

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

R. WAYNE KLEIN, the Court-
Appointed Receiver of Trigon Group,
Inc. and for the assets of Daren L. Palmer

Plaintiff,

v.

STEPHAN D. LAWSON, and individual

Defendant.

Case No. 4:10-CV-00197-EJL

ORDER

INTRODUCTION

Pending before the Court in the above-entitled matter is Plaintiff's Motion For Summary Judgment. The Motion is made under Federal Rule of Civil Procedure 56. The matter is ripe for the Court's consideration. Having fully reviewed the record herein, the Court finds that the facts and legal arguments are adequately represented in the briefs and record. Accordingly, and in the interest of avoiding further delay, and because the Court conclusively finds that the decisional process would not be significantly aided by oral argument, this Motion shall be decided on the record before this Court without oral argument.

FACTUAL AND PROCEDURAL BACKGROUND

On February 26, 2009, Plaintiff, R. Wayne Klein, was appointed Receiver of Trigon Group, Inc. ("Trigon") and for the assets of Daren L. Palmer in two related

enforcement actions filed by the Securities and Exchange Commission (the “SEC”) and the Commodity Futures Trading Commission (the “CFTC”). *See* Case 4:09-cv-00075-EJL and Case 4:09-cv-00076-EJL. In those cases, Trigon and Mr. Palmer were alleged to have engaged in a large-scale Ponzi scheme beginning before 2006 and continuing through 2009. Trigon was insolvent since as early as 2002 and became increasingly more insolvent with each passing year.

The Receiver has brought this action against Defendant Stephan D. Lawson to recover assets transferred from Trigon to Mr. Lawson during the Ponzi scheme. (Dkt. 1.) The Receiver alleges Mr. Lawson received a check for \$20,000 on or about September 9, 2008 from Trigon for which there was no reasonably equivalent value given to Trigon. The Complaint raises claims for breach of contract, avoidance and recovery of fraudulent transfer pursuant to the Idaho Uniform Fraudulent Conveyance Act (UFTA), Idaho Code §§ 55-913, 55-914, and 55-916, a constructive trust claim seeking remedies provided for under Idaho Code § 55-916(b) and (c), and attorney fees and costs. (Dkt. 1.)

STANDARD OF LAW

Motions for summary judgment are governed by Rule 56 of the Federal Rules of Civil Procedure. Rule 56 provides, in pertinent part, that “[t]he court shall grant summary judgment 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. The court should state on the record the reasons for granting or denying the motion.” Fed. R. Civ. P. 56(a). “A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record, including depositions, documents,

electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1).

The party moving for summary judgment has the initial burden of showing that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. *See Anderson v. Liberty Lobby*, 477 U.S. 242, 247-48 (1986). Once the moving party has met this initial burden, the nonmoving party has the subsequent burden of presenting evidence to show that a genuine issue of fact remains. The party opposing the motion for summary judgment may not rest upon the mere allegations or denials of her pleading, but must set forth specific facts showing that there is a genuine issue for trial. *Id.* at 248. If the non-moving party “fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial” then summary judgment is proper as “there can be no ‘genuine issue of material fact,’ since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986)¹

¹*See also*, Rule 56(e) which provides:

- (e) **Failing to Properly Support or Address a Fact.** If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:
- (1) give an opportunity to properly support or address the fact;
 - (2) consider the fact undisputed for purposes of the motion;
 - (3) grant summary judgment if the motion and supporting materials--including the facts

Moreover, under Rule 56, it is clear that in order to preclude entry of summary judgment an issue must be both “material” and “genuine.” An issue is “material” if it affects the outcome of the litigation. An issue, before it may be considered “genuine,” must be established by “sufficient evidence supporting the claimed factual dispute . . . to require a jury or judge to resolve the parties’ differing versions of the truth at trial.” *Hahn v. Sargent*, 523 F.3d 461, 464 (1st Cir. 1975) (quoting *First Nat’l Bank v. Cities Serv. Co. Inc.*, 391 U.S. 253, 289 (1968)). The Ninth Circuit cases are in accord. *See, e.g., British Motor Car Distrib. V. San Francisco Automotive Indus. Welfare Fund*, 883 F.2d 371 (9th Cir. 1989).

According to the Ninth Circuit, in order to withstand a motion for summary judgment, a party

(1) must make a showing sufficient to establish a genuine issue of fact with respect to any element for which it bears the burden of proof; (2) must show that there is an issue that may reasonably be resolved in favor of either party; and (3) must come forward with more persuasive evidence than would otherwise be necessary when the factual context makes the non-moving party’s claim implausible.

Id. at 374 (citation omitted). Of course, when applying the above standard, the court must view all of the evidence in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Hughes v. United States*, 953 F.2d 531, 541 (9th Cir. 1992).

(4) considered undisputed--show that the movant is entitled to it; or issue any other appropriate order.

DISCUSSION

In this Motion, the Receiver argues the transfer of the \$20,000 check from Trigon to Mr. Lawson is avoidable as a matter of law as it was both an actual and constructive fraudulent transfer for which there is no defense. (Dkt. 15.) In response, Mr. Lawson argues the check was a loan made from Trigon for the benefit of an entity called The Denali Group Inc., LC (“Denali Group”). Therefore, Mr. Lawson asserts, he should not be held personally liable. (Dkt. 20.) In reply the Receiver notes there is no dispute that the transfer was fraudulent as there was no value received by Trigon in return for the check. Further, the Receiver replies that Mr. Lawson is liable as he was the initial transferee – the check was made out payable to Mr. Lawson – and there is no evidence that if this was a loan that any repayment of the funds has been made. (Dkt. 22.) The Court finds as follows.

1. UFTA Claims

A. Actual Fraudulent Transfer

Under Idaho Code § 55–913(1)(a) an actual fraudulent transfer is a transfer made with “intent to hinder, delay or defraud any creditor of the debtor.” To prevail on this claim, it is the Receiver’s burden in the first instance to show that a transfer of monies was made with the actual intent to hinder, delay, or defraud. *See* Idaho Code §§ 55-913(1)(a). Upon the Receiver making such a showing, the burden then shifts to Mr. Lawson to prove any affirmative defenses that may apply under Idaho Code § 55-917(1). One such defense is the good faith defense which requires proof that he 1) acted in good

faith and 2) gave reasonably equivalent value in exchange for the transfer. *See* Idaho Code § 55-917(1) (“[a] transfer ... is not voidable under Idaho Code § 55-913(1)(a), against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.”).

Payments made from ponzi scheme funds are presumed to be made with the “actual intent to defraud.” *Donnell v. Kowell*, 533 F.3d 762, 770 (9th Cir. 2008). Because there is no dispute here that Trigon was operating a ponzi scheme at the time of the transfers in question, the Receiver maintains he has established that the transfers were actual fraudulent transfers under Idaho Code § 55-913(1)(a). The Court agrees and finds the Receiver has met his burden to show this was an actual fraudulent transfer. Mr. Lawson does not dispute having received the check from Trigon for \$20,000 on or about September 9, 2008, during the time when Trigon was insolvent. Thus, the burden now shifts to Mr. Lawson to prove any affirmative defenses that may exist under Idaho Code § 55-917(1).

As stated above, Idaho Code § 55-917 provides a defense to an otherwise avoidable fraudulent transfer where the person who took the transfer did so in good faith and for a reasonably equivalent value. The good faith defense requires proof that Mr. Lawson 1) acted in good faith and 2) gave reasonably equivalent value in exchange for the transfer. *See* Idaho Code § 55-917(1). “Reasonably equivalent value” is viewed in terms of the value received by the debtor; who in this case is Trigon. Here, Mr. Lawson’s response to the Motion argues that he was acting as principle for the Denali Group to whom Trigon was loaning the money and he did not personally receive or benefit from

the funds and, therefore, should not be held personally accountable. (Dkt. 20.) Even assuming Mr. Lawson's argument to be true, that he merely acted as a conduit for the funds to flow from Trigon to the Denali Group, there is no showing that Trigon received any reasonably equivalent value for the funds. Mr. Lawson has not argued or provided any evidence that any value was given to Trigon in exchange for the check, let alone reasonably equivalent value.

Further, the fact that the check may have been a loan to the Denali Group does not absolve Mr. Lawson of liability here. Under Idaho Code § 55-917(2), the Receiver is entitled to recover the amount of the transfer, \$20,000, from either the first transferee, Mr. Lawson, or the person who benefitted from the transfer or any subsequent transferee other than a good-faith transferee. *See* Idaho Code § 55-917(2). Again, there is no dispute here that Mr. Lawson was the first transferee as the check was made out in his name.

Based on the foregoing, the Court finds summary judgment is appropriate as to the Receiver's actual fraudulent transfer claim because the Receiver has demonstrated, as a matter of law, the elements necessary for the claim and Mr. Lawson has not shown that any genuine issue of material fact exists to support his defense.

B. Constructive Fraudulent Transfer

Alternatively, the Receiver claims the transfers were constructive fraudulent transfers under Idaho Code § 913(1)(b). To prevail on this claim, the Receiver must show that:

- 1) Trigon was insolvent at the time of the transfer of monies to Mr. Lawson, and

- 2) Trigon received no reasonably equivalent value in return for the monies paid to Mr. Lawson.

Idaho Code § 913(1)(b). There is no good faith defense to a constructive fraudulent transfer. Here again, the Court finds that the Receiver has shown that the transfer of monies to Mr. Lawson occurred at a time when Trigon was insolvent - during the time Trigon was engaged in a ponzi scheme. *See Donnell*, 533 F.3d at 770. For the same reasons as stated above, the Court also finds that the Receiver has shown that Trigon received no reasonably equivalent value in return for the transfer to Mr. Lawson. As such, there is no genuine issue of material fact in dispute on this claim and the Court finds summary judgment is appropriate.

2. Breach of Contract

The Receiver has also alleged a claim for breach of contract arguing if the \$20,000 check was a loan to the Denali Group, as Mr. Lawson contends, there have been no repayments made on the loan and the Defendant is in breach of contract. The Court need not address this argument in light of the ruling above on the UFTA claim above.

3. Prejudgment Interest

The Receiver also seeks the statutory prejudgment interest at a rate of 12% per annum as provided for in Idaho Code § 28-22-104 from September 9, 2008. The Court agrees that prejudgment interest is appropriate here and will grant the same. The amounts involved in the transactions here are readily ascertainable by mere mathematical process.

4. Attorney Fees

Finally, the Receiver requests payment of attorney fees pursuant to Idaho Code § 12-120(3) which provides:

In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney fee to be set by the court, to be taxed and collected as costs.

In Idaho, any action covered by subsection (3), regardless of the dollar amount, carries with it the mandatory award of attorney fees to the prevailing party. The action must involve a dispute over an actual commercial transaction in order to be covered by the “commercial transaction” clause. The term “commercial transaction” is defined to mean all transactions except transactions for personal or household purposes. “The critical test is whether the commercial transaction comprises the gravamen of the lawsuit; the commercial transaction must be integral to the claim and constitute a basis on which the party is attempting to recover.” *Bingham v. Montane Resource Associates*, 987 P.2d 1035, 1041 (Idaho 1999). “[T]he commercial transaction must be integral to the claim and constitute a basis on which the party is attempting to recover.” *Id.* at 1041; *see also C & G, Inc. v. Rule*, 25 P.3d 76 (Idaho 2001).

Motions for attorney fees are to be filed within fourteen days after entry of judgment. *See* Local Civ. R. 54.2(b). As such, the Court will deny this portion of the Motion for Summary Judgment and direct Plaintiff to, if necessary and appropriate, refile a motion for attorney fees as provided for in Local Civil Rule 54.2.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that the Plaintiff's Motion for Summary Judgment (Dkt. 15) is **GRANTED IN PART AND DENIED IN PART** as stated herein and the jury trial is vacated.

IT IS FURTHER ORDERED that Plaintiff shall submit a proposed judgment in conformity with this order to the Court's email box: EJL_Orders@id.uscourts.gov.



DATED: **May 28, 2013**

A handwritten signature in black ink that reads "Edward J. Lodge". The signature is written in a cursive style and is positioned above a horizontal line.

Honorable Edward J. Lodge
U. S. District Judge