about the delinquent status on their first mortgage, and asked if Central Finance would be willing to help the Debtors solve their problem and to possibly refinance the home. Mr. Leach was unable to help the Debtors, however, he put them in contact with Defendant, Jeffery B. Wampler, as an individual who occasionally buys homes and might be interested in buying the subject home. The Debtors were not acquainted with Mr. Wampler at that time, and the evidence is clear that Mr. Wampler had not had any contact with either of the Debtors prior to being introduced to them by Burt Leach, of Central Finance.

After having been introduced to Defendant Wampler by Burt Leach, Mr. Flora met with Mr. Wampler and discussed the possibility of Mr. Wampler purchasing the subject home. There is no dispute that, during their initial discussion, Mr. Flora disclosed to Mr. Wampler the fact that the Floras were delinquent in their mortgage payments to their first mortgage holder and they had been unsuccessful in their efforts to obtain refinancing on both the first and second mortgages. There is also no dispute that Mr. Flora informed Mr. Wampler that

the Debtors wished to avoid a foreclosure proceeding and stay in the home for one more year so that their son might finish high school in Champaign, Illinois.

Within approximately one week of his meeting with Mr. Flora, Mr. Wampler went to the Debtors' home, located at 2606 Woodridge Road, Champaign, Illinois, together with a realtor, John Shumacher, to view the Floras' house. At that time, Mr. Wampler indicated that he believed the Debtors' home was worth approximately $140,000, but that he would not pay this price if he was to defer a sale of the home for one year while the Debtors continued to live there. After several discussions over the next several days, the parties reached an agreement whereby the Debtors would sell the house to Mr. Wampler for the sum of $115,000 cash, Debtors would lease the house back from him for a period of one year at a total rental of $100, and Debtors would have the option during that one year to repurchase the home from Mr. Wampler for a price of $141,800, which the parties agreed was the fair market value of the home at the time of their agreement. A title search was done on the home, and Mr. Wampler applied for and obtained a loan to enable him to purchase the home from the Debtors. A Lease Agreement was drafted, as was a purchase Option agreement. Those documents were tendered to the Debtors' attorney, John Reeves, who reviewed them. The documents were subsequently signed by the Debtors and Mr. Wampler at the closing of the sale of the home, which occurred on September 25, 1997, at Central Illinois Bank, which was Defendant Wampler's mortgage lender for said sale.

The Lease Agreement between the Debtors and Defendant Wampler allowed the Debtors to lease the house from Mr. Wampler for a period of one year, ending on September 21, 1998, at a total rental of $100. The lease required the Debtors to pay all utilities on the home and to maintain the home in good condition and repair. The lease

permitted Defendant Wampler to show or advertise the house for sale during the final 120 days of the lease term. The parties also executed an option to purchase wherein the Debtors had an option to purchase the home for a price of $141,800 on or before September 21, 1998. The parties also executed a supplemental Agreement that indicated that, if the Debtors did not exercise their option to purchase the home prior to the expiration date of September 21, 1998, the Defendant would divide equally with the Debtors any "net proceeds" that he received from a subsequent sale of the home. This Agreement was drafted in response to the Debtors' concern that Defendant Wampler might obtain a larger than anticipated profit from the sale of the house in the event that the Debtors were unable to exercise their purchase option. The supplemental Agreement defined the term "net proceeds" as the gross sale proceeds realized by Mr. Wampler, less $141,800, any real estate commission and closing costs incurred by Mr. Wampler, any property tax prorations, any repairs or other expenses related to preparing the house for sale, any costs incurred by Mr. Wampler relating to the sale of the house, and $63.01 per day for each day between September 22, 1998, and the date of any subsequent sale closing on the home.

At the closing of the sale between the Debtors and Mr. Wampler on September 25, 1997, the Debtors' first mortgage and second mortgage were satisfied in full from the sale proceeds. Additionally, $1,525.61 of the sale proceeds were remitted by the closing agent to General Motors Acceptance Corporation to satisfy the Debtors' obligation under a lease for a 1996 Oldsmobile Cutlass automobile. The Debtors also received a check in the amount of $1,464.77.

Following September 25, 1997, the Debtors continued to occupy the home as their residence pursuant to the terms of their Lease Agreement with Mr. Wampler. The Debtors

were occupying the home as their residence at the time of their bankruptcy filing, under Chapter 7 of the Bankruptcy Code, on May 13, 1998. The Debtors were not able to exercise their purchase option, and they vacated the home in September 1998. The subject home was eventually sold by Defendant Wampler for the sum of $163,000 in July 1999, after Mr. Wampler had made some improvements to the home. The Debtors did not share in any of the profits from the sale of the home as there were not "net proceeds" as defined by their supplemental Agreement by Mr. Wampler. Defendant Wampler has calculated his profit from the sale of the home in July 1999, as $12,940.95.

The Debtors disclosed the details of their transaction with Defendant Wampler to the Chapter 7 Trustee, Steve Miller, at their first meeting of creditors on June 4, 1998. The Trustee did not exercise the option to purchase the subject home on behalf of the Debtors, nor did he assume the supplemental Agreement between the Debtors and Mr. Wampler within 60 days after the date of the Debtors' filing for bankruptcy, as is required under 11 U.S.C. § 365.

Conclusions of Law

The instant action was filed by the Trustee on August 19, 1999, pursuant to 11 U.S.C. § 544(b), which empowers the Trustee to avoid any property transfer by a bankrupt debtor that is voidable under "applicable law." In this case, the facts are governed by the Illinois Uniform Fraudulent Transfers Act found at 740 ILCS 160/1 *et seq.*

Pursuant to 740 ILCS 160/1 *et seq.*, fraudulent conveyances are generally divided into two categories. Those categories are "fraud in law," which is defined in section 6 of the Act, and "fraud in fact," which is defined in section 5 of the Act. If there was no consideration paid whatsoever, the transaction is considered "fraud in law." In these cases, the intent or

motive of the parties to the transaction is immaterial. In contrast, the "fraud in fact" category consists of cases where there was some consideration paid, as is the case here. In order to establish the fraudulent nature of a conveyance that was supported by some consideration, it is necessary to establish actual fraud on the part of the debtor and participation in said fraud by the grantee. Reagan v. Baird, 140 Ill. App.3d 58, 487 N.E.2d 1028 (4th Dist. 1985).

Pursuant to 740 ILCS 160/5(b), there are eleven factors or "badges of fraud" which a Court may consider in determining whether a transfer by a debtor was with the actual intent to defraud a creditor. No one of the eleven factors or "badges" is dispositive to a finding of fraud. Levit v. Spatz, 222 B.R. 157 (D.C. N.D. Ill. 1998). It has been found that, if the factors are present in a sufficient number, then a presumption of fraud arises, and the burden of proof then shifts to the defendant to establish the existence of a valid defense which will defeat the efforts of a creditor to avoid the transfer as being one that is fraudulent. See: In re Gillissie, 215 B.R. 370 (Bankr. N.D. Ill. 1997). In the instant case, the Court found that there were a sufficient number of factors present to establish a presumption of fraud, and, thus, the burden was then shifted to Defendant Wampler to establish the existence of a valid defense to this action.

The Court found that the testimony of the Defendant, Jeffery B. Wampler, was credible, and that, at best, the Trustee's Complaint alleged only four of the eleven factors set out in 740 ILCS 160/5(b). At trial, it became clear that the allegation that Mr. Wampler was an "insider" was incorrect, leaving the Court with three factors to consider.

Upon review of all of the circumstances in this case under the factors listed in 740 ILCS 160/5(b), the Court must conclude that the Trustee has failed to show an actual intent to defraud creditors as a result of the transaction between the Debtors and Defendant, Jeffery B.

Wampler. Although the structure of the sale of the home between the Debtors and Mr. Wampler was unusual, the Court finds that the facts show that adequate consideration was paid by Mr. Wampler for the home. As such, any presumption of fraud in this transfer has been rebutted by the credible evidence before the Court. Additionally, even though it is unnecessary in the determination of this matter, the Court finds that the Trustee also failed to show by a preponderance of evidence the amount of damages that the Trustee would have been entitled to had fraud been found. Thus, the Court must conclude that the Trustee's Complaint, filed on August 19, 1999, should be denied as to all relief requested.

ENTERED: April _____, 2000.

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GERALD D. FINES
United States Bankruptcy Judge

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vs.	)	Adversary Case No. 99-9070
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KENT A. FLORA, SHARON J. FLORA,	)	
and JEFFERY B. WAMPLER,	)	
	)	
Defendants.	)	

O R D E R

For the reasons set forth in an Opinion entered on the _____ day of April 2000;

IT IS HEREBY ORDERED that the Complaint filed by the Trustee, Steve Miller, on August 19, 1999, is DENIED.

ENTERED: April _____, 2000.

_____
GERALD D. FINES
United States Bankruptcy Judge

COPY OF OPINION AND ORDER SENT TO:

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