

In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division

In the matter of:)
RICHARD A. CHARNOCK)
LINDA G. CHARNOCK)
(Chapter 7 Case 01-20607))

Adversary Proceeding
Number 01-2030

Debtors

R. MICHAEL SOUTHER, TRUSTEE)

Plaintiff

v.)

RICHARD CHARNOCK)

Defendant

FILED
at 9 O'clock & 30 min AM
Date 1-3-02

MICHAEL F. McHUGH, CLERK
United States Bankruptcy Court
Savannah, Georgia SR

MEMORANDUM AND ORDER
ON TRUSTEE'S MOTION TO AVOID PREFERENTIAL TRANSFER

FINDINGS OF FACT

Richard A. and Linda G. Charnock ("Debtors") filed the underlying Chapter 7 case on May 29, 2001. The Trustee moves the Court to avoid the transfer of real property from Debtor Richard A. Charnock ("Son") to his father, Defendant Richard Charnock ("Defendant").

On March 16, 2001, Debtors transferred to Defendant, by Deed of Gift, a parcel of land identified as "Lot 47, Block B, Ridgewood Plantation Subdivision, Glynn County,

12

Georgia.” Defendant had previously conveyed the same property to Son to enable Son to pledge the property as security for a loan. Prior to that conveyance, Son and Defendant had agreed that if Debtors could not obtain a loan to purchase a mobile home to place on the land, then Son would transfer the land back to Defendant. Because Son was unable to obtain the loan, Son reconveyed the property, by Deed of Gift, to Defendant on March 16, 2001. Said Deed of Gift was filed of record on April 18, 2001, and recorded on April 19, 2001, in Deed Book 775, Page 063, Glynn County, Georgia.

The transfer of Debtors’ interest in the aforescribed real property to Defendant was made within ninety (90) days of the date Debtors’ filed their Chapter 7 petition. Debtors were insolvent at the time of the transfer and received no payment in any amount in consideration for the transfer. The fair market value of the aforescribed property was \$6,707.00 as determined by the Glynn County Tax Assessor.

CONCLUSIONS OF LAW

11 U.S.C. § 548(a) provides that the trustee may avoid a transfer of a debtor’s interest in property made within one year before the date of the debtor’s bankruptcy filing if the debtor received less than a reasonably equivalent value in exchange for the property and was insolvent at the time of the transfer. Here, the transfer of the property in issue is clearly avoidable under § 548(a) inasmuch as Debtors were insolvent on the date of the transfer and received no consideration in exchange for the transfer to Defendant.

Notwithstanding the applicability of § 548(a), Defendant argues that it is inequitable to deprive him of the property which originally belonged to him and which was conveyed under an oral limitation. Counsel has not cited, nor is the Court aware of, any authority to support his equitable exception argument, and the language of the Code makes no such exception. Moreover, any oral agreement limiting the absolute character of the deed to Son cannot be considered as it violates the Georgia Statute of Frauds. *See, e.g., First Nat. Bank in Elberton v. Osborne*, 233 Ga. 602, 605-06, 212 S.E.2d 785, 787-88 (1975) (finding alleged oral agreement to be unenforceable in part because “it attempt[ed] to engraft an additional obligation on the maker of written instruments which are complete and unambiguous”). Accordingly, no defense is established to the Trustee’s preferential transfer case.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the Deed of Gift from Debtors to Defendant dated March 16, 2001, and recorded in Deed Book 775, Page 063, Glynn County, Georgia, records, transferring Lot 47, Block “B”, Ridgewood Plantation Subdivision, Glynn County, Georgia, is hereby avoided.

Defendant Richard Charnock IS ORDERED to execute a Quitclaim Deed in favor of Plaintiff, R. Michael Souther, Trustee, conveying his interest in and to the subject property.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 2nd day of January, 2002.