

IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF SOUTH CAROLINA

FILED
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 U.S. BANKRUPTCY COURT
 DISTRICT OF SOUTH CAROLINA

In Re:)
)
 Charles Vereen,)
)
 Debtor,)
 _____)
)
 Robert F. Anderson, Trustee for the)
 Chapter 7 Bankruptcy Estate of)
 Charles Vereen,)
)
 Plaintiff)
)
 v.)
)
 Charles Vereen, Charles Clark Vereen,)
 Sonya Ann Vereen Clark, Melodie Renee)
 Vereen, Russell Wilson Vereen, Hamilton)
 Julian Vereen, Mark Groves, Garrett Sutton,)
 Nancy Lake, Vereen Joint Revocable Inter)
 Vivos Trust, East Cambridge Limited)
 Partnership and Five Star Management,)
)
 Defendants.)
 _____)

Case No. 96-78369-W
 Chapter 7

ENTERED
 JAN 31 2000
 S. R. P.

Adversary No. 98-80262-W

JUDGMENT

Based on the Findings of Fact and Conclusions of Law as stated in the attached Order of the Court, Defendant Mark Groves is not liable pursuant to S.C. Code §27-23-30 and the Court dismisses the action against him.


 UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
 January 28, 2000.

190

CERTIFICATE OF MAILING
The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

JAN 31 2000

~~DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE~~

SHEREE R. PHIPPS

Deputy Clerk

- ✓ Monas
- ✓ Richards
- ✓ McDonald
- ✓ Haseldor
- ✓ Howson
- ✓ Allen
- ✓ Vereen
- ✓ Zuckerman

Sent to
BNC for
Service.

IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF SOUTH CAROLINA

FILED
 00 JAN 28 AM 6:33
 LEWIS AND CLARK COUNTY
 DISTRICT OF SOUTH CAROLINA

In Re:)
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 Defendant.)
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Case No. 96-78369-W

Chapter 7

Adversary No. 98-80262-W

ENTERED
 JAN 31 2000
 S. R. P.

ORDER

THIS MATTER comes before this Court upon Plaintiff's Complaint filed on November 4, 1998 to recover fraudulent transfers made by Debtor pursuant to 11 U.S.C. §544 and S.C. Code Ann. §27-23-10. The Complaint seeks damages against Mark Groves ("Defendant") because Plaintiff claims Defendant "formulated, designed, participated in and/or acquiesced in the fraud perpetrated upon the creditors of the Debtor . . . by devising, preparing, executing, accepting and/or recording the documents purporting to make such conveyances." Plaintiff

JM-1 of 7-

189

bases the adversary proceeding against Defendant on S.C. Code Ann. §27-23-30. After reviewing the pleadings and considering the evidence presented and arguments of counsel at trial, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, made applicable by Rule 7052 of the Federal Rules of Bankruptcy Procedure.¹

FINDINGS OF FACT

1. Prior to August 10, 1993 Charles Vereen ("Debtor"), along with two partners, operated a bungee jumping attraction in Horry County, South Carolina, through a corporation known as Beach Bungee, Inc.
2. On August 10, 1993, two young men were killed at the bungee jumping attraction.
3. Debtor was a defendant in a wrongful death lawsuit filed in the United States District Court for the District of South Carolina (the "District Court Action") on October 8, 1993 by the parents of one of the young men killed in the bungee jumping accident.
4. Soon after the Complaint was filed in the District Court Action, Debtor formed Vereen Joint Revocable Inter Vivos Trust (the "Trust"), East Cambridge Limited Partnership ("East Cambridge"), and Five Star Management and transferred substantial assets to those entities.
5. By previous orders, this Court has held that the conveyances to East Cambridge, Five Star Management, and the Trust were void and of no effect pursuant to §27-23-10 and concluded that the assets conveyed to those entities constituted property of the bankruptcy estate.
6. The documents necessary to effect the transfers to the Trust, East Cambridge, and Five

¹ The Court notes that to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such; and to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.



Star Management were prepared by defendant Garret Sutton ("Sutton").

7. Debtor first contacted Sutton to devise strategies to shield Debtor's assets from a possible judgment in the District Court Action.

8. Because Debtor and certain partners also wanted assistance with a new real estate development project and business venture known as the Master's Club, Sutton referred Debtor to Defendant, a lawyer in Marietta, Georgia, who specializes in business transactions, to assist with the project. Sutton was apparently directed to Defendant by Universal Corporate Services, a business which sets up offshore companies. Defendant was listed with Universal Corporate Services as a lawyer to be contacted for tax ramification issues.

9. Defendant and Sutton both became involved in the Masters' Club project.

10. Defendant was informed by Debtor of the pending District Court Action.

11. Defendant was specifically asked to devise an ownership structure which would allow income from assets placed in the Master's Club to be shielded from liabilities including any possible judgment resulting from the District Court Action. Defendant testified in his Rule 2004 examination of February 18, 1997 that "[t]he plan was that there would be a trust in existence in Nassau, Bahamas The plan involved allowing the Masters Club to profit from its enterprises and sending those profits to the chain of owners, and that trust would hold the funds."

12. Defendant drafted the documents establishing the New Providence Rabbi Trust, a Bahamian trust to which profits from the Master's Club would ultimately flow. The Master's Club was ultimately not funded and its primary asset of real estate was eventually foreclosed upon by its lienholders. The Master's Club, Inc. is not a defendant in the adversary proceeding commenced by the Trustee, and the Trustee is not seeking to void any conveyance made to or associated with the Master's Club project.

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13. Defendant was forwarded an unsigned copy of the document creating the Trust which is at issue in this proceeding. After sending Defendant a copy of the Trust document, Sutton inquired whether the Trust should include Debtor's stock interest in the Master's Club and the related corporation, Sports Property, Inc. Defendant advised against such an approach.

14. On November 14, 1996, Debtor filed a voluntary Chapter 7 bankruptcy petition.

15. At his §341 examination Debtor explained that "Mr Groves [did] not have anything to do with [Debtor's] affairs other than the Masters [sic] Club." Debtor could not be located for attendance at the trial in this proceeding.

16. Plaintiff, as the Chapter Trustee of the bankruptcy estate, filed an adversary proceeding against all defendants on November 4, 1998. The action was brought by the Trustee to recover fraudulent transfers made by Debtor pursuant to 11 U.S.C. §544 and S.C. Code Ann. §27-23-10.

17. Plaintiff seeks damages against certain defendants, including Defendant, for participating in the transfers. Plaintiff alleges that Defendant conspired with others to transfer Debtor's assets as part of an overall scheme in order to render him judgment proof and that, as a result of the conspiracy, the bankruptcy estate has been deprived of the assets transferred. Plaintiff asks that the Court find Defendant liable in the amount of \$36,000, the amount of yearly rents from identified property transferred to the Trust, pursuant to §27-23-30.

CONCLUSION OF LAW

Section 27-23-10 of the South Carolina Code of Laws, known as the Statute of Elizabeth, provides that any conveyance made with "any intent or purpose to delay, hinder, or defraud creditor and others . . . [shall be] utterly void, frustrate and of no effect." The claims against Defendant in this adversary proceeding arise pursuant to a related statute, §27-23-30 of the South Carolina Code of Laws, which provides in pertinent part:



All parties to such designed, covinous and fraudulent gifts, grants, leases, charges or conveyances [as described in §27-23-10], or being privy to and knowing of them, or any of them, who shall wittingly or willingly put in use, avow, maintain, justify or defend them, or any of them, as true, simple and done, had or made bona fide or upon good consideration, . . . shall incur the penalty and forfeiture of one year's value of such lands, tenements and hereditaments so purchased or charged.

S.C. CODE ANN. §27-23-30 (Law. Co-op. 1976). No cases have been published which interpret the requirements set forth by this statute. The general rule of statutory construction is that "words must be given their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation." See *State v. Taub*, 519 F.2d 797, 799 (S.C. Ct. App. 1999); see also *Consett v. City of Myrtle Beach*, 521 S.E. 276, 279 (S.C. 1999). In order to hold a party liable under §27-23-30, three requirements need to be met. First, the person needs to have knowledge of being privy to the fraudulent conveyance identified under §27-23-10. In other words, the party either needs to be aware of the transfer or must have partaken in such fraudulent transaction. Second, there needs to be proof that the defendant "put in use, avow[ed], maintain[ed], justifi[ed] or defend[ed]" such fraudulent conveyance. This factor requires some indication that the defendant protected, shielded, supported, or justified the fraudulent transaction in question. Third, the statute clearly sets forth the requirement that the defendant's actions must have been intentional; the party must have "wittingly or willingly" supported or defended the fraudulent conveyance. The threshold issue presented in this proceeding is the degree of connection that Defendant had with the conveyances which are the subject of this Statute of Elizabeth action. As it is written, §27-23-30 requires a defendant charged under that section to be privy to the conveyances determined to be fraudulent, and therefore void, under §27-23-10.



The Court finds that even though the evidence presented shows that Defendant was part of an overall plan to shield Debtor's assets from the possible judgment in the wrongful death lawsuit, Plaintiff did not meet his burden to prove all three requirements of §23-27-30. While the first requirement was met, Plaintiff did not meet his burden to prove the other two factors required for judgment under §23-27-30. There is evidence to prove that Defendant was aware of at least some of the fraudulent conveyances which are the subject of the Statute of Elizabeth action; in fact, Defendant was aware that the Trust was in place, and Sutton even faxed him a copy of the document. In his R.C. 2004 examination, Defendant stated, "[a]s I recall, I was informed that it existed, but [Debtor] did not engage me to handle his personal estate planning and liability management." At trial, Defendant testified that he had received a copy of the Trust and had been approached by Sutton who had proposed Defendant to include Debtor's stock interest in the Masters' Club and Sports Properties, Inc. in the Trust; however, he further testified that the proposal was immediately rejected.

Even though Defendant clearly was aware that the Trust had been set up to shield Debtor's assets, Plaintiff did not meet his burden to prove that Defendant *intentionally* "put in use, avow[ed], maintain[ed], justify[ed], or defend[ed]" the fraudulent conveyances which were the subject of this Statute of Elizabeth action. There is no evidence that Defendant drafted the operative documents or advised Debtor, either separately or in concert with Sutton, regarding the conveyances which are the subject of this proceeding. There was no showing of an overall strategy meeting or discussions between Debtor, Sutton and Defendant which might more directly connect Defendant to the subject conveyances.

Defendant's involvement with the Debtor does not appear to have caused harm to creditors because the Master's Club project was never funded by the transfer of valuable assets

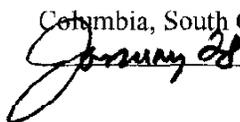
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and ultimately failed, and therefore provides no recovery to the estate and creditors. While Defendant and Sutton were both hired by Debtor to ultimately protect his assets from liabilities, and they eventually divided a lump sum legal fee for services provided to Debtor, this Court believes §27-23-30 requires proof of more direct participation in and support of the specific fraudulent conveyances which are the subject of the complaint. Although it is a difficult burden to meet, especially in circumstances of a sophisticated conspiracy or fraud, it nevertheless is necessary to present sufficient actual proof or circumstantial evidence from which reasonable references can be made in order to meet all of the requirements of the Statute. It is therefore,

ORDERED that judgment be entered in favor of Defendant Mark Groves and dismissing the action against him.

AND IT SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
 2000.

