

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

RONALD EDWARD REBLIN,

Debtor.

Case No. ST 97-00442
Chapter 7

JAMES W. BOYD, Trustee,

Plaintiff,

Adversary Proceeding
No. 97-88464

v.

COUNTRYWIDE FINANCIAL
CORPORATION and SURE FINANCIAL
CORPORATION,

Defendants.

v.

RAPID RIVER ESTATES and
BERNARD J. SCHEUREN,

Interveners.

NOT FOR PUBLICATION

NOTICE: It is the policy of the United States Bankruptcy Court for the Western District of Michigan that its unpublished bankruptcy opinions and/or orders shall not be cited or used as precedent except to support a claim of res judicata, collateral estoppel or law of the case in any federal court within this Circuit.

OPINION

In June of 1989, Ronald E. Reblin (Reblin or Debtor) and Bernard Schueren formed a partnership known as Rapid River Estates. The purpose of this partnership was to develop certain

real property known as the “Seven Bridges Property.” Patrick and Bernard Schueren (jointly) were to receive a total of 55% of the partnership shares while Reblin was to receive 45%.

On September 15, 1993, Reblin transferred his interest in the Seven Bridges Property to Countrywide Financial Corporation, later known as Sure Financial Corporation (Sure Financial or Defendant) by quit claim deed in exchange for \$78,000. On the same day, Reblin also assigned a 20% interest in Rapid River Estates to Sure Financial.

The Debtor filed Chapter 7 on January 21, 1997. On October 3, 1997, the Trustee filed an adversary proceeding against Sure Financial alleging unlawful transfers by Reblin under the Michigan Uniform Partnership Act, the Michigan Uniform Fraudulent Conveyances Act, 11 U.S.C. §544 and 11 U.S.C. §549.

While the adversary proceeding was pending, the parties agreed to proceed with the sale of the Seven Bridges Property. They submitted the matter to arbitration to determine the claims of the partners against the sale proceeds. The arbitrator determined the capital contributions to be returned to each partner including interest and that the partnership profits should be divided giving Schueren 70% and Reblin 30%.

Sure Financial filed a Motion for Summary Judgment on February 9, 2000. The Trustee filed a Response to the Motion for Summary Judgment and a Cross Motion for Summary Judgment as to Counts I and IV on March 13, 2000. The Court grants the Trustee’s Cross Motion for Summary Judgment as to Counts I and IV and in so doing also grants in part and denies in part Sure Financial’s Motion for Summary Judgment.

Count I

In Count I of the Complaint, the Trustee alleges that Reblin's attempt to convey his interest in the Seven Bridges Property to Sure Financial was void ab initio due to MCLA §449.25(2)(b) which states:

- (2) The incidents of this tenancy are such that:
 - (b) A partner's right in specific partnership property is not assignable except in connection with the assignment of the rights of all the partners in the same property.

The Defendant argues that the Trustee's characterization of the conveyance of Reblin's interest in Rapid River Estates as a transfer is in error since the same statute as cited above clearly states that Reblin can not lawfully transfer his interest by quit claim deed without the agreement of the other partners. Thus, the Debtor's deed was not a valid assignment and can not be an unlawful transfer.

The parties are arguing the same point only from different angles. Most importantly, both agree that the transfer never lawfully took place under MCLA §449.25. Therefore there is no genuine issue as to this material fact and summary judgment can be granted on this Count as provided under Fed. R. Bankr. P. 7056(c).

Count II

In Count II of the Complaint, the Trustee alleges that the assignment to Sure Financial of the 20% interest in the partnership should be nullified. MCLA §449.27(1) states:

- (1) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor as against the other partners in the absence of

agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

In the “Assignment of Interest of Property, Management, Capital Account and Voting Rights,” Reblin outlined the specific partnership rights he intended to convey. These were the rights of managing partner, the rights in the capital account and all voting rights. This Assignment did not convey profits which under the statute were the only rights he could transfer.

Consequently, there is a question of fact as to exactly what Reblin intended to convey. Since capital contributions are not the same as partnership profits, an assignment conveying capital accounts does not necessarily convey partnership profits. In addition, Reblin’s assignment either attempted to convey 20% of his interest in the partnership or 20% of the partnership overall. Since these material facts still exist, the Motion for Summary Judgment as to Count II is denied.

Count III

In Count III the Trustee claims the transfer of the partnership interests was a fraudulent conveyance under the former Michigan Fraudulent Conveyance Act and thus may be set aside under 11 U.S.C. §544(b). First the Trustee argues that Reblin’s assignment of 20% of his interest in the Rapid River Estates partnership in exchange for \$78,000 was not fair consideration. Second, he claims that Reblin, although claiming to convey 20% of the partnership, still exercised control over the same when he executed a Notice of Claim where he asserted his “rightful 45% interest of the

proceeds realized. . .” Along this same line, Reblin failed to record the quit claim deed for his partnership share until almost four years after it was executed.

Other factual disputes under Count III are: whether Reblin was the owner of 50% of the outstanding stock in Sure Financial; whether he transferred his interest in the partnership to satisfy certain regulatory obligations of Sure Financial relating to net worth; whether the transfer of the partnership interest to Sure Financial raised its net worth to \$98,000; and whether he was rendered insolvent by the transfer.

Although Sure Financial attached the Debtor’s Affidavit to its Motion there was no other documentation to support their position. These facts, if proved or disproved would be adjutory to the solvency and fair consideration elements of a fraudulent conveyance action.

Consequently, Sure Financial’s Motion for Summary Judgment is denied as to Count III.

Count IV

Count IV alleges that the quit claim deed conveying the partnership interests was recorded subsequent to the filing of the bankruptcy petition and therefore is avoidable under 11 U.S.C. §549. Sure Financial again states that there was no transfer because specific partnership property is not assignable under MCLA §449.25. Because the conveyance was not a lawful, valid transfer under the statute, it is void. There being no dispute between the parties, the Trustee’s Cross Motion for Summary Judgment and the Defendant’s Motion for Summary Judgment are granted as to Count IV.

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ORDER

At a session of said Court, held in and for said District, at the United States Bankruptcy Court, Federal Building, Grand Rapids, Michigan this 28 day of March, 2000.

PRESENT: HONORABLE JO ANN C. STEVENSON
United States Bankruptcy Judge

NOW THEREFORE IT IS HEREBY ORDERED as follows:

1. The Trustee's Cross Motion for Summary Judgment is GRANTED.

2. The Defendant's Motion for Summary Judgment is GRANTED as to Counts I and IV and DENIED as to Counts II and III.

3. The adjourned pre-trial conference shall be conducted on Friday, April 28, 2000 at 11:00 a.m. in Traverse City, Michigan.

IT IS FURTHER ORDERED that this opinion and order shall be served by first class United States mail, postage prepaid upon A. Brooks Darling, Esq., James W. Boyd, Chapter 7 Trustee and R. Edward Kuhn, Esq.

Dated: March 28, 2000

Honorable Jo Ann C. Stevenson
United States Bankruptcy Judge

Served as ordered:
