



IT IS ORDERED as set forth below:

Date: January 9, 2015

W. Homer Drake
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	CASE NUMBERS
	:	
JEFFREY A. MARTIN,	:	BANKRUPTCY CASE
	:	NO. 14-11743-WHD
	:	
Debtors.	:	
_____:	:	
	:	
GRIFFIN E. HOWELL, III, Chapter	:	ADVERSARY PROCEEDING
7 Trustee for the Estate of Jeffrey A. Martin,	:	NO. 14-1061
	:	
Plaintiff.	:	
	:	
v.	:	
	:	
MARTIN FINANCIAL, LLC, MARTIN	:	IN PROCEEDINGS UNDER
FINANCIAL, INC., TMAR LTD, LLC,	:	CHAPTER 7 OF THE
Q-TAN, LLC, AND MARADA, INC.,	:	BANKRUPTCY CODE
	:	
Defendants.	:	

ORDER GRANTING PRELIMINARY INJUNCTION

This matter comes before the Court on a request for a preliminary injunction by

Griffin E. Howell, III (hereinafter the “Trustee”), Chapter 7 Trustee for the estate of Jeffrey A. Martin. The Trustee seeks to enjoin the Defendants from transferring any interest in real property, particularly identified in Exhibit A to the Order granting a temporary injunction in this proceeding (Dkt. No. 7) (hereinafter the “Properties”), that is the subject of the Trustee’s complaint to avoid fraudulent conveyances and recover property for the benefit of the estate. The Court issued a temporary restraining order (Dkt. No. 7) on December 19, 2014, and extended it to January 9, 2015, by Order dated December 30, 2014 (Dkt. No. 15).

On January 7, 2014, the Court held a hearing, in accordance with Rule 65 of the Federal Rules of Civil Procedure (made applicable to these proceedings by means of Rule 7065 of the Federal Rules of Bankruptcy Procedure), to consider the merits of issuing a preliminary injunction in this matter. See FED. R. CIV. P. 65(b)(3). Griffin Howell, III and Lisa Wolgast appeared on behalf of the Trustee. Denise Dotson appeared on behalf of Martin Financial, Inc., TMAR Ltd., LLC and Q-Tan, LLC (hereinafter the “Defendants”). No representative was present for Marada, Inc. or Martin Financial, LLC. Upon conclusion of the hearing, the Court called for a short recess so that it could take the matter under advisement. Thereafter, the Court rendered its ruling. This Order memorializes that ruling.

As stated orally at the hearing, the Court finds that based on the presentations of

counsel:

1. There is a risk of irreparable harm to the estate should the injunction not issue;
2. The threatened injury to the estate outweighs the possibility that the Defendants will be harmed by not being allowed to transfer the Properties¹;
3. The Trustee has established a substantial likelihood of success on the merits of his case.²

¹ The Court also finds that any potential harm to the Defendants is ameliorated by the Court's willingness, should the need arise, to permit relief from the scope of the injunction for particular transactions.

² Unfortunately, "to be effective, the decision to grant an interlocutory injunction must often be made under time constraints that do not allow for the careful deliberation and reflection that accompany a full trial on the merits." Bishop v. Patton, 288 Ga. 600, 604 (Ga. 2011). At the hearing, the Court stated that the Defendants' attorney conceded many of the facts establishing a *prima facie* case of fraudulent conveyance. The Court does not wish to imply that the Defendants' attorney acceded to the substance of the Trustee's case, for she presented various potential defenses casting doubt upon the likelihood of success. More particularly, though, the Court focuses on the concession to the general timeline setting forth significant badges of fraud: the fact that the initial transfers were made, ostensibly within applicable statute of limitations, from the Debtor to an entity controlled by the Debtor shortly after a creditor sued the Debtor for default on a loan guarantee, which eventually resulted in a considerable judgment of \$3.2 million. See Proffer of Lisa Wolgast, Hr'g Tr., 02:13:05-02:13:45, Jan. 7, 2015; Proffer of Denise Dotson, Hr'g Tr., 02:17:35-02:18:50, Jan. 7, 2015; Proffer of Denise Dotson, Hr'g Tr., 02:25:43-02:25:45, Jan. 7, 2015; see also In re Gregg, 2013 WL 3989061, at *10-11 (Bankr. M.D. Ga., July 2, 2013) (stating that, absent an admission by the debtor, actual fraud can only be proved "inferentially by looking at the circumstances under which a transfer was made" and subsequently listing many badges of fraud); see also O.C.G.A. § 18-2-74(b)(1) ("The transfer or obligation was to an insider"); O.C.G.A. § 18-2-74(b)(2)

In re Anderson 2000, Inc., 2007 WL 7142578, at *7 (Bankr. N.D. Ga., Oct 28, 2007).

Accordingly, for the reasons stated in the record at the hearing, the Trustee's request for a Preliminary Injunction is **GRANTED**. The Defendants are enjoined from transferring any of the Properties.³

A bond shall not be required of the Trustee, as the Trustee is exempt from the requirements for posting bond or other security pursuant to Rule 65(c) of the Federal Rules of Civil Procedure. FED. R. CIV. P. 65(c); see also FED. R. BANKR. P. 7065 (“[A] . . . preliminary injunction may be issued on application of a . . . trustee . . . without compliance with Rule 65(c).”). However, should the need arise for the Defendants to dispose of property subject to this injunction, the Court shall entertain motions seeking partial relief from the injunction,⁴ and the Trustee shall be empowered to consent to partial relief from the injunction. Any proceeds from such dispositions shall be held in escrow until further order of the Court.

The Trustee is directed to serve a copy of this Order on the Defendants within two

(“The debtor retained possession or control of the property transferred after the transfer”); O.C.G.A. § 18-2-74(b)(4) (“Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit”); O.C.G.A. § 18-2-74(b)(10) (“The transfer occurred shortly before or shortly after a substantial debt was incurred”).

³ This injunction shall also include proceeds or rents of any of the Properties disposed of prior to this Order.

⁴ Should the need arise, the Court shall, upon request and a showing of cause, consider such a motion on an expedited basis.

(2) business days of entry of the Order and to file a certificate of service with the Court demonstrating compliance.

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