UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

In Re: **OSCAR E. GARCIA and HODELIA GARCIA,** **Debtors.**	**Bankruptcy Case No. 10-40937-JDP**
GARY L. RAINSDON, Trustee, **Plaintiff,** **vs.** **ANGEL GARCIA and EDITH GARCIA,** **Defendants.**	**Adv. Proceeding No. 11-8016-JDP**

MEMORANDUM OF DECISION

Appearances:

William Hollifield, HOLLIFIELD LAW OFFICE, Twin Falls, Idaho, Attorney for Plaintiff.

Kent Jensen, Burley, Idaho, Attorney for Defendants.

Introduction

Plaintiff Gary Rainsdon ("Trustee"), trustee in the chapter 7[1] case filed by debtors Oscar and Hodelia Garcia ("Debtors"), commenced this adversary proceeding to avoid Debtors' transfer of legal title to a house to Angel and Edith Garcia ("Defendants").[2] In lieu of a trial, the parties agreed to submit the issues to the Court for resolution based upon stipulated facts and written arguments. Briefing was completed December 9, 2011, and the issue was taken under advisement. After considering the evidence, the parties' submissions, and applicable law, this Memorandum sets forth the Court's findings of fact, conclusions of law, and decision in this action. Rule 7052.

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[1] Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, and all rule references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037.

[2] Debtor Oscar Garcia and Defendant Angel Garcia are brothers.

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Facts[3]

In mid-1998, Defendants and Debtors entered into what they called a "Rent to Own Agreement" ("Agreement") concerning the house owned by Debtors at 114 Oregon Street in Gooding, Idaho (the "Property"). Under the terms of the Agreement, Debtors allowed Defendants to live on the Property in exchange for monthly payments in an amount sufficient to cover Debtors' existing mortgage on the Property, which Defendants agreed to pay directly to Debtors' lender, Zions Bank. Defendants also agreed to pay the real estate taxes and insurance costs, and were responsible for the Property's utilities, which they placed in their names. Debtors agreed that, once Defendants' monthly payments to Zions Bank satisfied Debtors' mortgage, Debtors would give Defendants a warranty

[3] The parties elected to file a stipulation of facts in lieu of participating in a trial. Dkt. No. 28. In addition, the Court had identified other, undisputed facts in an October 3, 2011, Memorandum of Decision on Defendants' Motion for Summary Judgment. Dkt. No. 25. To the extent relevant herein, the Court incorporates the analysis and disposition of the issues in that Memorandum of Decision in this decision.

deed conveying clear title to the Property to them.

While the arrangement documented in the Agreement worked well, for reasons altogether clear in the record, Debtors and Defendants executed a new agreement, entitled "Contract," in October 2008. However, the changes to their existing deal made by the Contract were not significant. The monthly payment was reduced by $3 per month, the Contract stated the mortgage's remaining balance,[4] and Defendants now agreed to be responsible for any late fees on the mortgage or "other expenses" relating to the Property. The Contract specified which utilities were to be paid by Defendants, and Defendants agreed to keep the Property in good repair, comparable to its 2008 condition. Finally, Defendants agreed not to lease, rent, or allow occupancy of the Property by any third party until the mortgage balance was paid off.

The Contract lists Debtors as the Property's owners, and Defendants as its purchasers. Absent from the Contract, however, is the Agreement's explicit recitation that, upon completion of payments, Debtors would

[4] In October 2008, the mortgage balance was $14,402.64.

deliver a warranty deed to Defendants.

Defendants paid off the Zions mortgage in October 2009. However, for unspecified reasons, Debtors did not to deliver the warranty deed transferring the Property's title to Defendants until April 6, 2010. The Property's value in 2010, as determined by the Gooding County Assessor, was $59,616.

Debtors filed a chapter 7 bankruptcy petition on May 27, 2010. Trustee was appointed as case trustee. He commenced this adversary proceeding against Defendants on February 17, 2011. Trustee's complaint challenged the transfer of the Property via the warranty deed by Debtors to Defendants, and included claims to avoid the transfer under §§ 544(a), 544(b), 547(b), 548(a), and Idaho Code § 55-913. Defendants filed a motion for summary judgment, and on October 3, 2011, the Court entered its decision granting summary judgment in favor of Defendants as to each of Trustee's claims except for the preference claim under § 547(b).

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Discussion and Conclusions of Law[5]

Section 547(b), empowers a trustee to avoid pre-petition transfers made by a debtor to a favored creditor, and provides:

> [T]he trustee may avoid any transfer of an interest of the debtor in property—
> (1) to or for the benefit of a creditor;
> (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
> (3) made while the debtor was insolvent;
> (4) made—
> (A) on or within 90 days before the date of the filing of the petition; or
> (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
> (5) that enables such creditor to receive more than such creditor would receive if—
> (A) the case were a case under chapter 7 of this title;
> (B) the transfer had not been made; and
> (C) such creditor received payment of such

[5] The parties stipulated that this Court has subject matter jurisdiction of this action under 28 U.S.C. § 1334, and that this is a core proceeding in which the Court may enter a final judgment, citing 28 U.S.C. § 157(b)(2)(H). Of course, the correct statute constituting this preference action a core proceeding is 28 U.S.C. § 157(b)(2)(F). The Court presumes this a clerical error.

> debt to the extent provided by the provisions of this title.

The elements of an avoidable preference are satisfied in this case as to Debtors' transfer of title to the Property to Defendants.

1. **Debtors transferred an interest in their property.**

Defendants agree there was a transfer of Debtors' property. However, they assert that transfer occurred in 1998, at the time Debtors executed the Agreement and therein transferred an "equitable interest" in the Property to Defendants. But even if Debtors transferred some equitable interest in the Property when the Agreement was executed, Debtors retained legal title to the Property, and did not convey it to Defendants until they gave them the warranty deed on April 6, 2010. *Defendant A. v. Idaho State Bar*, 978 P.2d 222, 224–25 (Idaho 1999) (indicating that a conveyance of real property "requires delivery of the instrument").

Trustee seeks to avoid Debtors' transfer of the Property's legal title, and that property interest was transferred on April 6, 2010.

2. **Debtors' transfer of the Property was to or for the benefit of a creditor.**

Defendants argue they were not Debtors' creditors for the purposes of § 547(b). The Code's definition of "creditor" includes any "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." § 101(10)(A). A claim, in turn, is defined as a:

> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

§ 101(5).

Defendants assert that, because the subject of the parties' agreements[6] was real property, they did not hold a claim against Debtors

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[6] The Agreement and Contract are viewed by the Court as one agreement between the parties. *See Silver Syndicate, Inc. v. Sunshine Mining Co.*, 611 P.2d 1011, 1020 (Idaho 1979) (indicating that, for a second contract to abrogate a former contract, the new contract must either explicitly rescind the former, deal (continued...)

when the warranty deed was given to them. The foundation for that argument is their contention that (1) specific performance is the "optimal remedy" for breach of a real estate purchase and sale agreement; (2) specific performance does not fit within the Code's definition of "claim;" and, (3) therefore, Defendants did not have a claim against Debtors when they transferred their interest in the Property to Defendants.

Even if the "Rent to Own" Agreement is viewed as a real estate purchase and sale agreement, there is no legal right to specific performance in Idaho. *Kessler v. Tortoise Dev., Inc.*, 1 P.3d 292, 298 (Idaho 2000). Rather, specific performance is available only if the equitable considerations surrounding a particular breach of contract warrant the "extraordinary remedy." *See id.* In other words, while specific performance is often warranted in breach of real estate purchase and sale agreement cases, due

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[6](...continued)
with the former contract's subject matter so completely as to raise the inference of substitution, or be so inconsistent with the first contract that the two cannot stand together). The Contract did not completely rescind the Agreement, and the two should be read together. *See id.* ("Those provisions of the earlier contract which are not substantially [revoked by contradiction with a later contract] still subsist and may be enforced.")

to the perceived uniqueness of land, it is by no means a party's only remedy in such cases. *See id.*

Whether to pursue the remedy of specific performance is a choice made by the party seeking a remedy for another's breach of contract. *See id.* (explaining that, where specific performance is granted, it is the party seeking the remedy that bears the burden of showing it is appropriate). While Defendants could have pursued specific performance against Debtors' for their breach of contract, they also could have sought payment of money damages for that breach. Because Defendants had the option of pursuing a "right to payment" against Debtors when they paid off Debtors' mortgage without receiving a warranty deed in return, pursuant to § 101(5)(b), they held a "claim" against Debtors, and, for bankruptcy purposes, were Debtors' creditors at the time of the transfer.

3. <u>Debtors' transfer of the warranty deed was on account of an antecedent debt</u>.

A "debt" is a "liability on a claim." § 101(12). Defendants completed performance of, and satisfied their obligations to Debtors under, the

Agreement and Contract at least six months before Debtors fulfilled their part of the bargain. When Defendants satisfied those obligations, Debtors were legally bound by their agreements to transfer the warranty deed to Defendants. Until Debtors executed and tendered that deed, they owed a "debt" to Defendants. *See In re Pfankuch*, 393 B.R. 18, 25 (Bankr. D. Idaho 2008) (explaining that "[a] debt is incurred when the debtor first becomes legally bound to pay" (quoting *CHG Int'l, Inc. v. Barclays Bank* (*In re CHG Int'l, Inc.*), 897 F.2d 1479, 1486 (9th Cir. 1990), *abrogated on other grounds by Union Bank v. Wolas*, 502 U.S. 151 (1991)). Debtors' April 6, 2010, transfer was, therefore, made on account of an antecedent debt.

4. Debtors transferred the warranty deed to Defendants while Debtors were insolvent and within 90 days of filing their bankruptcy petition.

Debtors transferred the warranty deed to Defendants on April 6, 2010. Debtors filed a chapter 7 bankruptcy petition less than two months later. For preference purposes, a debtor is presumed to be insolvent during the 90 days prior to the bankruptcy filing. § 547(f). Because Debtors delivered the warranty deed to Defendants within 90 days of Debtors'

petition filing, Debtors were presumptively insolvent at that time. That presumption of insolvency has not been rebutted in this case.

5. Debtors' transfer enabled Defendants to receive more than they would have received as creditors in a chapter 7 liquidation.

Had Debtors not transferred the warranty deed to Defendants, Defendants would have held an unsecured claim against Debtors' their bankruptcy case on account of their claim against Debtors for breach of contract. The amount of Debtors' scheduled liabilities filed in this bankruptcy case is far in excess of their assets, and Debtors claimed exemptions in much of the asset-value that would otherwise have been available to creditors upon liquidation.[7] As a result, Defendants would have received no more than a token sum as unsecured creditors through the chapter 7 liquidation process. Because of Debtors' transfer, however, they received the Property, which, at least per the Gooding County Assessor, had a 2010 value of $59,616. Thus, Defendants received more

[7] In their bankruptcy schedules, Debtors listed $232,321.31 in liabilities and $198,814.70 in assets. Debtors claimed unopposed cumulative exemptions of $123,287 in all of their assets.

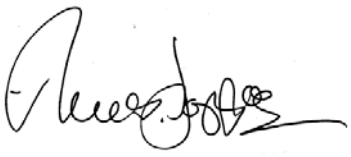
through Debtors' pre-petition transfer than they would have through the liquidation process in Debtors' bankruptcy.

Conclusion

Trustee has satisfied the burden of proving all of the required elements to avoid Debtors' transfer of the warranty deed to Defendants pursuant to § 547(b).[8] Per § 550(a), Trustee may recover the Property's legal title[9] for the benefit of Debtors' bankruptcy estate.

Counsel for the parties shall cooperate in the prompt submission of an approved form of judgment for entry by the Court.

Dated: January 9, 2012



Honorable Jim D. Pappas

[8] Defendants have not argued that any of the § 547(c) defenses to preference avoidance apply in this case.

[9] The Court expresses no opinion regarding whether, after avoidance of the transfer of legal title, Defendants retain some sort of unavoidable equitable interest in the Property.

United States Bankruptcy Judge