

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

COMPOSITION ROOFERS UNION : CIVIL ACTION
LOCAL NO. 30 WELFARE :
TRUST FUND, et al. :
 :
 :
v. :
 :
 :
JACKEL SERVICES CORPORATION, :
et al. : NO. 96-2589

MEMORANDUM

Dalzell, J.

January 27, 1998

Plaintiffs in this action are trust funds for two Roofers Union Locals' employee benefit plans established under 29 U.S.C. § 186(c)(5) against several businesses of the Graveley family that have conducted roofing work for many years in the Philadelphia area. The gist of the trust funds' claims is that these defendants are the alter egos of, or fraudulent transferees of assets from, Graveley Roofing Corporation, which for many years up to October 31, 1993 was a party to collective bargaining agreements with the two Roofers Locals whose benefit funds are plaintiffs in this case.

We have general federal question jurisdiction under 28 U.S.C. § 1331, together with specific grants of jurisdiction under 29 U.S.C. §§ 185(a), 1132 and 1145. Plaintiffs also invoke the supplemental jurisdiction statute, 28 U.S.C. § 1367, for their state law claims.

After adducing evidence at a nonjury trial on January 21 and 22, supplemented by the parties' lengthy stipulation contained at pages 11 through 30 of their joint pre-trial

stipulation, this memorandum will constitute our findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52(a).

I. Background

Michael Graveley, the eldest of six brothers, founded Graveley Roofing Company in 1974. Graveley Roofing Company performed commercial roofing work throughout the greater Philadelphia area, and operated out of an office at 909 North 26th Street, Philadelphia, Pennsylvania. On October 28, 1988, Graveley Roofing was incorporated in Pennsylvania, with Michael Graveley as the sole shareholder. The company's officers were Michael Graveley (President), and two of his brothers, John Graveley, Jr. (Vice-President), and Robert Graveley (Secretary). Michael Graveley was responsible for the day-to-day operation of the business, while several of his family members (John Graveley Jr., Joseph Graveley, Daniel Graveley, Kathryn Graveley, and Robert Graveley) were employees. Kathryn Graveley (Robert Graveley's wife and thus sister-in-law of Michael Graveley), was employed by Graveley Roofing Corporation as Michael Graveley's personal secretary. Both Kathryn Graveley and Michael Graveley were authorized signatories on Graveley Roofing Corporation's corporate checking and payroll accounts.

In the late 1980s, Michael Graveley, on behalf of Graveley Roofing Corporation, signed collective bargaining agreements ("CBA's") with Compositions Roofers Union Local No. 30 (effective May 1, 1989 through April 30, 1993) and the

Residential Roofers Union Local No. 30-B (effective December 1, 1989 through October 31, 1992).¹ Under the terms of both CBA's, Graveley Roofing Corporation was required to file monthly reports and pay monthly contributions for employees who performed covered work. Furthermore, under these agreements, Graveley Roofing Corporation was prohibited from subcontracting work to companies who were not signatories to the CBA's. From May, 1989 until December, 1992, Graveley Roofing Corporation submitted reports and paid contributions to the Roofer funds.

Beginning January 1, 1993, Graveley Roofing Corporation stopped submitting remittance reports and paying contributions. On May 24, 1993, the trust funds sued Graveley Roofing Corporation for breach of contract.² During the pendency of that lawsuit, on December 31, 1993, Graveley Roofing Corporation ceased operations. On February 3, 1994, Judge Joyner entered summary judgment in favor of the plaintiff trust funds. See Composition Roofers Union Local No. 30 Welfare Trust Fund v. Graveley Roofing Enterprises, Inc., Civ. No. 93-2759 (E.D. Pa.

¹ The term of the CBA with Residential Roofers Union Local No. 30-B was extended by one year to October 31, 1993 based upon an evergreen clause contained in the agreement.

² That lawsuit, filed in the United States District Court for the Eastern District of Pennsylvania, was styled: Composition Roofers Union Local No. 30 Welfare Trust Fund, et al. v. Graveley Roofing Enterprises, Inc., et al., Civ. No. 93-2759. While there was never an entity known as "Graveley Roofing Enterprises, Inc." it is clear that Graveley Roofing Corporation was the intended defendant in that case, and that Graveley Roofing Corporation, through its counsel Anthony Carrozza III, Esq., appeared in the case.

February 3, 1994). On March 13, 1995, Graveley Roofing Corporation filed for Chapter 7 bankruptcy in the Bankruptcy Court of this District (Docket No. 95-11889). In Graveley Roofing Corporation's bankruptcy schedule, it listed zero assets and liabilities of \$1,013,873.78 (including judgments of \$930,055.52).³

In this case, plaintiffs seek to enforce the terms of the collective bargaining agreements under an alter ego theory against other Graveley-owned family businesses, or, alternatively, seek to recover allegedly fraudulent conveyances made from Graveley Roofing Corporation to the defendants.⁴

II. Analysis

A. The Alter Ego Doctrine

³ At trial, the parties stipulated that the Chapter 7 bankruptcy proceedings for Graveley Roofing Corporation were closed on January 24, 1997.

⁴ We note that plaintiffs have also raised causes of action for violations of RICO, 18 U.S.C. § 1962 et seq., ERISA, 29 U.S.C. § 1101 et seq., breach of contract under the Labor Relations Management Act ("LRMA"), 29 U.S.C. § 185, as well as piercing the corporate veil against individual Graveley family members. As the plaintiffs conceded at the beginning of trial, the veil-piercing doctrine, liability under ERISA, and liability under the LRMA do not come into the case unless the plaintiffs establish their right to a judgment against at least one of the Graveley businesses under the alter ego doctrine, because none of the other Graveley businesses were signatories to the CBA's. See, e.g., UA Local 343 v. Nor-Cal Plumbing, Inc., 48 F.3d 1465, 1476 (9th Cir. 1994) ("The veil-piercing doctrine does not come into play in this case unless and until appellees establish their right to a money judgment . . . under the alter ego doctrine.") Furthermore, we will not address plaintiffs' RICO claims, as plaintiffs explicitly abandoned them at the beginning of the trial.

The alter ego doctrine is designed to defeat an employer's attempts to avoid the obligations of a collective bargaining agreement through a sham transaction or technical change in operations. See Eichleay Corp. v. International Assoc. of Bridge, Structural and Ornamental Iron Workers, 944 F.2d 1047, 1059 (3d Cir. 1991), Local One Amalgamated Lithographers v. Stearns & Beale, Inc., 812 F.2d 763, 772 (2d Cir. 1987). The key factors to be weighed in an alter ego analysis are whether the enterprises share "substantially identical" (i) management, (ii) business purpose, (iii) operation, (iv) equipment, (v) customers, (vi) supervision, and (vii) ownership. See Stardyne, Inc. v. N.L.R.B., 41 F.3d 141, 151 (3d Cir. 1994); see also, Local One Amalgamated Lithographers v. Stearns & Beale, Inc., 812 F.2d 763, 772 (2d Cir. 1987). In addition, our Court of Appeals has noted that the intent of the defendants to evade their responsibilities is also "an important, but not an essential, factor." Stardyne, 41 F.3d at 151. None of these factors taken alone, however, is the sine qua non of alter ego status. See id. at p.149. Instead, the sum total of the factors, when viewed together, helps determine whether the employers "are the same business in the same market." See id. at 151.

We shall apply these seven factors to each of the three corporate defendants (John Graveley Roofing Corporation, Jackel Services Corporation, and Graveley Brothers Roofing Corporation)

to determine if any of these entities was the alter ego of the now-defunct Graveley Roofing Corporation.⁵

(1) John Graveley Roofing Corporation

Turning first to the relationship between Graveley Roofing Corporation and the John Graveley Roofing Corporation, we find that while there are similarities in management, ownership, employees, and business purpose (not to mention name), the plaintiffs have not shown that John Graveley Roofing Corporation was the alter ego of Graveley Roofing Corporation.

John Graveley Roofing was a residential roofing business established by the brothers' father, John Graveley, Sr. Upon John Graveley, Sr.'s death in 1988, four of the Graveley brothers incorporated the business in Pennsylvania as John Graveley Roofing Corporation.

While there are similarities between Graveley Roofing Corporation and John Graveley Roofing Corporation, we cannot find that they were "the same business in the same market," Stardyne, 41 F.3d at 151. First, Michael Graveley testified without contradiction that the two corporations served different roofing markets. Graveley Roofing Corporation was involved primarily in commercial roofing, while John Graveley Roofing Corporation was a

⁵ At the close of trial, plaintiffs conceded that the alter ego analysis should not apply to the Graveley Family Partnership because the Partnership, as a real estate holding company, was involved in a completely different line of business from Graveley Roofing Corporation. We will, however, analyze the Graveley Family Partnership for any alleged fraudulent conveyances from Graveley Roofing Corporation.

residential roofing business. Second, and perhaps more significant, the parties have stipulated that John Graveley Roofing Corporation ceased operations in 1992, and filed a formal "out of existence/withdrawal" affidavit with the Commonwealth of Pennsylvania on December 31, 1992, one year before Graveley Roofing Corporation ceased its operations. We therefore find that the plaintiffs have not shown that the John Graveley Roofing Corporation operated as an alter ego of the Graveley Roofing Corporation for the purposes of avoiding payments under the collective bargaining agreements.

(2) Jackel Services Corporation

Jackel Services Corporation ("Jackel") was incorporated in Pennsylvania on May 13, 1992. Jackel was named for the Graveley brothers' parents, John Graveley, Sr. ("Jack") and Eleanor Graveley ("El"). Jackel's mailing address was 888 North 26th Street, on the diagonal corner from Graveley Roofing Corporation at 909 North 26th Street.⁶ The owners and officers of Jackel were Susan Graveley, Kathryn Graveley, and Marcella Graveley (the wives of Michael Graveley, Robert Graveley, and John Graveley, Jr. respectively), along with Joseph Graveley. While Kathryn Graveley ran the day-to-day operations of Jackel,

⁶ It should be noted, however, that Elizabeth Conway, Jackel's accountant in 1992 and 1993, credibly testified that she worked for Jackel at its office on 909 North 26th Street (Graveley Roofing Corporation's office). Furthermore, Conway also testified without contradiction that the receptionist for Jackel worked at 909 North 26th Street.

both Michael Graveley and Kathryn Graveley had signing privileges on Jackel's corporate checking and payroll accounts. Jackel also shared the same business purpose, commercial roofing.⁷

Graveley Roofing Corporation and Jackel's working relationship was that Graveley Roofing Corporation provided the equipment and financial support to complete commercial roofing projects, while Jackel, a non-signatory to the collective bargaining agreements, supplied the labor, in violation of the CBA's. In his testimony, Kevin Hughes, C.P.A., the plaintiffs' expert in forensic accounting, noted that Graveley Roofing Corporation reported \$2,500,000 in gross sales for 1993, but only \$56,213.18 in labor costs. See Plaintiffs' Exhibits 14, 17 and Stips. 59, 60. Hughes testified that, in his experience as an accountant for the construction industry, roughly twenty to twenty-five percent of gross sales should go to labor costs. Hughes testified that it was his expert opinion that based upon Graveley Roofing Corporation's low labor costs in 1993, Graveley Roofing Corporation was passing its labor costs to Jackel to avoid its obligations under the collective bargaining agreements.

Upon a careful review of the testimony and the parties' stipulations, we accept Hughes's analysis. For example, the parties have stipulated that from June of 1992 to December of

⁷ While defendants in their papers argue that Jackel was a general construction contractor, rather than a commercial roofing business, Michael Graveley's testimony confirms that Jackel was a commercial roofing business. Furthermore, Jackel's 1992 and 1993 tax returns state that Jackel's business activity was "roofing." See Plaintiffs' Exhibit's 36, 38 and Stip. 84.

1993 (when Graveley Roofing Corporation ceased its operations), Graveley Roofing Corporation subcontracted its roofing labor to Jackel at no profit. See Stips. 61-62. The parties have also stipulated that in 1992 and 1993, Jackel derived all of its income exclusively from Graveley Roofing Corporation, or from other Graveley family members or Graveley family businesses. See Stips. 96, 108. Additionally, the parties have stipulated that Graveley Roofing Corporation paid all of Jackel's 1992 utility bills, see Stip. 63, and all of Jackel's 1992 payroll costs, see Stip. 64, and apparently provided Jackel with the equipment that it needed to undertake its subcontracting work.⁸

Finally, and perhaps most telling, upon a comparison of the employees who worked for Graveley Roofing Corporation and Jackel, the two companies operated as virtually the same business. In comparing the names and social security numbers on the payrolls of the two companies, we find that the two companies shared 100% of the same employees in 1992, 57% of the same employees in 1993, and 52% of the same employees in 1994. See Plaintiffs' Exhibits 78-80.

Accordingly, we find that Jackel is an alter ego of Graveley Roofing Corporation, and that Jackel, as Graveley Roofing's alter ego, is liable as if it were a signatory to the collective bargaining agreements. Jackel is thus liable for any

⁸ Jackel's 1992 and 1993 tax returns confirm that Jackel owned no equipment or tools. See Stip. 90.

breach of these agreements in violation of the LRMA as well as under ERISA.⁹

(3) Graveley Brothers Roofing Corporation

Graveley Brothers Roofing Corporation was incorporated in Pennsylvania on October 12, 1993, roughly two months before Graveley Roofing Corporation ceased its operations. On the date of incorporation, Michael Graveley served as the new corporation's president and chief executive officer. See Stip. 117. Almost certainly in an attempt to avoid the appearance of an alter ego, Michael Graveley removed himself as the president and chief executive officer of Graveley Brothers Roofing Corporation at a special meeting of the board of directors held on the day of incorporation.¹⁰ See Stip. 118. While removed from his official capacity as its president and CEO, the evidence demonstrates that Michael Graveley was the day-to-day manager and supervisor of the newly-created company. For example, similar to Jackel's operations, both Michael Graveley and Kathryn Graveley had signing privileges on Graveley Brothers Roofing Corporation's

⁹ We do not find sufficient evidence to pierce the corporate veil of Jackel and hold its shareholders or officers personally liable. Plaintiffs have not shown the factors necessary to pierce the corporate veil of Jackel such as: failure to observe corporate formalities, absence of corporate records, non-functioning of officers or directors, or the fact that the corporation was merely a facade for the operations of the dominant shareholder. See, e.g., United States v. Pisani, 646 F.2d 83, 88 (3d Cir. 1981) (citing factors).

¹⁰ The current shareholders and officers of Graveley Brothers Roofing Corporation are Joseph Graveley, Robert Graveley, John Graveley, Jr., and Daniel Graveley. Each brother owns 25 shares of stock. See Stips. 119-120.

corporate checking and payroll accounts. See Stip. 124. Furthermore, according to the testimony of Elizabeth Conway, the bookkeeper for Graveley Brothers Roofing Corporation in 1994, Michael Graveley was responsible for obtaining all of Graveley Brothers Roofing Corporation's roofing contracts.¹¹ Perhaps most eloquent are Graveley Brothers Roofing Corporation's internal accounting records which show that Michael Graveley was, in fact, treated as an officer of the corporation in 1994, and was paid the same salary as the other brothers who were officers and shareholders of the corporation, \$75,000. See Plaintiffs' Exhibit 54.

Furthermore, aside from substantially identical management, operation, supervision, and ownership as Graveley Roofing Corporation, Michael Graveley himself testified that Graveley Brothers Roofing Corporation also had the same primary business purpose as Graveley Roofing Corporation, i.e., commercial roofing, see also Stip. 115., and had similar employees and customers.¹² In addition, Graveley Roofing

¹¹ Conway testified that Michael Graveley was the only Graveley brother not to do any of the actual roofing work, because it was his responsibility to get the roofing business that was the lifeblood of the family's business.

¹² Kevin Hughes, C.P.A., testified that Jackel (an alter ego of Graveley Roofing Corporation), and Graveley Brothers Roofing Corporation shared 64.4% of the same employees in 1994. See Plaintiffs' Exhibit 81. Hughes also noted that he found a significant overlap between the names of the customers for Graveley Roofing Corporation and those of Graveley Brothers Roofing Corporation. See Plaintiffs' Exhibit 34.

Corporation and Graveley Brothers Roofing Corporation operated out of the same location.¹³

A review of some of the financial interactions between the Graveley family businesses highlights the reality that the Graveley family regarded Graveley Roofing Corporation and Graveley Brothers Roofing Corporation as one business. For example, Michael Graveley testified that in the late 1980s Graveley Roofing Corporation lost \$1.1 million on a job at Glen Eagle Square in Delaware County. Due to the poor financial condition of Graveley Roofing Corporation in the early 1990s, United Valley Bank called Graveley Roofing Corporation's \$800,000 indebtedness under a line of credit. To cover the \$800,000 debt, Michael Graveley and his wife paid \$200,000 out of personal funds, and obtained the remaining \$600,000 with a loan from his personal "mentor", Sidney Baer (the "Baer loan"). To secure the Baer loan, Michael Graveley testified that the Graveley Family Partnership, along with several individual Graveley family members, signed the loan agreement with Sidney Baer. Most interesting about the Baer loan, however, was the fact that while it was taken out to cover the debts of Graveley Roofing

¹³ While the mailing address for Graveley Brothers Roofing Corporation was listed as 888 North 26th Street (which, as noted above, is at the diagonal corner from Graveley Roofing Corporation's office at 909 North 26th Street), Graveley Brothers Roofing Corporation's 1994 tax return lists its address as 909 North 26th Street, see Stip. 125, and Elizabeth Conway, the accountant for Graveley Brother's Roofing in 1994, stated that both she and the Graveley Brothers Roofing Corporation's receptionist worked out of the office at 909 North 26th Street.

Corporation, Graveley Roofing Corporation was not a signatory to the Baer loan, but it was instead treated as a family debt that would be paid off over time by Graveley Roofing Corporation as well as by the other Graveley businesses, if necessary. Indicative of this treatment is the fact that on December 31, 1994, the Graveley Family Partnership reclassified the Baer loan as a liability of Graveley Brothers Roofing Corporation, even though that new Graveley firm had no reason to assume this major debt of Graveley Roofing Corporation.

Notably, the Graveleys did not bother to evidence any of these inter-corporate transactions with notes or even a single sheet of paper.

Similarly, the evidence also shows many unexplained transfers of money, equipment, and receivables from Graveley Roofing Corporation to Graveley Brothers Roofing Corporation in 1994, the year after Graveley Roofing Corporation had ceased its operations. As Graveley Roofing Corporation phased out its operations in 1993 and 1994, the Graveley family slowly transferred the assets of Graveley Roofing Corporation to its latest iteration, Graveley Brothers Roofing Corporation, to continue the family roofing business.

For example, the parties have stipulated that on January 1, 1994, one day after Graveley Roofing Corporation formally ceased its operations, Graveley Roofing Corporation transferred \$770,219 in accounts receivables to Graveley Brothers Roofing Corporation. See Stip. 76 and Plaintiffs' Exhibit 33.

Furthermore, during 1994 Graveley Roofing Corporation (a then-defunct company) also transferred \$738,965.50 of its billings to Graveley Brothers Roofing Corporation, see Stip. 77, 129 and Plaintiffs' Exhibit 33, and \$53,842.15 in cash, see Stip. 75, as well as all of its trucks and equipment, see Stip. 68, with a book value of \$46,000, see Plaintiffs' Exhibit 37.¹⁴ While these transfers of money, equipment and receivables, totalling over \$1.6 million, were palpably fraudulent conveyances under either the Uniform Fraudulent Conveyance Act or the Uniform Fraudulent Transfer Act, we also find that these transfers serve as further proof that the Graveley family treated Graveley Roofing Corporation and Graveley Brothers Roofing Corporation as but one business.¹⁵

Again, defendants did not at trial proffer any documentation of these inter-corporate transactions.

¹⁴ To cover the value of the trucks, Graveley Brothers Roofing Corporation paid \$7,000 to the Chapter 7 trustee for the benefit of Graveley Roofing Corporation's bankrupt estate. See Stip. 73-74.

¹⁵ The Uniform Fraudulent Conveyance Act ("UFCA"), 39 Pa. Con. Stat. § 351-363, covers fraudulent transfers that occurred before February 1, 1994. The Uniform Fraudulent Conveyance Act was repealed and re-enacted as the Uniform Fraudulent Transfer Act ("UFTA"), 12 Pa. Con. Stat. § 5101-5110, covering all transactions that occurred on or after February 1, 1994. As an alternative holding to our finding of alter ego status, we find, but need not elaborate, that Graveley Brothers Roofing Corporation violated both the UFCA and the UFTA with the numerous fraudulent transfers that occurred throughout 1994 between Graveley Roofing Corporation and Graveley Brothers Roofing Corporation.

For all these reasons, we find that Graveley Brothers Roofing Corporation is an alter ego of Graveley Roofing Corporation, and thus Graveley Brothers Roofing Corporation is liable as if it were a signatory to the collective bargaining agreements. Graveley Brothers Roofing Corporation is therefore liable for any breach of these agreements in violation of the LRMA as well as under ERISA.¹⁶

B. Fraudulent Conveyances¹⁷

As noted above, the Uniform Fraudulent Conveyance Act ("UFCA"), 39 Pa. Con. Stat. § 351-363, covers fraudulent transfers that occurred in Pennsylvania before February 1, 1994. The UFCA was repealed and re-enacted as the Uniform Fraudulent

¹⁶ Again, we do not find sufficient evidence to pierce the corporate veil of Graveley Brothers Roofing Corporation and hold its shareholders or officers personally liable. Plaintiffs have not shown the factors necessary to pierce the corporate veil of Graveley Brothers Roofing Corporation such as: failure to observe corporate formalities, absence of corporate records, non-functioning of officers or directors, or the fact that the corporation was merely a facade for the operations of the dominant shareholder. See, e.g., United States v. Pisani, 646 F.2d 83, 88 (3d Cir. 1981) (citing factors).

¹⁷ As we have already found that both Jackel Services Corporation and Graveley Brothers Roofing Corporation are liable under the CBA's, the LRMA, and ERISA, as alter egos of Graveley Roofing Corporation, we need not further address any alleged fraudulent conveyances among these entities; a finding of any fraudulent conveyances would not have any further legal effect as to liability or damages. Furthermore, we will not address any alleged fraudulent conveyances between Graveley Roofing Corporation and John Graveley Roofing Corporation because we find that plaintiff has not made a sufficient showing of fraudulent conveyances between these two entities. We will, however, address plaintiffs' claims of fraudulent conveyances between Graveley Roofing Corporation and the Graveley Family Partnership.

Transfer Act ("UFTA"), 12 Pa. Con. Stat. § 5101-5110, covering all transactions that occurred on or after February 1, 1994.

Plaintiffs first contend that the Graveley Family Partnership violated the UFCA and the UFTA because Graveley Roofing Corporation made payments to the Graveley Family Partnership to help repay the Baer loan. Plaintiffs argue that Graveley Roofing Corporation's payments to the Graveley Family Partnership were fraudulent because Graveley Roofing Corporation was not a signatory to the Baer loan, and thus should not have made any payments on the loan.

We do not find that these payments constitute fraudulent conveyances under either the UFCA or the UFTA. As noted above, Michael Graveley testified that the Baer loan was taken out by the Graveley Family Partnership and several individual Graveley family members to cover three-fourths of Graveley Roofing Corporation's \$800,000 debt to United Valley Bank. Although Graveley Roofing Corporation was not a signatory to the Baer loan, Michael Graveley credibly testified that Graveley Roofing Corporation treated the Baer loan as its own debt. Therefore, as the Graveley Family Partnership paid the \$7,763.85 per month Baer loan payments, Graveley Roofing Corporation reimbursed the Graveley Family Partnership for those payments over time. Accordingly, we do not find a violation of either the UFCA or the UFTA in relation to the Baer loan.¹⁸

¹⁸ In fact, the Baer loan could be viewed as the
(continued...)

Finally, plaintiffs contend that the stipulated payment of \$235,255.13 in 1993 from Graveley Roofing Corporation to the Graveley Family Partnership, see Stips. 80, 151, constitutes either intentional or constructive fraud under the UFCA.¹⁹ Plaintiffs argue that even if we discount the total 1993 payments of \$235,255.13 by \$93,166.20 for payments made from Graveley Roofing Corporation to the Graveley Family Partnership for the Baer loan,²⁰ as well as for the repayment of a \$34,000 debt,²¹ Graveley Roofing Corporation still fraudulently conveyed an unexplained total of \$108,088.93 to the Graveley Family Partnership in violation of the UFCA.

The UFCA proscribes both intentional and constructive fraud. Under the UFCA's intentional fraud provisions, any conveyance made, or obligation incurred, either without fair

¹⁸(...continued)
opposite of a fraudulent conveyance. But for the Graveley Family Partnership and the individual Graveley family members taking out the Baer loan in 1991 to cover Graveley Roofing Corporation's debts, it is likely that Graveley Roofing Corporation would have gone bankrupt well before 1995.

¹⁹ As the payments were all made before February 1, 1994, we apply the UFCA, rather than the UFTA, to determine if these payments were fraudulent conveyances. See generally, In re Estate of Israel, 645 A.2d 1333, 1337 & n.6 (Pa. Super. 1994).

²⁰ Michael Graveley testified that the Baer loan payments were \$7,763.85 per month. For twelve months of such payments, Graveley Roofing Corporation would owe the Graveley Family Partnership \$93,166.20 (12 months x \$7,763.85).

²¹ Michael Graveley testified that for one month in 1993 Graveley Roofing Corporation's checking account was frozen, so the Graveley Family Partnership covered a \$34,000 judgment against the Graveley Roofing Corporation until Graveley Roofing Corporation's checking account was unfrozen.

consideration by one who "intends or believes that he will incur debts, beyond his ability to pay as they mature," 39 Pa. Con. Stat. Ann. § 356, or with an "actual intent . . . to hinder, delay, or defraud . . . creditors" is fraudulent, id. at § 357. Actual intent to defraud may be inferred from the circumstances surrounding a transfer. See Moody v. Security Pacific Business Credit, Inc., 971 F.2d 1056, 1063-1064 (3d Cir. 1992) (noting the difficulty in proving intentional fraud).

Unlike intentional fraud, the UFCA's constructive fraud provisions operate without regard to intent. See id. Under § 4 of the UFCA, any conveyance made or obligation incurred "by a person who is or will be thereby rendered insolvent" is fraudulent if it is made or incurred for less than fair consideration. 39 Pa. Con. Stat. Ann. § 354.²²

Based upon the record before us, we cannot find that the Graveley Roofing Corporation or its principal actor, Michael Graveley, committed intentional or constructive fraudulent conveyances in 1993 from Graveley Roofing Corporation to the Graveley Family Partnership in violation of the UFCA.²³ We base

²² Insolvency has two components under Pennsylvania law: insolvency in the "bankruptcy sense" (a deficit net worth immediately after the conveyance), and insolvency in the "equity sense" (an inability to pay debts as they become due). See Moody, 971 F.2d at 1064 (citing Larrimer v. Feeney, 192 A.2d 351, 353 (Pa. 1963)). Fair consideration requires a "good faith" exchange of a "fair equivalent." 39 Pa. Con. Stat. Ann. § 353(a).

²³ While we have found that Graveley Roofing Corporation's conveyances of money, equipment, and receivables to
(continued...)

these conclusions upon the highly credible testimony of plaintiffs' own expert, Kevin Hughes, C.P.A.. Hughes unequivocally stated that it was his opinion that Graveley Roofing Corporation was solvent as of December 31, 1993. See Notes of Testimony p. 115-116 (January 21, 1998). As Graveley Roofing was solvent at December 31, 1993, we cannot deduce that the unexplained conveyance, sometime before the end of that year, of \$108,088.93 from Graveley Roofing Corporation to the Graveley Family Partnership could have rendered Graveley Roofing Corporation insolvent or created the threat of insolvency at any time during 1993. No evidence proffered to us implied any other conclusion.²⁴

III. Damages

Section 301 of the LRMA is the statutory mechanism under which claims for breach of a collective bargaining agreement is governed. See 29 U.S.C. § 185. In determining

²³(...continued)

Graveley Brothers Roofing Corporation in 1994 (after Graveley Roofing Corporation had ceased its operations) were intentional fraudulent conveyances in violation of both the UFCA and the UFTA, we cannot reach the same conclusion for transactions occurring in 1993 while Graveley Roofing Corporation was still a viable business enterprise.

²⁴ While it is certainly true that Graveley Roofing Corporation bled a slow death in 1994 as it fraudulently transferred over \$1.6 million in equipment, cash and receivables to Graveley Brothers Roofing Corporation, and at some point -- no later than March, 1995 -- Graveley Roofing Corporation became insolvent, we need not determine the exact time that Graveley Roofing Corporation became insolvent, as that event occurred after December 31, 1993.

whether a collective bargaining agreement has been breached, § 301 authorizes federal courts to fashion a body of law for the enforcement of collective bargaining agreements. See, e.g., UAW v. Textron Lycoming Reciprocating Engine Div., 117 F.3d 119, 123 (3d Cir. 1997) (citing cases).

In this case, based upon the highly credible and unimpeached testimony of Kevin Hughes, C.P.A., we find that Graveley Roofing Corporation and its alter egos, Jackel Services Corporation and Graveley Brothers Roofing Corporation, breached the two CBA's by under-reporting the number hours and number of employees working, as well as by subcontracting work in violation of the agreements. Defendants offered no serious refutation of the damage calculations of Hughes's written report, see Plaintiffs' Exhibit 68, and we detect no errors therein. We shall therefore adopt these figures, and award the plaintiffs \$735,171 in damages pursuant to § 301 of the LRMA.²⁵ See 29 U.S.C. § 185.

²⁵ Hughes's report and testimony illustrate that Graveley Roofing Corporation under-reported its contributions to Union Local No. 30's CBA by \$61,129 in 1991 and \$13,263 in 1992, for a total of \$74,392. Similarly, Hughes's report and testimony show that Graveley Roofing Corporation under-reported its contributions to Union Local No. 30-B's CBA by \$32,587 in 1991 and \$323 in 1992, for a total of \$32,910. In addition, Hughes's report and testimony show that Jackel Services Corporation, as an alter ego of Graveley Roofing Corporation, is responsible for unreported contributions of \$72,815 in 1992 and \$439,520 in 1993, for a total of \$512,335. Finally, Hughes's report and testimony demonstrate that Graveley Roofing Corporation failed to report subcontracting work of \$92,108 in 1991 and \$23,426 in 1992, for a total of \$115,534.

In addition, we also find that Graveley Roofing Corporation, Jackel Services Corporation, and Graveley Brothers Roofing Corporation all failed to pay contributions as required under Section 515 of ERISA. See 29 U.S.C. § 1145.²⁶ Accordingly, we will also award the plaintiffs additional relief pursuant to § 502(g) of ERISA. See 29 U.S.C. § 1132(g)(2).²⁷

An Order follows.

²⁶ 29 U.S.C. § 1145 provides:

Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.

²⁷ Section 502(g) provides for the mandatory award of the following damages if a judgment under Section 515 is entered in favor of the plaintiffs:

(A) the unpaid contributions, (B) interest on the unpaid contributions, (C) an amount equal to the greater of- (i) interest on the unpaid contributions, or (ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A), (D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and (E) such other legal or equitable relief as the court deems appropriate.

29 U.S.C. § 1132(g)(2). Thus, plaintiffs shall file an application for further damages, fees, and costs.

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

COMPOSITION ROOFERS UNION	:	CIVIL ACTION
LOCAL NO. 30 WELFARE	:	
TRUST FUND, <u>et al.</u>	:	
	:	
v.	:	
	:	
JACKEL SERVICES CORPORATION,	:	
<u>et al.</u>	:	NO. 96-2589

ORDER AND JUDGMENT

AND NOW, this 27th day of January, 1998, after a two-day trial on the matter, and upon the findings of fact and conclusions of law set forth in the accompanying memorandum, it is hereby ORDERED that:

1. Plaintiffs' RICO claims in Count XII of the Complaint are WITHDRAWN;
2. JUDGMENT IS ENTERED in favor of plaintiffs and against defendant Jackel Services Corporation and defendant Graveley Brothers Roofing Corporation, jointly and severally, in the amount of \$735,171.00;
3. JUDGMENT IS ENTERED in favor of defendants Graveley Family Partnership, John Graveley Roofing Corporation, Michael Graveley, Susan Graveley, Kathryn Graveley, Robert Graveley, Daniel Graveley, Marcella Graveley, and John Graveley, Jr. and against the plaintiffs;
4. Plaintiffs shall file an application for further damages, fees, and costs in accordance with Part III of the memorandum by February 6, 1998, and defendants shall file any

objections and a memorandum in support thereof by February 18, 1998; and

5. The Clerk shall CLOSE this action statistically.

BY THE COURT:

Stewart Dalzell, J.