

**United States Bankruptcy Court
Western District of Wisconsin**

Cite as: [Unpublished]

**Melvyn L. Hoffman, Trustee, Plaintiff, v.
Nancy Kay Fassett and Chaunda L. Fassett, Defendants**

(In re: Nancy Kay Fassett, Debtor)
Bankruptcy Case No. 11-15594-7
Adv. Case No. 11-331

United States Bankruptcy Court
W.D. Wisconsin, Eau Claire Division

March 20, 2012

Melvyn L. Hoffman, Hoffman Law Firm, L.L.C., La Crosse, WI, for plaintiff
Roger Merry, Merry Law Offices, Monroe, WI, for defendants

Thomas S. Utschig, United States Bankruptcy Judge

DECISION AND ORDER

On March 13, 2012, the Court held a telephone conference call on (i) the complaint, and (ii) the motion by the plaintiff for summary judgment. Attorney Melvyn L. Hoffman appeared on his own behalf as trustee, and Attorney Roger Gene Merry appeared on behalf of the defendants. The parties agreed that the matter should be submitted to the Court for decision based upon the existing submissions. This is a core proceeding under 28 U.S.C. § 157(b)(2)(H) as a proceeding to determine, avoid, or recover fraudulent conveyances, and the Court has jurisdiction under 28 U.S.C. § 1334. The following shall constitute the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052.

The trustee has moved for summary judgment on his claim under 11 U.S.C. § 548(a)(1)(B). This section permits a bankruptcy trustee to avoid the transfer of an interest of the debtor in property made within two years of the filing of the bankruptcy petition if the debtor received less than a reasonably equivalent value in exchange for the transfer and was either insolvent, engaged in business or other transactions without sufficient capital, or intended to incur debts beyond the debtor's ability to repay. Approximately 11 months before filing bankruptcy, Nancy Fassett transferred \$14,127.65 to her daughter Chaunda. The parties agree that Nancy withdrew these funds from her 401(k) retirement account and placed them in her personal bank account prior to transferring them to her daughter.

Nancy hoped that the transfer would help Chaunda purchase a mobile home. While the trustee contends that Nancy received nothing tangible in exchange for the funds, she claims to have received the “value” of knowing that her daughter and granddaughter would have a roof over their heads. Nancy also submits that creditors were not deprived of any assets since the money was originally part of her retirement funds and would have been exempt. The trustee notes that the transfer was essentially a gift, and the bankruptcy statute is intended to prevent debtors from depleting resources through “gratuitous” transfers of property. Under § 548(d)(2)(A), “value” is defined as including property or satisfaction or securing of a present or antecedent debt. The sort of intangible, emotional satisfaction that Nancy may have received is not what the code considers “value” for purposes of determining whether a particular transfer may be avoided.

Nancy voluntarily removed the funds from her 401(k) account and placed them in her personal checking account. The money lost its exempt character at that point. Even if that were not the case, exempt property remains property of the estate until the debtor asserts a right to the exemption. As such, once a voluntary transfer of otherwise exempt property is avoided under § 548, the asset is brought into the bankruptcy estate. The code precludes a debtor from asserting an exemption in such assets. See 11 U.S.C. § 522(g)(1) (debtor may exempt property recovered by the trustee only if “such transfer was not a voluntary transfer of such property by the debtor”); Kepler v. Weis (In re Weis), 92 B.R. 816, 820-21 (Bankr. W.D. Wis. 1988) (§ 522(g) provides the “exclusive mechanism” for a debtor to assert his exemption rights after the trustee has exercised avoidance powers).

Nancy concedes that she made a transfer of \$14,127.65 to Chaunda, that Chaunda is an “insider” within the meaning of the bankruptcy code, and that she herself was insolvent at the time the transfer was made. The facts conclusively illustrate that she did not receive anything of tangible value in exchange for the money given to Chaunda. Summary judgment is appropriate where there are no disputed issues of material fact and the moving party is entitled to summary judgment as a matter of law. See Fed. R. Bankr. P. 7056, incorporating Fed. R. Civ. P. 56(c). Summary judgment is to be denied only if there is a “genuine issue of material fact.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). While the Court is sympathetic to both Nancy and Chaunda, there is simply no genuine issue of material fact as to whether Nancy received reasonably equivalent value for the transfer. She did not. As such, based upon the record, the trustee is entitled to summary judgment as a matter of law.

Accordingly,

IT IS ORDERED that the trustee is entitled to judgment against the defendants, Nancy Fassett and Chaunda Fassett, in the amount of \$14,127.65. The parties shall each bear their own costs.