

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

IN THE MATTER OF:

RAYMOND FRANK MANGIULLI and
SHIRLEY MARIE MANGIULLI,

Debtors.

WILLIAM J. RAMEKER, TRUSTEE,

Plaintiff,

v.

MEMORANDUM AND ORDER
06-C-670-S

VILLAGE OF WONEWOC,

Defendant.

Plaintiff William J. Rameker, as bankruptcy trustee, commenced this adversary proceeding to recover an alleged fraudulent conveyance to defendant Village of Wonewoc pursuant to 11 U.S.C. § 548. The Bankruptcy Court found that the debtors had received reasonably equivalent value for the transfer and therefor granted summary judgment in favor of defendant. Plaintiff now brings this appeal from the final order of the Bankruptcy Court pursuant to 28 U.S.C. § 158. The following is a summary of the undisputed facts and bankruptcy court proceedings.

BACKGROUND

In 1992 debtors purchased a lot and building at 303 Center Street in Wonewoc, Wisconsin (the "property") for \$25,000. Between 1992 and 2002 debtors made improvements to the property costing \$18,000 and operated a pet store on the premises. In about 2002 debtors moved the pet store operation to a different location and the property stood vacant for the next two years. The building was over 80 years old and in a state of disrepair. No offers to purchase were received for the property during this period and the property was not actively marketed for sale.

The 2003 property tax bill assessed the property value at \$39,400 and estimated its fair market value at \$41,800.

In 2003 Wonewoc Development Corporation ("WDC") asked the debtors if they would be interested in selling the property. WDC was interested in acquiring the property for expansion of the community library on an adjacent lot. On February 6, 2004, after negotiations with debtors during which WDC offered to pay \$25,000 for the property, WDC submitted an offer to purchase the property to the debtors. The offer to purchase stated a purchase price of \$41,800, but also included the following provision: "The purchase price shall be delivered at closing as follows: \$25,000, in cash, and the remaining balance is a gift by sellers to the Village of Wonewoc." Debtors accepted the offer and the contract was

subsequently assigned to the Village of Wonewoc. Debtor's later claimed a tax deduction for the "gift" amount.

In May or June 2004, prior to closing on the sale of the property, a WDC representative attended a property tax board of review on behalf of debtors. At the Board of review the representative presented pictures of the building on the property and argued that the building had no value. The assessor agreed with this position and reduced the assessment of the building to zero. The 2004 property tax bill provided a total assessed value of \$2600 and an estimated fair market value of \$3,000.

After acquiring the property, defendant spent approximately \$5000 to demolish the building.

On June 8, 2005 debtors filed a Chapter 7 bankruptcy petition. Plaintiff commenced this adversary proceeding claiming that debtors' conveyance of the property to defendant was a fraudulent transfer to the extent of the \$16,800 "gift" referenced in the purchase contract. Plaintiff claimed that debtors had not received "reasonably equivalent value" for the property within the meaning of 11 U.S.C. § 548(a)(1)(B)(i).

A trial was conducted on September 26, 2006 during which the facts set forth above were presented to the Bankruptcy Court. At the conclusion of trial the Bankruptcy Court found that the property tax bills were not credible evidence of value and concluded as follows:

In fact, there's - the extent we can tell, this is the only time this property was exposed to any kind of market was when an offer was made and accepted after negotiation. That offer was for \$25,000 plus whatever tax benefit would come from an additional gift of \$16,800....

I find that there has been inadequate proof to find under preponderance of the evidence that the debtors received less than equivalent value for the property they sold. The gift structure has reasons for establishing additional value to the debtors by making that number large for tax refunds and can't be relied upon as setting the true value of the real estate. So tripping over the threshold to a fraudulent transfer dooms the plaintiff's case here, having not proved that less than reasonably equivalent value was received, all the other inquiry was unnecessary.

Plaintiff now appeals from this decision.

MEMORANDUM

Plaintiff contends that the Bankruptcy Court erred as a matter of law in finding that debtors received reasonably equivalent value. Defendant maintains the ruling was correct and fully supported by the evidence.

The Bankruptcy Court's determinations of fact are reviewed for clear error and its conclusions of law are reviewed de novo. Village of San Jose v. McWilliams, 284 F.3d 785, 790 (7th Cir. 2002). Contrary to plaintiff's suggestion, a determination whether the debtors received a reasonably equivalent value for the property is indisputably a question of fact. In re Image Worldwide, Ltd.,

139 F.3d 574, 576 (7th Cir. 1998). Accordingly, the present issue is whether the Bankruptcy Court's finding of reasonably equivalent value was clearly erroneous. It was not.

In fact, the Bankruptcy Court's conclusion was the only reasonable one to be drawn from the facts presented at trial. First, it was entirely reasonable to reject the tax assessments as a reliable measure of market value. This is particularly true in view of the dramatic reduction in estimated value in response to evidence on the condition of the building and the disparity between estimated values in 2003 and 2004.

Second, the Bankruptcy Court correctly noted that the best estimate of value is an arms length transaction between a willing buyer and a willing seller, see Barber v. Golden Seed Co., Inc., 129 F.3d 382, 387 (7th Cir. 1997), and that the \$25,000 cash purchase price is the best evidence of this value. The undisputed trial testimony was that WDC never offered or intended to pay more than \$25,000 for the property. There was no evidence of another interested buyer. Furthermore, given that the purchaser had the unique circumstance of a desire to facilitate the library expansion from an adjacent lot, one might predict its value to be greater to WDC than to other potential purchasers.

Taking a broader view, the bankruptcy Court was entirely reasonable in its assessment of the reality of the arms length transaction. Namely, that debtors were willing to sell and WDC was

willing to purchase for \$25,000 and that the inflated purchase price and gift language in the offer was added for the sole purpose of procuring a tax benefit for debtors at no cost to the purchaser. There is no suggestion in the record that debtors were in any way motivated by a charitable purpose in entering into the sale or that they entered the transaction out of any desire to make a gift to the village. Certainly, this is at least one reasonable, and not clearly erroneous, interpretation of the facts.

The facts at trial fully support the finding of the Bankruptcy Court that plaintiff failed to establish by a preponderance of the evidence that debtors received less than reasonably equivalent value for the property.

ORDER

IT IS ORDERED that the decision of the Bankruptcy Court is AFFIRMED.

Entered this 9th day of January, 2007.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge