

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: : CASE NO. A02-96069-REB

TERESA J. SHAW, :

Debtor. :

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MARTHA MILLER, in her capacity as Trustee  
for the Chapter 7 Bankruptcy Estate  
of Teresa J. Shaw, :

Plaintiff, :

v. :

JUDY COX, :

Defendant. :

ADVERSARY PROCEEDING  
NO. 04-6251

CHAPTER 7

JUDGE BRIZENDINE

**ORDER DENYING PLAINTIFF-TRUSTEE'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

Before the Court is the motion of Plaintiff-Trustee filed on March 25, 2009 for entry of partial summary judgment in her favor and against Defendant on Plaintiff's complaint as filed herein on June 1, 2004. Based upon a review of the motion, brief, and statement of material facts, as well as Defendant's response thereto, the Court concludes that the Trustee's motion should be denied.

In her motion, Trustee argues that she is entitled to summary judgment on various counts of the complaint in that Debtor acted with actual intent to hinder, delay, and defraud investors in a Ponzi scheme as established in her plea agreement by transferring certain assets to Defendant through Defendant's investments in this scheme. Specifically, Trustee contends she is entitled

to recover the amount of \$987,500.00 in transfers made to Defendant during the one year period between June 11, 2001 and the filing of this case on June 11, 2002 on grounds that same constitute fraudulent transfers under 11 U.S.C. § 548(a)(1)(A) as well as voidable preferential transfers made to an insider of the Debtor under Section 547. Trustee further asserts entitlement to relief under Section 549 regarding certain alleged post-petition transfers in the amount of \$99,800.00, and that she is entitled to a turnover in the total amount of \$1,098,300.00 under Section 542 based on Defendant's possession of said monies. Trustee also argues in the motion that she is entitled to a recovery from Defendant because there is no dispute that Defendant cannot establish facts showing that she provided equivalent value to Debtor and that she acted in good faith under Section 548(c).

In her response, Defendant contends that Trustee has failed to allege facts or present evidence sufficient to support her claims for relief as a matter of law and that she is not, therefore, entitled to summary judgment. In particular, Defendant asserts Plaintiff has not established the transfers in question through competent evidence and fails to account for payments made by Defendant to Plaintiff. Further, Defendant argues that fact issues exist concerning her good faith and the state of her knowledge concerning the transfers made by Debtor. Defendant also challenges the credibility of Debtor's testimony regarding these claims.

Based upon a review of the record and the elements needed to establish an entitlement to a judgment under the statutory provisions cited above, the Court concludes that Trustee is not entitled to the relief requested in the motion.

Summary judgment may be granted pursuant to Fed. R. Civ. P. 56, applicable herein by and through Fed. R. Bankr. P. 7056, if "there is no genuine issue as to any material fact and ...

the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In deciding a motion for summary judgment, the court "is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202, 212 (1986). Further, all reasonable doubts should be resolved in favor of the non-moving party, and "if reasonable minds could differ on any inferences arising from undisputed facts, summary judgment should be denied." *Twiss v. Kury*, 25 F.3d 1551, 1555 (11<sup>th</sup> Cir. 1994), citing *Mercantile Bank & Trust Co. v. Fidelity & Deposit Co.*, 750 F.2d 838, 841 (11<sup>th</sup> Cir. 1985). Presumptions or disputed inferences drawn from a limited factual record cannot support entry of summary judgment under Fed. R. Civ. P. 56(c), applicable herein through Fed. R. Bankr. P. 7056. The court cannot weigh the evidence or choose between competing inferences. See *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11<sup>th</sup> Cir. 1997); *Raney v. Vinson Guard Serv., Inc.*, 120 F.3d 1192, 1196 (11<sup>th</sup> Cir. 1997).<sup>1</sup>

Based upon a review of the complaint, motion, briefs, response, and other materials as submitted, the Court concludes that Defendant has presented sufficient instances of existing issues of material fact in the record to warrant a denial of Trustee's motion. Specifically, with respect to Section 548(c), a genuine dispute exists on the issues of whether Defendant provided

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<sup>1</sup> Once the party moving for summary judgment has identified those materials demonstrating the absence of a genuine issue of material fact, the non-moving party cannot rest on mere denials or conclusory allegations, but must go beyond the pleadings and designate, through proper evidence, specific facts showing the existence of a genuine issue for trial. See Fed. R. Civ. P. 56(e); see also *Matsushita Elec. Ind. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986); *Johnson v. Fleet Finance, Inc.*, 4 F.3d 946, 948-49 (11<sup>th</sup> Cir. 1993); *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112 (11<sup>th</sup> Cir. 1993).

equivalent value as well as her good faith in connection with the subject transfers. There are also issues regarding whether Defendant was a partner with Debtor and qualifies as an insider for purposes of Section 547 and Section 101(31).

Issues of intent, state of mind, knowledge, inquiry notice, or fraud are typically not appropriate for disposition on summary judgment and, therefore, the Court concludes it would not be appropriate to make such finding on the present record. Given the nature of the remedy sought herein, and the difficulty in ascertaining subjective intent and its general unsuitability to summary disposition, the Court must hear Defendant's testimony and observe her demeanor before making any findings concerning allegations concerning Defendant's understanding of the nature of the subject transfers within the meaning of the aforesaid statutory provision.

In sum, upon a review of the record and the argument presented in the briefs, and the other materials presented, the Court concludes Trustee has not established the absence of a genuine issue of material fact on her claims for relief or that she is entitled to summary judgment on her complaint herein as a matter of law, and thus entry of summary judgment in favor of Trustee against Defendant herein is not appropriate.

Accordingly, it is

**ORDERED** that the motion of Plaintiff-Trustee for partial summary judgment be, and hereby is, **denied**.

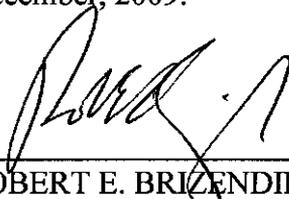
A status conference will be set on this matter by separate written notice.

The Clerk is directed to serve a copy of this Order upon counsel for Plaintiff-Trustee,

counsel for Defendant, and the United States Trustee.

**IT IS SO ORDERED.**

At Atlanta, Georgia this 9<sup>th</sup> day of December, 2009.



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ROBERT E. BRIZENDINE  
UNITED STATES BANKRUPTCY JUDGE