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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

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PERETZ AMIR,

Plaintiff,

-against-

EASTON & ECHTMAN, PC, IRWIN ECHTMAN, DAVID ETKIND and ECHTMAN & ETKIND, LLP,

Defendants.

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Index No. 108711/07

FINDINGS OF FACT and CONCLUSIONS OF LAW

WALTER B. TOLUB, J.:

This matter was tried before the court on March 26, 2008 and March 27, 2008. This constitutes the court's findings of fact and conclusions of law.

FINDINGS OF FACT

Easton and Echtman P.C. was formed in 1972 by the late Henry Easton and Irwin M. Echtman. Mr. Easton died in 1986 and thereafter Mr. Echtman was its sole shareholder. In 1998 the firm had grown to four lawyers and 10 employees.

In February 1998, the "Texaco" case, which gave rise to the fee dispute at issue, was settled resulting in a substantial fee being earned by Easton and Echtman. Entitlement to that fee was claimed by Joel Martin Aurnou and Peretz Amir. The fees were placed in escrow pending the resolution of the dispute.

Shortly after the litigation, Mr. Echtman suffered cardiac arrest and was unable to continue practicing law. The offices of Easton and Echtman essentially stopped working, the staff was disbandened and the firm's only function was collecting its

receivables.

On April 17, 2002, Judge York granted Defendants' motion for summary judgment and dismissed all of Plaintiff's claims for attorney's fees owed.

On June 20, 2002, Easton and Echtman entered into a settlement agreement with Joel Martin Aurnou for the release of $1,000,000 to Easton and Echtman with an additional $800,000 to be released to Eaton and Echtman in January 2003.

Although Mr. Echtman never officially disbanded Easton and Echtman, in early 2003, he established the Law Firm of Erwin M. Echtman P.C.

On December 9, 2003, the Appellate Division reversed April 17, 2002 decision dismissing Plaintiff's claims for attorneys' fees and set the case for trial on the issues of whether Plaintiff was an associate at the Easton Echtman firm and whether he had worked on the "Texaco" case.

In 2005 a trial was held. The defense advanced by Mr. Echtman, as the judgment debtor's sole principal, was that while he had agreed to share the fee, it was not with Peretz Amir, but rather with Sharon Amir, who had no relationship to Echtman or the firm. Mr. Echtman argued that he was not required to pay the counsel fee to Sharon Amir because it would violate the prohibition under DR -2-107 of sharing a fee with someone who was not an associate of his law firm. Mr. Echtman's other defense was that even if it were to be determined that the agreement was to pay Peretz Amir the counsel fee, Peretz

Amir was not entitled to the money because he did not qualify as an associate at the judgement debtor's firm. Following the trial, the court dismissed Peretz Amir's claims for counsel fees.

In 2007, the Appellate Division reversed and judgment was entered in favor of Plaintiff. The Appellate Division calculated the damage of one-third (1/3) of the legal fee of $2,880,000 to be $960,000 with interest from February 4, 1998. The Judgment was entered on May 8, 2007 in the amount of $1,762,454.80 in favor of Peretz Amir and against Easton and Echtman.

Easton and Echtman claims that it is unable to pay Peretz Amir since it is no longer solvent. Mr. Amir claims that the Chase account which held his counsel fees was drained by Mr. Echtman and Easton and Echtman through fraudulent conveyances. This action then ensued.

On September 5, 2007 this court ordered Echtman to show why deposits made in, and then withdrawn from, the account of Easton and Echtman at HSBC in the amount of $1,000,000, which were then deposited in The Chase Manhattan Bank (Chase), and an additional $801,748.87 deposited in, and then withdrawn from, the account of Easton and Echtman at HSBC, and then deposited in Picet Et Cie Geneva (Swiss Bank), should not be turned over to Plaintiff's attorney. This court ordered that, to the extent that the monies were withdrawn from the above listed accounts, the Defendant was to advise the Plaintiff of the amount of the withdrawals, the dates and payees and to explain why each payment was not a fraudulent conveyance.

In response to this court's order, Easton and Echtman only explained a small portion of transactions. For example, Echtman admitted that he lent $145,000 of the $801,748.47 deposited in the Swiss Bank, to one of his son's corporations. Overall Echtman's response to the order issued by this court was incomplete and vague at best. This trial on fraudulent conveyances followed.

CONCLUSIONS OF LAW

"Every conveyance made without fair consideration when the person making it is a defendant in an action for money damages or a judgment in such an action has been docketed against him, is fraudulent as to the plaintiff in that action without regard to the actual intent of the defendant if, after final judgment for the plaintiff, the defendant fails to satisfy the judgment. (Debtor and Creditor Law §273-a; Kalati v. Independent Diamond Brokers, Inc., 209 AD2d 412 [2d dept 1994]). The rule is that a transfer without consideration by one who is then a debtor raises a rebuttable presumption of fraud (Scola v. Morgan, 66 AD2d 288 [1st Dept 1979]).

It is clear from the evidence presented at trial that the conveyances and transfers of Easton and Echtman and Mr. Echtman are fraudulent. Easton and Echtman is a company which, at the time of the initial judgment through the present, essentially stopped functioning other than collecting its receivables. The company had no employees and its office was Mr. Echtman's living room. Even for the collection of its receivables, Echtman engaged another firm, Eachtman and Etkind, LLP. Mr. Echtman also established the Law Firm

of Irwin M. Echtman PC in 2003.

At trial, Mr. Echtman was unable to answer why, inter alia; (1)Easton and Echtman paid a bookkeeping company when it had no employees; (2) why it paid a different company for legal work when all legal work was don't through Irwin M. Echtman PC; (3) why bonuses were being paid to employees that did not work for Easton and Echtman; (4) Mr. Echtman could not remember what his office expenses were; (5) Mr. Echtman claimed that there had been mistaken deposits in Easton and Echtman PC by Irwin Echtman; and (6) Mr. Echtman could not explain how he was drawing such a large salary from Easton and Echtman when no work was being performed. The list goes on and on. Furthermore, Easton and Echtman loaned hundreds of thousands of dollars to third-parties, including Mr. Echtman's son's company of which Mr. Echtman owns a 40% interest. Mr. Echtman also unilaterally transferred company money to his retirement account at Merrill Lynch. There was no consideration for any of these conveyances.

Mr. Echtman's transfers and conveyances were made without fair consideration from the time the underlying action was commenced through the present. Such transfers without the required consideration raises the presumption of fraud (Scola v. Morgan, 66 AD2d 288 [1st Dept 1979]). Mr. Eachtman's testimony and the evidence presented have not overcome the presumption of fraud. Mr. Echtman's actions constitute fraudulent conveyances pursuant to Debtor Creditor Laws §273 and 273-a.

Accordingly, it is held that Mr. Echtman's actions constitute

fraudulent conveyances. Furthermore, Mr. Amir is entitled to $1,762,454.80 plus interest from May 8, 2007 from Mr. Echtman.

This memorandum constitutes the Court's findings of fact and conclusions of law.

Settle Order.

Dated: 8/12/08

HON. WALTER B. TOLUB, J.S.C.