

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

In the matter of:

ELIZABETH KAYE
(Chapter 7 Case 90-41847)

Debtor

WILEY A. WASDEN, III

Plaintiff

v.

ELIZABETH KAYE

Defendant

Adversary Proceeding

Number 91-4005

FILED

at 3 O'clock & 22 min PM

Date 3/2/92

MARY C. BEOTON, CLERK
United States Bankruptcy Court
Savannah, Georgia



MEMORANDUM AND ORDER

FINDINGS OF FACT

The above case came on for trial before the Court on September 25,

1991. The evidence presented at trial showed that on April 23, 1981, Debtor received by gift deed sole title to a piece of property generally described as 2813 Aimar Avenue. On April 15, 1987, Debtor signed a gift deed in favor of her husband for one-half of her interest in this property. However, this deed was not filed of record in the Clerk's Office of the Superior Court of Chatham County until May 3, 1990. In the intervening period, Debtor had been subjected to active collection efforts as a result of delinquent credit obligations.

Debtor filed a Chapter 7 bankruptcy petition on October 10, 1990. In Schedule B-1 of this petition Debtor set forth that she owned a one-half interest in 2813 Aimar Avenue which had a value of \$1,000.00. In Schedule A-2 of the petition she listed the sole debt on this property to be a first mortgage in the amount of \$61,386.42.

Trustee filed the instant adversary proceeding seeking a return of the one-half interest Debtor conveyed to her husband and objecting to the discharge of the Debtor pursuant to 11 U.S.C. Section 727(a)(2) and 11 U.S.C. Section 727(a)(4).

CONCLUSIONS OF LAW

Under Georgia law, all deeds conveying land are required to be recorded in the Superior Court Clerk's Office of Chatham County prior to their having any legal effect against a third-party acting in good faith. O.C.G.A. Section 44-2-1; O.C.G.A. Section 44-2-2(b). The effective date of a legal transfer of property is the date upon which the deed is recorded in the Superior Court of the county where the land is located, not the date an unrecorded deed is actually signed by the parties. Southern Railway Company v. Horine, 115 Ga. App. 665 (1902).

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Under the Bankruptcy Code the Trustee is given the rights of a bona fide purchaser at the commencement of the bankruptcy case. 11 U.S.C. Section 544(a)(3). As such, the legal transfer of the property in question took place against him only upon the recording of the deed in the Superior Court Clerk's Office of Chatham County on May 3, 1990. *See generally* Matter of Fleeman, 81 B.R. 160 (M.D.Ga. 1987). The date of filing having been within one year prior to the filing of the bankruptcy petition, this transfer meets the first condition of a fraudulent transfer as set forth in 11 U.S.C. Section 548(a).

I further find that the Trustee has carried his burden of proving that the transfer was made with actual fraudulent intent pursuant to 11 U.S.C. Section 548(a)(1). At the time of the transfer of this property in May of 1990, the Debtor was aware of the pendency of the resolution of a lawsuit by at least one creditor which would have entitled that creditor to attach the property in question. Although the deed was originally executed in 1987 and given for adequate consideration I conclude that the operative time to assess a party's intent for fraudulent transfer purposes is at the time the transfer becomes final, i.e., when the deed is recorded. There was no rationale for the decision to record the deed in 1990, which had been delivered three years earlier, except as an effort to avoid the reach of creditors. As such, I hold that the Debtor made such transfer with actual intent to hinder, delay, or defraud a creditor which ultimately became a judgment creditor after the transfer. As a result, the transfer is subject to avoidance pursuant to 11 U.S.C. Section 548(a)(1).

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law IT IS THE ORDER OF THIS COURT that the deed from Debtor to her husband is set

aside as void and that the Trustee is entitled to recover from the Debtor and administer as an asset in this Chapter 7 case the Debtor's real property located at 2813 Aimar Avenue.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 28th day of February, 1992.

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