

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Chapter 7 Case

Anita Mae Madery,

BKY Case No. 3-90-687

ADV. No. 3-90-109

Debtor.

Charles W. Ries, Trustee,

Plaintiff,

v.

MEMORANDUM ORDER

Michael Madery,

Defendant.

This matter came before the Court for trial on June 17, 1991 on the Plaintiff's complaint seeking avoidance of certain transfers to Defendant as preferences under 11 U.S.C Section 547(b), and as fraudulent transfers under 11 U.S.C. 548(a), and their recovery under 11 U.S.C. Section 550. Plaintiff is represented by Charles W. Ries. Defendant is represented by Richard H. Bins. This is a core proceeding under 28 U.S.C. Sections 1334 and 157(a), and Local Rule 103(b). The Court has jurisdiction to determine this matter under 28 U.S.C. Section 157(b)(2)(F) & (H). Having heard testimony and oral argument, received and reviewed written argument, and now being fully advised in the premises, the Court makes this ORDER pursuant to the Federal and Local Rules of Bankruptcy Procedure.

I.

This is a preference and fraudulent transfer action. Anita Mae Madery ("Debtor") filed her Chapter 7 petition on February 15, 1990. Prior to filing, the Debtor was engaged in a combined crop, livestock and dairy operation. The Defendant, Michael Madery ("Madery"), is the Debtor's son, who resided with her in 1989. Prior to the filing, Madery worked as an employee in the farming operation under an oral agreement with the Debtor at a wage of \$250 per week, which he received pre-petition on a sporadic basis. Madery received the following pre-petition transfers that the trustee claims are avoidable preferences under 11 U.S.C. Section 547: on November 22, 1989, \$2,600 identified in the Debtor's records as back wages and the sale of a cow; on January 4, 1990, \$1,300 as back wages; on January 22, 1990, \$1,050 as back wages and use of an automobile for the previous five months. The following assets were purchased from the Debtor's bank account: a mini-mixer, hayrack, barn fan, pump, "big bale" truck, water heater, grate, and hay conditioner, valued at cost at \$11,413. These assets were depreciated on the Debtor's 1988 tax return, but the Debtor now claims that the equipment was purchased for Madery as additional compensation for his past efforts in the farming

operation.(FN1)

For the 1989 crop year, the total value of government payments

(FN1) There are no recorded transfers of equipment between the Debtor and Madery on their tax returns. The only documentation of transfers between them is a bill of sale executed on February 1, 1990, under which Madery purchased 36 head of cattle from the Debtor, along with 7,000 bushels of corn, 223 tons of silage, 20 tons of hay, 394 tons of haylage, and 550 bushels of soybeans (an amount equal to the crop remaining on hand at filing). Prior to that time, he owned no more than four to six cows.

and crops raised and sold was \$68,423.05. Pre-petition, the Debtor had already received \$42,540.05 of crop proceeds expected, and at filing, \$25,883 worth of crop remained on hand. The Debtor paid all input costs associated with the 1989 crop, including machinery use, real estate rental, seed, fertilizer, etc. On November 5, 1989, she paid Mark Madery, another son, \$2,470 to harvest the 1989 crop.

Defendant claims that he is entitled to one-third of the 1989 crop under an alleged lease arrangement, although he was not shown on ASCS records as a producer for 1989. He bases this claim on an alleged oral crop lease with the Debtor providing for a 1/3-2/3 crop split. He denies that he owes any liability for, and has not paid a portion of, the 1989 crop input costs or harvest costs. There was no pre-petition planning for segregation of crop proceeds belonging to the Debtor from crop proceeds now claimed by

Madery.(FN2)

The Plaintiff argues that the disputed transfers of cash and equipment to Madery constitute preferential transfers within the meaning of 11 U.S.C. Section 547(b),(3) which the estate is entitled

(FN2) In fact, Madery testified in his deposition that it was "a very miraculous coincidence" that 1/3 of the crop proceeds remained at filing. The Debtor admitted at trial that a written summary presented to the Court showing her income and expenses from the 1989 crop was not prepared as a planning document to provide for separation of her proceeds from those intended for Madery, but rather was prepared after the conclusion of the 1989 crop year to demonstrate actual costs associated with planting and harvesting the 1989 crop. Further, although FmHA had a first lien on the crop, the agency was not informed of Madery's claimed interest in it.

(FN3) 11 U.S.C. 547 reads in pertinent part: "... (b) Except as provided in subsection (c) 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; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
(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) the creditor received payment of such debt to the extent provided by the provision of this title...."

to recover for the benefit of creditors. See: 11 U.S.C. Section 550(a). Regarding the crop proceeds, the trustee disputes the Defendant's claim of a lease arrangement with the Debtor, and argues that the transfer of the crop from the Debtor to Madery was a fraudulent transfer within the meaning of 11 U.S.C. Section 548(a)(1) and (2).(FN4)

II.

1. Preferential transfers. The filing of a bankruptcy case creates an estate, which includes all legal and equitable interests of the debtor in property. See: 11 U.S.C. Section 541(a). To recover alleged preferences for the benefit of the estate, the trustee has the burden of proof on all elements of 11 U.S.C. Section 547(b). *Brown v. First Nat'l Bank of Little Rock*, 748 F.2d 490, 491 (8th Cir. 1984). There is no dispute between the parties that Madery benefitted from the Debtor's wage transfers to him, that the transfers were for an antecedent debt, or that the Debtor was insolvent when the transfers were made. Therefore, the trustee has met his burden with regard to those transfers.

The Debtor's focus immediately prior to filing was to ensure that Madery obtained an opportunity to continue the family farming operation. Cash and personal property were given him within 90 days prior to the filing of her petition while other creditors with outstanding pre-petition claims were left unpaid. Equipment that was given him was paid for from the Debtor's bank account and depreciated on the Debtor's tax return. But for these transfers to Madery, the Debtor's estate would have contained an additional \$4,950 in cash and various items of equipment valued at cost at \$11,413. Accordingly, the trustee is entitled to judgment that these transfers to Madery were preferential within the meaning of 11 U.S.C. Section 547(b), and may be recovered for the benefit of the bankruptcy estate under 11 U.S.C. Section 550(a).

2. Fraudulent transfer. Madery's defense to the trustee's action to recover crop proceeds is based upon an alleged oral lease arrangement for which no independent verification is available. It

(FN4) 11 U.S.C.548(a)(1) and (2) reads in pertinent part:
"...(a) the trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or sithin one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily-

(1) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or
(2)(A) received less than a reasonably equivalent value in

exchange for such transfer or obligation; and (B)(i) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;...."

is contradicted by written documents signed by the Debtor and Madery, and by the historical employer/employee relationship consistently maintained by the parties.

The bill of sale transferring the crops, worth \$23,120, from the Debtor to Madery was signed 14 days pre-petition at a time when her other creditors were left unpaid. It is contradicted by the employer/employee relationship they acknowledged at trial, which provided for a weekly wage of \$250. It is further contradicted by Madery's minimal pre-petition involvement in the dairy operation, limited to ownership of no more than four to six cows. Therefore, the trustee is entitled to avoid the transfer as fraudulent within the meaning of 11 U.S.C. Section 548(a)(1) and (2).

NOW, THEREFORE, IT IS ORDERED:

1. The trustee has judgment that the transfers by Anita Mae Madery to Michael Madery of \$4,950 in cash, and of equipment valued at cost at \$11,413, were preferential under 11 U.S.C. Section 547(b), and may be recovered under 11 U.S.C. Section 550(a).

2. The trustee has judgment that transfer by Anita Mae Madery to Michael Madery of 1989 crops was fraudulent under 11 U.S.C. Section 548(a)(1) and (2) and may be recovered under 11 U.S.C. Section 550(a).

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: July 31, 1991.

Dennis D. O'Brien
U.S. Bankruptcy Judge