SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1533-16T2

FUTURE CARE CONSULTANTS, LLC,

Plaintiff-Appellant,

v.

BARBARA ABRAHAM and IAN LIVINGSTONE,

Defendants-Respondents.

Submitted November 16, 2017 — Decided December 18, 2017

Before Judges Simonelli and Haas.

On appeal from Superior Court of New Jersey, Chancery Division, Hudson County, Docket No. C-000187-15.

SB2, Inc., attorneys for appellant (John P. Pendergast, on the briefs).

Bogart, Keane, Ryan, LLC, attorneys for respondents (James F. Ryan, Jr., on the brief).

PER CURIAM

Plaintiff Future Care Consultants, LLC (FCC) appeals from the November 4, 2016 final judgment entered in favor of defendants Barbara Abraham and Ian Livingstone following a bench trial. On

appeal, FCC contends that defendants violated the Uniform Fraudulent Transfer Act (UFTA), N.J.S.A. 25:2-25, with respect to the transfer of property owned by Abraham's father, Alwyn Trotman. We disagree and affirm.

Trotman was born in Guyana, South America, and owned property there. The property involved in this matter is located in Jersey City (the property). There is a one-family home on the property. After Trotman's wife, Stella, died in 2006, he had difficulties maintaining the property and paying his bills. Abraham began paying her father's bills in 2007.

In December 2011, Trotman called Abraham and asked her to assume full responsibility for the property. There was a tax lien on the property at the time, which Abraham subsequently paid to avoid a tax foreclosure. On December 28, 2011, Trotman executed a deed, which Abraham, a non-lawyer, prepared, transferring ninety-nine percent of his interest in the property to Abraham for one dollar, and reserving a one-percent interest and life estate (the 2011 deed). Trotman's one-percent interest would transfer to Abraham upon his death. Trotman also executed a general power of attorney to Abraham.

At the time Trotman executed the deed, he was ninety years old, but was in good physical and mental health, travelled alone to Guyana every six months, was in control of his own life, and

made his own decisions. No one anticipated he would require nursing home care, and neither he nor Abraham had ever heard of and did not know anything about FCC. Abraham's sister, Olwin Trotman Jones, confirmed that in December 2011, Trotman was in good health, was "very sharp," and had served in the military.[1] Jones also confirmed that she knew about the 2011 deed and the circumstances surrounding the transfer of her father's interest in the property to her sister.

Livingstone was a very close, long-time family friend who lived in Trotman's home for three years after he immigrated from Guyana, and frequently helped Trotman make repairs after he moved out. Livingstone's and Abraham's parents were friends since the time they lived in Guyana, and the families remained close friends when they immigrated to the United States. Livingstone considered the Trotman's as family, and called Trotman "Uncle Alwyn" and Stella "Aunt Stella."

At the time Trotman executed the 2011 deed, the home was in poor condition and required extensive repairs. Abraham and Livingstone verbally agreed that Livingstone would assume responsibility for the property's improvements, maintenance, and repairs. There is no evidence that at that time, Abraham also

[1] Abraham has other siblings who were not involved in this litigation.

agreed to transfer any or all of her interest in the property to Livingstone, or that Abraham or Livingstone intended to sell the property.

Trotman continued living in the home until May 2013, when he became ill and was admitted to a nursing home. In June 2013, FCC, the nursing home's fiscal agent, contacted Abraham about Trotman's application for institutional Medicaid benefits. Abraham disclosed the transfer of Trotman's interest in the property to her in December 2011, and sent FCC a copy of the 2011 deed.

The Hudson County Division of Welfare (Division) subsequently determined that Trotman was financially eligible for institutional Medicaid benefits, effective November 1, 2013. However, the Division imposed a penalty from November 1, 2013 to August 21, 2015, due to Trotman's transfer of the property for less than fair market value within the five-year lookback period. See N.J.A.C. 10:71-4.10. Instead of discharging Trotman from the nursing home, FCC allowed him to stay. At the time he died in June 2015, his outstanding nursing home bill was $332,460.60.

By August 2014, the property was still "in terrible shape" and Livingstone was trying to restore it to its original state and make it livable. Because Livingstone had done all of the work and spent all of his money on repairs to the property, Abraham executed a deed, which she prepared, transferring fifty percent of her

interest in the property to him. In November 2015, Abraham and Livingstone executed an agreement, which memorialized their 2011 verbal agreement that Livingstone would assume responsibility for improvements, maintenance, and repairs to the property. The agreement also contained Livingstone's proposal to obtain Abraham's remaining fifty-percent interest in the property in exchange for continuing to improve, maintain, repair, and perform other services related to the property.

In January 2016, Abraham executed a deed, which she prepared, transferring her remaining fifty-percent interest in the property to Livingstone. By that time, Livingstone had expended over $200,000 for repairs to the property, and later gave Abraham money to pay the taxes. Regarding the Trotman family's continued use of the property thereafter, Livingston testified as follows:

> [W]e're all family and the property is everybody's own. Not because my name is on the deed. [The Trotman family] can use the property, they can have fun, do whatever they need to do, spend time, whatever is necessary. There's no restrictions on the property where people, the family can't use it. None whatsoever.

Livingstone also testified that he planned to keep the property for sentimental value and have the Trotman family use it when necessary.

During her trial testimony, Abraham misstated that she still had an ownership interest in the property. She subsequently confirmed that she had transferred her entire interest to Livingstone. The trial judge indicated that he would review the trial transcript to determine if there should be further action taken against Abraham based on her misrepresentation of her ownership interest in the property. However, the judge did not find that the misrepresentation was relevant to whether there was a fraudulent transfer of the property in December 2011.

In a subsequent oral opinion, the judge found that FCC did not meet its burden of proving there was a fraudulent transfer under N.J.S.A. 25:2-25(a) or (b). The judge found credible the testimony of Abraham and Jones about the circumstances surrounding the transfer in December 2011. The judge emphasized that the transfer occurred one and one-half years prior to Trotman's admission to the nursing home, no one anticipated at the time of the transfer that Trotman would be facing a nursing home stay, and the reasons for the transfer were totally unrelated to his subsequent admission into a nursing home.

The judge noted there were four badges of fraud present in the case: (1) the transfer of the property was to an insider, Abraham; (3) the debtor, Trotman, retained possession or control of the property through a life estate; (3) the transfer was of

substantially all of the debtor's assets; and (4) the value of consideration for the transfer, one dollar, was not reasonably equivalent. However, the judge concluded that these badges of fraud did not compel a finding of fraudulent transfer.

After rendering his decision, the judge stated he did not intend to obtain the trial transcript or take any further action against Abraham. The judge attributed Abraham's misrepresentation of her ownership interest in the property to her not "know[ing] much about what she was doing in terms of preparation of documents. There was somewhat of a . . . language problem." This appeal followed.

On appeal, FCC contends that defendants violated the UFTA. Although FCC argues the judge abused his discretion in finding Abraham's testimony credible to conclude there was no UFTA violation, FCC does not challenge Jones' testimony.

Our review of a trial court's fact-finding in a non-jury case is limited. Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011). "The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence. Deference is especially appropriate when the evidence is largely testimonial and involves questions of credibility." Ibid. (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). The trial court enjoys the benefit, which we do not,

of observing the parties' conduct and demeanor in the courtroom and in testifying. Ibid. Through this process, trial judges develop a feel of the case and are in the best position to make credibility assessments. Ibid. As a factfinder, the judge can believe all, some, or none of a witness's testimony. See State v. Wesler, 137 N.J.L. 311, 314 (1948) (holding the factfinder is "not bound to believe testimony of any witness in whole or in part, but [rather] may reject what in their conscientious judgment ought to be rejected and accept that which they believe credible"), aff'd, 1 N.J. 58 (1948). We will defer to those credibility assessments unless they are manifestly unsupported by the record. Weiss v. I. Zapinsky, Inc., 65 N.J. Super. 351, 357 (App. Div. 1961). However, we owe no deference to a trial court's interpretation of the law, and review issues of law de novo. Mountain Hill, LLC v. Twp. Comm. of Middletown, 403 N.J. Super. 146, 193 (App. Div. 2008), certif. denied, 199 N.J. 129 (2009).

Applying the above standards, we discern no reason to disturb the judge's ruling. We are satisfied that the record amply supports the judge's factual and credibility findings.

The UFTA provides as follows:

> A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was

> incurred, 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 obligation, and the debtor:
>
> (1) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction;[2] or
>
> (2) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they become due.
>
> [N.J.S.A. 25:2-25.]

The purpose of the UFTA is to "prevent a debtor from placing his or her property beyond a creditor's reach" to cheat a creditor and to "allow the creditor to undo the wrongful transaction so as to bring the property within the ambit of collection." Gilchinsky v. Nat'l Westminster Bank N.J., 159 N.J. 463, 475 (1999).

To determine if a conveyance constitutes a fraudulent transfer, courts must engage in a two-part test. First, the court must inquire "whether the debtor [or person making the conveyance] has put some asset beyond the reach of creditors which would have

[2] FCC does not contend that N.J.S.A. 25:2-25(b)(1) applies.

been available to them" if there had been no conveyance. Id. at 475-76 (alteration in the original) (quoting In re Wolensky's Ltd. Partnership, 163 B.R. 615, 626-27 (Bankr. D.C. 1993)). Second, the court must inquire "whether the debtor transferred the property with an intent to defraud, delay, or hinder the creditor." Ibid. This test requires the court to consider the totality of the circumstances in each case. Id. at 476.

The party seeking to set aside the transfer bears the burden of proving the debtor had the actual intent to defraud, delay, or hinder the creditor. Ibid. To determine a debtor's actual intent, courts should consider, among other factors, 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;

d. Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

e. The transfer was of substantially all the debtor's assets;

f. The debtor absconded;

g. The debtor removed or concealed assets;

h. The value of the consideration received by the debtor was reasonably equivalent

to the value of the asset transferred or the amount of the obligation incurred;

i. The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

j. The transfer occurred shortly before or shortly after a substantial debt was incurred; and

k. The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

[N.J.S.A. 25:2-26.]

Where several badges of fraud, as enumerated in N.J.S.A. 25:2-26, surround a transaction, a strong inference of fraud arises, which a party can rebut using "strong, clear evidence" of a sufficient explanation. Gilchinsky, 159 N.J. at 476, 484.

Here, factors a, b, e, and, arguably, factor h apply. Trotman transferred the property to an insider;[3] he retained possession of the property after the transfer; the property appeared to be Trotman's only valuable asset;[4] and he did not receive fair market value for the property. However, these badges of fraud did not establish that Trotman transferred the property with the actual

[3] N.J.S.A. 25:2-22(a)(1) defines an "insider," in relevant part, as "[a] relative of the debtor."

[4] The record does not reveal the value of Trotman's property in Guyana at the time of the transfer.

intent to hinder, delay, or defraud FCC or any other creditor, N.J.S.A. 25:2-25(a), or intended to incur, or reasonably believed or should have believed he would incur debts beyond his ability to pay. N.J.S.A. 25:2-25(b)(2). To the contrary, the evidence confirms that Trotman's intent not to defraud creditors, but to relieve himself of the responsibilities associated with owning it and transfer it to his daughter, who was paying all of the bills. What Abraham did with the property after the transfer and her dealings with Livingstone are irrelevant to whether there was a fraudulent transfer in December 2011. The UFTA only refers to the debtor's actual intent at the time of the transfer, not to the transferee's intent or actions upon receiving the asset.

The evidence also confirms that Trotman was in good mental and physical health at the time of the transfer, capable of making his own decisions, and no one anticipated he would require nursing home care. There was no evidence that Trotman had any pressing health condition at the time of the transfer to make him reasonably believe he would require nursing home care.

We agree that FCC failed to prove Trotman made the transfer with the actual intent to defraud, delay, or hinder it, or intended to incur, or believed or reasonably should have believed he would incur a nursing home debt he could not pay. N.J.S.A. 25:2-25(a)

and (b)(2). FCC's arguments to the contrary lack sufficient merit to warrant further discussion. R. 2:11-3(e)(1)(E).

Affirmed.