

Cohen Tauber Spievack & Wagner P.C. v Ringel

2022 NY Slip Op 31077(U)

April 1, 2022

Supreme Court, New York County

Docket Number: Index No. 653585/2021

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
 NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

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COHEN TAUBER SPIEVACK & WAGNER P.C.,
 Plaintiff,

INDEX NO. 653585/2021

MOTION DATE 03/22/2022

MOTION SEQ. NO. 001

- v -

BENJAMIN RINGEL, BR LAKEWOOD, LLC, RINGEL
 CHILDREN'S TRUST, YAEL RINGEL, BARUCH DAVID
 SCHREIBER AS CO-TRUSTEE OF, ESTATE OF KLARA
 RINGEL, SUNSET HILL OAKRIDGE PLAZA, LLC, SUNSET
 HILL R, CHILDREN INVESTMENTS, LLC, JOHN DOE,
 JANE DOE, ABC CORPS. 1-10, CHILDREN
 INVESTMENTS, LLC, BCR 12TH CAREY REALTY,
 LLC, BCR GERTNERS REALTY, LLC, ARMSTRONG
 REALTY MANAGEMENT CORP

**DECISION + ORDER ON
 MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

BACKGROUND

Plaintiff commenced this action to set aside several alleged fraudulent transfers by Benjamin Ringel (Ringel). Plaintiff filed suit against Ringel in 2014 and has held a judgment against Ringel from this Court since March 2016, which Ringel has not paid. Instead, plaintiff alleges Ringel has made repeated transfers to hinder, delay, and defraud his numerous creditors, including plaintiff.

PENDING MOTIONS

On February 3, 2022, plaintiff moved for an order pursuant to CPLR §3212 awarding plaintiff partial summary judgment with respect to its' claim for a fraudulent transfer of Ringel's

transfer of forty percent (40%) of his ownership interest in BR Lakewood, LLC to the Ringel Children's Trust in June 2015. The motion was marked submitted on March 23, 2022.

On March 22, 2022, defendants cross-moved for an order amending their answer. The cross-motion was granted on consent pursuant to a stipulation filed by the parties on March 21, 2022.

For the reasons stated below, the motion for partial summary judgment is granted.

ALLEGED FACTS

BR Lakewood, LLC ("BRL") is an entity which Ringel was initially the sole member of, and which owned 50% of BCR Lakewood, LLC ("BCRL") together with his sister Chana, who owns the remaining 50% in BCRL through her wholly controlled entity, CR Lakewood, LLC ("CRL"). In 2011, various properties owned by Ringel's parents' trusts ("NJ Properties"), which his children and Chana's children (collectively, the "Grandchildren") were the beneficiaries of, in the form of a remainder interest, were allegedly improperly transferred to BCRL. The transfers wiped out the Grandchildren's remainder interest in the parents' trusts and, because the transfer would be deemed a gift from the Grandchildren to BCRL, would have incurred hefty gift taxes on BCRL.

Ringel asserts that in order to avoid the gift tax liability, he and his sister transferred 60-80% of their interest in BCRL to the Grandchildren. Ringel states he was subsequently advised by counsel, to transfer 80% of his interest in BRL, which owned 50% of BCRL, to his children.

Ringel acknowledges he made an initial transfer of 40% of his ownership interest in BR Lakewood to his children's trust, the Ringel Children's Trust (the "Trust"), on January 25, 2012 and a second transfer of 40% of his ownership interest in BRL to the Trust in June of 2015. Ringel asserts that there was fair consideration for the transfer despite that the recited

consideration was for “love and affection” because it was intended to compensate his children’s trusts for their transfer of their remainder interest in the NJ Properties to BCRL.

In March 2014, plaintiff filed an action for money damages against Ringel entitled *Cohen Tauber Spievack & Wagner P.C. v. Armstrong Capital LLC and Benjamin Ringel*, Index No. 152531/2014 (the “2014 Action”), seeking compensation for the unpaid balance in legal fees, along with interest and costs. Judgment against both defendants in the 2014 Action was entered on March 1, 2016, in the total amount of \$246,306.68. To date, no part of said judgment had been paid.

Ringel’s second transfer of forty percent (40%) of his ownership interest in BR Lakewood LLC to The Ringel Children’s Trust was as noted above in June of 2015, while the 2014 action was pending. Plaintiff alleges such assignment was without any consideration, asserting that the designated consideration was for “love and affection.”

DISCUSSION

It is well established that CPLR § 3212 authorizes the grant of summary judgment if it can be shown that no issues of material fact exist which require a trial. *Sillman v. Twentieth Century Fox Film Corp.*, 3 N.Y.2d 395, 404 (1957). See also *Andre v. Pomeroy*, 35 N.Y.2d 361, 364 (1974) (*where there is no genuine issue to be resolved at trial, the case should be summarily decided*). To establish entitlement to judgment as a matter of law, the movant must make a *prima facie* showing by tendering sufficient evidence to eliminate any material issues of fact from the case. *Penthouse Terraces, Inc. v. McGrath*, 163 A.D.2d 144 (1st Dep’t 1990). Once the moving party demonstrates its entitlement to summary judgment, the burden then shifts to the opposing party to present facts demonstrating that genuine, triable issues of fact exist, which would preclude the granting of summary judgment. *Zuckerman v. City of New York*, 49 N.Y.2d 557,

562 (1980). In this case, plaintiff has met its *prima facie* burden of establishing the right to partial summary judgment and the burden then shifted to defendant to establish a triable issue of fact, which burden defendant has failed to meet.

The claim at issue on this motion is for fraudulent transfer in 2015. The Legislature amended the Debtor and Creditor Law in 2019, but only for fraudulent transfers that occur after April 4, 2020. See L.2019, c. 580, § 2. Accordingly, the pre-2020 version of the Debtor and Creditor Law applies here.

The relevant section of that law provides:

Conveyances by defendants. 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.

To prevail on a claim under this section, plaintiff must show “(1) that the conveyance was made without fair consideration; (2) that the conveyor is a defendant in an action for money damages or that a judgment in such action has been docketed against him; and (3) that defendant has failed to satisfy the judgment.” *Taylor-Outten v. Taylor*, 248 A.D.2d 934, 935 (4th Dept. 1998). Plaintiff asserts it has shown all these elements because: the conveyances in June 2015 were made without any consideration; Ringel was a defendant in the underlying action in June 2015, as the Complaint against him was filed in March 2014 and remained pending until the entry of judgment in March 2016; and Ringel has paid no part of the judgment.

In opposition, Ringel argues that his affidavit raises a question of fact as to whether the transfer was made for fair consideration.

Plaintiff casts doubt as to the truthfulness of Ringel's explanation for the transfer, and further asserts even if this court accepts Ringel's statement as true, the transfer is without fair consideration as a matter of law.

Fair consideration is given for property, or obligation,

- a. When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or
- b. When such property, or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained.

Debtor Creditor Law § 272. To be fair consideration, the property must be conveyed "in exchange" for the other property or to cancel an antecedent debt. *Gallagher v. Kirschner*, 220 A.D.2d 948, 950 (3d Dept. 1995). In *Gallagher*, an interest in property held by the defendant passed by operation of law to other parties to whom he also owed antecedent debts. The defendants claimed that the satisfaction of this debt constituted "fair consideration" for the passing of the property interest. But the Third Department rejected this contention, as the transfer of the property interest was not "in exchange" for cancelling the debt. *Id.*

Here, Ringel admits he was the sole member BR Lakewood LLC in 2011 when he bought properties worth millions of dollars from his mother with his sister Chana Ringel. Ringel admits that the properties are owned by a company named BCR Lakewood Holdings LLC, which in turn is owned 50% by BR Lakewood, and 50% by CR Lakewood. He admits that "initially" he was the sole member of BR Lakewood, and his sister was the sole member of CR Lakewood. Thus, in 2011, he owned 50% and his sister Chana owned 50% of BCR Lakewood Holdings which in turn owned millions of dollars in property in Lakewood, New Jersey.

Then, in 2012 and 2015, nothing was transferred by Ringel's children to Ringel in exchange for his 80% interest in BR Lakewood, nor did he have any "antecedent debt" to his

children. In exchange for the transfer of his interest, he received nothing. If Klara Ringel's transfer was "improper", then perhaps her grandchildren had a claim against her. No such claim was ever made nor released. Ringel's children had no claim against him, nor did they release any claim. Based on the foregoing, Ringel, has failed to raise a triable issue of fact as to whether there was "fair consideration" for the transfer as required by the Debtor Creditor Law. Nothing was transferred by Ringel's children to Ringel "in exchange" for the 80 percent interest in BR Lakewood LLC that he transferred.

Under the Debtor and Creditor Law, a heavier burden is placed on the defendant to demonstrate fair consideration when the transaction involves family members and was made without any tangible consideration (*see Kitty v Flute*, 310 BR 31, 52-53 [Bank SD NY2004]; *Wall Street Assoc. v Brodsky*, 257 AD2d 526, 528 [1st Dept 1999]). The burden to demonstrate the giving of fair consideration shifts to the intra-family transferee where there is no tangible consideration (*Gavenda v Orleans County*, 2002 U.S. Dist LEXIS 25515, [WD NY 2002]). "Courts view intrafamily transfers made without any signs of tangible consideration as presumptively fraudulent" (*United States v Alfano*, 34 F Supp 2d at 845).

Based on the foregoing, there was no fair consideration and summary judgment is appropriately granted.

CONCLUSION

WHEREFORE it is hereby:

ORDERED that the plaintiff's motion for summary judgment is granted to the extent of granting partial summary judgment in favor of plaintiff and against defendant on the first cause of action as follows; and it is further

ORDERED that the transfer of forty percent (40%) of Benjamin Ringel’s ownership interest in BR Lakewood LLC to The Ringel Children’s Trust was in June of 2015 was a fraudulent transfer and is hereby set aside and reversed; and it is further

ORDERED that the first cause of action is severed, and the balance of the claims are continued; and it is further

ORDERED that the action shall continue as to the second through fourth causes of action; and it is further

ORDERED that counsel are directed to appear for a virtual preliminary conference in on May 18th, 2022, at 11 AM.

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.

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SABRINA KRAUS, J.S.C.

<u>4/1/2022</u> DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE