UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:	Bankruptcy Case No. 21-50100
J. Brockton Holbert,	Chapter 7
Debtor.	
Erik A. Ahlgren, Trustee,	
Plaintiff,	
v.	Adversary Proceeding No. 21-05006
Lucinda Miller n/k/a Luncinda Engen, MAG Law Offices, PC d/b/a Guzior Armbrecht Maher, Computer Forensic Services, LLC, and David Riley,	
Defendants.	

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT AND DISMISSING ADVERSARY PROCEEDING

At Duluth, Minnesota.

This adversary proceeding came before the Court on May 19, 2022 on Computer Forensic Services, LLC's ("Computer Forensic") motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), as incorporated by Federal Rule of Bankruptcy Procedure 7012(b). Def.'s Mot. Dismiss, ECF No. 49; Fed. R. Civ. P. 12(b)(6); Fed. R. Bankr. P. 7012(b). In this adversary proceeding, the Chapter 7 Trustee, Erik Ahlgren ("Trustee"), seeks to avoid an alleged preferential transfer pursuant to 11 U.S.C. § 547(b). In its motion, Computer Forensic argues the relevant transfer occurred before the ninety-day preference period of 11 U.S.C. § 547(b)(4)(A) and, therefore, the transfer is unavoidable. Def.'s

Mem. Supp. Mot. Dismiss 1, ECF No. 49. The Trustee filed a response opposing the motion and disputing the relevant transfer date. Pl.'s Resp. to Def.'s Mot. Dismiss, ECF No. 53. At the hearing, Erik Ahlgren appeared as the Plaintiff; Nicole Anderson appeared for Lucinda Miller n/k/a Lucinda Engen ("Ms. Miller"); Jaime Wing appeared for Computer Forensic; and Michael Sheridan appeared for MAG Law Offices, PC d/b/a Guzior Armbrecht Maher ("MAG Law"). Ms. Miller and MAG Law supported Computer Forensic's motion. The Court took the motion under advisement. The Court is treating the motion to dismiss as a motion for summary judgment under Federal Rule of Civil Procedure 56, as incorporated by Federal Rule of Bankruptcy Procedure 7056, on the issue of the date of the transfer. See Fed. R. Civ. P. 12(d) (allowing such treatment); Fed. R. Civ. P. 56; Fed. R. Bankr. P. 7056. For the reasons stated below, the Court grants summary judgment as to Count I. Because the remaining counts are predicated on Count I and 11 U.S.C. § 547(b), the adversary proceeding must be dismissed.

PROCEDURAL BACKGROUND

The Trustee commenced this adversary proceeding on July 28, 2021. Compl., ECF No. 1. There have been two amended complaints filed. Am. Compl., ECF No. 18; Second Am. Compl., ECF No. 45. The operative complaint is the second amended complaint, which was filed by the Trustee on February 24, 2022 ("Complaint"). Second Am. Compl., ECF No. 45 [hereinafter, "Compl."]. The Complaint consists of five counts. Id. In Count I, the Trustee seeks to avoid an alleged preferential transfer from the Debtor, J. Brockton Holbert ("Debtor" or "Mr. Holbert"), to Ms. Miller pursuant to 11 U.S.C. § 547(b). Compl. ¶¶ 26–34. In Counts II through IV, the Trustee alleges subsequent transferee liability against MAG Law, Computer Forensic, and David Riley, respectively, pursuant to 11 U.S.C. § 550(a)(2). Compl. 7–8. David Riley is no longer a party to this adversary proceeding, as he was dismissed by the Trustee. Notice of Dismissal, ECF No. 33.

Finally, in Count V (inadvertently labeled Count IV), the Trustee seeks to disallow the Defendants' claims against the Debtor's bankruptcy estate pursuant to 11 U.S.C. § 502(d). Compl. ¶¶ 40–41.

There were two previous dispositive motions filed in this adversary proceeding. Those motions were filed in response to previous versions of the Complaint. First, Ms. Miller filed a motion to dismiss the original complaint for various reasons, including for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), as incorporated by Federal Rule of Bankruptcy Procedure 7012(b), on October 1, 2021. Def.'s Mot. Dismiss, ECF No. 10; see also Pl.'s Resp. to Def.'s Mot. Dismiss, ECF No. 13; Fed. R. Civ. P. 12(b)(6); Fed. R. Bankr. P. 7012(b). The Court denied Ms. Miller's motion because the Court found, among other things, that the Trustee sufficiently alleged all elements of a preferential transfer under 11 U.S.C. § 547(b). Order Den. Def.'s Mot. Dismiss, ECF No. 15. Second, MAG Law filed a motion for summary judgment as to the first amended complaint under Federal Rule of Civil Procedure 56, as incorporated by Federal Rule of Bankruptcy Procedure 7056, on December 21, 2021. Def.'s Mot. Summ. J., ECF No. 29; see also Pl.'s Resp. to Def.'s Mot. Summ. J., ECF No. 31; Fed. R. Civ. P. 56; Fed. R. Bankr. P. 7056. Pursuant to the Court's order, the parties submitted additional briefing. Order Cont. Hr'g, ECF No. 35; Def.'s Suppl. Br. Supp. Mot. Summ. J., ECF No. 37; Pl.'s Suppl. Br. Resp. to Def.'s Mot. Summ. J., ECF No. 38. The Court denied MAG Law's motion because the Court found that the record was deficient. Order Den. Def.'s Mot. Summ. J., ECF No. 43. In deciding MAG Law's motion, the Court raised the issue of whether the deposit of the sale proceeds with the Mille Lacs County Court (described below) was analogous to the creation of an escrow. See generally, Matter of Newcomb, 744 F.2d 621 (8th Cir. 1984) (discussing when a transfer occurs under an escrow arrangement). Neither MAG Law nor the Trustee had briefed that Eighth Circuit case law.

Computer Forensic, which was added as a defendant in the second amended complaint subsequent to the Court's ruling on MAG Law's motion, filed the present motion as a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), as incorporated by Federal Rule of Bankruptcy Procedure 7012(b), on March 28, 2022. Def.'s Mot. Dismiss, ECF No. 49; Fed. R. Civ. P. 12(b)(6); Fed. R. Bankr. P. 7012(b). The Trustee filed a response on April 15, 2022. Pl.'s Resp. to Def.'s Mot. Dismiss, ECF No. 53. The Court held a hearing on April 20, 2022. At the hearing, the Court determined it was appropriate to treat the motion to dismiss as a motion for summary judgment. See Fed. R. Civ. P. 12(d) ("If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion."). The parties agreed that such treatment is appropriate for the transfer issue under 11 U.S.C. § 547(b)(4)(A). The Court continued the hearing to May 19, 2022 and gave the parties until May 12, 2022 to file supplemental briefs. Order Cont. Hr'g, ECF No. 56. Both Computer Forensic and the Trustee properly briefed the Eighth Circuit case law raised by the Court previously. See, e.g., Def.'s Mem. Supp. Mot. Dismiss 7, ECF No. 49; Pl.'s Resp. to Def.'s Mot. Dismiss 5, ECF No. 53; Def.'s Suppl. Br. Supp. Mot. Dismiss 1, ECF No. 58; Pl.'s Suppl. Br. Resp. to Def.'s Mot. Dismiss 4, ECF No. 59. As mentioned above, Ms. Miller and MAG Law support Computer Forensic's motion. See Def.'s Suppl. Br. Supp. Mot. Dismiss 15, ECF No. 58 (signatures of counsel). All parties submitted a factual stipulation. Stip., ECF No. 57. The Court held oral arguments as scheduled on May 19, 2022 and took the motion under advisement.

JURISDICTION

The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This adversary proceeding is a core proceeding under 28 U.S.C. §§ 157(b)(2)(B) and (F). All parties have consented to the entry of final orders and judgment by this Court. See Def.'s Statement Consent, ECF No. 9 (Ms. Miller); Def.'s Answer 12, ECF No. 22 (MAG Law); Compl. ¶ 6 (Trustee); Def.'s Statement Consent, ECF No. 55 (Computer Forensic).

UNDISPUTED FACTS

Nearly all the following facts come directly from the parties' factual stipulation. Stip., ECF No. 57 [hereinafter, "Stip."]. In 2003, Mr. Holbert purchased the real estate and structures located at 7854 Tailor Road, Wahkon, Minnesota 56386 ("Property") pursuant to a contract for deed, dated August 1, 2003, from vendors Herm A. Weber and Arlie M. Weber, husband and wife. Stip. ¶ 1. On or about August 30, 2010, Mr. Holbert and Ms. Miller entered into an agreement by which Ms. Miller received a one-half interest in the Property. Id. ¶ 2. On or about May 2, 2012, Mr. Holbert recorded a deed conveying an interest in the Property to himself and Ms. Miller as joint tenants. Id. ¶ 3.

On November 10, 2015, Ms. Miller commenced a Minnesota state-court civil action in Mille Lacs County, Minnesota styled Lucinda L. Miller v. J. Brockton Holbert, Noble Wear, Ltd., and Water and Woods Gallery and Gifts, Inc. d/b/a Pacific and Maine, No. 48-CV-15-2178 ("Minnesota Action") asserting several causes of action against the defendants. Id. ¶ 4. More specifically, Ms. Miller alleged twenty causes of action, two of which included fraud and breach of warranty for Mr. Holbert's alleged actions regarding the Property. Id. ¶ 4, Ex. 4. The other causes of action mainly pertain to the parties' business dealings. Id. Mr. Holbert also filed counterclaims against Ms. Miller. Id. ¶ 4, Ex. 5. They each requested a partition of the Property,

though apparently they could not agree on the nature of the partition (e.g., in kind or sale). Id. ¶ 5, Ex. 6. On February 9, 2018, the Mille Lacs County Court appointed three referees to "assess[] and report[] their professional opinion of the estimated fair market value of the Property and recommend[] the manner (including but not limited to consideration of auction versus private sale), timing, and circumstances of any recommended sale or other disposition of the Property." Id.

On May 8, 2018, the Mille Lacs County Court issued an order: (1) approving the referees' report; (2) directing the Property's sale at public auction; and (3) appointing a referee to conduct the sale ("May 8, 2018 Order"). Id. ¶ 6. The May 8, 2018 Order found that "Lucinda Miller and J. Brockton Holbert each own an undivided equal interest in the Property." Id. ¶ 7. The May 8, 2018 Order further directed that the proceeds of the sale be deposited by the referee into his law firm's trust account and:

> distributed by further order of this Court…according to the priority order specified in Minn. Stat. 558.16: "(1) to pay its just proportion of the general costs of the action; (2) to pay the costs of the reference; (3) to satisfy and cancel or record the several liens, if any, in their order of priority by payment of the sums due and to become due; the amount remaining due to be verified by affidavit at the time of payment; (4) the residue among the owners of the property sold, according to their respective shares.

Id. ¶ 8.

On August 16, 2018, the Mille Lacs County Court issued an order confirming the Property's sale to a third party for $1,200,000 plus a $72,000 buyer's fee ("August 16, 2018 Order"). Id. ¶ 9. While the August 16, 2018 Order provided for a $72,000 buyer's fee, the actual amount of the buyer's fee for the sale of the Property was $68,334.43. Id. ¶ 9 n.1. The August 16, 2018 Order directed the referee to use certain of the Property's proceeds to pay: (1) the remaining amount on the contract for deed by which Mr. Holbert originally acquired the Property; and (2) expenses related to the sale, including the referee's professional fees, an auction service, and

publication costs. Id. ¶ 10. The August 16, 2018 Order further directed that the remainder of the net proceeds, which totaled $812,578.40, be deposited with the Mille Lacs County Court. Id. ¶ 11. A deed conveying and quitclaiming the Property from the contract for deed vendor (Arlie M. Weber, as Trustee of The Harm A. Weber Revocable Trust Agreement) to Mr. Holbert and Ms. Miller as joint tenants was recorded on September 14, 2018. Id. ¶ 13.

On September 18, 2018, the Mille Lacs County Court issued an order appointing Steven B. Schmidt as Special Master ("Special Master") and assigned him the duty to determine the proper distribution of the funds on deposit with the Mille Lacs County Court resulting from the partition sale of the Property, and all non-jury issues. Id. ¶ 12. The Special Master had the authority to "[c]onduct evidentiary hearings and conclusively determine the outcome of any and all issues that do not require trial to a jury." Id. ¶ 12, Ex. 9. The Special Master's orders would be subject to review by the Mille Lacs County Court for clear error for findings of fact and for abuse of discretion for conclusions of law. Id. The non-jury issues were set for a three-day evidentiary hearing on August 24, 2020 in front of the Special Master. Id. ¶ 14.

Three days before the evidentiary hearing, on August 21, 2020, Mr. Holbert filed for bankruptcy protection under Chapter 7 of the Bankruptcy Code. Id. ¶ 15; see also Voluntary Petition, In re J. Brockton Holbert, No. 20-50512 (Bankr. D. Minn. Aug. 21. 2020), ECF No. 1. The Minnesota Bankruptcy Court dismissed Mr. Holbert's bankruptcy case on September 9, 2020. Stip. ¶ 16.

On September 15, 2020, the law firm of Thom Ellingson, PLLP ("Lien Claimant") filed a Notice of Attorney's Lien in the Minnesota Action, claiming a lien amount of $130,217.68 ("Lien") against Mr. Holbert's property. Id. ¶ 17. On October 21, 2020, Mr. Holbert and Ms. Miller fully executed a settlement agreement and release ("Settlement Agreement"). Id. ¶ 18. The

Settlement Agreement provided that "Defendant [Holbert] shall receive One Hundred Fifteen Thousand Two Hundred Thirty-One and 25/100 Dollars ($115,231.25) from the funds on deposit with the Mille Lacs County Court Administrator." Id. ¶ 19. Of that $115,231.25, $44,000.00 would be paid to the Lien Claimant. Id. ¶ 18, Ex. 11. The Settlement Agreement further provided that "Plaintiff [Miller] shall receive the remaining funds on deposit with the Mille Lacs County Court Administrator, to be paid to the trust account for her law firm of Guzior Armbrecht Maher." Id. ¶ 20. The parties agreed the Settlement Agreement would be "binding on the parties [t]herein." Id. ¶ 18, Ex. 11.

On October 26, 2020, a stipulation between Ms. Miller, Mr. Holbert, and the Lien Claimant was filed with the Mille Lacs County Court and reviewed by the Special Master ("Stipulation"). Id. ¶ 21. The Stipulation contained similar terms to the Settlement Agreement. Id. ¶¶ 18–21, Exs. 11–12. On October 28, 2020, the Special Master raised certain issues under the Stipulation as filed with the Mille Lacs County Court. Id. ¶ 22. To address the Special Master's concerns, the Stipulation was amended and signed by Mr. Holbert on November 10, 2020, and by the remaining parties on November 12, 2020 ("Amended Stipulation"). Id. ¶ 23. The Amended Stipulation was submitted on November 17, 2020 and signed by the Special Master on November 19, 2020. Id. ¶ 24. The Amended Stipulation provided for certain fees for the Special Master, among others, and reduced the amount ultimately awarded to Mr. Holbert. Id. ¶ 23, Ex. 13. It provided that Mr. Holbert would receive $68,481.25 (minus fifty percent of the proceeds paid to the Special Master) and Ms. Miller would receive the remainder (minus other fees paid). Id.

On November 30, 2020, the Mille Lacs County Court entered an order denying Woodland Bank's motion to levy on the sale proceeds held by the Mille Lacs County Court. Id. ¶ 25. In that order, the Mille Lacs County Court noted:

> The money from the sale of the house has been held by the court, [*in*] *custodia legis*, since the sale. This means that no party has any settled entitlement or interest in that money. A lien cannot attach to an object until interests have been determined and as those interests are the subject of the litigation, those will not be determined until a resolution has been reached.

Id., Ex. 14 (italics added). That same day, the Mille Lacs County Court entered an order approving the parties' Amended Stipulation and accompanying order for judgment and docketed the same ("November 30, 2020 Order"). Id. ¶ 26. Pursuant to the terms of the Settlement Agreement and the Amended Stipulation, the Mille Lacs County Court entered judgment and ordered the distribution of proceeds from the Property's sale that remained on deposit with the Mille Lacs County Court Administrator as specified by and pursuant to the Settlement Agreement and Amended Stipulation. Id. Pursuant to the November 30, 2020 Order, $709,690.97 in proceeds from the sale of the Property was distributed, $596,094.72 of which was paid to the Guzior Armbrecht Maher IOLTA Account ("Guzior Account"), on behalf of Ms. Miller. Id. ¶ 27. While the Trustee and Computer Forensic did not formally stipulate to the date of distribution, both parties seem to agree that the proceeds were distributed on December 4, 2020. Compl. ¶ 23; Def.'s Mot. Dismiss 3, ECF No. 49.

On February 20, 2021, Mr. Holbert again filed for bankruptcy protection under Chapter 7 of the Bankruptcy Code. Voluntary Petition, In re J. Brockton Holbert, No. 21-50100 (Bankr. D. Minn. Feb. 20, 2021), ECF No. 1. The Trustee commenced this adversary proceeding five months later.

LEGAL STANDARD

Federal Rule of Civil Procedure 56(a), as incorporated by Federal Rule of Bankruptcy Procedure 7056, dictates that summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of

law." Fed. R. Civ. P. 56(a); Fed. R. Bankr. P. 7056. In this adversary proceeding, there is no genuine dispute as to any material fact. The parties stipulated to all relevant facts for purposes of determining when the transfer occurred. The only issue is whether Computer Forensic is entitled to judgment as a matter of law. See Newcomb, 744 F.2d at 625 ("The issue of when the relevant 'transfer' occurred, within the meaning of the Bankruptcy Code, is a question of law[.]"). Therefore, this adversary proceeding is ripe for summary judgment. See Eichenwald v. Small, 321 F.3d 733, 736 (8th Cir. 2003) (noting that summary judgment is "particularly appropriate" if "the unresolved issues are primarily legal rather than factual"). "The inquiry performed is the threshold inquiry of determining whether there is the need for a trial[.]" Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); see also id. ("[The standard for summary judgment] mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 50(a), which is that the trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict.").

DECISION

"The Bankruptcy Code allows the trustee in bankruptcy to enhance a debtor's estate by 'avoiding' pre-bankruptcy transfers of the debtor's property that conferred an unfair preference on one creditor." In re Jones Truck Lines, Inc., 130 F.3d 323, 325 (8th Cir. 1997). "Though the concept is quite simple, it is difficult to implement, and the end result is a lengthy, complex statute, 11 U.S.C. § 547." Jones Truck Lines, 130 F.3d at 325. Section 547(b) provides, in part:

> (b) Except as provided in subsections (c), (i), and (j) of this section, the trustee may…avoid any transfer of an interest of the debtor in property—
> (1) to or for the benefit of a creditor;
> (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
> (3) made while the debtor was insolvent;
> (4) made—

> (A) on or within 90 days before the date of the filing of the petition…
>
> (5) that enables such creditor to receive more than such creditor would receive if—
>
> (A) the case were a case under chapter 7 of this title;
>
> (B) the transfer had not been made; and
>
> (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

11 U.S.C. § 547(b). For purposes of this summary judgment decision, the question before the Court is whether the relevant transfer was "made on or within [ninety] days before the date of the filing of" Mr. Holbert's bankruptcy petition. Id. § 547(b)(4)(A).

On this question, the parties disagree. Computer Forensic argues this case is analogous to Newcomb, 744 F.2d 621, where the Eighth Circuit held the relevant transfer occurs upon deposit into an escrow, not upon distribution of the funds. Id. at 627. As such, Computer Forensic argues, "The relevant transfer here occurred no later than the time that the Property's proceeds were deposited with the Milles Lacs [County] Court on August 16, 2018." Def.'s Mem. Supp. Mot. Dismiss 7, ECF No. 49. In contrast, the Trustee argues this case is analogous to Price, 589 B.R. 690, (an out-of-circuit decision raised by the Court) and Newcomb only applies where the escrow is established to secure payment of a debt, not when the purpose of the escrow is to maintain the status quo (which he asserts was the purpose here). Pl.'s Resp. to Def.'s Mot. Dismiss 5–6, ECF No. 53. Therefore, according to the Trustee, "the transfer occurred on December 4, 2020 [within the nintey days], when the funds were distributed to the Guzior…Account." Id. at 4.

The Court asked the parties to consider, in the alternative, whether the settlement (and accompanying documents) between Mr. Holbert and Ms. Miller constituted the relevant transfer. Order Cont. Hr'g, ECF No. 56. On that point, Computer Forensic argues, "[A]ssuming that court-ordered deposit merely kept the status quo, cf. In re Price, 589 B.R. at 702, [Ms.] Miller and [Mr.] Holbert's settlement of their legal claims and the adjudication of a resulting Amended Stipulation

also constituted a transfer" and "all of this occurred outside the lookback period." Def.'s Suppl. Br. Supp. Mot. Dismiss 9, 14, ECF No. 58. Computer Forensic relies, in part, on the definition of "transfer" in the Bankruptcy Code. Id. at 10; see also 11 U.S.C. § 101(54). In contrast, the Trustee argues, "Because the funds were held by the court, the parties' stipulated settlement did not divest the Debtor's interest in the funds until the court approved the settlement and ordered distribution of the funds." Pl.'s Suppl. Br. Resp. to Def.'s Mot. Dismiss 7, ECF No. 59. In other words, "the transfer occurred on November 30, 2020, because that is when the Mille Lacs [County] [C]ourt made a final determination of property rights in the funds being held by the court." Pl.'s Resp. to Def.'s Mot. Dismiss 4, ECF No. 53. The Trustee relies on the terms of the Settlement Agreement, Minnesota Rule of Civil Procedure 53.07(a), and the Mille Lacs County Court's order denying Woodland Bank's motion to levy on the sale proceeds. Pl.'s Suppl. Br. Resp. to Def.'s Mot. Dismiss 7–9, ECF No. 59; see also Stip. ¶ 18, Ex. 11; Minn. R. Civ. P. 53.07(a); Stip. ¶ 25, Ex. 14.

For the reasons stated below, the Court agrees with Computer Forensic and finds the relevant transfer was not "made on or within [ninety] days before the date of the filing of" Mr. Holbert's bankruptcy petition. 11 U.S.C. § 547(b)(4)(A). As a result, the Court finds Computer Forensic is entitled to judgment as a matter of law as to Count I. Because the remaining counts are predicated on Count I and 11 U.S.C. § 547(b) (a finding that the transfer occurred on or within the ninety days prior to Mr. Holbert's bankruptcy filing), the adversary proceeding must be dismissed.

I. The "Lookback Date" For Purposes Of Section 547(b)(4)(A) Is November 20, 2020.

The Court begins its analysis by first determining the "lookback date" for the ninety-day preference period of 11 U.S.C. § 547(b)(4)(A). Mr. Holbert filed his bankruptcy petition on Saturday, February 20, 2021. Voluntary Petition, In re J. Brockton Holbert, No. 21-50100 (Bankr.

D. Minn. Feb. 20, 2021), ECF No. 1. Ninety days before February 20, 2021 was Sunday, November 22, 2020. See Fed. R. Bankr. P. 9006(a)(1)(A)–(B). Because November 22, 2020 was a Sunday, Federal Rules of Bankruptcy Procedure 9006(a)(1)(C) and (a)(5) require the Court to count backward since the time is measured before an event (i.e., the filing of Mr. Holbert's bankruptcy petition). Fed. R. Bankr. P. 9006(a)(1)(C), (a)(5). In counting backward as required by the rules, the Court holds that the ninety-day "lookback date" is Friday, November 20, 2020. This is undisputed. Therefore, the Trustee can only survive summary judgment if the transfer occurred on or after that date. 11 U.S.C. § 547(b)(4)(A). The two relevant events that occurred after November 20, 2020 are: (1) the Mille Lacs County Court's entry of the November 30, 2020 Order and accompanying judgment; and (2) the distribution of the sale proceeds on December 4, 2020. These are the two events the Trustee relies on. Neither of those two events constitute the relevant transfer as a matter of law.

II. The Court Must Apply Both Federal And State Law.

Section 547 of the Bankruptcy Code involves the application of both federal and state law. 11 U.S.C. § 547. "'What constitutes a transfer and when it is complete' is a matter of federal law." Barnhill v. Johnson, 503 U.S. 393, 397 (1992) (quoting McKenzie v. Irving Trust Co., 323 U.S. 365, 369–70 (1945)). Section 101(54)(D) of the Bankruptcy Code broadly defines "transfer" as "each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or an interest in property." 11 U.S.C. § 101(54)(D)(i)–(ii) (punctuation omitted). "Section 547(e) provides further guidance on the meaning and dating of a transfer." Barnhill, 503 U.S. at 397; 11 U.S.C. § 547(e). As stated, "a transfer is made at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 30 days after, such time…" 11 U.S.C. § 547(e)(2)(A); see also id. § 547(e)(1)(B) ("[A]

transfer of a fixture or property other than real property is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee."). Further, "a transfer is not made until the debtor has acquired rights in the property transferred." Id. § 547(e)(3). Although federal law controls what constitutes a "transfer," "property" and "interest in property" are "creatures of state law" in the absence of controlling federal law. Barnhill, 503 U.S. at 398; see also Butner v. United States, 440 U.S. 48, 54 (1979) ("Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law.").

III. The Sale Proceeds Were Held *In Custodia Legis*.

Once the Property was sold, the Mille Lacs County Court held the sale proceeds *in custodia legis*. That was affirmed by the Mille Lacs County Court in its November 30, 2020 order denying Woodland Bank's motion to levy on the sale proceeds. Stip. ¶ 25, Ex. 14, at 5. Computer Forensic and the Trustee agree that the sale proceeds were held *in custodia legis*. Def.'s Mem. Supp. Mot. Dismiss 3, ECF No. 49 ("In other words, proceeds from the Property's sale had been held by the Milles Lacs [County] [C]ourt *in custodia legis*…") (italics added); Pl.'s Resp. to Def.'s Mot. Dismiss 8, ECF No. 53 ("The fact that the partition funds were held by the court, [*in*] *custodia legis*…") (italics added). When property is held *in custodia legis*, that property is said to be "in the custody of the law" and "[c]reditors have no right to interfere with [that] property…or acquire liens upon it which if enforced would affect the rights of those acquiring title[.]" In re Telesports Prods., Inc., 476 N.W.2d 798, 800 (Minn. Ct. App. 1991). The Minnesota Supreme Court has held that when property is taken into the custody of the court, title is with the court. See Henning v. Raymond, 29 N.W. 132, 133 (Minn. 1886) ("When a court has taken property into its own charge and custody, for the purposes of administration and disposition, in accordance with the rights of the parties to the litigation, it is *in custodia legis*. The title of the property for the time being, and

for the purposes of such administration, may, in a sense, be said to be in the court.") (italics added). While Minnesota courts have generally applied the doctrine of *in custodia legis* to instances where a court-appointed receiver holds funds, the parties in this case and the Mille Lacs County Court agree that the doctrine applies in this case. See id.; CorePointe Cap. Fin., LLC v. Hecker, A11-1048, 2012 WL 360413, at *3 (Minn. Ct. App. Feb. 6, 2012).

A. For Property Held *In Custodia Legis*, Courts Hold The Transfer Occurs When The Property Is Deposited With The Court.

While the issue of when a transfer occurs under 11 U.S.C. § 547(b) for property held *in custodia legis* has not been directly addressed by the Eighth Circuit, several other courts have specifically addressed the issue and have held the transfer occurs when the property is first deposited with the court. See, e.g., In re Shao Ke, No. 09-32272, 2012 WL 2974754, at *4 n.9 (Bankr. N.D.N.Y. July 20, 2012) (finding the relevant transfer date is the date of the deposit); In re Bianchi Indus. Servs., LLC, No. 11-31035, 2012 WL 601889, at *7 (Bankr. N.D.N.Y. Feb. 23, 2012) ("It is well established that the relevant transfer date for preference purposes as to funds held *in custodia legis* is the date of their deposit with the court.") (citing Saper v. West, 263 F.2d 422, 427 (2d Cir. 1959)); Matter of Hayes, 5 B.R. 676, 679 (Bankr. S.D. Ohio 1980) (finding the funds were held *in custodia legis* and "the debtor's payment of $134.00 into the trusteeship on September 14, 1979 constituted a transfer of property of the debtor"). Under the reasoning of these cases, the transfer clearly occurred upon deposit of the sale proceeds with the Mille Lacs County Court shortly after August 16, 2018, well before the ninety-day preference period.

B. The Eighth Circuit Has Held A Transfer Occurs When Property Is Deposited In An Escrow.

While the Eighth Circuit has not specifically addressed the issue of when a transfer occurs under 11 U.S.C. § 547(b) for property held *in custodia legis*, it has addressed the issue for property

held in an escrow and it reached the same conclusion as the courts above. In Newcomb, the trustee sought to avoid the transfer of escrowed funds. 744 F.2d at 623. In a prior action, the United States had obtained a judgment against the debtor. Id. While appeal of that judgment was pending, the parties executed an escrow agreement. Id. The debtor deposited funds into the escrow thereby securing the judgment. Id. Pursuant to the escrow agreement, if the debtor prevailed on appeal, the escrowed funds would be returned to him; alternatively, if the United States prevailed on appeal, the escrowed funds would be disbursed to the United States. Id. One month after the United States prevailed on appeal, the debtor and his wife filed bankruptcy. Id. at 624.

Applying the broad definition of "transfer" (then defined in 11 U.S.C. § 101(40)), the Eighth Circuit held "the relevant transfer occurred when the escrow agreement was entered into and the funds [were] turned over to the escrow agent." Newcomb, 744 F.2d at 627; see also id. at 625–26 (discussing escrows and property interests under Missouri law). Because that transfer occurred before the ninety-day preference period, the transfer could not be avoided. Id. at 626. That was true even though the parties' rights in the funds had not yet been conclusively determined at the time the funds were turned over to the escrow agent. In citing 11 U.S.C. §§ 547(e)(2) (then ten days instead of thirty days) and (e)(1)(B), the Eighth Circuit reasoned:

> The transfer that occurred when the escrow was created is a type of transfer for which no further perfection is possible or necessary. In terms of the Bankruptcy Code, the transfer was "perfected" when it took effect between the parties. Since it was perfected simultaneously, the transfer involved here is deemed made when the escrow was created.

Newcomb, 744 F.2d at 626 n.6 (internal citations omitted); accord In re Pan Am Corp., 138 B.R. 382, 388 (Bankr. S.D.N.Y. 1992), aff'd in part, vacated in part, 166 B.R. 538 (S.D.N.Y. 1993); In re Intercontinental Publ'ns, Inc., 131 B.R. 544, 548 (Bankr. D. Conn. 1991); In re Cedar Rapids Meats, Inc., 121 B.R. 562, 569–70. (Bankr. N.D. Iowa 1990) (a decision by now Eighth Circuit

Judge Michael J. Melloy); In re Coco, 67 B.R. 365, 369 (Bankr. S.D.N.Y. 1986). The Eighth Circuit noted that when the escrow was created, the interest left to the debtor "was a contingent right to the funds." Newcomb, 744 F.2d at 626. As such, the transfer that occurred when the condition of the escrow agreement was met "did not deprive the estate of anything of value" and, hence, it could not be avoided. Id. at 627; see also id. at 626 ("To be avoidable a transfer must deprive the debtor's estate of something of value which could otherwise be used to satisfy creditors.").

IV. Newcomb Applies To This Adversary Proceeding And The Relevant Transfer Is Unavoidable.

The question becomes whether the reasoning of Newcomb applies to the facts of this adversary proceeding. To answer that question in the affirmative, the deposit of the sale proceeds with the Mille Lacs County Court must have been substantially similar to the creation of an escrow under Minnesota law and the interests transferred in an escrow under Minnesota law must be sufficiently analogous to the interests transferred in an escrow under Missouri law as described in Newcomb. See Barnhill, 503 U.S. at 398 (finding "property" and "interest in property" are "creatures of state law"). The Court will address each issue in turn, though the Court notes the Trustee did not dispute either issue. The Court concludes that Newcomb applies to this adversary proceeding and the relevant transfer, being the deposit of the sale proceeds with the Mille Lacs County Court, is unavoidable because it occurred before the ninety-day preference period.

A. The Deposit Of The Sale Proceeds With The Mille Lacs County Court Was Substantially Similar To The Creation Of An Escrow.

The Court finds that although the deposit of the sale proceeds with the Mille Lacs County Court was not nominally referred to as an "escrow," it was substantially similar to the creation of an escrow, with no material difference. Importantly, this is true even if the sale proceeds were not

technically held *in custodia legis*. (As noted above, the parties agree the property was held *in custodia legis*.) See, e.g., Thoraldsen v. Hatch, 91 N.W. 467, 468 (Minn. 1902) ("To make a deed an escrow, it must be delivered to a stranger, to be held until the condition is performed, then to be delivered to the grantee."); Van Valkenburg v. Allen, 126 N.W. 1092, 1092 (Minn. 1910) ("An escrow is a deed delivered to some third person, to be by him delivered to the grantee upon the performance of some precedent condition by the grantee or another, or the happening of some event.") (quotation omitted); In re LDM Dev. Corp., 211 B.R. 348, 351 (Bankr. D. Minn. 1997) ("Under Minnesota law, an escrow results when property is delivered to a stranger for the benefit of parties in interest to a transaction."). Here, the sale proceeds were deposited with the Mille Lacs County Court (i.e., "a stranger" or "third person") for the benefit of Mr. Holbert and/or Ms. Miller (i.e., "parties in interest") with distribution pending the issuance of a court order (i.e., "precedent condition" or "happening of some event").

This conclusion that the deposit of funds with a court is substantially similar to the creation of an escrow is supported by decisions of other courts. See In re Aspen Data Graphics, Inc., 109 B.R. 677, 682 (Bankr. E.D. Pa. 1990) ("As the funds in question were ordered by the state court to be held in escrow by an officer of that court…it appears that these funds were being held subject to the doctrine of *in custodia legis*…Thus, it appears that the transfer occurred, and was perfected in favor of the defendants, for purposes of [11 U.S.C.] § 547(b), when the funds were placed in *escrow* with the state court.") (emphasis added). One court expressly found that "the deposit of funds into an escrow account is substantially similar to the transfer of funds into and out of an undertaking." In re Anthony Sicari, Inc., 144 B.R. 656, 660 (Bankr. S.D.N.Y. 1992), aff'd, 151 B.R. 60 (S.D.N.Y. 1993); see also id. at 659 ("Under New York law, an undertaking refers to either cash or a surety's bond deposited into court."). As such, the relevant transfer occurred when the

debtor transferred funds into the undertaking. Id. at 663. In summary, the deposit of the sale proceeds with the Mille Lacs County Court was substantially similar to the creation of an escrow under Minnesota law.

B. Minnesota Escrow Law Is Sufficiently Analogous To Missouri Escrow Law.

The Court finds that the interests transferred in an escrow under Minnesota law are sufficiently analogous to the interests transferred in an escrow under Missouri law as described in Newcomb. Compare Lindley v. Groff, 34 N.W. 26, 28 (Minn. 1887) (Under Minnesota law, "[t]he general rule is that where a deed is deposited as an escrow, the title does not pass till the second delivery."), and Gibb v. Fire Ins. Co. of Phila., 61 N.W. 137, 138 (Minn. 1894) (However, "[t]he word 'interest' is broader than the word 'title,' and includes both legal and equitable rights."), and Rusch v. Lagerman, 261 N.W. 186, 187 (Minn. 1935) (where grantee died before conditions of escrow were satisfied, grantee's son inherited equitable interest in the property), with Newcomb, 744 F.2d at 625–26 (discussing the passage of legal title and equitable interests in an escrow under Missouri law). Because the Court has concluded, and the Trustee has not disputed, that: (1) the deposit of the sale proceeds with the Mille Lacs County Court was substantially similar to the creation of an escrow under Minnesota law; and (2) the interests transferred in an escrow under Minnesota law are sufficiently analogous to the interests transferred in an escrow under Missouri law as described in Newcomb, the reasoning of Newcomb applies to the facts of this adversary proceeding.

C. The Relevant Transfer Occurred Upon Deposit Of The Sale Proceeds With The Mille Lacs County Court Before The Preference Period.

Since the reasoning of Newcomb applies to the facts of this adversary proceeding, the relevant transfer occurred shortly after August 16, 2018 when the Mille Lacs County Court issued

an order confirming the Property's sale to a third party and directing that the remainder of the net proceeds be deposited with the court. It is unnecessary to determine the exact date the funds were deposited with the Mille Lacs County Court because it is undisputed that it was well before November 20, 2020. Once the Property was sold (at the request of Mr. Holbert) and the sale proceeds deposited with the court, Mr. Holbert voluntarily parted with an interest in property. 11 U.S.C. § 101(54)(D)(ii). Because the deposit of the sale proceeds with the Mille Lacs County Court occurred before the ninety-day preference period of 11 U.S.C. § 547(b)(4)(A), the transfer is unavoidable.

V. The Trustee's Arguments Fail.

The Court will now address the Trustee's arguments to the contrary. For the reasons stated below, the Trustee's arguments fail.

A. Newcomb Is Not As Limited As The Trustee Suggests.

The Trustee asserts that Newcomb "applies where the parties establish an escrow agreement to secure payment of a debt" and here, the Mille Lacs County Court's May 8, 2018 Order was not intended to secure payment of a debt. Pl.'s Resp. to Def.'s Mot. Dismiss 5–6, ECF No. 53. However, Newcomb is not that limited. In fact, the language of Newcomb is quite broad and the Trustee's argument must be rejected.

B. Price Is Distinguishable.

The Trustee also argues that Newcomb does not apply where the purpose of the escrow is to maintain the status quo. Pl.'s Resp. to Def.'s Mot. Dismiss 6, ECF No. 53. The Trustee states, "Unlike the Newcomb escrow arrangement, in the present case the funds were being held to maintain the status quo, not to secure a specific debt." Id. There is some non-binding case law that addresses the Trustee's argument. See, e.g., In re Price, 589 B.R. 690 (D. Haw. 2018). The Court

asked the parties to file supplemental briefs to address that case law, namely Price. Order Cont. Hr'g, ECF No. 56.

In Price, the creditor/appellant terminated his right to purchase certain real property in Honolulu, Hawaii in favor of the debtor in exchange for the debtor's written promise that the appellant would receive half of the net profits, if any, if the property was resold. Price, 589 B.R. at 694. The appellant recorded an affidavit of adverse claim, which prevented the debtor from being able to sell the property because title was unmarketable. Id. at 694–95. The debtor sued the appellant in state court and during the pendency of that litigation, the parties agreed the appellant would withdraw the affidavit of adverse claim and the debtor would deposit the net proceeds from the sale of the property into an escrow account. Id. at 695. The escrow instructions provided, in part, that the proceeds could be released: (1) by mutual agreement; (2) by court order; or (3) by deposit into a court-supervised account. Id. The debtor eventually obtained a court order transferring the proceeds to a court-supervised account, which was governed by the escrow instructions. Id. The state court granted summary judgment for the appellant on his counterclaim against the debtor and the clerk disbursed $123,716.23 to the appellant in partial satisfaction of the judgment. Id. at 695–96. The bankruptcy court ruled the trustee could recover the $123,716.23 as a preferential transfer because that transfer occurred within the ninety-day preference period—either when the state court entered its final judgment or when the clerk disbursed the funds. Id. at 696. The appellant appealed to the district court arguing, in part, that the relevant transfer occurred either: (1) when the net proceeds were deposited in the escrow account; or (2) when said proceeds were deposited in the court-supervised account. Id.

On appeal, the district court rejected the appellant's arguments. As to the deposit into the escrow account, the district court referenced Newcomb and reasoned:

> In cases relied on by [a]ppellant, the creditors showed the escrowed funds were not property of the bankruptcy estate where the escrow agreement left the debtor with only a contingent right to the escrowed funds. The transfer that occurred when the condition of the escrow was met therefore did not deprive the debtor's estate of anything of value.

Id. at 701 (citations and alterations omitted). The district court further reasoned, "For [a]ppellant to show that the escrow deposit sufficiently changed [d]ebtor's interest in the funds so that it was without value and did not become part of the bankruptcy estate, it is at least necessary that the escrow deposit altered the status quo." Id. at 702. Therefore, because the debtor could not sell the property and use the sale proceeds as he wished without the consent of the appellant or a court order before the escrow instructions were drafted, the deposit into the escrow account did not alter the status quo. Id. As to the deposit into the court-supervised account, the district court ruled that the sale proceeds were not held *in custodia legis* (and, therefore, were not out of reach by other creditors or the trustee) since the parties could withdraw the proceeds from the court-supervised account by mutual agreement. Price, 589 B.R. at 703.

First, and most importantly, Newcomb is not limited to situations where the status quo is not being preserved and Newcomb is binding on this Court. Second, Price appears to be a minority view. See In re Hooker Investments, Inc., 155 B.R. 332, 339 (Bankr. S.D.N.Y. 1993) ("With respect to a deposit by a debtor into escrow, the courts have uniformly held in the context of a preference action that it is the debtor's deposit of funds into escrow and not the subsequent release of the funds that is the controlling transfer."). Third, the Court finds the present adversary proceeding is distinguishable from Price. Unlike Price, Mr. Holbert and Ms. Miller could not simply mutually agree to remove the funds from the possession of the Mille Lacs County Court. At all relevant times, the sale proceeds remained out of reach of Mr. Holbert and Ms. Miller. The sale proceeds also remained out of reach of creditors. In other words, "a creditor on a simple

contract…[could not] acquire a judicial lien that…[would be] superior to the interest of" Ms. Miller because the sale proceeds were held *in custodia legis*. 11 U.S.C. § 547(e)(1)(B). The Lien Claimant did obtain an attorney's lien, but that was a statutory lien. See Minn. Stat. § 481.13. Woodland Bank, on the other hand, could not obtain a judicial lien. 11 U.S.C. § 547(e)(1)(B). In fact, the Trustee concedes that Price "does not address an *in custodia legis* situation similar to the instant case." Pl.'s Suppl. Br. Resp. to Def.'s Mot. Dismiss 5, ECF No. 59.

C. If Price Applies, The Transfer Occurred Upon Settlement Between Mr. Holbert And Ms. Miller Before The Preference Period.

Assuming Price applies and the Eighth Circuit held that a court holding funds to maintain the status quo is not a transfer, Computer Forensic would still prevail on summary judgment. This is because if the relevant transfer did not occur when the sale proceeds were deposited with the Mille Lacs County Court, it occurred when Mr. Holbert and Ms. Miller ultimately settled their claims to the sale proceeds. At that point, it could not be argued that the Mille Lacs County Court was holding the sale proceeds pending resolution of the dispute (maintaining the status quo) as the dispute was resolved. While the Mille Lacs County Court remarked in its November 30, 2020 order denying Woodland Bank's motion to levy on the sale proceeds that the parties' "interests are the subject of the litigation, [and] those will not be determined until a resolution has been reached," the court was apparently referring to the fact that the funds were still held *in custodia legis* (even though a settlement had been reached) and, therefore, the funds were unreachable by Woodland Bank at that time. Stip. ¶ 25, Ex. 14, at 5.

On October 21, 2020, Mr. Holbert and Ms. Miller fully executed the Settlement Agreement. Stip. ¶ 18. On October 26, 2020, the parties filed a Stipulation, incorporating the Settlement Agreement, for review by the Special Master. Id. ¶ 21. To address certain of the Special Master's concerns, the parties executed an Amended Stipulation between November 10, 2020 and

November 12, 2020. Id. ¶ 23. The parties submitted the Amended Stipulation on November 17, 2020 and the Special Master signed it on November 19, 2020. Id. ¶ 24. All of these events took place before November 20, 2020 (the "lookback date" for purposes of the transfer). In other words, before November 20, 2020, it was established that Mr. Holbert would receive $68,481.25 (minus fifty percent of the proceeds paid to the Special Master) and the remainder (totaling $596,094.72) would be deposited in the Guzior Account on behalf of Ms. Miller. Stip. ¶¶ 23–24, Ex. 13; Id. ¶ 27. That settlement was a "transfer" under the Bankruptcy Code (assuming the deposit of the sale proceeds with the Mille Lacs County Court was not).

The Court returns to the broad definition of "transfer" under the Bankruptcy Code: "each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or an interest in property." 11 U.S.C. § 101(54)(D)(i)–(ii) (punctuation omitted). By executing the Settlement Agreement (and Stipulation and Amended Stipulation), Mr. Holbert directly, conditionally (discussed below), and voluntarily disposed of his interest in the sale proceeds. The transfer took effect between Mr. Holbert and Ms. Miller at that same time because the parties were bound by such agreements. The parties agreed the Settlement Agreement would be "binding on the parties [t]herein." Stip. ¶ 18, Ex. 11; see Chalmers v. Kanawyer, 544 N.W.2d 795, 797 (Minn. Ct. App. 1996) ("Settlement agreements are contractual in nature and are as binding on the parties as any contract they could make."); see also 11 U.S.C. § 547(e)(2)(A). The transfer was also perfected at that same time because as mentioned above, the sale proceeds remained in the possession of the Mille Lacs County Court and no creditor "on a simple contract…[could] acquire a judicial lien that…[would be] superior to the interest of" Ms. Miller. 11 U.S.C. § 547(e)(1)(B); id. § 547(e)(2)(A).

To summarize, if the deposit of the sale proceeds with the Mille Lacs County Court did not divest Mr. Holbert of his one-half interest to those proceeds (as the Trustee asserts, see Pl.'s Suppl. Br. Resp. to Def.'s Mot. Dismiss 6, ECF No. 59, contrary to Newcomb), then Mr. Holbert transferred his one-half interest to the proceeds when he agreed before the ninety-day preference period to transfer those proceeds to Ms. Miller in exchange for her agreement to not pursue her claims against him. See In re Chapman, 628 B.R. 512, 524 (Bankr. S.D. Tex. 2021) ("Recall that the 'transfer' was made on October 9, 2018, when [the] [d]ebtor and [the] [d]efendants entered into the Settlement Agreement whereby [the] [d]ebtor relinquished and disclaimed all interests in the Chapman Family Trust."). For the foregoing reasons, Price does not alter the Court's conclusion that summary judgment is appropriate.

D. Entry Of The November 30, 2020 Order Was Not The Relevant Transfer.

The Trustee counters that court approval was required to effectuate the parties' settlement and, therefore, the transfer did not occur until the Mille Lacs County Court issued the November 30, 2020 Order. Pl.'s Suppl. Br. Resp. to Def.'s Mot. Dismiss 7, ECF No. 59. First, the Trustee relies on the terms of the Settlement Agreement, which provided, in part, "Within 48 hours of the execution of this Settlement Agreement, all parties agree to execute any additional documents needed to effectuate the terms contained herein, including but not limited to a joint stipulation to be filed in the Mille Lacs County Court." Stip. ¶ 18, Ex. 11. Second, the Trustee relies on Minnesota Rule of Civil Procedure 53.07(a) which requires a court to afford an opportunity to be heard when acting on a special master's order, report, or recommendations. Minn. R. Civ. P. 53.07(a). Finally, the Trustee relies on the Mille Lacs County Court's order denying Woodland Bank's motion to levy on the sale proceeds which concluded, "Woodland's efforts to attach or levy on the proceeds held by this court must fail on the grounds that no interest in the proceeds

held by the court has attached to this point." Stip. ¶ 25, Ex. 14. While "a transfer is not made until the debtor has acquired rights in the property transferred," 11 U.S.C. § 547(e)(3), the Trustee asserts the Mille Lacs County Court did not mean that neither Mr. Holbert nor Ms. Miller had an interest in the funds but, rather, that they did not have an interest subject to attachment or levy. Pl.'s Suppl. Br. Resp. to Def.'s Mot. Dismiss 9 n.3, ECF No. 59.

Assuming the Trustee is correct regarding the parties' interests, the Trustee's argument that court approval was required to effectuate the parties' settlement and the Trustee's subsequent reliance on the Settlement Agreement, Minnesota Rule of Civil Procedure 53.07(a), and the Mille Lacs County Court's order denying Woodland Bank's motion to levy on the sale proceeds is misplaced. The Trustee's argument ignores the broad language found in the definition of "transfer" in the Bankruptcy Code. (Notably, the Trustee does not cite to or refer to the definition of "transfer" in either his response or his supplemental brief.) Under 11 U.S.C § 101(54)(D), a transfer can be conditional. This means that the Settlement Agreement, Stipulation, Amended Stipulation, and the Special Master's adjudication could have been conditioned upon court approval and they could still have constituted a transfer from Mr. Holbert to Ms. Miller for purposes of the Bankruptcy Code.

The Trustee's argument that court approval of the settlement and distribution was required for there to have been a transfer could have also applied in Newcomb. In Newcomb, at the time of the transfer, the appellate court still needed to decide if the debtor or the United States won in district court. 744 F.2d at 623. And, the escrow agent had not disbursed the funds. In fact, at the time the Eighth Circuit decided Newcomb, the escrow agent was still holding the funds. Id. at 624. Here, at the time of the relevant transfer, the Mille Lacs County Court had not approved or distributed the funds. In Newcomb and in this adversary proceeding, the respective court orders

were issued within the ninety-day preference period but prior to the bankruptcy filing. Id. at 623–24. To rule as the Trustee requests, the Court would have to ignore Newcomb, which it cannot do. (Newcomb was not addressed in the prior dispositive motions.) Hence, the Trustee's argument fails under Newcomb as well.

E. The Court Must Only Consider The Facts Before It.

Lastly, the Trustee repeatedly urges the Court "to consider how the funds would have been treated had the Debtor filed bankruptcy when the [Mille Lacs County] [C]ourt still held the funds from the partition sale, but before the [Mille Lacs County] [C]ourt issued its order." Pl.'s Resp. to Def.'s Mot. Dismiss 8, ECF No. 53. The Trustee asserts:

> [I]f such a bankruptcy had been administered, the bankruptcy court would have had exclusive jurisdiction to resolve the remaining claims and to determine the competing property rights in the partition funds. Because the bankruptcy court would have maintained jurisdiction over the assets and the claims, the Mille Lacs [County] [C]ourt's interim retention of the partition funds would not have deprived the Debtor's estate of something of value which could otherwise be used to satisfy creditors and, thus, there would be no transfer within the meaning of Newcomb.

Id. Those are simply not the facts before the Court in this adversary proceeding. On the facts before the Court, the Mille Lacs County Court issued its distribution order prior to the filing of Mr. Holbert's bankruptcy petition. As shown above, the Trustee's assertion could have also applied in Newcomb.

Under Newcomb, Mr. Holbert did not have an interest in the remainder of the sale proceeds at the time of filing. See Matter of Missionary Baptist Found. of Am., Inc., 792 F.2d 502, 506 (5th Cir. 1986) ("[I]n each of the cases, [including Newcomb,] the contingency which would wipe out the debtor's interest in an escrow fund occurred prior to bankruptcy. Hence, at the date of bankruptcy, no contingent interest existed which might accrue to the debtor's estate. Where the contingency of the escrow was not fulfilled prior to bankruptcy, the debtor holds an interest in the

property."); see also In re N.S. Garrott & Sons, 772 F.2d 462, 466 (8th Cir. 1985) ("[A]n interest limited in the hands of the debtor is equally limited in the hands of the estate…"). Even if those were the facts before the Court, the Court has doubts about the Trustee's assertion regarding depriving the estate of something of value. See In re Interior Wood Prods. Co., 986 F.2d 228, 231 (8th Cir. 1993) ("The fact that the payment went through Interior Wood's attorney, who acted as an escrow agent for the unsecured creditors, does not refute the fact that the payment was made from Interior Wood's property and thus implicitly diminished the bankruptcy estate.").

VI. This Adversary Proceeding Is Dismissed.

Based on the foregoing, the Court finds Count I fails as a matter of law as the transfer occurred before the ninety-day preference period. In Counts II through IV, the Trustee alleges subsequent transferee liability against MAG Law, Computer Forensic, and David Riley (dismissed from the adversary proceeding by the Trustee), respectively, pursuant to 11 U.S.C. § 550(a)(2). Section 550(a)(2) is predicated on a transfer being avoided under 11 U.S.C. § 547(b). 11 U.S.C. 550(a) ("[T]o the extent that a transfer is avoided under section…547…"); Compl. 7–8. The same is true for Count V (inadvertently labeled Count IV). In Count V, the Trustee seeks to disallow the Defendants' claims against the Debtor's bankruptcy estate pursuant to 11 U.S.C. § 502(d). Compl. ¶¶ 40–41. Section 502(d) is also predicated on a transfer being avoided under 11 U.S.C. 547(b). 11 U.S.C. § 502(d) ("[T]he court shall disallow any claim of any entity…that is a transferee of a transfer avoidable under section…547…"). Therefore, because the other counts are dependent on liability in Count I, this adversary proceeding is dismissed.

CONCLUSION

Newcomb mandates that the relevant transfer occurred when the sale proceeds were deposited with the Mille Lacs County Court. That occurred before the ninety-day preference period

of 11 U.S.C. § 547(b)(4)(A) and, therefore, the transfer is unavoidable. The Trustee's real quarrel is with Newcomb. Alternatively, the transfer occurred when the parties settled their claims, which also occurred before the ninety-day preference period. The Court need not rule on Computer Forensic's alternative argument that the transfer was not made on account of an antecedent debt. See 11 U.S.C. § 547(b)(2); Def.'s Mot. Dismiss 13, ECF No. 49.

THEREFORE, IT IS ORDERED: Computer Forensic's motion for summary judgment, ECF No. 49, joined by MAG Law and Ms. Miller, is **GRANTED** and this adversary proceeding is **DISMISSED** without prejudice as to the Trustee's ability to object to claims of the Defendants on issues other than preferential transfer.

BY THE COURT:

Date: *August 19, 2022*

/e/William J. Fisher
William J. Fisher
United States Bankruptcy Judge