

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE:	:	
	:	CIVIL ACTION NO.
C.F. FOODS, INC.,	:	
DEBTOR,	:	
_____	:	
	:	
ARTHUR P. LIEBERSOHN, TRUSTEE	:	
PLAINTIFF,	:	
	:	
v.	:	
	:	
FIRST BAPTIST CHURCH OF	:	01-2849
COLLINGDALE ET AL.	:	
Defendants.	:	

M E M O R A N D U M

Newcomer, S.J.

December , 2001

The parties' cross motions for summary judgment are now before the Court.

I. BACKGROUND

On January 1, 1994, Edward Stillman and David Burry formed C.F. Foods, the debtor in this action. C.F. Foods had a stated purpose of engaging in the purchase, sale, and distribution of wholesale candies from large candy manufacturers to local purchasers such as supermarkets, candy stores, and other retailers.

Following C.F. Foods formation, Burry solicited investors, and over time, attracted over \$25 million in investments. However, to attract these investors, Burry falsified sales records, balance sheets, income statements, and

accounts receivable listings. Further, the investors were paid back through a "Ponzi" scheme where proceeds from new investors were given to old investors creating an illusion of legitimate profit making. This scheme ultimately caused C.F. Foods' investors to incur substantial losses.

Between 1996 and 1999, C.F. Foods transferred sums of money to the Defendants: First Baptist Church of Collingdale ("Collingdale Church"), First Baptist Church of Ogden ("Ogden Church") and Morning Cheer Inc. operating under the name Sandy Cove Ministries ("Morning Cheer"). Specifically, Collingdale received the following payments: 1) \$3000 on December 4, 1996; 2) \$7000 on March 17, 1997; and 3) \$25,000 on September 9, 1998. Ogden Church received the following payments: 1) \$1200 on July 28, 1997; 2) \$3600 on January 30, 1998; 3) \$5400 on April 13, 1998; 4) \$5400 on July 2, 1998; 5) \$9600 on October 19, 1998; and 6) \$7000 on February 15, 1999.¹ Morning Cheer also received two payments: 1) \$22,000 on August 26, 1998; and 2) \$12,000 on December 19, 1998.

On May 6, 1999, Commerce Bank/Pennsylvania, N.A. and PNC Bank National Association filed an involuntary petition for relief under Chapter 7 of the Bankruptcy Code against C.F. Foods. On August 9, 1999, Arthur P. Liebersohn was appointed as interim

¹Ogden Church repaid the Trustee \$3000 on January 23, 2000.

Trustee (the "Trustee").

Between August 9, 2000 and April 30, 2001, the Trustee commenced adversary proceedings against the Defendants. To commence these proceedings, the Trustee filed three separate complaints to recover money and/or property pursuant to 11 U.S.C. §§ 544(b), 548.² These complaints allege that C.F. Foods'

²The relevant part of § 544(b) provides:

(b)(1) . . .the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title.

Further, the relevant part of § 548 provides in relevant part:

(a)(1) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily--

(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or
(B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any

payments to the Defendants were made: 1) while the debtor was insolvent; 2) for less than reasonably equivalent value in exchange for such transfers; and 3) while the debtor intended to incur debts beyond its ability to pay as such debts matured and for less than reasonably equivalent value.

Then, between September 18, 2000 and June 4, 2001, Defendants answered the complaints. Each Answer admits that the Defendants received the payments listed earlier, and received them for less than reasonably equivalent value within the four year period preceding the filing of Debtor's involuntary petition. Each Answer also raises the following defenses: 1) the Trustee failed to meet the requirements of 11 U.S.C. § 548; 2) the Trustee failed to meet the requirements of 11 U.S.C. §544(b); 3) §§ 548 and 544(b) violate the Religious Freedom Restoration Act of 1993; 4) §§ 548 and 544(b) are unconstitutional exercises of Congress' power under Article I, § 8 of the United States Constitution; 5) §§ 548 and 544(b) impermissibly infringe upon the Defendants' First Amendment religious liberty rights; 7) §§ 548 and 544(b) violate the Fifth Amendment guarantee that private property shall not be taken for public use without with out just

property remaining with the debtor was an unreasonably small capital; or (III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured.

compensation; 8) the Trustee's claim under § 544(b) fails because the Pennsylvania Uniform Fraudulent Transfer Act violates Pennsylvania's constitutional protection of religious liberty; and 9) the Trustee's claim under § 544(b) fails because the Pennsylvania Uniform Fraudulent Transfer Act violates Pennsylvania's constitutional guarantee that private property shall not be taken for public use without just compensation.

The parties' motions for summary judgment are before the Court because this Court previously granted the Defendants' respective motions for withdrawal of reference. Thus, the Court now turns to those motions.

II. DISCUSSION

A. Legal Standard

The standards by which a court decides a summary judgment motion do not change when the parties file cross motions. Southeastern Pa. Transit Auth. v. Pennsylvania Pub. Util. Comm'n, 826 F. Supp. 1506, 1512 (E.D. Pa. 1993). Summary judgment is appropriate "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." Fed. R. Civ. P. 56(c) (1994). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317,

323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. Id. at 324.

A genuine issue is one in which 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 (1986). When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the non-movant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

B. The Religious Freedom Restoration Act

Defendants argue that the Trustee efforts pursuant to sections 544(b) and 548 violate the Religious Freedom Restoration Act (RFRA). RFRA, 42 U.S.C. § 2000bb-1, provides in relevant part:

(a) In general
Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

(b) Exception
Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person--

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

In City of Boerne v. Flores, 521 U.S. 507 (1997), the Supreme Court held that RFRA exceeds Congress' enforcement powers under section 5 of the Fourteenth Amendment. See Alamo v. Clay, 137 F.3d 1366, 1368 (D.C.Cir. 1998). However, Defendants contend that RFRA is still applicable to sections 548 and 544(b) of the Bankruptcy Code, and that application of those sections to Defendants violate RFRA. However, the Court will first determine whether RFRA even provides the Defendants with a possible defense here.

The first inquiry under RFRA is whether the statute in question substantially burdens a person's religious practice. An adherent's free exercise of his or her religion is substantially burdened by a statute that either: (1) requires the adherent to refrain from engaging in a practice important to his or her religion, see Hobbie v. Unemployment Appeals Comm'n, 480 U.S. 136, 140-41 (1987); or (2) forces the adherent to choose between following a particular religious practice or accepting the

statute's benefits. See Sherbert v. Verner, 374 U.S. 398, 404 (1963). Thus, Government action substantially burdens religious practices only if it significantly inhibits or constrains "conduct or expression that manifests some central tenet" of an individual's beliefs or "meaningfully" curtails the individual's ability to express adherence to his or her faith; or denies an individual reasonable opportunities to engage in those activities that are fundamental to that individual's religion. Klemka v. Nichols, 943 F. Supp. 470, 474 (M.D.Pa. Oct 16, 1996) (quoting Werner v. McCotter, 49 F.3d 1476, 1480 (10th Cir. 1995); see also Austin v. Guarini, 1997 WL 47566 at *6 (E.D.Pa. Feb 03, 1997) (citing Werner).

Here, Defendants assert that application of sections 548 and 544(b) against them would substantially burden their fundraising practices. They claim that if forced to repay the Trustee, they will have to "curtail significantly their religious activities and divert their supporters' regular donations to return those donations to the trustee." (Defendants' Memorandum of Law in Support of Their Motion for Summary Judgment at 17). Further, Defendants claim that religious organizations have no means to ensure the financial viability of their donors, and thus the only way for them to avoid liability under section 548 and 544(b) is to stop raising funds, or to raise funds but refuse to

use them for four years.³ Accordingly, Defendants contend that if they, and other religious institutions, cannot obtain donations, they will “find it difficult to erect buildings, buy vans and support missionaries.” (Defendants’ Memorandum of Law is Support of Their Motion for Summary Judgment at 19).

However, these arguments are unsupported by any evidence, and are simply counsel’s assertions. As such, they are insufficient. Even if true, Defendants fail to demonstrate that any of their asserted burdens would inhibit or constrain one of their central tenets, restrict their ability to express adherence to their faith or deny them reasonable opportunities to engage in religious activities. Additionally, nothing in sections 541 or 548 prevents a debtor from donating, or prevents a religious organization from accepting donations. Indeed, in this case, the record fails to indicate that Defendants are prevented from accepting donations. In fact, the record shows the opposite as Defendants all accepted money from C.F. Foods despite the existence of sections 544(b) and 548. Because the Court finds that Defendants have failed to show that sections 544 and 548 substantially burden their religious practices, the Court

³Defendants claim that religious organizations would have to hold funds for four years because Pennsylvania’s Uniform Fraudulent Transfer Act, 12 Pa. Cons. Stat. § 5101 et seq., the “applicable law” here within the meaning of 11 U.S.C. § 544(b)(1), has a four year statute of limitations. 12 Pa. Cons. Stat. § 5109.

concludes that those sections do not violate RFRA in this case.

C. Article I, Section 8 of the Constitution

The Defendants also argue that sections 544(b) and 548 are unconstitutional exercises of Congress' powers to establish bankruptcy laws. Specifically, Defendants assert that Article I, section 8 of the United States Constitution does not allow Congress to permit a trustee to "undo every charitable donation made by C.F. Foods within four years of its bankruptcy petition. . . ." (Defendants' Memorandum of Law in Support of Their Motion for Summary Judgment at 28).

Article I of the United States Constitution gives Congress the power to establish "uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. art. I, § 8, cl. 4. There is a presumption of constitutionality of an act of Congress. O'Gorman & Young, Inc. v. Hartford Insurance Company, 282 U.S. 251, 257-58 (1931). Thus, the party challenging the constitutionality of a statute bears the burden of demonstrating its unconstitutionality. Lujan v. G & G Fire Sprinklers, Inc., 121 S.Ct. 1446, 1452 (2001).

The Supreme Court has explained that Congress' authority under the Bankruptcy Clause extends:

. . . to all cases where the law causes to be distributed the property of the debtor among his creditors; this is its least limit. Its greatest, is a discharge of the debtor from his contracts. And all intermediate legislation, affecting substance and form, but tending to further the great end of the

subject--distribution and discharge--are in the competency and discretion of Congress.

Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555, 588 n. 18 (1935) (quoting In re Klein reported in a note to Nelson v. Carland, 42 U.S. 265, 281). Further, the Constitution gives Congress the power "make all laws which shall be necessary and proper for carrying into Execution" its bankruptcy power. U.S. Const. art. I, § 8, cl. 18.

Here, Defendants have failed to demonstrate that sections 544(b) and 548 are not necessary and proper legislative exercises of congressional authority under the Bankruptcy Clause. The purpose of these sections and Pennsylvania's Uniform Fraudulent Transfer Act ("PUFTA") is to protect a debtor's unsecured creditors from unfair reductions in the debtor's estate where creditors usually look for security. E.g., In re Randy, 189 B.R. 425, 444 (Bankr. N.D.Ill. 1995). Thus, these enactments further the distribution and discharge of C.F. Foods' property and debts, and because Defendants have not shown otherwise, the Court does not find that sections 544(b) and 548 are unconstitutional exercises of congressional authority.

D. First Amendment and Religious Liberty

Defendants contend that sections 544(b) and 548 violate the their religious freedom under the First Amendment. The Free Exercise Clause of the First Amendment provides that "Congress shall make no law. . .prohibiting the free exercise [of

religion]. . ." U.S. Const. amend. I. The protections of the Free Exercise Clause pertain "if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 532 (1993).

For years, the Supreme Court appeared to require the government to make religious exemptions from neutral, generally applicable laws that have the incidental effect of substantially burdening religious conduct. Fraternal Order of Police Newark Lodge No. 12 v. City of Newark, 170 F.3d 359, 361 (3d Cir. 1999 (citing as an example Wisconsin v. Yoder, 406 U.S. 205, 220 (1972))). In these cases, the Court applied "strict scrutiny" when a law or regulation imposed a substantial burden on religious activity. Lodge No. 12, 170 F.3d at 361 (citing Thomas v. Review Bd. of Indiana Employment Security Div., 450 U.S. 707, 718 (1981)).

However, the legal landscape changed dramatically in 1990 when the Supreme Court handed down its decision in Employment Div., Dep't of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990). Lodge No. 12, 170 F.3d at 361. Smith concerned two individuals who were denied state unemployment compensation benefits after being fired from their jobs for ingesting peyote, a controlled substance under Oregon law. Smith, 494 U.S. at 874.

The Court declined to apply strict scrutiny, and concluded that "the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." Smith, 494 U.S. at 879.

Nevertheless, the Smith Court did not overrule its prior free exercise decisions, but instead distinguished them. Lodge No. 12, 170 F.3d at 363 (citing Smith, 494 U.S. at 881-84 n. 3). Here, Defendants contend that sections 548 and 544(b) are not subject to the holding in Smith, and should be subject to strict scrutiny, because those sections are not neutral laws of general application. The Court disagrees. Sections 548 and 544(b) are not directed at any religious practice or at any religion, nor do they prohibit any activity. Instead, both statutes apply equally to any entity. 11 U.S.C. §§ 544(b), 548; see also, e.g., In re Newman, 183 B.R. 239, 250 (Bankr. D.Kan. 1995) ("11 U.S.C. § 548(a) allows the case trustee to recover any transfer which meets its criteria, not because the transfer was religiously motivated or the result of following a religious practice. Section 548 makes no reference whatsoever to religious practice. It is neutral on its face: It is not directed at religious practice. While the law may, as this case demonstrates, affect religious practice, any effect is purely

incidental to the general bankruptcy practice of equal distribution to creditors").

Even if this Court were to apply strict scrutiny, as discussed in part II.A. above, Defendants have failed to demonstrate that sections 544(b) and 548 burden their religious practices. For these reasons, the Court does not find that Defendants First Amendment rights have been violated here.⁴

E. PUFTA and Pennsylvania's Constitutional Protection of Religious Liberty

In this case, the Trustee's 544(b) claim is predicated upon PUFTA as PUFTA is the "applicable law" within the meaning of section 544(b). Accordingly, Defendants contend that PUFTA violates Pennsylvania's constitutional protection of religious liberty in this case. Specifically, Defendants claim that the Trustee's power to take Defendants' property hampers their right to worship God because that power causes the diversion of monies intended to further Defendants' religious faith.

Article I, § 3 of the Pennsylvania Constitution

⁴In their Answers, Defendants claim that sections 548 and 544(b) violate the Fifth Amendment guarantee that private property shall not be taken for public use without with out just compensation. The Trustee moved for summary judgment against this defense, but in their Reply, Defendants indicate that they "choose not to respond to the Trustee's discussion of this issue." (Defendants' Reply to Trustee's Motion for Summary Judgment at 17). The Court has reviewed the Trustee's brief in support of his Motion for Summary Judgment on this issue, and the relevant case law, and finds that sections 548 and 544(b) do not violate the Takings Clause.

provides, in relevant part that:

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; . . . no human authority can, in any case whatever, control or interfere with the rights of conscience.

PUFTA, like its federal bankruptcy counterparts, is not directed at any religious practice, any religion, nor does it prohibit any activity. Indeed, under the statute, as long as a transfer was made within four years of the transfer while the debtor was insolvent, and was for less than reasonably equivalent value, the creditor can recover the transfer. See 12 Pa. Cons. Stat. §§ 5104(a)(2), 5109(1). Further, and as discussed earlier, Defendants fail to show that the Trustee has interfered with Defendants' religious rights.

Moreover, the Pennsylvania Supreme Court has explained that "[t]he protection of rights and freedoms secured by this section of our Constitution, however, does not transcend the protection of the First Amendment of the United States Constitution." Wiest v. Mt. Lebanon School Dist., 320 A.2d 362, 366 (Pa. 1974). Consequently, the analysis of Defendants' claim under the First Amendment to the United States Constitution is "equally apposite" to their claim raised under article 1, section 3 of the Pennsylvania Constitution. Haller v. Commonwealth, 693 A.2d 266, 266 n.7 (Pa. Commw. Ct. 1997) (citing Wiest, 320 A.2d at 367). The Court determined above that Defendants failed to

demonstrate that their first amendment rights have been violated because sections 544(b) and 548 are neutral laws of general applicability. Thus, for the same reason, those sections do not violate Pennsylvania's Constitution.

F. The Trustee's Claims Under Sections 544(b) and 548

Finally, the Trustee contends that it does not fail to meet the requirements of sections 544(b) and 548. However, the Court finds that issues of material fact preclude summary judgment on this issue. For example, an issue of fact exists as to whether C.F. Foods' transfers to Defendants constituted a substantial amount of C.F. Foods' assets. Likewise, an issue of fact exists as to whether C.F. Foods' concealed the subject transfers. Thus, the Court will not enter summary judgment concerning the Trustee's claims under sections 544(b) and 548.

An appropriate Order follows.

Clarence C. Newcomer, S.J.