

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 454

September Term, 2016

GREYSTONE OPERATIONS, LLC, et al.

v.

STEVEN STEINBERG

Meredith,
Friedman,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: April 12, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellants, Charles Rand (“Rand”) and Greystone Operations, LLC (“Greystone”), appeal from an order of the Circuit Court for Montgomery County setting aside the transfer of a 2005 Mazda automobile from Rand to Greystone as a fraudulent conveyance and awarding title to appellee, Steven Steinberg (“Steinberg”). We have consolidated and rephrased appellants’ questions on appeal as follows:

1. Did the trial court err in determining that the transfer of the 2005 Mazda to Greystone was a fraudulent conveyance?
2. Assuming the transfer was a fraudulent conveyance, did the trial court err by giving title of the 2005 Mazda to appellee?

We answer “No” to the first question. As to the second question, we hold that the trial court erred in ordering that the title be transferred directly to appellee, but that, under these circumstances, the court’s error is harmless.

FACTUAL AND PROCEDURAL BACKGROUND

The facts in this case are largely undisputed. In October of 2010, Rand filed for Chapter 7 bankruptcy. On August 14, 2013, the U.S. Bankruptcy Court entered a consent judgment for \$40,000 in favor of Steinberg against Rand. Steinberg enrolled the judgment in the Circuit Court for Montgomery County and attempted to execute on the judgment. Steinberg obtained writs of garnishment on all of Rand’s personal bank accounts and issued attachments on Rand’s three personally owned vehicles: a 1997 BMW Z3 automobile, a 1999 Ford Taurus automobile, and a 2007 Honda Shadow motorcycle.¹

¹ Rand subsequently disposed of each of these vehicles. The Ford Taurus was sold to Thomas Rand, a colleague of no relation. The Honda Shadow and BMW Z3 were given

On December 14, 2013, Rand purchased a 2005 Mazda automobile. Rand paid for the vehicle using a \$5,000 check from the operating account of his law firm, McKernonRand, LLC (“McKernonRand”). Rand is the sole member of McKernonRand and has operated his legal practice through the LLC since 2007.² On December 18, 2013, Rand used a power of attorney given to him by his daughter, Angela Lakatos, to title the vehicle in the name of Greystone. Greystone was formed two days earlier by Angela and her husband, Charles Lakatos, for the stated purpose of “property management and improvement, investing and consulting.” Notably, the Mazda was never titled to McKernonRand.

On July 2, 2015, Steinberg filed a complaint in the Circuit Court for Montgomery County naming Greystone and Rand as defendants. The complaint alleged two counts of fraudulent conveyance relating to the transfer of the 2005 Mazda to Greystone and one count of civil conspiracy to defraud.

At a bench trial in April, 2016, Steinberg argued that the transfer of the Mazda to Greystone was a fraudulent conveyance under Md. Code (1975, 2013 Repl. Vol.) § 15-204 of the Commercial Law Article (“Com. Law”) because it was made without fair consideration. Appellants responded that: 1) McKernonRand owned the vehicle, not Rand

to Charles Lakatos and Barry Miles respectively, each in exchange for a promissory note for expert fees. At trial in this case, Rand noted that the court had ordered him to “retrieve” the vehicles in a separate action, and they were subsequently sold at a sheriff sale for Steinberg’s benefit.

² Rand was indefinitely suspended from the practice of law by an order from the Court of Appeals dated December 22, 2015.

personally, and 2) that the vehicle was given to Greystone on behalf of Angela Lakatos in consideration of past work she had done for McKernonRand for which she had not been paid.

Steinberg further argued that the transfer was a fraudulent conveyance under Com. Law § 15-207 based on Rand's intent to hinder, delay, or defraud his creditors. He asserted that Rand's own testimony supported his theory of an intent to defraud:

[RAND]: My personal bank accounts had been being [sic] garnished and I think closed one after the other. I don't know the exact status of any of them. But certainly I wasn't able to keep any bank account open. They had garnished them all.

They had been paid all of them or certainly they were unusable by me from after the date of the garnishment. And I had no choice. As I had now and as I have explained it to both this Court and to the Court of Special Appeals that the only choice that I had at that time was to use my operating account in [appellee's counsel]'s famous words as an ATM account and let the accountant sort it out what's a draw and what is a business expense later. That is something that Steinberg himself caused me to do.

Finally, Steinberg contended as to both fraudulent conveyance claims that, although the vehicle was purchased using McKernonRand's account, Rand and McKernonRand were indistinguishable from one another. Steinberg noted that Rand had used the McKernonRand account for multiple personal expenses, including purchases of business attire and miscellaneous personal items. Though not a creditor of McKernonRand, Steinberg argued that the court should pierce McKernonRand's corporate veil "and order that the car be sold, with the proceeds given to [Steinberg]."

The trial court took the matter under advisement, and on April 28, 2016, announced its findings of fact and conclusions of law. As a preliminary matter, the court found that

the case did not involve “piercing the corporate veil or more accurately, piercing the LLC’s veil of limited liability.” The trial court concluded that “this case does not involve the debts or obligations of [McKernonRand]. It involves the debt or obligation of Charles Rand, the sole member of [McKernonRand]. Therefore, the Court does not find it appropriate or necessary to analyze whether the corporate veil should be pierced[.]”

The trial court then analyzed the first fraudulent conveyance count under Com. Law § 15-204 and found that the transaction lacked fair consideration. The court found that Rand gave the car to Greystone in name only, and that Rand still exerted substantial control over the car. Specifically, Rand used the car on a regular basis, paid for its maintenance, and was identified with Charles Lakatos on the Maryland Insurance Identification Card. The court found that Charles and Angela Lakatos only used the car “on rare occasions when they need a car without a baby seat.” The court also noted that neither Angela Lakatos nor Greystone had reported the car as income on any tax forms. The court concluded that Angela “hadn’t really gotten anything for her services.” Accordingly, the court entered judgment in favor of Steinberg on that fraudulent conveyance count.

As to the second fraudulent conveyance count under Com. Law § 15-207, the trial court found “clear and convincing evidence that Mr. Rand transferred the car to Greystone Operations on behalf of his daughter with the intent to hinder and delay Mr. Steinberg from trying to collect on it[.]” It found that the timing of the transaction was suspicious “because Greystone Operations was not in existence when the car was purchased.” The trial court expressly found that Angela’s testimony about Greystone’s formation lacked credibility.

Finding a fraudulent conveyance pursuant to Com. Law § 15-207, the trial court entered judgment in favor of Steinberg.

After entering judgment in favor of appellants on the conspiracy count, the trial court moved to crafting a remedy. Relying on Com. Law § 15-209, the trial court set aside the transfer. The court then ordered that the vehicle and its title be given directly to Steinberg. Appellants timely noted this appeal.

STANDARD OF REVIEW

Maryland Rule 8-131(c) recites the standard of review for a case tried without a jury:

When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

Accordingly, we shall accept the trial court's findings of fact unless clearly erroneous. *Griffin v. Bierman*, 403 Md. 186, 195 (2008) (quoting *Ryan v. Thurston*, 276 Md. 390, 392 (1975)). "If there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous." *Della Ratta v. Dyas*, 414 Md. 556, 565 (2010) (quoting *Solomon v. Solomon*, 383 Md. 176, 202 (2004)). As to the trial court's conclusions of law, however, our review is *de novo*. *Griffin*, 403 Md. at 195 (citing *Goff v. State*, 387 Md. 327, 337-38 (2005)).

DISCUSSION

I. Fraudulent Conveyance

Appellants first argue that the trial court erred in finding that the transfer of the 2005 Mazda to Greystone was a fraudulent conveyance under Com. Law §§ 15-204 and 15-207. We disagree and shall analyze each provision separately.

A. Com. Law § 15-204

Commercial Law § 15-204 provides the following:

Every conveyance made and every obligation incurred by a person who is or will be rendered insolvent by it is fraudulent as to creditors without regard to his actual intent, if the conveyance is made or the obligation is incurred without fair consideration.

Accordingly, the elements of a fraudulent conveyance under this statute are: 1) a conveyance; 2) the debtor either already is insolvent, or will be made insolvent by this conveyance; 3) the existence of a debtor-creditor relationship; and 4) lack of fair consideration. Appellants do not dispute that a conveyance occurred, nor that Rand was insolvent at the time of the transfer,³ but argue that the other elements are not satisfied.

i. Debtor-Creditor Relationship

Appellants first argue that the requisite debtor-creditor relationship does not exist as to this transaction. They note that the purchaser and transferor of the 2005 Mazda was McKernonRand, not Rand, and that Steinberg was not a creditor of McKernonRand at the

³ Appellants dispute that McKernonRand was insolvent at the time of the transfer. However, as discussed in the debtor-creditor section *infra*, McKernonRand's status is immaterial to our analysis.

time of the transfer. Related to this argument is appellants' contention that the trial court effectively pierced McKernonRand's corporate veil in order to hold it liable for Rand's personal debts. We reject appellants' arguments.

As a preliminary matter, the trial court did not err in its piercing the corporate veil analysis. In Maryland, a court has the authority to pierce the so-called veil of limited liability, imposing the debts and obligations of the corporation on its shareholders "where it is necessary to prevent fraud or enforce a paramount equity." *Bart Arconti & Sons, Inc. v. Ames-Ennis, Inc.*, 275 Md. 295, 310 (1975). However, as the trial court correctly noted in its ruling, the instant case "does not involve the debts or obligations of [McKernonRand]." ⁴ Accordingly, the trial court correctly determined that it was improper "to analyze whether the corporate veil should be pierced in determining this case."

Despite the court's statement that it was not piercing the corporate veil, appellants note that the trial court nevertheless ignored McKernonRand's corporate form by determining that Rand purchased the Mazda, not McKernonRand. Appellants therefore contend that, despite rejecting the applicability of the doctrine, the trial court effectively pierced the corporate veil. This argument incorrectly presumes that the trial court could only ignore the existence of McKernonRand by piercing its corporate veil.

⁴ Indeed, the facts of this case are more suited to a claim of "reverse veil-piercing," a theory which extends the "traditional veil-piercing doctrine to permit a third-party creditor to 'pierce[] the veil' to satisfy the debts of an *individual* out of the corporation's assets." *C.F. Trust, Inc. v. First Flight Ltd. Partnership*, 306 F.3d 126, 134 (4th Cir. 2002) (alteration in original) (emphasis in original).

The Court of Appeals' decision in *Attorney Grievance Comm'n v. Foltz*, 411 Md. 359 (2009) is instructive in resolving this case. In *Foltz*, the Court upheld the trial court's finding that Foltz, an attorney, had fraudulently conveyed funds from corporations he controlled to himself and his wife. The Court rejected Foltz's claim that the monies received from his corporations were legitimate rent payments, agreeing with the trial judge's conclusion that "the purported rent was a ruse to transfer tens of thousands of dollars from the corporations to Mr. Foltz and his wife, without generating income subject to garnishment." *Id.* at 407. In concluding that Foltz defrauded his creditors, the Court stated, "Mr. Foltz conveyed the funds held in the names of his corporations to himself and his wife, the corporate shareholders, suggesting that the transferor and transferee . . . were 'so closely related' to effectively be considered the same." *Id.*

In this case, the trial court found that Rand used his law firm's operating account to pay personal expenses. The court acknowledged Rand's testimony on this issue:

Mr. Rand was quite candid that the reason McCurran & Rand [sic] purchased the car was because it would have been futile to buy a car personally. Mr. Rand attempts to hide behind the fact that McCurran & Rand [sic] is a separate entity and that somehow that makes this conveyance untouchable.

Indeed, we note that Rand testified that "the only choice that I had at that time was to use my [law firm's] operating account . . . as an ATM account and let the accountant sort it out what's a draw and what is a business expense later." We view these circumstances as strikingly similar to those in *Foltz*. As in *Foltz*, Rand and McKernonRand were so closely related to effectively be considered the same. Accordingly, the trial court was not clearly

erroneous in determining that Rand, not McKernonRand, conveyed the Mazda to Greystone.

ii. Fair Consideration

Appellants further contend that the transaction does not satisfy the elements of Com. Law § 15-204 because there was fair consideration for the transfer. They argue that the vehicle was transferred from McKernonRand to Greystone in consideration for work Angela Lakatos performed for McKernonRand but for which she was not paid. As noted above, the trial court properly found that Rand was the actual transferor, not McKernonRand. Nevertheless, we shall address appellants' argument concerning consideration.

For the purposes of Com. Law § 15-204, "fair consideration" is given if:

- 1) In exchange for the property or obligation, as a fair equivalent for it and in good faith, property is conveyed or an antecedent debt is satisfied; or
- 2) The property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained.

Com. Law § 15-203. Accordingly, property transferred to satisfy an antecedent debt, as appellants contend here, may constitute fair consideration. *See Berger v. Hi-Gear Tire & Auto Supply, Inc.*, 257 Md. 470, 476 (1970). The trial court acknowledged this, noting that "[h]ad the car simply been transferred to [Greystone] on behalf of Ms. Lakatos with it being used by Greystone Operations, that would have been fair consideration for services rendered[.]"

In finding a lack of fair consideration, however, the trial court found that Angela Lakatos “hadn’t really gotten anything for her services.” This was true, in the court’s opinion, because Rand, not Greystone, exercised control over the vehicle. The court described the transaction in this way:

The Court looks at this transaction as if Ms. Lakatos had been given \$5,000 cash for her services but then her father says, let me have the money back and I’ll use it the way I want to. If you need any money, I’ll give you a few dollars, otherwise, I’m keeping the bulk of it.

The trial court’s finding is supported by extensive evidence in the record. For example, the vehicle remained in Rockville with Rand. Rand used the vehicle the majority of the time and paid for its gas and maintenance. The trial court also did not find credible Angela Lakatos’s testimony that an accountant had advised her that she need not report the vehicle as income for tax purposes. Accordingly, we hold that the trial court was not clearly erroneous in finding that the transfer of the Mazda lacked fair consideration.

B. Com. Law § 15-207

Turning to the second fraudulent conveyance claim, Com. Law § 15-207 provides the following:

Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud present or future creditors, is fraudulent as to both present and future creditors.

Accordingly, the elements of a fraudulent conveyance under this provision are: 1) a conveyance; 2) a debtor-creditor relationship; and 3) an intent to hinder, delay or defraud present or future creditors. As discussed above, Rand conveyed the Mazda to Greystone

and a debtor-creditor relationship existed between Rand and Steinberg. Appellants, however, challenge the existence of any intent to hinder, delay, or defraud.

In Maryland, intent to defraud creditors is proven through nine generally recognized indicia or “badges” of fraud. *See Wellcraft Marine Corp. v. Roeder*, 314 Md. 186, 189-90 (1988). They are: 1) insolvency or indebtedness of the transferor; 2) lack of consideration for the conveyance; 3) relationship between the transferor and transferee; 4) pendency or threat of litigation; 5) secrecy or concealment; 6) departure from the usual means of business; 7) transfer of the debtor’s entire estate; 8) reservation of benefit to the transferor; and 9) retention by the debtor of possession of the property. *Id.*

In the instant case, at least seven badges of fraud were present:

- Rand was insolvent.
- The transfer lacked fair consideration.
- Rand purported to transfer the vehicle to his daughter’s newly-formed LLC.
- Steinberg made multiple efforts to enforce his judgment.
- Rand used a McKernonRand check to purchase the vehicle rather than a personal check.
- Rand reserved a benefit by being the primary driver of the vehicle after the transfer.
- Rand substantially retained possession of the car.

Given these indicia of fraud, the trial court did not err in concluding that Rand intended to hinder, delay, or defraud Steinberg in violation of Com. Law § 15-207.

II. Remedy

Finally, appellants argue that the trial court committed error in awarding title of the 2005 Mazda to Steinberg. They contend that if the transfer is set aside, the proper remedy is to return the vehicle to McKernonRand or to the original seller. While we agree with appellants that the trial court erred in awarding title directly to Steinberg, we hold the error harmless.

Commercial Law § 15-209 provides two possible remedies for creditors with mature claims who have been aggrieved by a fraudulent conveyance: they may either “[h]ave the conveyance set aside or obligation annulled to the extent necessary to satisfy the claim,” or “[l]evy on or garnish the property conveyed as if the conveyance was not made.” Com. Law § 15-209. Here, the trial court chose neither of the permissible statutory remedies and instead transferred possession and title directly to Steinberg. Accordingly, the trial court erred.

In this case, reversal of the judgment is not mandated. “It has long been the policy of this State that [appellate courts] will not reverse a lower court judgment if the error is harmless.” *Flores v. Bell*, 398 Md. 27, 33 (2007). “The burden is on the complaining party to show prejudice as well as error.” *Id.* “The focus of our inquiry is on the probability, not the possibility of prejudice.” *Id.*

Here, appellants argue they were prejudiced by the trial court’s failure to set aside the conveyance and return the vehicle to “McKernonRand, LLC, or possibly the seller Martin.” As we have already noted, however, it was Rand who transferred the vehicle to

Greystone, not McKernonRand. Accordingly, under appellants' theory the vehicle would revert to Rand, making it subject to levy and sale by Steinberg. At oral argument, Steinberg represented that Rand was given a credit of \$1,750 toward the outstanding judgment as a result of the direct transfer of the Mazda to Steinberg. This figure was derived from the CarMax appraisal introduced as evidence by Angela Lakatos on behalf of Greystone. Rand acknowledged at oral argument that the Mazda would "bring almost nothing" at a public auction. Under these circumstances, and in the absence of any demonstration of prejudice, we hold that the court's error in fashioning a remedy for the fraudulent conveyance was harmless.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. APPELLANTS TO PAY
COSTS.**