UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re: Fitzpatrick Container Company,	:	**Chapter 7**
Debtor.	:	**Bky. No. 20-14139 (PMM)**
Lynn E. Feldman, Chapter 7 Trustee,	:	
Plaintiff	:	
v.	:	
John B. Lynch, Jr.,	:	
Defendant.	:	**Adv. No. 23-00070 (PMM)**

O P I N I O N

I. INTRODUCTION

An ancient proverb states that the enemy of my enemy is my friend. However, this appears not to be the case between John B. Lynch, Jr. ("Lynch" or the "Defendant") and the chapter 7 trustee. Lynch was the President of Fitzpatrick Container Company (the "Debtor") until the mid-2000's when Thomas Shallow, Jr. ("Shallow"), his nephew, bought him out and took control of the Debtor. Lynch received ongoing monthly payments from the Debtor until those payments ceased in 2019; the following year the Debtor was placed into an involuntary chapter 7 bankruptcy by its creditors.

Ms. Feldman (the "Trustee") was appointed chapter 7 trustee on December 28, 2020, and began the difficult process of assembling the information necessary to file the required statements and schedules. Shallow proved to be uncooperative, resulting in several extensions of

time, as well as contempt orders entered by this Court. Due to Shallow's actions, the Trustee was unable to obtain the information necessary to file schedules for over two (2) years. This delay also precluded the filing of several avoidance actions, including this one, until well beyond certain statutes of limitations periods.

The Trustee here seeks avoidance of several transfers made by the Debtor to Lynch between January 2017 and August 2019 as fraudulent. These claims were brought nearly three (3) years after the entry of the order of relief in the main case, long after the statute of limitations ran. However, the blame for this delay lies not with either party here before me, but with Shallow.

The Defendant filed a Motion for Summary Judgment (the "Motion"), arguing that the claims at issue are time barred, and that based on undisputed facts, the Trustee cannot demonstrate Debtor's insolvency when the transfers were made, a lack of reasonably equivalent value for the monthly payments, and actual fraudulent intent. For reasons discussed below, I find that the limitation period for all these claims have been equitably tolled and that genuine and material disputes of fact exists as to each of the three substantive elements. Therefore, summary judgment for the Defendant will be denied.

II. PROCEDURAL HISTORY

On October 19, 2020, four (4) of Debtor's creditors filed an involuntary chapter 7 petition against Debtor. See doc. # 1 in the main case.[1] On December 23, 2020, the order for relief was entered and five (5) days later, Ms. Feldman was appointed chapter 7 trustee. See doc. #'s 11, 13 in the main case.

[1] Docket entries in the main bankruptcy case are noted as such; all other docket entries refer to the above-captioned Adversary Proceeding.

Because Shallow, the Debtor's principal, was not compliant in the process in the main case, the Trustee received seven (7) extensions of time in which to file schedules. See, e.g., doc. #'s 96, 113 in the main case. On October 26, 2021, the first of many orders was entered either authorizing the production and examination of documents from Shallow or compelling compliance with the Court's Rule 2004 Order. See, e.g., doc. #'s 47, 60 in the main case. Shallow was sanctioned by the court on two (2) occasions. Doc. #'s 60, 71 in the main case. A Show Cause hearing was rescheduled five (5) times, again, due to Shallow's lack of cooperation. Doc. #'s 82, 84, 86, 88, 90, 98 in the main case. At one point, the U.S. Marshal was directed to apprehend Shallow. See doc. #90 in the main case. The Trustee was able to file the schedules on March 13, 2023. See doc. #'s 116, 117 in the main case. The §341 Meeting of Creditors was then continued four (4) times due to the failure of a representative of the Debtor to attend and finally held on November 06, 2023. See, e.g., doc. #'s 124, 136 in the main case.

The Trustee commenced this Adversary Proceeding against Defendant on October 30, 2023. Doc. #1. The Complaint states six (6) counts. The Trustee seeks to avoid transfers made to the defendant under 12 Pa.C.S. §5104(a) through 11 U.S.C. §544(b), under 12 Pa.C.S. §5105 through 11 U.S.C. §544(a), under 11 U.S.C. §548(a)(1)(A), and under 11 U.S.C. §548(a)(1)(B). Additionally, the Complaint states causes of action for recovery of the transfers pursuant to 11 U.S.C. §550 and for unjust enrichment. The Defendant answered on November 06, 2023. Doc. #5. The parties engaged in discovery and the Defendant moved for summary judgment on July 11, 2024. Doc. #79. The Trustee filed her response and the Defendant replied. Doc. #'s 87, 89.

The matter is now ripe for adjudication.

III. FACTUAL BACKGROUND

The following facts are taken from the Complaint and pleadings and appear not to be in dispute.

The Debtor was founded in 1947 in Allentown, Pennsylvania as a paper and corrugated packaging company. Doc. #1, ¶16. Lynch was the president of the Debtor for several years until the mid-2000's when he stepped down, sold his interest in the Debtor, and Shallow assumed the principal role. Doc. #79, ¶2. In 2007, Lynch and Shallow, along with other third parties, signed a Purchase, Settlement and Mutual Release Agreement (the "Agreement"). Doc. # 87, Exhibit A, p. 182-201. The Agreement indicates that at that time, Shallow owned 48% of Debtor's outstanding shares and was the current President and CEO. Id. Pursuant to the Agreement, Lynch sold his 48% ownership interest in the Debtor and resigned from his role on the Debtor's board of directors. Id. The Agreement also mentions and reaffirms an obligation by the Debtor to provide Lynch and his wife with certain benefits, including insurance, an annual expense account, and monthly payments of $6,066.66 to continue for the remainder of Lynch's life. Id. The Debtor made monthly payments of $6,066.66 to Lynch which continued through the period of January 18, 2017 to August 9, 2019 after which the payments ceased. Doc. #79, ¶5. On October 19, 2020, the Debtor was placed into an involuntary chapter 7 bankruptcy by four (4) of its creditors. Doc. #1 in the main case. Lynch was not a petitioning creditor and did not file a proof of claim in the bankruptcy until January 15, 2024. See Claim #8 in the main case.

IV. THE PARTIES' ARGUMENTS

Only the Defendant has moved for summary judgment and seeks judgment as a matter of law on all claims.

The Defendant first argues that, based on the undisputed facts, the Trustee will be unable to make out the elements of each of her claims. Lynch further contends that Counts I through IV[2] fail because the Trustee offers no evidence for finding that the Debtor was insolvent at the time the transfers were made. The Trustee argues that an insolvency analysis of the Debtor will show that the Debtor was insolvent during each of the years in question and points to the Debtor's inability to pay debts to several lenders and suppliers during the period in which the transfers took place. Both parties also point to figures in the Debtor's tax returns which they argue tends to prove or disprove the Debtor's insolvency during each of the years in question. The Trustee argues that at a minimum, the Debtor's insolvency is still at issue and must be determined by a trier of fact.

The Defendant argues that Counts I through IV also fail because the facts demonstrate valid consideration was exchanged for the payments the Trustee is seeking to avoid. The Defendant points to the Agreement and other documents which tend to show that the transfers were made in exchange for Lynch's equity in the Debtor, the termination of his employment, and his agreement to release any claims against the Debtor. The Trustee, in reliance on the same Agreement and Lynch's deposition testimony, argues that the monthly transfers were not in exchange for any new consideration under the Agreement and that the transfers were being made for the benefit of Debtor's principal, Shallow, rather than the Debtor itself.

Regarding claims of actual fraud, the Defendant argues that the Trustee has no evidence to show that the transfers were made with actual intent to hinder, delay, or defraud any creditor. The Defendant argues that he was simply an ordinary creditor receiving these payments based on

[2] Both parties have been less than clear with regard to which counts their arguments are directed. I will assume, as the parties have, that the Trustee is attacking these transfers as both actually and constructively fraudulent under both Pennsylvania state law and the Code.

a contractual obligation entered into with the Debtor and that no evidence exists to prove the "badges of fraud" relied upon by courts to infer requisite intent. The Trustee points to the Agreement which shows the prior existence of this monthly obligation to Lynch and the lack of any documents evidencing the original obligation. The Trustee also refers to an affidavit which would show that the Debtor was simultaneously underfunding its pension while continuing to make the payments to the Defendant, intentionally depleting assets while creditors remained unpaid, suggesting the Debtor was intending to hinder certain creditors.[3]

The Defendant makes a second discrete argument that all of the claims must be dismissed as time barred. Lynch contends that Counts I, II, III, and IV are all subject to and barred by the two-year statute of limitation in 11 U.S.C. §546. The Defendant also singles out Counts I and II as barred by the statute of repose in 12 Pa.C.S. §5109 and Count VI as barred by the statute of limitations in 12 Pa.C.S. §5525(a)(4). The Trustee admits that all the relevant limitations periods, on their face, have run. However, the Trustee argues that equitable tolling should apply to any statutes of limitations based on the diligent conduct of the Trustee and the extraordinary challenges created by Shallow's noncompliance. The Trustee contends that the facts known to the court are sufficient to support an application of equitable tolling and that Defendant has produced no facts to show otherwise.

V. SUMMARY JUDGMENT STANDARD

The standard regarding summary judgment is well known and will be summarized briefly. Pursuant to Federal Rule of Civil Procedure 56(a), summary judgment is appropriate if "the movant shows that there is no genuine dispute as to any material fact and the movant is

[3] The Debtor also argues that Count V should be dismissed because it is based on 11 U.S.C. §550 which cannot stand alone as a cause of action. This argument is premised on a finding that the other claims are dismissed. Because no other claims will be dismissed, Count V will also not be dismissed.

entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Genuine issues of material fact refer to "any reasonable disagreement over an outcome-determinative fact." In re Energy Future Holdings Corp., 990 F.3d 728, 737 (3d Cir. 2021) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)).

The purpose of a motion for summary judgment is not to weigh the evidence presented but rather to determine if the evidence warrants adjudication by trial. Anderson, 477 U.S. at 249-52. In reviewing the evidence presented, the court must draw all reasonable inferences in the light most favorable to the nonmoving party. Halsey v. Pfeiffer, 750 F.3d 273, 287 (3rd Cir. 2014).

To successfully oppose entry of summary judgment, the nonmoving party may not simply rest on its pleadings, but must demonstrate, through the submission of admissible evidence, that a factual dispute remains for trial. In re Bentivegna, 597 B.R. 261, 263-64 (Bankr. E.D. Pa. 2019) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986)).

VI. ANALYSIS

A. ARE THERE DISPUTED FACTUAL ISSUES REGARDING THE ELEMENTS OF THE TRUSTEE'S CLAIMS?

The Defendant argues that, based on the undisputed facts, he is entitled to summary judgment on Counts I through IV because the Trustee cannot make out all elements of her claim. Several of the Trustee's claims attack the transfers made to the Defendant as constructively fraudulent. Constructive fraud is substantially similar under state law and the Code, requiring the Trustee to demonstrate that the Debtor was insolvent at the time of the transfer—or rendered insolvent by the transfer—and that the Debtor did not receive reasonably equivalent value for the transfer. See 12 Pa.C.S. §§5104(a)(2), 5105; 11 U.S.C. §548(a)(1)(B). Likewise, actual fraud

requires the Trustee to show that the transfers were made with "actual intent to hinder, delay or defraud" creditors. See 12 Pa.C.S. §5104(a)(1); 11 U.S.C. §548(a)(1)(A). Therefore, summary judgment is only proper if there are no material factual disputes as to each of these elements.

Insolvency of the Debtor

To avoid a transaction as constructively fraudulent, the Trustee must show that the Debtor "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." 11 U.S.C. §548(a)(1)(B)(ii)(I); see also 12 Pa. C.S. §5105 (requiring that "the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation."). One method of demonstrating insolvency is the "balance sheet test" whereby a debtor's assets and liabilities are valued and compiled to determine whether the debtor's debts exceeded its assets at the time the transfer was made. See In re R.M.L., Inc., 92 F.3d 139, 155-56 (3d Cir. 1996). The Trustee bears the burden of proving the Debtor's insolvency at the time of each of the transfers. In re Fruehauf Trailer Corp., 444 F.3d 203, 211 (3d Cir. 2006) ("The party bringing the fraudulent conveyance action bears the burden of proving each of these elements by a preponderance of the evidence.").

The Trustee relies primarily on the affidavit of Charles Persing ("Persing") of Bederson LLP ("Bederson") to support a finding of the Debtor's insolvency. See doc. #87-3. According to Persing, Bederson performed a solvency analysis of the Debtor for each year from 2016 to 2019 utilizing the balance sheet test. Bederson analyzed the books and records made available to the Trustee, including the Debtor's tax returns and financial statements. Bederson concluded that the Debtor was insolvent in the years 2017, 2018, and 2019 and was probably insolvent in 2016. See id., ¶24.

The Defendant argues that the Trustee has "no evidence to demonstrate that the Debtor's debt exceeds the value of its assets" when the transfers were made. Doc. #79-2. The Defendant points to certain creditors of the Debtor who continued to extend credit to the Debtor during the years in question, suggesting Debtor was not insolvent. Doc. #79, ¶¶19-23. The Defendant goes on to characterize the Bederson analysis as a subjective opinion about the Debtor's insolvency. Instead, the Defendant points me to the Debtor's tax returns which he claims indicate gross profits from 2016 to 2019. Doc. #79, ¶¶29-33. The Trustee, however, claims these returns indicate business losses each year. Doc. #87, ¶¶29-33.

After reviewing the affidavit and other documents, I find that the Debtor's solvency during the relevant period is in dispute. The Trustee has come forward with a report prepared by her accountants relating to the Debtor's insolvency during the relevant timeframe. The Defendant's arguments about the behavior of creditors and the significance of particular financial records go to the weight and credibility of the Trustee's evidence. While the Trustee's evidence may ultimately be incredible, that is an issue resolved at trial. Therefore, summary judgment on this issue must be denied.

Reasonably Equivalent Value

To avoid a transaction as constructively fraudulent, the Trustee must also show that the debtor "received less than a reasonably equivalent value in exchange for such transfer or obligation." 11 U.S.C. §548(a)(1)(B)(i); see also 12 Pa. C.S. §5105 (requiring that the "debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation"). There is no precise test or formula for determining whether a party has received reasonably equivalent value. Rather, a court must look at the

evidence presented and determine whether the debtor received roughly the value that it gave up. See VFB LLC v. Campbell Soup Co., 482 F.3d 624, 631 (3d Cir. 2007). This analysis includes examining factors such as "(1) the 'fair market value' of the benefit received as a result of the transfer, (2) the existence of an arm's-length relationship between the debtor and the transferee, and (3) the transferee's good faith." In re Fruehauf, 444 F.3d at 213 (quotation marks omitted).

The Defendant sold his ownership interest in the Debtor as part of the 2007 Agreement. However, Lynch argues that he sold his ownership interest back to the Debtor partly in exchange for a stream of payments, which were to continue for the rest of his natural life. Doc. #79-2. According to Lynch, it is his equity in the company, the termination agreement, and the release of claims that form the consideration for those payments. Id. The Defendant contends that because the parties to the Agreement had the assistance of counsel and accountants in negotiating, the Agreement was an arms-length transaction and the Debtor received fair value for the obligation to make these payments to Defendant. Therefore, the Defendant maintains that transfers were, contrary to the contention of the Trustee, supported by consideration.

The Trustee again relies on the Persing affidavit which states that, based on the Bederson analysis, the Debtor did not list its obligation to Defendant in its books and records and received no value from Defendant in exchange for the transfers. Doc. #87-3, ¶¶25, 26. Additionally, the Trustee points to portions of the Agreement which raise questions about what benefits actually inhered to the Debtor rather than the Debtor's principal, Shallow.

Upon review of the Agreement, I find that the language is ambiguous as to whether Shallow or the Debtor purchased Defendant's ownership interest. At one point the Agreement states that Lynch "sells to Shallow Jr., or his nominee all of his shares representing an approximate 48% shareholder interest in FCC. . ." Doc. #87-1, pp. 182-202. Later, the

Agreement notes that "the parties agree that FCC is redeeming all shares of the FCC common stock owned by" Lynch, Jr. Id. Thus, while it is possible that the payments were made in exchange for benefits to the Debtor, it is also possible that the Debtor received no benefit but made payments on account of the principal's personal liability.

Beyond the difficulty in determining to whom the benefits of the 2007 Agreement run, it is also unclear whether the payments were consideration for the Agreement. The language of the Agreement indicates that Shallow had already taken over as the Debtor's principal and that the Defendant was already receiving a stream of monthly payments. The terms of the Agreement focus primarily on the Defendant giving up his shares in the Debtor in exchange for a lump sum payment. The Agreement then reaffirms the Debtor's commitment to continue making the monthly payments to Lynch, presumably on account of a prior transaction.

Because the Agreement is ambiguous in its terms and the parties present competing and plausible narratives regarding consideration of the monthly payments made to Defendant, summary judgment on this issue must be denied.

Actual Fraudulent Intent

The Trustee may be able to avoid transactions as fraudulent under 12 Pa.C.S. §5104(a)(1) or 11 U.S.C. §548(a)(1)(A) by showing that the Debtor made those transfers "with actual intent to hinder, delay, or defraud." Actual intent is rarely proven with direct evidence; rather, courts will consider certain factors, or "badges of fraud," to determine whether actual intent can be inferred. See In re Carbone, 615 B.R. 76, 80 (Bankr. E.D. Pa. 2020). No one factor or particular combination of factors is necessary to support a finding of fraud; even a strong showing of a single factor may be enough. See id. at 80-81. In considering these factors, a court might

determine whether the transfer was made to an insider, whether the transfer was disclosed or concealed, whether the value of the consideration received by the debtor was reasonably equivalent to the value of the assets transferred, and whether the debtor was insolvent or became insolvent shortly after the transfer was made. See 12 Pa.C.S. §5104(b).

The Defendant asserts that he was an ordinary creditor of the Debtor and received these monthly payments on account of the Debtor's contractual obligations stemming from the Agreement. Doc. #79-2. The Defendant argues that Trustee has not produced any evidence that would permit an inference of actual fraud. Id.

The Trustee once again points to the Persing affidavit which states that the Debtor made these payments to the Defendant while failing to pay its other creditors and underfunding its pension. Doc. #87-3, ¶12. The Trustee also points to the ambiguities in the Agreement and the evidence discussed above tending to show Debtor's insolvency and lack of reasonably equivalent value for the transfers. Doc. #87-2.

Bearing in mind that a strong showing of even a few badges of fraud can support an inference of fraudulent intent, the Trustee has presented evidence which, assuming its credibility can be shown at trial, could demonstrate actual fraudulent intent on the part of the Debtor. According to the Persing affidavit, the Debtor did not disclose its liability to Lynch on its books, yet prioritized Lynch over other creditors. The Trustee also intends to show that Lynch was being paid at a time when other creditors, including the petitioning creditors, were not and that the Debtor was underfunding its pension. As discussed above, the Trustee has also placed the Debtor's solvency at issue and raised doubts as to the value the Debtor received in exchange for these payments. Because the Trustee has produced evidence which may demonstrate several

badges of fraud, the issue of actual fraudulent intent remains a disputed issue of fact and summary judgment on this issue must be denied.

B. WHICH CLAIMS, IF ANY, ARE TIME BARRED?

The Defendant argues that the Trustee's claims are time barred by the relevant statutes of limitations or repose. Given that the Trustee brought this action on October 30, 2023, roughly three years after the involuntary petition and order for relief was entered in the main case, the argument is sensible. However, because all claims would have been timely at the filing of the main case, and because equitable tolling applies to the limitation period set out in 11 U.S.C. §546, I find that none of the Trustees claims are fully time barred. However, to the extent that the Trustee seeks to avoid transfers made prior to October 19, 2018, under Counts III or IV, those claims are barred.

Timeliness of State Law Claims Depends on 11 U.S.C. §546

The timeliness of Counts I, II, and VI are in part determined by Pennsylvania state law. Counts I and II are subject to 12 Pa.C.S. §5109, a four (4) year statute of repose.[4] Count VI is subject to 42 Pa.C.S. §5525(a)(4), a four-year statute of limitations. Lynch argues that because the relevant state statute of limitations or repose ran prior to initiation of this action, these claims should be barred. This is incorrect.

11 U.S.C. §544 empowers a trustee to bring certain claims at the commencement of the case that would be available to a theoretical creditor at that time. 11 U.S.C. §546 then controls

[4] While 12 Pa.C.S. §5109 provides a statutory discovery rule for actual fraud claims that can extend beyond four (4) years, that distinction is irrelevant here because all of the transfers under attack took place within four (4) years of the petition date.

whether those avoidance actions brought in a federal bankruptcy proceeding are timely. Courts have roundly rejected the argument that state law statutes can cut the §546 limitation period short, regardless of whether the state statute was one of limitations or repose. See In re EPD Inv. Co., LLC, 523 B.R. 680, 686 (B.A.P. 9th Cir. 2015) (holding that a trustee's claims were timely because the state law fraudulent transfer claims existed on the petition date and, therefore, the only relevant limitation period was governed by §546(a)); Matter of Princeton-New York Invs., Inc., 219 B.R. 55, 66 (D.N.J. 1998) (finding a trustee's §544 action timely despite the underlying New Jersey statute of repose period having run between the date of the petition and the date of the avoidance action.); Smith v. Am. Founders Fin., Corp., 365 B.R. 647, 676 (S.D. Tex. 2007) (finding a Texas statute of repose, which would have expired two months after the petition date, preempted by §546). This makes sense given that a trustee might only have a remarkably short window in which to bring these claims but for the time §546 provides.

An involuntary case is commenced on the date the petition was filed. 11 U.S.C. §303(b). Because the petition in the main case was filed October 19, 2020, Counts I, II, and VI can reach transfers as far back as October 19, 2016; the Trustee seeks to avoid transfers only as far back as January 18, 2017. Because these claims would have been timely on the petition date, the limitations period of §546 applies to preserve those claims. However, the limitations period of §546 had run by the time the Trustee filed this action. Therefore, the timeliness of the Trustee's state law avoidance claims turns on an application of equitable tolling to §546.

Timeliness of §548 and §550 Claims Also Depends on 11 U.S.C. §546

The timeliness of Counts III, IV, and V is also determined by 11 U.S.C. §546. Section 546, by its terms, applies to claims brought under §548. Section 550 claims rise and fall with

any underlying §548 or §544 claims. Therefore, the timeliness of Counts III, IV, and V also turns on an application of equitable tolling to §546.

Equitable Tolling Applies

The timeliness of all of the Trustee's claims turns on an application of equitable tolling to the limitations period set out in 11 U.S.C. §546. Because I find that equitable tolling applies in the circumstances presented, all of the Trustee's claims are timely.

Equitable tolling is presumed to apply to all federal statutes of limitations, including 11 U.S.C. §546. See Lozano v. Montoya Alvarez, 572 U.S. 1, 11 (2014) ("Congress is presumed to incorporate equitable tolling into federal statutes of limitations because equitable tolling is part of the established backdrop of American law."); In re Randall's Island Fam. Golf Centers, Inc., 288 B.R. 701, 706 (Bankr. S.D.N.Y. 2003) ("It is well-settled that equitable tolling may be applied, in appropriate circumstances, to toll the statute of limitations imposed under 11 U.S.C. § 546(a)."). To reiterate, 11 U.S.C. §546 is not jurisdictional in nature but rather is a statute of limitations that can be tolled. See 5 Collier on Bankruptcy P 546.02 (16th 2024); In re United Ins. Mgmt., Inc., 14 F.3d 1380, 1385 (9th Cir. 1994) (citing cases).

Equitable tolling may be applied "when a trustee, exercising due diligence, has been prevented from asserting a cause of action" because he or she remains unaware of the action due to fraud or misrepresentation, or when "extraordinary circumstances beyond [the trustee's] control [make] it impossible to file claims on time." 5 Collier on Bankruptcy P 546.02 (16th 2024). "Generally, a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way." Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005); Sistrunk v.

Rozum, 674 F.3d 181, 190 (3d Cir. 2012) (courts should apply equitable tolling "only when the principles of equity would make the rigid application of a limitation period unfair") (citation omitted).

Here, the Trustee can demonstrate both her diligence in pursuing these causes of action and the presence of extraordinary circumstances. While normally a long delay in bringing claims might suggest a lack of diligence, the relevant history of this case demonstrates the reasonableness of the Trustee's actions. The Court is well-acquainted with the difficulties the Trustee faced in her dealings with Debtor's principal. I granted seven (7) extensions of time to file schedules and ordered the U.S. Marshall to apprehend and potentially incarcerate Shallow for his repeated noncompliance with the Trustee and court orders. The Defendant himself admits that Shallow was uncooperative and posed hurdles for the Trustee that are atypical in a chapter 7 bankruptcy. See doc. #89. Admittedly, in the face of such obstacles, it is possible that the Trustee could have expended more resources and pursued avoidance claims more doggedly. However, the diligence of a trustee is measured against several important and competing interests. See In re Pomaville, 190 B.R. 632, 637 (Bankr. D. Minn. 1995) ("Due diligence requires a trustee to conduct searches that are realistic in the ordinary course of a trustee's performance of his duties."). A trustee must be allowed to weigh the limited resources of the estate, the overall benefit to creditors, and ongoing efforts in related proceedings when deciding how to proceed against an obstinate debtor. To hold otherwise would be to incentivize involuntary debtors' noncompliance with the trustee during the two-year period after filing and put trustees in the situation of having to drain estate resources unnecessarily to prevent meritorious avoidance actions from becoming time barred. Given the circumstances, I find that the Trustee acted diligently, while facing extraordinary obstacles in pursuing this claim.

The Defendant argues that equitable tolling is inapplicable because the obstructions the Trustee faced were caused by the Debtor and its principal, not the Defendant. While it is true that Lynch's actions are not at issue here, bankruptcy cases present a "different slant" on the application of equitable tolling. See Pomaville, 190 B.R. at 637 ("A bankruptcy case presents a rather different slant on equitable tolling. In the typical situation, it is the debtor's conduct rather than the defendant's conduct which invokes equitable tolling. In some senses, this is unfair to the defendant."). A trustee's ability to bring avoidance actions in an involuntary chapter 7 bankruptcy is often subject to the cooperation of the debtor, a third party to any adversary proceedings. Therefore, equitable tolling can apply based solely on the actions of a debtor and its principal, notwithstanding a lack of obstruction or bad acts by the defendant. See id. (holding that equitable tolling could apply on account of the debtor's, not the defendant's, wrongdoing); In re Kwok, 2024 WL 666646, at *8 (Bankr. D. Conn. Feb. 15, 2024) (recognizing that in bankruptcy proceedings, equitable tolling is often based on the actions of the debtor and does not require wrongdoing by the defendant); In re Sasso, 550 B.R. 550, 556 (Bankr. D.N.M. 2016) (acknowledging that fraudulent concealment by the debtor preventing a trustee from discovering transfers might be sufficient for an application of equitable tolling despite the defendant being an innocent transferee).

The Defendant also argues that considerations of "justice and fairness" should enter into the equitable tolling analysis. I am attentive to the difficulties that Lynch faces in defending this action. From his vantage, Lynch has lost an income stream as the result of the Debtor's bankruptcy and is now being forced to expend resources defending transfers of funds to which he believes he is entitled. Given Lynch's age and limited resources, the Defendant argues that equitable tolling of the statute allowing the Trustee to maintain the action against him presents an

undue burden which dictates against such a result. However, this action is no different than the one the Defendant would have faced a year prior but for Shallow's actions. Thus, on these facts, I am unconvinced that the equities preclude an application of equitable tolling.

For the foregoing reasons, I find that equitable tolling applies and that all of the Trustee's claims are timely.

Equitable Tolling Cannot Expand the Scope of §548 Claims

The Complaint is not clear as to which transfers each claim applies. While the state law claims have a four (4) year look back period, actions brought under 11 U.S.C. §548 have a two (2) year look back period. 11 U.S.C. §548 (allowing the trustee to reach transfers "made or incurred on or within 2 years before the date of the filing of the petition. . ."). The look back period in §548 is best understood as a substantive element of the claim and not a limitation period subject to discretionary tolling by this court. See In re Fruehauf, 444 F.3d at 210 (listing proof of a transfer within the relevant look back period as a substantive element of a §548 claim that the trustee was required to prove); In re Pitt Penn Holding Co., Inc., 2012 WL 204095, at *5 (Bankr. D. Del. Jan. 24, 2012) ("[t]he two year period is a substantive element of the trustee's claim, not a statute of limitations") (quoting In re Maui Industrial Loan & Finance Co., 454 B.R. 133, 134 (Bankr. D. Haw. 2011)). The petition in the main case was filed October 19, 2020. Thus, to the extent that the Trustee is seeking to avoid transfers made prior to October 19, 2018 under Counts III or IV, those claims are barred and may be disposed of on summary judgment.

VII. CONCLUSION

Because genuine disputes exist as to material facts and because equitable tolling applies to all of the Trustee's claims, I will largely deny summary judgment to the Defendant.

Based on terms in the 2007 Agreement, statements made by the Defendant during his deposition, and the Trustee's reports and affidavits, it is impossible to say that the Defendant is entitled to judgment as a matter of law. Factual issues as to the Debtor's insolvency, the consideration Debtor received for these payments, and fraudulent intent in making these payments are disputed. For these reasons, material factual issues remain for trial.

The Trustee has faced extraordinary challenges bringing this and other avoidance actions and has worked diligently in doing so. While the standard for applying equitable tolling is high, it has been met here. Accordingly, I find that none of the Trustee's claims are time barred.

However, because 11 U.S.C. §548 has a two (2) year look back period, Counts III and IV cannot reach transfers made more than two (2) years before the petition date. Therefore, summary judgment will be granted in part as to Counts III and IV regarding transfers made before October 19, 2018.[5] Summary judgment will be denied in all other respects.

An appropriate order will be entered.

Date: October 16, 2024

Patricia M. Mayer

PATRICIA M. MAYER
U.S. BANKRUPTCY JUDGE

[5] Transactions prior to October 19, 2018, might still be avoided under other Counts.