

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
JASON BENJAMIN ROLLINS,)	CASE NO. 07-80682 - MHM
)	
Debtor.)	
)	
<hr/>		
HARRY PETTIGREW, TRUSTEE,)	
)	
Plaintiff,)	
v.)	ADVERSARY PROCEEDING
)	NO. 09-6054
B. KEITH ROLLINS and)	
SANDRA P. ROLLINS,)	
)	
Defendants.)	

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This adversary proceeding is before the court on *Plaintiff's Motion for Partial Summary Judgment* (Doc. No. 42) (the "Motion"). Defendants oppose summary judgment. For the reasons set forth below, Plaintiff's Motion is denied.

STATEMENT OF FACTS

Trustee's complaint seeks to avoid transfers by Debtor to Defendants in connection with transfers of two parcels of real property. Trustee's Motion seeks summary judgment as to one of those parcels of real property, residential real estate located at 7020 Morningside Court, Douglasville, Georgia (the "Property"). The facts surrounding the transfer of the Property are set forth in *Trustee's Statement of Undisputed*

Material Facts (Doc. No. 42) and supplemented by the transcript of the deposition of Defendant Keith Rollins conducted by Trustee's attorney (Doc. No. 49).

Defendants are Debtor's mother and father and Debtor is Defendants' only child. In 2003, Defendants purchased the Property and contemporaneously with the purchase, Defendants conveyed (as a gift) a one-third interest in the Property to Debtor. Defendants purchased the Property to serve as the residence for Debtor and his wife and five children. Defendants transferred the one-third interest in the Property to Debtor because, as Debtor would be residing in the Property, he could obtain a homeowner's insurance policy, rather than Defendants obtaining the more limited and expensive coverage of a landlord's insurance policy. Debtor and his family are still living in the Property. Debtor has never paid rent to Defendants.

In 2004, Defendants sold another parcel of real estate, their beach house. On the advice of their accountant, to minimize or eliminate their tax liability on the sale of the beach house, Defendants sought to construct a tax-free exchange and decided to use the Property to set up that tax-free exchange. For no consideration, they transferred their two-thirds interest in the Property to Debtor, so that he held full title to the Property, and then purchased the Property from Debtor for \$400,000. At the time of the transfer of the Property from Debtor to Defendants, the \$313,000 first priority lien was satisfied, and the settlement statement showed that the net sales proceeds of \$76,888.88 (the "Net Proceeds") were paid to the seller, Debtor. The closing attorney issued a check for the Net Proceeds payable to Debtor, which check was deposited in a joint account held by

Debtor and Defendant Keith Rollins. The Net Proceeds, except approximately \$2,000 Debtor used to buy furniture, were used to make improvements to the Property, including a swimming pool, a two-story garage and a finished basement.¹ Trustee asserts that the purchase price *de facto* establishes that the Property's fair market value at the time of the transfer to Defendants was \$400,000.² Trustee seeks to recover the Net Proceeds as a fraudulent conveyance from Debtor to Defendants.

Debtor was an electrical contractor and in 2005 and 2006, his annual income was approximately \$47,000,³ but Debtor's annual income began to decline in 2007. As of the petition date, on Schedule J, Debtor showed his family's monthly living expenses (exclusive of rent; he and his family still reside in the Property rent free) totaled \$7,140. In the past and up until the present, Defendants have ensured that Debtor is able to live a lavish lifestyle well beyond his means. Defendants acquired a beach house near Savannah (which was actually titled in Debtor's name but the down payment was provided by Defendants and the monthly mortgage payments were and are paid by Defendants) for use by Debtor and his family.⁴ In 2006, Debtor purchased a 2005 Boston

¹ The Net Proceeds were insufficient to pay for all the improvements to the Property and Defendants paid additional amounts to complete the improvements.

² In his deposition, Defendant states that the actual fair market value of the property was significantly less than \$400,000, and that the improvements were made to the Property to bring it up to a fair market value of \$400,000.

³ Trustee shows that, as of the petition filing date (December 6, 2007), the applicable median family income for a family of seven was \$87,411. In October 2005, the applicable median family income for a family of seven was \$76,960.

⁴ Defendants live in a separate residence in Savannah.

Whaler boat, which secures a lien held by Wachovia in the amount of \$85,826.

Defendants make the payments for the boat loan and its insurance. Defendants have paid off the vehicles that Debtor has retained *and* pay for the insurance on those vehicles.

Defendants pay the taxes and insurance on the Property.⁵ Defendants pay Debtor's bill for DirectTV. Defendants maintain an account at Sam's Club that Debtor and his family can use to purchase groceries and other goods. Defendants pay school tuition and purchase school clothes for Debtor's children.

Boiled down to its essentials, Defendants gifted Debtor with a residence and then purchased that residence from Debtor for \$400,000, with the implied promise that Debtor and his family could continue to live there, with the improvements, free of rent for the foreseeable future. Trustee seeks to recover from Defendants the Net Proceeds as a fraudulent conveyance because they were used to pay for improvements to the Property rather than going into Debtor's pocket for Debtor to spend.

DISCUSSION

Under 11 U.S.C. §544, a Chapter 7 trustee may rely upon state law to recover a fraudulent transfer. Georgia law, O.C.G.A. § 18-2-74 provides:

- (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

⁵ Defendants satisfied the mortgage on the Property when they acquired it from Debtor, so Defendants make no mortgage payments.

- (1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or
- (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
 - (A) Was engaged or was about to engage in a business or a transaction for which the remaining 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 he or she would incur, debts beyond his or her ability to pay as they became due.

Defendants presented no appraisal evidence that the fair market value of the Property was less than the purchase price at the time of transfer to Defendants. Trustee does not argue that Debtor transferred the Property with an actual intent to hinder, delay or defraud any creditor. The evidence of Debtor's income and liabilities during the two years prior to and at the time of the petition establishes (discounting the substantial financial assistance provided to Debtor and his family by Defendants) that Debtor was insolvent at the time of the transfer of the Property to Defendants. Therefore, the issue that is the focus of the Motion is whether Debtor received reasonably equivalent value in exchange for the transfer of the Property.

At the time of the transfer of the Property from Debtor to Defendants, Debtor and his family had been living in the Property rent-free and had a reasonable expectation that they would continue to live there rent-free for the foreseeable future. Debtor received the Net Proceeds from the transfer and voluntarily deposited them into the joint account from which Debtor and Defendants intended to, and did, fund substantial improvements to the

Property. Debtor's "gift" of the Net Proceeds to Defendants to make improvements to the Property was a reasonable exchange for the privilege of living in the Property without payment of any rent, taxes or insurance and in exchange for enjoying the benefit of the improvements made to the Property. The totality of the circumstances shows that Debtor received reasonably equivalent value for the transfer of the Property. Accordingly, it is hereby

ORDERED that Trustee's motion for partial summary judgment is *denied*.

The Clerk is directed to serve a copy of this Order upon counsel for Plaintiff, counsel for Defendants, and the Chapter 7 Trustee.

IT IS SO ORDERED, this the 29th day of September, 2011.



MARGARET M. MURPHY
UNITED STATES BANKRUPTCY JUDGE