

Fraudulent transfer
Reasonably equivalent value
Strict foreclosure
Land sale contract

Sticka v. Ceideburg et al. 99-6187-fra
In re David Parker 697-63924-fra7

1/6/2000 Alley Unpublished

The Debtor purchased real property from the Defendants under a land sale contract. Debtor failed to make payments and the Defendants brought suit in state court for strict foreclosure of the contract. The court entered an interlocutory decree giving the Debtor a period in which to pay the amount owing on the contract. When Debtor failed to do so, the court entered on July 3, 1996 a final judgment of strict foreclosure which foreclosed the Debtor's interest in the real property and the money previously paid on the contract. On July 8, 1997, the Debtor filed bankruptcy under Chapter 13 and later converted to Chapter 7. The Trustee brought this action against the vendors/Defendants to avoid the foreclosure of Debtor's interest in the real property as a fraudulent transfer under Code § 548 and under state law, asserting that the transfer was for less than reasonably equivalent value. Defendants filed a motion for judgment on the pleadings.

Because Code § 548 requires that the transfer occur within one year of the petition date, the claim under § 548 was not timely, leaving the Trustee with a claim based on Oregon fraudulent transfer law. As the Uniform Fraudulent Transfer Act, adopted by Oregon in 1985, is based on the provisions of Code § 548, the court stated that caselaw interpreting Code § 548 would be highly persuasive in interpreting state fraudulent transfer law and the meaning of "reasonably equivalent value." The court held that the holdings in BFP and Vermillion provided the rationale for a determination that the transfer was for reasonably equivalent value as a matter of law. The foreclosure was conducted according to state law and was noncollusive.

Regarding avoidance of the transfer where the court finds that the amount received is so grossly inadequate as to shock the court's conscience: The state court is empowered to call for a foreclosure sale if it feels one is necessary and is required under state law to fashion relief in a strict foreclosure according to the equities of the case. The state court judgment therefore implicitly holds that the result is not inequitable or "unconscionable." The Bankruptcy Court cannot second guess the state court's decision regarding unconscionability. Defendants' motion for judgment on the pleadings was granted.

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

IN RE)
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DAVID L. PARKER,) Case No. 697-63924-fra7
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Debtor.)
)
RONALD R. STICKA, TRUSTEE,) Adv. Proc. No. 99-6187-fra
)
Plaintiff,)
)
v.)
)
FRANK CEIDEBURG, ARTHUR)
KONING, and SHIRLEY KONING,)
)
Defendants.) MEMORANDUM OPINION

BACKGROUND

The Debtor purchased certain real property in Junction City from the Defendants by use of a land sale contract. The Debtor thereafter defaulted on the contract and Defendants, as vendors, filed an action in Lane County Circuit Court for strict foreclosure of the contract. On May 30, 1996, the court entered an interlocutory decree which required the Debtor and a second

1 named individual (presumably a co-purchaser under the land sale
2 contract) to pay the Defendants the amount owing on the contract
3 within 30 days to avoid foreclosure of their interest in the real
4 property and any amounts previously paid toward the purchase
5 price of the property. On July 3, 1996, the court entered a
6 final judgment of strict foreclosure which foreclosed the
7 purchasers' interest in the real property and the money
8 previously paid on the contract by the purchasers. On July 8,
9 1997, the Debtor filed a bankruptcy petition under Chapter 13 of
10 the Bankruptcy Code; on July 2, 1998, the case was converted to
11 Chapter 7. The Trustee filed this adversary proceeding on July
12 7, 1999 to avoid the foreclosure of the Debtor's interest in the
13 real property as a constructively fraudulent transfer under 11
14 U.S.C. § 548 and under O.R.S. 95.200 et al.

15 On November 16, 1999, Defendants filed a "Motion to
16 Dismiss," alleging that the judgment of strict foreclosure cannot
17 be set aside as constructively fraudulent. Because an Answer had
18 already been filed by the Defendants, their Motion to Dismiss
19 will be considered a Motion for Judgment on the Pleadings.

20 JUDGMENT ON THE PLEADINGS

21 For purposes of a motion for judgment on the pleadings,
22 the allegations of the non-moving party must be
23 accepted as true, while the allegations of the moving
24 party which have been denied are assumed to be false. .
25 . . Judgment on the pleadings is proper when the moving
26 party clearly establishes on the face of the pleadings

1 that no material issue of fact remains to be resolved
2 and that it is entitled to judgment as a matter of law.
3 Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc., 896 F.2d
4 1542, 1550 (9th Cir. 1990) (citing Doleman v. Meiji Mutual Life
5 Ins. Co., 727 F.2d 1480, 1482 (9th Cir. 1984)).

6 The question of what is considered part of the pleadings may
7 be answered by reference to case law regarding motions to dismiss
8 under Fed.R.Civ.P. 12(b)(6) because a court "may not consider any
9 material beyond the pleadings in ruling on a Rule 12(b)(6)
10 motion." Hal Roach Studios, 896 F.2d at 1555 n. 19. "Material
11 which is properly submitted as part of the complaint may be
12 considered on a motion to dismiss." Id. "A document is not
13 'outside' the complaint if the complaint specifically refers to
14 the document and if its authenticity is not questioned." Branch
15 v. Tunnell, 14 F.3d 449, 453 (9th Cir. 1994) (citing Townsend v.
16 Columbia Operations, 667 F.2d 844, 848-849 (9th Cir. 1982)). In
17 its review of the Defendants' motion, the court will consider the
18 complaint, the answer, and any documents attached to the
19 complaint as exhibits.

20 DISCUSSION

21 11 U.S.C. § 548

22 As was stated to the parties in the Court's previous letter
23 asking for additional briefing, part of Plaintiff's prima facie
24 case under 11 U.S.C. § 548 is to present evidence that the
25 transfer sought to be avoided occurred within one year of the
26 bankruptcy petition date. BFP v. Resolution Trust Corp., 511

1 U.S. 531, 535 (1994). As the Judgment of Strict Foreclosure was
2 entered July 3, 1996 and the petition date is July 8, 1997, the
3 Plaintiff cannot present a prima facie case under Code § 548.
4 Accordingly, the Plaintiff's claim under Code § 548 must fail.

5 Uniform Fraudulent Transfer Act (UFTA)

6 Code § 544(b)(1) allows the Trustee to avoid the transfer of
7 an interest of a debtor that is voidable under "applicable law"
8 by an unsecured creditor holding an allowable claim in the
9 bankruptcy. The Plaintiff seeks to avoid the effects of the
10 foreclosure judgment using O.R.S. 95.230(1)(b)¹ and O.R.S.
11 95.240(1), the constructive fraud sections of the UFTA, adopted
12 by Oregon in 1985 at O.R.S. 95.200 et seq. Those sections read
13 as follows:

14 95.230 Transfers fraudulent as to present and future
15 creditors. (1) A transfer is fraudulent as to a
16 creditor, whether the creditor's claim arose before or
17 after the transfer was made or the obligation was
18 incurred, if the debtor made the transfer or incurred
19 the obligation:

20 * * *

21 (b) Without receiving a reasonably equivalent
22 value in exchange for the transfer or obligation, and
23 the debtor:

24 (A) Was engaged or was about to engage in a
25 business or a transaction for which the remaining
26 assets of the debtor were unreasonably small in
relation to the business or transaction; or

(B) Intended to incur, or believed or reasonably
should have believed that the debtor would incur, debts

24 ¹The complaint actually states that a claim is made under O.R.S.
25 95.230(1)(a), which requires a showing of actual fraud. As there were no
26 allegations of actual fraud made in the complaint, I am assuming that the
claim is actually made under subsection (b) and the subsection as shown in the
complaint is a misprint.

1 beyond the debtor's ability to pay as they become due.

2 95.240 Transfers fraudulent as to present creditors.
3 (1) A transfer made or an obligation by a debtor is
4 fraudulent as to a creditor whose claim arose before
5 the transfer was made or the obligation was incurred if
6 the debtor made the transfer or incurred the obligation
without receiving a reasonably equivalent value in
exchange for the transfer or obligation and the debtor
was insolvent at that time or the debtor becomes
insolvent as a result of the transfer or obligation.

7 Both sections require that the transfer be made for less
8 than reasonably equivalent value, a term that is undefined in the
9 UFTA. The Bankruptcy Code adopted its current provision for
10 avoidance of fraudulent transfers and the term "reasonably
11 equivalent value" when the Bankruptcy Code was adopted in 1978.²
12 In 1984, the National Conference of Commissioners on Uniform
13 State Laws adopted the Uniform Fraudulent Transfer Act (the
14 "UFTA") which was enacted into law by the Oregon legislature the
15 following year in 1985.³ The UFTA mirrors the provisions of
16 Bankruptcy Code § 548, adopting the term "reasonably equivalent
17 value" for purposes of constructive fraud.

18 Given the identical language and the Uniform Law drafters'
19 conscious decision to follow the Bankruptcy Code, federal law
20 construing Code § 548, while not necessarily binding for state-
21 law purposes, is highly persuasive. The starting point is BFP v.

22
23 ²The constructive fraud provision of the Bankruptcy Act, in effect
24 prior to 1978, allowed avoidance of a transfer if the transfer was not made
for "fair consideration." See Bankruptcy Act § 67(d)(2).

25 ³The Uniform Fraudulent Conveyance Act (UFCA), in effect in Oregon
26 prior to 1985, had a "fair consideration" requirement for constructive fraud
just as the Bankruptcy Act did.

1 Resolution Trust Corp., 511 U.S. 531, 535 (1994) which held that
2 the consideration received by a debtor in a non-collusive
3 foreclosure sale conducted in accordance with state law is
4 reasonably equivalent as a matter of law for purposes of Code §
5 548. This is in conformity with the UFTA adopted by Oregon which
6 states at O.R.S. 95.220(2) that

7 For the purposes of ORS 95.230(1)(b) and 95.240, a
8 person gives a reasonably equivalent value if the
9 person acquires an interest in the debtor in an asset
10 pursuant to a regularly conducted, noncollusive
11 foreclosure sale or execution of a power of sale for
12 the acquisition or disposition of the interest of the
13 debtor upon default under a mortgage, deed of trust or
14 security agreement.

15 In Vermillion v. Scarbrough (In re Vermillion), 176 B.R. 563
16 (Bankr. D. Or. 1994), aff'd Civil No. 95-6106-HO (D.Or. 11/8/95),
17 the court held that the BFP rationale applies to forfeiture of a
18 vendee's interest in a land sale contract under O.R.S. 93.905 et
19 seq. This statutory scheme provides for nonjudicial foreclosure.
20 It requires that notice of a default be given and provides for a
21 specified time within which the default must be cured. The
22 vendee's interest in the property is terminated if the cure is
23 not timely made.

24 Oregon law regarding strict foreclosure satisfies the
25 criteria set out in BFP and Vermillion. First, it involves real
26 property, thus implicating the State's strong interest in title
 to real estate, and avoiding the disruption which would
 inevitably occur if each transaction were subject to post-
 foreclosure review in federal or state court. Second, the

1 foreclosure is supervised by the court pursuant to a well-defined
2 scheme. The court orders the vendee to pay the amount due on the
3 contract within a period set by the court. If the vendee is
4 unable to pay the amount due, the court confirms the vendor's
5 title to the property and orders possession of the property to
6 the vendor. Alternatively, the court may use its discretionary
7 power to order a foreclosure sale if the equities of the
8 situation call for it. See Vermillion at 567.

9 The Plaintiff cites to Carter v. H & B Jewelry and Loan, 209
10 B.R. 732, 735 (Bankr. D.Or. 1997) in arguing that the lack of a
11 foreclosure sale precludes the use of the BFP rationale. Carter,
12 however, involved the forfeiture of personal property rather than
13 real property, and is distinguishable in that respect. Moreover,
14 the state court has the discretion to order a sale of the
15 property where foreclosure of the vendee's interest without one
16 would be inequitable. In Vermillion, the bankruptcy court held
17 as a matter of law that forfeiture of a vendee's interest in real
18 property conducted in accordance with Oregon law is reasonably
19 equivalent value for his obligation under the land sale contract.
20 In a strict foreclosure, the vendee is afforded the additional
21 right to a foreclosure sale if the court determines that equity
22 demands one. Strict foreclosure therefore comports with the
23 BFP/Vermillion rationale.

24 Finally, the Plaintiff points to dicta in Vermillion wherein
25 the court noted an exception under state law to its holding where
26 the amount received in the transfer is "so grossly inadequate as

1 to shock the conscience of the court." Vermillion at 570.
2 Plaintiff states that whether the circumstances in the present
3 case are sufficiently shocking to "shock the conscience of the
4 court" is a question of fact which must be taken to trial and
5 cannot be disposed of by way of Defendant's motion on the
6 pleadings.

7 Unlike Vermillion, this case involves a judicial proceeding.
8 The loss of the property for failure to pay a fraction of its
9 value was not merely reviewed by a court of competent
10 jurisdiction, but was in fact the exact result of the court's
11 decree. Oregon's courts are required to consider the
12 circumstances of the parties and the value of the property, and
13 to fashion equitable relief based upon that review. Unlike a
14 sale which produces results that the court could not have
15 contemplated, a final decree of strict foreclosure must be
16 presumed to be consistent with the court's sense of justice.
17 That determination cannot be second guessed by a federal court.
18 In other words, the final decree is *res judicata* on the question
19 of whether the transfer is for "shockingly" low consideration.

20 CONCLUSION

21 No material issue of fact remains to be resolved and, for
22 the foregoing reasons, Defendants' motion for judgment on the

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1 pleadings is granted. Defendants' counsel shall submit a form
2 of judgment consistent with my remarks.

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FRANK R. ALLEY, III
Bankruptcy Judge