

1999, Judge Waldman sentenced the defendant to four months in prison and to, *inter alia*, pay restitution to the three companies victimized in the total amount of \$231,508.00, \$35,000 of which was to be paid within sixty days of sentencing. To date, Mr. Sheehan has paid only \$19,215.08 toward his restitution obligation and the balance currently owed is \$212,192.92.

Mr. Sheehan was the owner, as tenants by the entirety with his wife, Elizabeth V. Sheehan, of a residence located at 855 Meadowood Drive in Warminster, Bucks County, Pennsylvania. The Sheehans originally purchased that property in 1963 and it was unencumbered by a mortgage. In late December, 2001, Elizabeth Sheehan was diagnosed with pancreatic cancer. On July 9, 2002, Mr. Sheehan, by deed, transferred his interest in the Meadowood Drive home to his wife for the stated consideration of \$1.00. On July 17, 2002, Elizabeth Sheehan executed her Last Will and Testament in which she bequeathed all of her tangible, personal property and any insurance policies thereon to her husband, her Vanguard Account to her youngest daughter, Eileen Sheehan, and all the residue of her estate (including the real property) in equal shares to her thirteen children. Elizabeth Sheehan died five days later, on July 22, 2002.

On November 19, 2003, the Government filed this lawsuit under the Federal Debt Collection Procedure Act, 28 U.S.C. §3001, *et. seq.*, the Pennsylvania Uniform Fraudulent Transfers Act, 12

Pa.C.S. §5101, *et. seq.*, and the common law theories of unjust enrichment and constructive trust seeking to set aside Mr. Sheehan's July 9, 2002 transfer as fraudulent.

Summary Judgment Standards

It is recognized that the underlying purpose of summary judgment is to avoid a pointless trial in cases where it is unnecessary and would only cause delay and expense. Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976), *cert. denied*, 429 U.S. 1038, 97 S. Ct. 732, 50 L. Ed. 2d 748 (1977).

Under Fed.R.Civ.P. 56(c), summary judgment is properly rendered:

...if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Stated more succinctly, summary judgment is appropriate only when it is demonstrated that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322-32, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

In deciding a motion for summary judgment, all facts must be viewed and all reasonable inferences must be drawn in favor of the non-moving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986); Oritani Savings & Loan Association v. Fidelity & Deposit

Company of Maryland, 989 F.2d 635, 638 (3d Cir. 1993); Troy Chemical Corp. v. Teamsters Union Local No. 408, 37 F.3d 123, 125-126 (3d Cir. 1994); Arnold Pontiac-GMC, Inc. v. General Motors Corp., 700 F. Supp. 838, 840 (W.D. Pa. 1988). An issue of material fact is said to be genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

Discussion

As noted, the plaintiff Government in this case moves for the entry of summary judgment under, *inter alia*, the Federal Debt Collection Procedure Act and the Pennsylvania Uniform Fraudulent Transfers Act. Similar to one another, these statutes provide the following in relevant part:

28 U.S.C. §3304. Transfer fraudulent as to a debt to the United States

(a) Debt arising before transfer.--Except as provided in section 3307, a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States which arises before the transfer is made or the obligation is incurred if--

(1)(A) the debtor makes the transfer or incurs the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and

(B) the debtor is insolvent at that time or the debtor becomes insolvent as a result of the transfer or obligation; or

(2)(A) the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time;

and

(B) the insider had reasonable cause to believe that the debtor was insolvent.

(b) Transfers without regard to date of judgment.--

(1) Except as provided in section 3307, a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States, whether such debt arises before or after the transfer is made or the obligation is incurred, if the debtor makes the transfer or incurs the obligation--

(A) with actual intent to hinder, delay, or defraud a creditor; or

(B) without receiving a reasonably equivalent value in exchange for the transfer or obligation if the debtor--

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(2) In determining actual intent under paragraph (1), consideration may be given, among other factors, to whether--

(A) the transfer or obligation was to an insider;

(B) the debtor retained possession or control of the property transferred after the transfer;

(C) the transfer or obligation was disclosed or concealed;

(D) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(E) the transfer was of substantially all of the debtor's assets;

(F) the debtor absconded;

(G) the debtor removed or concealed assets;

(H) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(I) the debtor was insolvent or became insolvent

shortly before or shortly after a substantial debt was incurred; and

(J) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(K) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

.....

12 Pa.C.S.A. §5104. Transfers fraudulent as to present and future creditors

(a) General rule.--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; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) Certain factors.--In determining actual intent under subsection (a)(1), consideration may be given, among other factors, to whether:

(1) the transfer or obligation was to an insider;

(2) the debtor retained possession or control of the property transferred after the transfer;

(3) the transfer or obligation was disclosed or concealed;

(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

- (5) the transfer was of substantially all the debtor's assets;
- (6) the debtor absconded;
- (7) the debtor removed or concealed assets;
- (8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and
- (11) the debtor transferred the essential assets of the business to a debtor who transferred the assets to an insider of the debtor.

12 Pa.C.S.A. §5105. Transfers fraudulent as to present creditors

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

"Claim" is defined in both the federal and state acts to mean

a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

28 U.S.C. §3301(3); 12 Pa.C.S.A. §5101(b).

Likewise, "creditor" is defined in both statutes to mean "a person who has a claim." 28 U.S.C. §3101(4); 12 Pa.C.S.A. §5101(b). Under both the federal and state laws, "a transfer is

made-

with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee...

28 U.S.C. §3305(1); 12 Pa.C.S.A. §5106(1).

The federal statute only defines "insider", and in this regard 28 U.S.C. §3301(5) states in relevant part that an "insider" includes--

(A) if the debtor is an individual--

- (i) a relative of the debtor or of a general partner of the debtor;
- (ii) a partnership in which the debtor is a general partner;
- (iii) a general partner in a partnership described in clause (ii); or
- (iv) a corporation of which the debtor is a director, officer, or person in control;

The Government here claims that by the July 9, 2002 deed transfer to his wife, Mr. Sheehan actually intended to defraud, delay and hinder its collection of his restitution debt and that, even if this Court should find otherwise, the transfer should be set aside as fraudulent because it was not made in exchange for reasonable consideration. As the above passages make clear, in order to prevail, the Government must prove *either* that the transfer from Mr. Sheehan to his now deceased wife was made with

"actual intent to hinder, delay or defraud any creditor of the debtor" (i.e., actual fraud) or that it was made "without [Mr. Sheehan] receiving a reasonably equivalent value in exchange for the transfer or obligation," and that Mr. Sheehan was either "insolvent at the time or ... became insolvent as a result of the transfer..." (constructive fraud). See, e.g., 28 U.S.C. §3304(a)(1)(A) and (B); 12 Pa.C.S.A. §5104(a); In re Blatstein, 192 F.3d 88, 96 (3d Cir. 1999).

In this case, there is no dispute as to when the judgment debt against Mr. Sheehan attached--this took place on the date of his sentencing before Judge Waldman on August 26, 1999. The Department of Justice thereafter recorded a lien in the Office of the Bucks County Prothonotary on November 3, 1999. (Exhibit F to Plaintiff's Motion for Summary Judgment). Both events took place more than two years before the transfer and hence we need not determine whether Mr. Sheehan acted with actual intent to defraud the government.¹

Turning then to the requirements imposed under 28 U.S.C. §3304(a)(1) and 12 Pa.C.S.A. §5105, we note that the consideration or value which Mr. Sheehan received in return for his transfer of his interest in the Meadowood Drive property was

¹ Indeed, Sheehan contends that he transferred his interest in the marital home to his wife at her suggestion because he had been mishandling their financial affairs since his heart attack one year earlier.

one dollar (\$1.00). Under 28 U.S.C. §3303(b)²,

For the purposes of sections 3304 and 3307, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of such interest upon default under a mortgage, deed of trust, or security agreement.

Given that the property was estimated to be worth \$175,000 at the time of Mrs. Sheehan's death some two weeks after the transfer, we find that Mr. Sheehan clearly did not receive an equivalent value for the transfer. See Also, U.S. v. Moore, 156 F.Supp.2d 238, 245-246 (D.Conn. 2001).

We next consider whether Mr. Sheehan was insolvent at the time of the transfer or was rendered insolvent thereby.

Again, the state and federal statutes echo one another with respect to the definition of insolvency. Indeed with slight variations, 28 U.S.C. §3302 and 12 Pa.C.S.A. §5102 provide in

² Again, the Pennsylvania statute closely parallels the language of the Federal Act:

For the purposes of sections 5104(a)(2) (relating to transfers fraudulent as to present and future creditors) and 5105 (relating to transfers fraudulent as to present creditors), a person gives reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or the exercise of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust or security agreement or pursuant to a regularly conducted, noncollusive execution sale.

12 Pa.C.S.A. §5103(b).

substance:

(a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets.

(b) A debtor who is generally not paying the debtor's debts as they become due is presumed to be insolvent.

(c) A partnership is insolvent under subsection (a) if the sum of the partnership's debts is greater than the aggregate, at a fair valuation of all of the partnership's assets and the sum of the excess of the value of each general partner's non-partnership assets over the partner's non-partnership debts.

(d) Assets under this section do not include property that has been transferred, concealed or removed with intent to hinder, delay or defraud creditors or that has been transferred in a manner making the transfer fraudulent or avoidable under this chapter.

(e) Debts under this section do not include an obligation to the extent such obligation is secured by a valid lien on property of the debtor not included as an asset.

Here, Mr. Sheehan testified that his current sources of income are his social security and retirement checks, which total \$1,700 per month. At the time that he went off of probation and while his wife was still living, their combined incomes were \$2,281 per month. Although he did not specify what his monthly expenses were, Mr. Sheehan testified that at present, he must pay bills for, *inter alia*, gas, water, sewer, and homeowner's insurance and that by the end of each month, he is "running out of money" and that his expenses are "more than what [he] brings in." (Exhibit I to Plaintiff's Motion for Summary Judgment, at pp. 4-7). According to his answers to Plaintiff's Request for Admissions, at the time he transferred his interest in the

Meadowood Drive home to his wife, Mr. Sheehan had no other assets of significant value. (Exhibit C to Plaintiff's Motion for Summary Judgment at p.6). Thus, we find that, by his own admissions, Mr. Sheehan was rendered insolvent by the July 9, 2002 transfer and that by making that transfer, he constructively defrauded the Government.

We turn now to determine an appropriate remedy. Again, the Federal and State fraudulent transfers statutes provide the following in relevant part:

28 U.S.C. §3306. Remedies of the United States

(a) In general.--In an action or proceeding under this subchapter for relief against a transfer or obligation, the United States, subject to section 3307 and to applicable principles of equity and in accordance with the Federal Rules of Civil Procedure, may obtain--

- (1) avoidance of the transfer or obligation to the extent necessary to satisfy the debt to the United States;
- (2) a remedy under this chapter against the asset transferred or other property of the transferee; or
- (3) any other relief the circumstances may require.

12 Pa.C.S.A. §5107. Remedies of creditors

(a) Available remedies. In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in sections 5108 (relating to defenses, liability and protection of transferee) and 5109 (relating to extinguishment of cause of action), may obtain:

- (1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim.
- (2) An attachment or other provisional remedy against

the asset transferred or other property of the transferee in accordance with the procedure prescribed by applicable law.

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(i) an injunction against further disposition by the debtor or a transferee or both, of the asset transferred or of other property;

(ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) any other relief the circumstances may require.

(b) Execution.--If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, subject to the limitations of sections 5108 and 5109, may levy execution on the asset transferred or its proceeds.

The Government seeks to set the conveyance from Mr. Sheehan to his wife aside and an order directing Mr. Sheehan to execute and an order directing "the defendants to execute all documents necessary to re-establish ownership rights in the marital residence as they existed prior to July 9, 2002." In response, Defendants argue that the relief sought by the Government is not an appropriate remedy because the federal lien encumbered only Mr. Sheehan's one-half interest in the property and not the interest that Mrs. Sheehan willed to her children. Following careful consideration, we cannot agree with Defendants' position.

It is true that in United States v. Craft, 535 U.S. 274, 122 S.Ct. 1414, 152 L.Ed.2d 437 (2002), the Supreme Court ruled that

property held as tenants by the entirety constitutes property or "rights to property within the meaning of 26 U.S.C. §6321 such that a federal tax lien could attach to the debtor's interest in entirety property."³ Although the Supreme Court in that case construed Michigan law governing a tenancy by the entirety, as Judge O'Neill pointed out very recently in Popky v. United States, 326 F.Supp.2d 594 (E.D.Pa. 2004), "the rights possessed by a Pennsylvania tenant by the entirety closely follow those held by a Michigan tenant and importantly also include the three property rights deemed essential in Craft." Popky, at 599. Thus, Craft applies with equal force where a Pennsylvania tenant by the entirety is concerned.

While significant, neither Craft nor Popky addressed the specific issue which Defendants raise here--whether by virtue of the Government's lien against the real estate, the late Mrs. Sheehan was capable of thus willing her interest (which Defendants assert was one-half) to her thirteen children. A tenancy by the entirety is a unique form of co-ownership grounded in the common law concept that husband and wife were but one legal entity; the tenancy exists when property is held jointly by a husband and wife. Clingerman v. Sadowski, 513 Pa.

³ Under 18 U.S.C. §3613(c), an order of restitution such as is at issue in this case, "...is a lien in favor of the United States on all property and rights to property of the person fined as if the liability of the person fined were a liability for a tax assessed under the Internal Revenue Code of 1986..."

179, 519 A.2d 378, 380 (1986). The essential characteristics of the tenancy are that each spouse is seised of the whole or the entirety and not a divisible part thereof, that neither spouse may independently appropriate property to his or her own use to the exclusion of the other, that neither spouse may independently sever the estate by conveying part of the property away and the right of survivorship whereby upon the death of one spouse the other becomes the sole owner of the entireties property. Clingerman, 519 A.2d at 381.

Furthermore, once created, a tenancy by the entirety may only be severed in certain limited circumstances, death of one of the spouses obviously being one such circumstance. During the parties' lifetimes, it may be severed by a joint conveyance of the estate, divorce, or mutual agreement either express or implied. Id., citing In re Brose's Estate, 416 Pa. 386, 206 A.2d 301 (1965), In re Pritchard, 359 Pa. 315, 59 A.2d 101 (1948) and Biehl v. Martin, 236 Pa. 519, 84 A. 953 (1912). See Also, In re Estate of Livingston, 531 Pa. 308, 315, 612 A.2d 976, 980 (1992).⁴

⁴ There being no evidence that the Sheehans were divorced or that they jointly conveyed the estate, the question arguably arises whether or not they impliedly intended and agreed to sever the estate by Mr. Sheehan's conveyance to Mrs. Sheehan three weeks before her death.

Mr. Sheehan's testimony on this point was unequivocal: the only intention and goal behind his transfer of his interest in the property to his wife was to facilitate her paying the bills and otherwise managing their financial affairs given his mental

We find that Defendants' argument flies in the face of the well-settled law of Pennsylvania given that one of the hallmarks of a tenancy by the entirety is survivorship. Indeed, were we to accept Defendants' argument, any spouse could simply will away his or her share in entirety property to anyone they wished in exactly the same manner as could a co-tenant who held property with another in a tenancy in common. As the above caselaw makes clear, a tenancy by the entirety is a separate and distinct form of ownership unique to married couples. There being no evidence that the Sheehans' terminated their entirety estate prior to Mrs. Sheehan's death, the tenancy remains intact and Mr. Sheehan, as the surviving spouse, became the sole owner of the real estate upon his wife's passing. We therefore find that the remedy requested by the Government is an appropriate one pursuant to both 28 U.S.C. §3306(a) and 12 Pa.C.S.A. §5107(a).

An order follows.

state following his heart attack. The two Sheehan children who were named as Executors of their mother's estate both testified that they did not know why the transfer took place. We thus find no evidence to conclude that the parties had mutually agreed by implication to sever their entirety estate by virtue of the July 9, 2002 conveyance.

