

STATE OF MAINE  
CUMBERLAND, ss

BUSINESS AND CONSUMER COURT  
BCD-CV-19-21

RICHARD OLSON, Trustee of  
The Promenade Trust,

Plaintiff

v.

PAMELA GLEICHMAN,  
GENERAL HOLDINGS, INC. and  
ELLEN HANCOCK, TRUSTEE of  
HILLMAN NORBERG TRUST,

Defendants

**ORDER ON MOTION FOR SUMMARY  
JUDGMENTS FOR COUNTS I, II AND IV**

Before the Court is a Motion for Summary Judgment brought by Defendants Pamela Gleichman and Ellen Hancock as Trustee of the Hillman Norberg Trust on Counts I, II and IV of the Complaint brought against them and Defendant General Holdings, Inc.. Plaintiff is represented by Attorney Gerald F. Petruccelli, and Defendants are represented by Attorney John S. Campbell.

Count I of the Amended Complaint alleges that in violation of 14 M.R.S.A. Section 3575 Defendant Gleichman fraudulently transferred several parcels of real estate to Defendant Ellen Hancock as Trustee of two trusts with the intent to hinder, delay or defraud Gleichman's creditors; or were made without receiving reasonably equivalent value in exchange for the transfers; or that Gleichman was engaged in a business transaction for which her remaining assets were unreasonably small in relation to the business or transaction; or she intended to incur

or reasonably believed she would incur debts beyond her ability to pay as those debts became due.

Count II of the Amended Complaint alleges that in violation of 14 M.R.S.A. Section 3576 Defendant Gleichman fraudulently transferred several parcels of real estate to Defendant Ellen Hancock as Trustee of two trusts when at the time Plaintiff was the holder of claims that Gleichman had accrued before the transfers were made, that Gleichman did not receive a reasonably equivalent value in exchange for the transfers, and that Gleichman was insolvent at the time of the transfers or as a result of the transfers.

Count IV of the Amended Complaint alleges that Defendant General Holdings fraudulently transferred several parcels of real estate to Defendant Ellen Hancock as Trustee of two trust when at the time Plaintiff was the holder of claims that Gleichman had accrued before the transfers were made, that General Holdings did not receive a reasonably equivalent value in exchange for the transfers, and that General Holdings was insolvent at the time of the transfers or as a result of the transfers.

### **UNDISPUTED FACTS**

On October 23, 2012, Defendant Pamela Gleichman (“Gleichman”) established the Hillman Norberg Trust for the benefit of Hillman Norberg. Def. S.M.F. ¶ 5. This trust was created for the purpose of refinancing the family’s summer home located in Bar Harbor, Maine. The Trust was obligated to make payments from trust rental income on a “mortgage loan” being obtained from Bank of America. Def. S.M.F. ¶ 6. Gleichman transferred her General Partnership interests in three Maine apartment properties (“the Three Maine Projects”) into the Trust upon its creation. Def. S.M.F. ¶ 2.

As of October 23, 2012, Karl Norberg, husband of Defendant Gleichman and serving as Trustee of the Promenade Trust, was the holder of certain claims against Gleichman. Def. S.M.F. ¶ 9. In 2013 Norberg transferred the claims he had against his wife to an earlier trustee of the Promenade Trust, Chris Coggeshall. Def. S.M.F. ¶ 10. Plaintiff Olson eventually became the Trustee of the Promenade Trust, and as successor to Mr. Coggeshall, has claimed a right to the claims against Gleichman previously held by Mr. Coggeshall as Trustee. Pl.'s S.M.F. ¶ 11. Plaintiff Olson contends that the transfer of Gleichman's General Partnership assets was done with the intent to hinder, delay, or defraud her creditors, one of which is Olson. For this reason, Olson asks the Court to avoid the transfer, and grant him damages as well as other equitable remedies. Plaintiff filed his Complaint on October 22, 2018 in Cumberland County Superior Court.

### **STANDARD OF REVIEW**

Summary judgment is appropriate if, based on the parties' statements of material fact and the cited record, there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. M.R. Civ. P. 56(c); *Levine v. R.B.K. Caly Corp.*, 2001 ME 77, ¶ 4, 770 A.2d 653. A genuine issue of material fact exists when a fact-finder must choose between competing versions of the truth, even if one party's version appears more credible or persuasive. *Id.* A fact is material if it has the potential to affect the outcome of the suit. *Id.* To survive a defendant's motion for summary judgment, the plaintiff must establish a prima facie case for every element of the plaintiff's cause of action. *Oceanic Inn, Inc., v. Sloan's Cove, LLC*, 2016 ME 34, ¶ 26, 133 A.3d 1021. "When a plaintiff has the burden of proof on an issue, a court may properly grant summary judgment in favor of the defendant if it is clear that the defendant would be entitled to a judgment as a matter of law if the plaintiff presented nothing more than was before the court"

when the motion was decided. *Reliance Nat'l Indem. v. Knowles Indus. Servs., Corp.*, 2005 ME 29, ¶ 9, 868 A.2d 220.

## DISCUSSION

### **I. Whether Plaintiff has Established a Prima Facie Case of Fraudulent Transfer According to 14 M.R.S.A. §§ 3575, 3576 is a Dispute of Material Fact.**

Counts I, II, and IV of the Plaintiff's Amended Complaint allege that Defendant Gleichman fraudulently transferred several parcels of real estate to Defendant Ellen Hancock as Trustee of two trusts, in violation of 14 M.R.S.A. §§ 3575, and 3576.<sup>1</sup> Gleichman contends that the facts are undisputed and Plaintiff cannot establish a prima facie case of a fraudulent transfer. In support of her assertion, Gleichman claims that the transfers were carried out openly and transparently, for the purpose of refinancing her property. Additionally, Gleichman argues that Plaintiff lacks standing to contest the transfers at issue. For these reasons, Gleichman moves for summary judgment. However, Gleichman's arguments are unpersuasive.

According to Section 3575(1), a transfer made or obligation incurred by a debtor is fraudulent as to present and future creditors, if the debtor made the transfer or incurred the obligation:

- A. With actual intent to hinder, delay, or defraud any creditor of the debtor; or
- B. Without receiving a reasonably equivalent value in exchange for the transfer or obligations and the debtor:
  - (1) Was engaged or was about to engage in a business or transaction for which the remaining assets of the debtor were unreasonably small in relation to the business transaction; or
  - (2) Intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as the debts became due.

<sup>1</sup> In her motion for summary judgment, Gleichman makes the same arguments for dismissal of both Counts I and II. Because her arguments are the same on both counts, the Court addresses them together.

14 M.R.S.A. § 3575(1).<sup>2</sup>

As illustrated above, 14 M.R.S.A § 3575(1)(A) describes a transfer or obligation as fraudulent if made or incurred with actual intent to delay or defraud the debtor's present and future creditors.<sup>3</sup> Gleichman first asserts that Plaintiff is unable to establish a prima facie case of fraudulent transfer. However, as Plaintiff has pointed out, Gleichman's actions create an inference of an intentional plan to hinder and delay her creditors.

According to 14 M.R.S.A. § 3575(2), the Court is required to consider a variety of factors in determining whether a debtor had actual intent to engage in a fraudulent transfer. The factors are 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; . . . (I) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred; or (J) The transfer occurred shortly after a substantial debt was incurred. . . .”

14 M.R.S.A § 3575(2). Plaintiff alleges multiple facts that correspond with the above factors, as well as with Subsection B of 14 M.R.S.A. § 3575(1).

First, Plaintiff contends that because the transfer was made to the Trust for the benefit of Hillman Norberg, the transfer was to an insider. In any case, Plaintiff asserts, whether or not the transfer was to an insider, the ultimate beneficial owner of the general partnerships assets is the transferor's son Hillman Norberg. Second, Gleichman apparently has made plans, as demonstrated in her Answer and affidavit, to use the transfers at issue in connection with other

<sup>2</sup> Likewise, 14 M.R.S.A. § 3576 considers a transfer fraudulent when it is made without receipt of reasonably equivalent value, or is made to an insider for an antecedent debt while the debtor was insolvent and the insider had reasonable cause to believe the debtor was insolvent. Plaintiff asserts, and the Court agrees, that neither Gleichman's motion or supporting documents provide any evidence that she received fair consideration for the transfers.

financing schemes. Gleichman Aff. ¶ 6; Ans. ¶ 41-42. To that end, Plaintiff contends that plans to use the transferred property indicate Gleichman's retention of control of the property, and that further discovery is likely to support this claim. Further, Plaintiff asserts that Gleichman continued to receive reports of her limited partnership interests in various entities, including the three subject to this litigation, and that the certified records of the Maine Secretary of State indicate that Gleichman remained a general partner in all three of the partnerships at issue, despite allegedly transferring her interest in them. Third, Plaintiff asserts that Gleichman has failed to provide any evidence that she provided notice of the transfer to taxing authorities, the management company, or any regulatory agencies, thus keeping it a secret. Pl.'s S.M.F. ¶ 9. The fourth and final factor enumerated in Section 3575(2) that Gleichman's behavior allegedly satisfies is (I); Plaintiff believes the Court must presume Gleichman is insolvent.

It is undisputed that Gleichman made a transfer of assets to the Hillman Norberg Trust. Plaintiff alleges the above facts that, when viewed in relation to the factors listed in 14 M.R.S.A. § 3575(2), create a dispute of material fact as to whether this transfer was done with the intent to hinder, delay, or defraud Gleichman's creditors. Thus, on these facts alone, the Court cannot dispose of Count I of Plaintiff's Complaint.

Nonetheless, in further defense of the transfers at issue, Gleichman states that she was solvent at the time they were made. Conversely, Plaintiff contends the Court should instead presume Gleichman insolvent. 14 M.R.S.A. § 3573(2) presumes a debtor insolvent when they are not paying their debts as they become due. The Court notes the various instances in pleadings where Gleichman references significant debts, many apparently unpaid. For instance, paragraphs 36 and 37 of the counterclaim portion of Gleichman's Answer describe various debts to be cured by a bankruptcy plan, presented to creditors in Chicago. Gleichman Ans. ¶¶ 36-37. Further,

Gleichman herself states that the transfers at issue were aimed at preventing foreclosure on her Bar Harbor home, while attempting to pay off multiple debts. Gleichman Ans. ¶¶ 41- 46; Gleichman Aff. ¶ 6. The Court recognizes Gleichman might possibly be able to demonstrate that her 2012 assets had sufficient value to exceed her 2012 liabilities. Critically, however, the Summary Judgment record contains no such evidence of value. In addition to the previously described, though disputed, indicia of actual intent to defraud her creditors, Gleichman's insolvency is both material and in dispute. Thus, the Court denies Gleichman's motion for summary judgment on Counts I, II, and IV at this stage.<sup>4</sup>

## **II. Whether Plaintiff Lacks Standing to Challenge the Transfer of Her Partnership Interests to the Hillman Norberg Trust.**

The final argument Gleichman makes in support of her motion is that Plaintiff lacks standing to challenge the transfers at issue in this case. Defendant asserts that in October, 2012, the time of the transfer at issue, Karl Norberg held the claims against Gleichman that are being used to support standing in this case, and was aware of Gleichman transferring her partnership interests to the Hillman Norberg Trust. Mr. Coggeshall, acting as Trustee of the Promenade Trust, received those claims in 2013, but according to Gleichman, Mr. Coggeshall had only acquired the claims for the purpose of protecting Gleichman against her creditors. Gleichman argues that Plaintiff, as successor Trustee, does not stand in the shoes of the original creditor, and may not bring a claim under the UFTA, particularly when Norberg, in his role as Trustee, knew of and consented to the transfers at the time they occurred. Gleichman has failed to cite sufficient

<sup>4</sup> Count IV of Plaintiff's complaint alleges that Defendant General Holdings engaged in a fraudulent transfer alongside Gleichman in her individual capacity. Defendant's motion for summary judgment does not differentiate their arguments between Counts, or Defendants. For this reason, the Court addresses the arguments as they were made, and declines to enter judgment in favor of the Defendants on Count IV for the same reasons it denies the motion on Counts I and II.





