

Commissioners of the State Ins. Fund v Boemio

2025 NY Slip Op 34065(U)

October 21, 2025

Supreme Court, New York County

Docket Number: Index No. 450326/2021

Judge: Debra A. James

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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. DEBRA A. JAMES PART 59

Justice

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INDEX NO. 450326/2021

COMMISSIONERS OF THE STATE INSURANCE FUND,

MOTION DATE 05/12/2021

Petitioner,

MOTION SEQ. NO. 001

- v -

MICHAEL BOEMIO,

Respondent,

**DECISION + ORDER ON
MOTION**

-and-

MASTERCRAFT MASONRY I, Inc.,

Judgment Debtor.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 37

were read on this motion to/for JUDGMENT - MONEY.

ORDER

Upon the foregoing documents, it is

ORDERED that the affirmative defenses ("objections in point of law") interposed in respondent Michael Boemio's answer are dismissed; and it is further

ORDERED that the petition, pursuant to Debtor Creditor Law § 275, of petitioner Commissioners of the State Insurance Fund seeking a declaration that the 2016 Loan Repayment and the 2016 Distribution, totaling four million and seven hundred thousand dollars (2016 Transfers), by judgment-debtor Mastercraft Masonry

I, Inc, to respondent Michael Boemio were fraudulent and must be set aside is granted; and it is further and hereby

ADJUDGED and DECLARED that such 2016 Transfers are null and void; and it is further

ORDERED that to the extent that it seeks reasonable attorneys' fees, the petition is denied; and it is further

ORDERED that, pursuant to CPLR § 276-a, the Clerk shall enter judgment in favor of petitioner Commissioners of the State Insurance Fund and against respondent Michael Boemio in the amount of \$ 449,548.12, together with interest at the statutory rate per annum from the date of January 23, 2017, until the date of the decision on this petition, and thereafter at the statutory rate, as calculated by the Clerk.

DECISION

Petitioner Commissioners of the State Insurance Fund ("SIF") commenced this special proceeding, pursuant to Debtor Creditor Law §276-a¹, seeking: (1) to set aside and declare null and void

¹Debtor Creditor Law § 273-a, effective to April 3, 2020, (underlining supplied) provides:

In an action or special proceeding brought by a creditor, receiver, trustee in bankruptcy, or assignee for the benefit of creditors to set aside a conveyance by a debtor, where such conveyance is found to have been made by the debtor and received by the transferee with actual intent, as distinguished from intent presumed in law, to hinder, delay or defraud either present or future creditors, in which action or special proceeding the creditor, receiver, trustee in bankruptcy, or assignee for the benefit of creditors shall recover judgment, the justice or surrogate

the transfer of four million and seven hundred thousand dollars (\$4,700,000.00) by the judgment debtor Mastercraft Masonry I, Inc. ("Mastercraft") to the respondent Michael Boemio ("Boemio"); and (2) to obtain judgment in its favor in the amount of the judgment entered in Commissioners of the State Insurance Fund v Mastercraft Masonry I, Inc., Westchester County Supreme Court, Index No. 62961/2017 (underlying action), against Boemio.

In such the underlying action, on December 27, 2017, SIF obtained a judgment against Mastercraft in the amount of \$449,548.25 (the "SIF Judgment"). NYSCEF Doc. No 008.

It is undisputed that, in 2016, Mastercraft transferred \$3.2 million in distributions (the "2016 Distribution") and \$1.5 million in loan repayment (the "2016 Loan Payment," collectively, the "2016 Transfers") to Boemio, who was Mastercraft's sole shareholder and president.

In his answer to the petition, Boemio interposes affirmative defenses, which are technically "objections in point of law", pursuant to CPLR § 404(a). This court must dispose of such

presiding at the trial shall fix the reasonable attorney's fees of the creditor, receiver, trustee in bankruptcy, or assignee for the benefit of creditors in such action or special proceeding, and the creditor, receiver, trustee in bankruptcy, or assignee for the benefit of creditors shall have judgment therefor against the debtor and the transferee who are defendants in addition to the other relief granted by the judgment. The fee so fixed shall be without prejudice to any agreement, express or implied, between the creditor, receiver, trustee in bankruptcy, or assignee for the benefit of creditors and his attorney with respect to the compensation of such attorney.

objections, before determining this special proceeding. See New York & Atlantic Ry Co v Town of Babylon, 48 Misc3d 1219(A), *7 (Supreme Court, Suffolk Co., 2015, Martin, J.) Respondent's "objections of law" are merely boiler plate, conclusory assertions, unsupported by any evidence, and therefore, lacking in merit, they must be dismissed.

SIF alleges that the SIF Judgment has never been satisfied and that the 2016 Transfers constitute fraudulent conveyances under Debtor and Creditor Law ("DCL") §§ 273, 274, 275, and 276, on the basis that such transfers were made while Mastercraft was insolvent or that such transfers rendered Mastercraft insolvent.

DCL § 273 states:

Conveyances by insolvent

Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration.²

"In general, the burden of proving insolvency is on the party challenging the conveyance" Battlefield Freedom Wash, LLC v Song Yan Zhuo, 148 AD3d 969, 971 (2d Dept 2017). "However, when a transfer is made without fair consideration, a presumption of insolvency and fraudulent transfer arises, and the burden shifts to the transferee to rebut that presumption." Ibid.

² The versions of the Debtor Creditor Law §§ 273, et seq, which were effective until April 3, 2020, applies to this proceeding, as each of the subject transactions occurred before April 4, 2020.

SIF met its burden of establishing that Master Craft was solvent before the 2016 Transfers by submitting the application for workers' compensation and employer liability insurance that Mastercraft submitted in December 2013, as well as the audits of the 2015 and 2016 policy periods, which audits were based upon the books and records of Mastercraft, as well as Mastercraft's 2016 tax return. By affidavit of its accountant Andrew Cohen ("Cohen"), petitioner demonstrates that such tax return shows that Master Craft's assets exceeded its liabilities by \$2,349,116, as of January 1, 2016. In such affidavit, Cohen also states that based on such tax return, as of December 31, 2016, Mastercraft's liabilities exceeded its assets by \$728,994. NYSCEF Doc No 005 ¶¶ 10, 13). In addition, in his affidavit, Cohen states that Mastercraft's 2016 tax returns shows that as of January 1, 2016, Mastercraft was indebted to Boemio in the amount of \$1,500,000. Cohen states, further, that as of December 31, 2016, those tax returns show that Mastercraft owed Boemio \$0. Cohen also avers that the 2016 tax return shows that Boemio, the 100% shareholder of Mastercraft, received \$3,200,000 in distributions from Mastercraft over the course of 2016. Thus, SIF comes forward with sufficient evidence to demonstrate that the 2016 Transfers rendered Mastercraft insolvent within the meaning of DCL § 271(1), which states that "A person is insolvent when the present fair salable value of his assets is less than the amount that will be required to pay his probable

liability on his existing debts as they become absolute and matured.”.

Boemio contends that the 2016 Loan Payment was made to satisfy an existing loan that he made to Mastercraft. As proof of such antecedent debt, Boemio produces a promissory note, dated June 3, 2013 (the “2013 Note”), between him and Mastercraft, which note is unsecured. NYSCEF Doc No 029. Boemio correctly argues that “no preference occurs upon the payment of a secured debt” because “[t]he satisfaction of secured debt causes no improvement of position, in that the transfer represents only an exchange of value for the equivalent release of collateral”, In re Northstar Dev. Corp., 465 BR 6, 14 (US Bankr Ct, WD New York, 2012). However, such principle of law is inapplicable here because the 2013 Note is expressly entitled “Unsecured Promissory Note” NYSCEF Doc No 029, p. 1.

As the Chief Judge of the United States Bankruptcy Court, Western New York, states, in pertinent part, in In re Northstar Dev. Corp., id., *13: “As a general rule in New York, for purposes of fraudulent conveyance law, the payment of an unsecured debt to an insider is deemed to be without good faith, and therefore lacking in fair consideration.” In In re Northstar, id., Chief Bankruptcy Court Judge cites Farm Stores, Inc. v School Feeding Corp., 102 AD2d 249, 254-256 (2nd Dept), aff’d, 65 NY2d 1065 (1985), wherein the Appellate Division, Second Department, in unanimously affirming a judgment avoiding a fraudulent conveyance, stated that such transfer was a

preferential transfer[] in derogation of the rights of general creditors [that does] not fulfill the good-faith requirement of the Debtor and Creditor Law

shareholders cannot be considered bona fide purchasers for fair consideration who are immune from liability as transferees of fraudulently conveyed property, as the record reveals that they were aware that they were receiving money from [the debtor] when the claims of the general creditors had not been completely paid and, in fact, they consented to such a distribution of the corporate funds.

Likewise, as stated in CIT Group/Commercial Services, Inc. v 160-09 Jamaica Ave. Ltd. Partnership, 25 AD3d 301, 303 (1st Dept 2006), "transfers to a controlling shareholder, officer or director of an insolvent corporation are deemed to be lacking in good faith and are presumptively fraudulent."

Boemio urges that Mastercraft was not made insolvent by the 2016 Transfers. NYSCEF Doc No 026, ¶¶ 8, 11, 19-20. However, the affidavit of Toni Ann Licatesi ("Licatesi"), the accountant for both Boemio and judgment debtor Mastercraft, which Boemio submits, raises no issue of fact with respect to Mastercraft having been rendered insolvent by the 2016 Transfers. Licatesi references a balance sheet, and states only in conclusory fashion that Mastercraft was already insolvent in 2013, before entry of the underlying judgment. Neither such statements of Licatesi nor his reference to the balance sheets refute the presumption of fraud where the 2016 Transfers rendered Mastercraft insolvent as shown in the tax return filed by Mastercraft.

The 2016 Transfers are likewise fraudulent under DCL § 274, in that such transactions left Mastercraft with unreasonably

small capital to continue its operations while insolvent. See Akodes v Pyatetsky, 127 AD3d 895, 896 (2d Dept 2015).

Accordingly, as Mastercraft made transfers to Boemio, its sole shareholder, without fair consideration while insolvent, the 2016 Transfers are fraudulent conveyances under DCL § 273. See Matter of CIT Group/Commercial Servs., Inc. v 160-09 Jamaica Ave. Ltd. Partnership, 25 AD3d 301 (1st Dept 2006).

Furthermore, as Boemio, Mastercraft's sole shareholder and officer, does not dispute that he was aware the 2016 Transfers would render Mastercraft unable to pay its obligations, the transfers are also fraudulent under DCL § 275. See CIT Group/Commercial Servs., Inc., id, at 302, "Also fraudulent are conveyances made without fair consideration when the conveyer intends or believes that he will incur debts beyond his ability to pay as they mature."

This court denies the petition to the extent that it seeks reasonable attorneys' fees that petitioner incurred in this proceeding, as petitioner came forward with no proof of actual intent to defraud creditors. "The attorney's fees provision of section 276-a is inapplicable where the subject conveyance is

invalid under the constructive fraud provisions of the Debtor and Creditor Law as opposed to the actual fraud provisions thereof", Farm Stores, Inc., supra, p 257.

Debra A. James

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10/21/2025

DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: