

**Exhibit 12**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

In re, Janice Kay Gallant,		Case No. 19-06102-DD
		Adv. Pro. No. 20-80082-DD
	Debtor.	
Michelle Vieira,		Chapter 7
	Plaintiff,	
v.		<b>Order Granting Default Judgment</b>
Sherry Wilt,		
	Defendant.	

This matter is before the Court on a motion for default judgment filed by the plaintiff Michelle Vieira on December 1, 2020. No response to the motion was filed. The plaintiff commenced this adversary proceeding on October 19, 2020, asserting that the transfer of a one-half interest in certain real property by the debtor to the defendant was a fraudulent conveyance pursuant to S.C. Code § 27-23-10 and [11 U.S.C. § 544\(b\)](#) and seeking recovery of the avoided transfer pursuant to [11 U.S.C. § 550](#). A summons was issued on October 20, 2020 reflecting an answer deadline of November 19, 2020. The plaintiff filed a certificate of service on October 23, 2020, indicating that she served the defendant with a copy of the summons and complaint on the same date. The defendant did not file an answer. On November 24, 2020, the plaintiff filed an affidavit of default and the Clerk entered default on November 30, 2020.

Because the defendant did not answer the complaint, the well-pled facts in the complaint are deemed admitted. According to the complaint, the debtor purchased real property located at 57 Bainbridge Way, Bluffton, South Carolina on or about October 20, 2015. To finance a

portion of the purchase price, the debtor obtained a loan. The debtor also provided the funds for the remainder of the purchase price. The defendant did not contribute any funds to the purchase of the property, but the property was jointly titled in both the debtor's and the defendant's names, with each holding a one-half undivided interest. The complaint asserts that the defendant obtained the half-interest in the property for no consideration, that at the time the debtor granted the defendant a one-half interest in the property, the debtor was indebted to one or more unsecured creditors, and that the debtor did not retain sufficient assets to pay her creditors in full.

Section 544(b) of the Bankruptcy Code allows the trustee to “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 [the Bankruptcy Code] or that is not allowable only under section 502(e) of [the Bankruptcy Code].” The plaintiff here relies on South Carolina's Statute of Elizabeth, which states, in relevant part:

Every gift, grant, alienation, bargain, transfer, and conveyance of lands, tenements, or hereditaments, goods and chattels or any of them, or of any lease, rent, commons, or other profit or charge out of the same, by writing or otherwise, and every bond, suit, judgment, and execution which may be had or made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, and forfeitures must be deemed and taken (only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every one of them whose actions, suits, debts, accounts, damages, penalties, and forfeitures by guileful, covinous, or fraudulent devices and practices are, must, or might be in any ways disturbed, hindered, delayed, or defrauded) to be clearly and utterly void, frustrate and of no effect, any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

If there is an existing creditor at the time of the transfer, the trustee can set aside a fraudulent conveyance by a debtor, if not made for valuable consideration, if she can show:

(1) The grantor was indebted to [the creditor] at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay the indebtedness to the plaintiff in full.

Here, the complaint alleges that there was a creditor existing at the time the defendant received a half-interest in the property. The complaint further alleges that the transfer was not for valuable consideration, was voluntary, and that the debtor failed to retain sufficient assets to pay her creditors in full. Accordingly, the debtor's transfer of the defendant's one-half interest in the property to her is avoided.

After a transfer is avoided under §544, 11 U.S.C. § 550 allows the trustee to recover, for the benefit of the estate, the property transferred or the value of such property from the initial transferee of such transfer. Here, the Court has found that the transfer of the defendant's one-half interest in the property is avoided. The defendant is the initial transferee of the interest.

Accordingly, the trustee is entitled to recover the one-half interest in the property from the defendant. The defendant's one-half interest in the property is recovered. The transfer is recovered for the benefit of the bankruptcy estate.

AND IT IS SO ORDERED.

**FILED BY THE COURT**  
**12/07/2020**



Entered: 12/07/2020

David R. Duncan

US Bankruptcy Judge  
District of South Carolina