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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	)	CHAPTER 7
	)	
ANTHONY G. CHRISTOU,	)	CASE NO. 06-68251 - MHM
	)	(Jointly administered and consolidated
Debtor.	)	with Case No. 06-68376 - MHM)
	)	
IN RE:	)	CHAPTER 7
	)	
ATLAS MORTGAGE CORPORATION,	)	CASE NO. 06-68376 - MHM
	)	(Jointly administered and consolidated
Debtor.	)	with Case No. 06-68251 - MHM)
JEFFREY K. KERR, Trustee,	)	
Plaintiff,	)	
v.	)	**ADVERSARY PROCEEDING**
	)	**NO. 08-6402**
CRESSATY METALS, INC., CHERIF CRESSATY,	)	
Defendants.	)	

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

The complaint filed by the Chapter 7 Trustee ("Trustee") seeks to avoid and recover transfers from the consolidated bankruptcy estates of Anthony G. Christou and Atlas Mortgage Corporation (together, "Debtor") to Cherif Cressaty and Cressaty Metals (together, "Defendant"). Defendant filed a motion for summary judgment; Trustee opposes. For the reasons set forth below, Defendant's motion for summary judgment is denied.

I. STATEMENT OF FACTS

Anthony G. Christou ("Christou") owned and operated Atlas Mortgage Corporation ("Atlas"). Through Atlas, Christou operated a classic Ponzi scheme whereby money from new investors was used to generate interest and principal paid to prior investors. Christou used promises of short-term, high-interest investments in "bridge loans"[1] to entice a steady flow of new investors to contribute money to his Ponzi scheme.

In addition to operating a "bridge loan" Ponzi scheme, Atlas was also a legitimate mortgage broker. Atlas's legitimate operations were often used to identify new investors for the "bridge loan" Ponzi scheme. Lulled into a false sense of security by prior mortgage transactions, Atlas's customers were easily convinced by an investment opportunity as compelling as Debtor's "bridge loans."

Cherif Cressaty ("Cressaty") was a former customer of Atlas. Cressaty first met Christou in the 1970's when they were introduced through Christou's wife. Cressaty and Christou were, however, only casual acquaintances and not close friends. Starting in 1984 though, and over the course of approximately the next twenty years, Cressaty entered into about six or seven mortgage transactions brokered through Debtor.

In 1997, Cressaty started Cressaty Metals, Inc. ("Cressaty Metals"), a corporation dealing in the sale of steel and steel products. Through Cressaty Metals, Cressaty purchased steel from suppliers and sold it to customers. Payments from customers consisted of both a profit paid to Cressaty and purchase money owed to steel suppliers.

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[1] "Bridge loans" are loans that "are given to people that are buying a new house but have not yet sold their old house and they need to finance that portion in the middle until they sell their old house." (Defendant's Statement of Material Facts, pp. 4-5, ¶ 12).

Cressaty generally had approximately 30 to 60 days from receipt of payment to pay purchase money to suppliers. During this time, purchase money was available for short-term investment.

In 2002, Debtor learned about the 30- to 60-day availability of purchase money received by Defendant. Debtor used the promise of short-term, high-interest "bridge loan" investments to entice Defendant to invest in Debtor's Ponzi scheme. Allegedly lulled into a false sense of security by a history of legitimate mortgage transactions, Defendant agreed to channel purchase money from the sale of steel into Debtor's "bridge loan" investments.

Defendant continued investing in Debtor's "bridge loans" until approximately 2006. From 2002-2006, Defendant claims to have paid $12,545,160.00 to Debtor and to have received only $12,445,218.44. The difference between these two amounts, $101,941.56, is asserted as a net loss by Defendant.

Money from Defendant's investments in "bridge loans" was, at Defendant's instruction, channeled by Debtor directly to third parties such as, for example, Cressaty Metals' suppliers and Cressaty's sister. Defendant's accountant, Ronald Herman ("Herman"), explained that money channeled directly to third parties in this fashion is more difficult to keep track of. Defendant also claims to have received zero interest payments from "bridge loan" investments, explaining that Debtor kept all interest payments and was to set them aside in a retirement account for Cressaty. Herman testified that since Cressaty did not receive interest payments, no interest income was recorded on his tax returns.

On November 20, 2006, Christou was indicted in the Northern District of Georgia on four counts of wire fraud and three counts of money laundering. On February 21, 2008, a jury returned a verdict of guilty against Christou on all seven counts of the indictment.

On February 5, 2009, GlassRatner Advisory & Capital Group, LLC, an accountant retained by Trustee, issued a forensic accounting report analyzing Debtor's transactions ("Report"). The Report concluded that the short-term, high-yield nature of Debtor's "bridge loans" should have created concern for a reasonable person considering lending money to Debtor.

Cressaty has a business degree from the University of Georgia. He worked for Hersch America, Inc., a German steel company, for over twenty years. Cressaty then ran his own company for over a decade. Additionally, Herman testified that he thought of Cressaty as a savvy investor. So, while Herman did caution Cressaty about his "bridge loan" investments, he concluded that Cressaty probably knew what he was doing.

II. CONCLUSIONS OF LAW

Pursuant to FRCP 56(c), incorporated in Bankruptcy Rule 7056, a party moving for summary judgment is entitled to prevail if no genuine issue as to any material fact exists and the moving party is entitled to judgment as a matter of law. The moving party is charged with "the burden of showing the absence of a genuine issue as to any material fact." *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (U.S. 1970) (explaining that any evidence "must be viewed in the light most favorable to the opposing party"); *Clark v. Coats & Clark, Inc.*, 929 F. 2d 604 (11th Cir. 1991).

Trustee pursues recovery of transfers to Defendant under 11 U.S.C. § 544 and the Georgia Uniform Fraudulent Transfer Act ("Georgia UFTA"), O.C.G.A. § 18-2-74, *et seq*. In relevant part, 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: (1) With actual intent to hinder, delay, or defraud any creditor of the debtor. . . .

The language "whether the creditor's claim arose before or after the transfer was made," allows a creditor of a debtor, irrespective of when their claim arose, to bring a claim against a debtor. Any such claim, however, is contingent upon: (1) the existence of a creditor of a debtor at the time of the transfer; and (2) the presence of actual intent on the part of a debtor to hinder, delay, or defraud any creditor.

However, O.C.G.A. §18-2-78 specifies that a transfer "is not voidable under paragraph (1) of subsection (a) of Code section 18-2-74 against a person who took in good faith and for a reasonably equivalent value." To prevail, Defendant must show that he: (1) received the transfers in good faith; and (2) provided reasonably equivalent value in exchange for the transfers.

O.C.G.A. § 18-2-74, is "virtually identical to the corresponding provision of the Bankruptcy Code, 11 U.S.C. § 548." *Warfield v. Byron*, 436 F.3d 551, 558 (5th Cir. Tex. 2006); *Martino v. Edison Worldwide Capital (In re Randy)*, 189 B.R. 425, 443 (Bankr. N.D. Ill. 1995). "The bankruptcy statute and the state statute are analogous in form and substance, and may be analyzed contemporaneously." *Woodard v. Stewart (In re Stewart)*, 280 B.R. 268, 273 (Bankr. M.D. Fla. 2001). Accordingly, case law considering § 548 can be used to advise a consideration of O.C.G.A. § 18-2-74.

III. DISCUSSION

a. Pursuant to O.C.G.A. § 18-2-74, Transfers to Defendant were Fraudulent.

Debtor's schedules reveal greater than $33 million in unsecured debt. This unsecured debt evidences the existence of creditors. Any transfers made during the course of a Ponzi scheme are presumptively made with intent to defraud. *In re Int'l Mgmt. Assocs., LLC*, 2009 Bankr. LEXIS 4240, 7-8 (Bankr. N.D. Ga. Dec. 1, 2009); *In re AFI Holdings*, 525 F. 3d 700 (9th Cir. 2008); *SEC v. Resource Development Intern'l LLC*, 487 F. 3d 295 (5th Cir. 2007); *In re C.F. Foods, L.P.*, 280 B.R. 103 (Bankr. E.D. Penn. 2002); *In re Manhattan Investment Fund*, 310 B.R. 500 (Bankr. S.D.N.Y. 2003). Neither party contests that Debtor ran a Ponzi scheme. Debtor's transfers to Defendant, totaling $12,443,218.44, thus satisfy both elements of O.C.G.A. § 18-2-74.

b. Pursuant to O.C.G.A. § 18-2-78, the Transfer is not Voidable

i. Reasonably Equivalent Value

In relevant part, O.C.G.A. § 18-2-73 provides: "Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or *an antecedent debt is secured or satisfied.*" (emphasis added) Defendant concedes he invested $12,443,218.44 in Debtor's "bridge loan" Ponzi scheme. Pursuant to the terms of

Debtor's loans, this principal amount was to be repaid, with interest, to Defendant. Any amount of repayment to Defendant, including payments of interest, up to $12,443,218.44 would be in satisfaction of antecedent debt. Defendant has thus given reasonably equivalent value of $12,443,218.44.

ii. Good Faith

The good faith of a transferee is determined through an objective consideration of what that transferee knew or should have known. *Brown v. Third Nat'l Bank (In re Sherman)*, 67 F.3d 1348, 1355 (8th Cir. Mo. 1995). Circumstances that would "place a reasonable person on inquiry of a debtor's fraudulent purpose," and where "a diligent inquiry would have discovered the fraudulent purpose," objectively prove a lack of good faith. *See Jobin v. McKay (In re M & L Bus. Mach. Co.)*, 84 F.3d 1330, 1338 (10th Cir. Colo. 1996); *CEP Holdings, Inc. v. Schreier (In re CEP Holdings, Inc)*, 2010 Bankr. LEXIS 1145 (Bankr. N.D. Ga. Jan. 5, 2010). Good faith thus requires not just a lack of actual knowledge of actual fraud, but also a lack of knowledge of circumstances requiring further investigation.

Defendant contends that, like hundreds of others, he was "duped" into participating in Debtor's "bridge loan" transactions. At first glance, Defendant's contention seems compelling. Debtor's Ponzi scheme used money from new investors to fund payments to prior investors and thus required a constant source of investors to survive. Defendant's customers were a constant source of investors. Their money was pumped directly into Debtor's Ponzi scheme and provided necessary funds to allow the scheme to perpetuate itself. Defendant was therefore an ideal mark for Debtor's scheme.

Simply being an attractive target for a fraudulent scheme, however, does not conclusively establish good faith. Defendant's participation in Debtor's scheme is, in fact, particularly suspicious for two reasons. First, as Trustee points out, "[o]ther than Cressaty Metals, Inc. and Cherif Cressaty . . . I identified no other lenders to the Ponzi scheme who failed to document their loans with promissory notes." Second, despite loaning Debtor over $12 million, Defendant claims he collected zero interest payments over the nearly four years in which the loans were occurring. Defendant is an educated and sophisticated businessman. It strains credulity to assume he invested $12 million in good faith, received no notes to document his investments, and was paid zero interest over the course of approximately four years. Failing to document loans to Debtor and not receiving payments of interest does, however, permit Debtor to avoid tangible evidence of the short duration and high returns associated with Debtor's "bridge loans." In other words, Defendant was able to avoid circumstances the expert report explains should have created concern for a reasonable person (*i.e.*, circumstances requiring further investigation).

Here, Defendant has the burden of establishing their good faith. *Jobin v. McKay (In re M & L Bus. Mach. Co.)*, 84 F.3d 1330, 1338 (10th Cir. 1996); *CEP Holdings, Inc. v. Schreier (In re CEP Holdings, Inc)*, 2010 Bankr. LEXIS 1145 (Bankr. N.D. Ga. Jan. 5, 2010). Defendant, however, has put forth no evidence of good faith, save for repeated assertions that he had no reason to distrust Christou since Christou had successfully completed for Cressaty several mortgage loans over the course of seventeen years. While it is possible Cressaty was tricked into what seemed a reasonable investment opportunity, it is highly likely that, so long as the investments continued to fund his retirement, Cressaty intentionally avoided any circumstances that might alert him to their fraudulent nature. Intentional avoidance implies Cressaty had knowledge of either suspicious circumstances or actual fraud. In either case, Cressaty would not have received the Transfers in good faith.

IV. CONCLUSION

In summary judgment, the burden of proof is on the moving party to establish that a genuine issue of material fact is absent. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970); *Clark v. Coats & Clark, Inc.*, 929 F. 2d 604 (11th Cir. 1991). Defendant fails to prove the absence of notes documenting loans with Debtor and receipt of zero interest payments is not an intentional avoidance of knowledge of circumstances requiring further investigation. Accordingly, it is hereby

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

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Plaintiff's attorney, Defendant's attorney, and the Chapter 7 Trustee.

IT IS SO ORDERED, this the 23d day of September, 2010.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE