

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

WILMINGTON SAVINGS FUND)
SOCIETY, FSB,)
)
Plaintiff,)
)
v.) Civil Action No. 1769-N
)
HENRY E. KACZMARCZYK, JR. and)
SANDRA L. KACZMARCZYK,)
)
Defendants.)

MEMORANDUM OPINION

Submitted: November 2, 2006

Decided: March 1, 2007

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PARSONS, Vice Chancellor.

Wilmington Savings Fund Society, FSB (“WSFS” or the “Bank”), brought this action to determine the proper owners of funds received from a property sale. WSFS claims that a transfer of property interest in 102 Dennison Lane, Hockessin, Delaware (the “Dennison Lane Property” or “Property”) from Henry Kaczmarczyk to his wife, Sandra Kaczmarczyk, was fraudulent and intended to avoid Henry’s obligation to repay a negative balance in a WSFS account he owned with his former corporation, H. Kay Interiors. Under 6 *Del. C.* § 1305, WSFS seeks a declaration of fraudulent transfer of the Property such that the proceeds from the sale of the Property, currently held in accounts of Sandra, can be applied to Henry Kaczmarczyk’s debts owed to WSFS.

The Court conducted a trial on WSFS’s claims on June 1, 2006. For the reasons stated in this opinion, I conclude that the transfer of interest from Henry Kaczmarczyk to Sandra Kaczmarczyk of the Dennison Lane Property was fraudulent, and that as a consequence, WSFS may look to the proceeds of that transfer to satisfy the outstanding debts of Henry and H. Kay Interiors.

I. FACTUAL BACKGROUND

A. The Parties

Plaintiff WSFS is a Delaware bank with its principal offices in Wilmington, Delaware.

Defendant Henry Kaczmarczyk and his business, H. Kay Interiors, maintained business checking and savings accounts at WSFS.¹ Henry Kaczmarczyk is the sole

¹ JX 7; JX 8.

owner of H. Kay Interiors, a Delaware corporation. In 2003, H. Kay Interiors made between \$600,000 and \$700,000 in gross income, and Henry received gross pay of approximately \$130,000.²

Together with his wife, Defendant Sandra Kaczmarczyk, Henry purchased the Dennison Lane Property in a tenancy by the entirety on July 9, 1990.³ Defendants financed the property with a first mortgage to Chase Manhattan Mortgage. Later, the Kaczmarczyks also opened an equity line with WSFS against the Property to purchase a boat.⁴

Henry Kaczmarczyk opened business checking and savings accounts for H. Kay Interiors with WSFS on February 14, 2001.⁵ In doing so, Henry signed a signature card, acknowledging that multiple applicants would be jointly and individually liable for all

² JX 11 (Dep. of Henry Kaczmarczyk) at 20.

³ JX 5; JX 11 at 16. The parties' handling of deposition testimony in their post-trial briefing has engendered some confusion. Defendants' Answering Brief contains virtually no citations to the trial transcript or joint exhibits and is therefore less helpful than the Court would expect. Although the parties submitted complete copies of the depositions of Henry and Sandra Kaczmarczyk as Joint Exhibits for the Court's convenience, WSFS provided specific deposition designations and Defendants were invited to submit any counterdesignations they might have. *See* June 1, 2006 Transcript ("Trial Tr.") at 77-80. Ultimately, Defendants did not counterdesignate anything. In its reply brief, however, WSFS cited to portions of those depositions not previously designated. In these rather ambiguous circumstances, the Court has decided to consider the depositions of Henry and Sandra Kaczmarczyk in their entirety, and not solely the designated portions of them.

⁴ JX 5; Trial Tr. at 40-41.

⁵ Verified Compl. (JX 1), Ex. B.

obligations they might have to WSFS.⁶ On or about February 10, 2004, Henry deposited a \$83,452 check from Peninsula United Methodist Homes (“PUMH”) into the savings account of H. Kay Interiors, but several days later the check was returned unpaid.⁷ As a result, draws against the account could not be paid and a negative balance of over \$40,000 ensued, causing WSFS to begin closing the account.⁸ H. Kay Interiors has since become defunct and has no assets.⁹

On or about March 19, 2004, WSFS filed an action in Superior Court against H. Kay Interiors and Henry Kaczmarczyk to recover the unpaid amount of \$41,930.43, attorneys’ fees and pre- and post-judgment interest.¹⁰ Thereafter, on March 24, 2004, Henry conveyed his interest in the Dennison Lane Property to Sandra for ten dollars.¹¹ H. Kay Interiors and Henry Kaczmarczyk did not defend against the Superior Court action, and on July 12 and August 27, 2004, respectively, the Court entered default

⁶ JX 16 and JX 1 ¶7. Specifically, the signature card provides that “if there are multiple applicants, we understand that we will be jointly and individually liable for the full amount of all obligations we may have to WSFS in connection with the account/services we have requested.”

⁷ JX 1, Ex. C.

⁸ JX 1, Ex. I.

⁹ JX 11 at 12-13; Trial Tr. at 45-46.

¹⁰ JX 2.

¹¹ JX 3; Trial Tr. at 39-40.

judgments against each of them for \$41,930.43 plus interest, late charges, attorneys' fees and court costs.¹²

On or about November 15, 2004, Sandra Kaczmarczyk sold the Dennison Lane Property to William and Susan Murray for \$359,900.¹³ From that sale, Sandra paid in full the first mortgage to Chase Manhattan Mortgage and the second mortgage on the equity line to WSFS.¹⁴ She deposited the remaining \$115,097.12 in proceeds into her money market account with MBNA America Bank, N.A. ("the MBNA Account").¹⁵ Shortly thereafter, Sandra also sold the boat for \$12,000 and placed those monies in her checking account.¹⁶ Since then, Sandra has used \$21,000 as a down payment towards building a new home.¹⁷

B. Procedural History

On November 8, 2005, WSFS filed this action seeking injunctive relief and a declaration under 6 *Del. C.* §§ 1301 through 1311, the Uniform Fraudulent Transfer Act,

¹² JX 7, 8.

¹³ JX 5.

¹⁴ *Id.*

¹⁵ JX 4; JX 12 at 35.

¹⁶ JX 12 at 52-53; JX 11 at 24; Trial Tr. at 40-41, 47. *Compare* JX 11 at 53 (boat sale in the amount of \$13,000 or \$15,000) and Pl.'s Op. Br. at 11 (boat proceeds of approximately \$13,000) *with* JX 12 at 40-41 (boat sale at \$12,000). Because WSFS did not submit any documentary evidence relating to the boat sale, and the testimony regarding the sale price is somewhat inconsistent, I accept the testimony of Sandra Kaczmarczyk and find that she received \$12,000 for the boat.

¹⁷ JX 12 at 36. According to WSFS, the \$21,000 remains on deposit with Frank Robino Associates. Pl.'s Op. Br. at 3.

that the transfer of Henry Kaczmarczyk's interest in the Dennison Lane Property to Sandra Kaczmarczyk was fraudulent and that Henry's portion of the proceeds from the subsequent sale of that Property be placed in a constructive trust and applied towards the default judgments against him and H. Kay Interiors. The parties stipulated that the proceeds from the sale of the Dennison Lane Property remaining within the possession or control of Sandra Kaczmarczyk would be frozen until the Court renders a final decision on the merits. Following a trial on June 1, 2006, the parties submitted post-trial briefs and later presented oral argument on WSFS's claims.

C. Parties' Contentions

WSFS alleges that Henry Kaczmarczyk conveyed his interest in the Property to Sandra in an effort to thwart the Bank's ability to recoup the amounts owed by H. Kay Interiors and Henry. In particular, WSFS alleges that Henry Kaczmarczyk, as a signatory on the H. Kay Interiors accounts, could not pay his debts as they became due and was therefore insolvent after PUMH stopped payment on its check. WSFS contends that, because Henry thereafter transferred his interest in the Property to his wife for only nominal consideration, the transfer was fraudulent under the Uniform Fraudulent Transfer Act.¹⁸ WSFS also argues that proceeds from the sale of the boat, which was financed by a second mortgage against the Property, are also susceptible to the default judgment. As a result, WSFS seeks the imposition of a constructive trust on half of the

¹⁸ DEL. CODE ANN. tit. 6, §§ 1301—1311 (2005).

proceeds from the sale of the Property and the boat proceeds and to apply those funds toward satisfaction of the default judgments.

Defendants primarily contest WSFS's characterization of the consideration Henry received for his interest in the Dennison Lane Property based on certain circumstances in the Kaczmarczyks' marital relationship when the challenged transfer of the Property occurred. Specifically, the Kaczmarczyks allege that at that time they were involved in dividing their marital property in contemplation of a divorce or permanent separation. They aver that during the period of time surrounding the challenged transfer, Henry engaged in an extramarital affair with another woman¹⁹ and had a nervous breakdown.²⁰ Among other things, this caused Sandra to throw all of Henry's personal effects and his company's tools and paperwork into a dumpster and discard them as trash.²¹ Although Sandra did not continue to pursue legal separation, she and Henry physically separated on November 17, 2003 and, on or about January 9, 2004, began having a formal separation agreement prepared.²² According to Defendants, they each then began to perform their obligations under the separation agreement.²³ For example, Henry transferred \$5,000 on or about February 8, 2004 to Sandra pursuant to their oral agreement.²⁴ Defendants

¹⁹ Trial Tr. at 38-39, 149; Defs.' Ans. Br. at 5, 7-8.

²⁰ Trial Tr. at 151-52.

²¹ *Id.* at 198-99.

²² JX 13; Trial Tr. at 39-40.

²³ Trial Tr. at 38-39, 58-60.

²⁴ *See* JX 6; JX 1, Ex. D (check from H. Kay Interiors to Sandra Kaczmarczyk).

further contend that beyond the ten dollar payment for the Dennison Lane Property, Sandra, who they allege did not know that Henry and H. Kay Interiors were insolvent,²⁵ “paid nearly \$630,000.00 for her husband’s interest in the Dennison Lane Property when she allowed Mr. Kaczmarczyk to walk away with H. Kay Interiors.”²⁶ Thus, Defendants contend that Henry Kaczmarczyk transferred his interest in the Property to Sandra for reasonably equivalent value, and therefore not fraudulently within the meaning of the Uniform Fraudulent Transfer Act.

The Kaczmarczyks also emphasize that the down payment on the Dennison Lane Property came entirely from Sandra Kaczmarczyk’s inheritance. They allege that Sandra’s mother bequeathed half of a Wilmington property to Sandra and that, upon sale of that property, Sandra used approximately \$120,000 of the proceeds as the down payment on the Dennison Lane Property.²⁷ Defendants also contend that Sandra contributed significantly to the mortgage and household payments on the Property.²⁸ Because Sandra Kaczmarczyk contributed her inheritance toward the purchase of the Property and also contributed to its upkeep, the Kaczmarczyks contend that she rightfully received all the net proceeds (which approximate her inheritance), including the gain realized, when it was sold.

²⁵ Defs.’ Ans. Br. at 15. At trial, Sandra Kaczmarczyk contradicted this allegation, testifying that by March of 2004 she was aware that H. Kay Interiors was insolvent. Trial Tr. at 45-46.

²⁶ Defs.’ Ans. Br. at 19.

²⁷ JX 18; Trial Tr. at 31-34, 87-91.

²⁸ See Trial Tr. at 30.

II. ANALYSIS

WSFS contends that the conveyance of the Dennison Lane Property interest from Henry to Sandra is a fraudulent transfer under 6 *Del. C.* § 1305. WSFS also contends that, because the boat was funded entirely out of the equity line secured by the Property, it is entitled to a constructive trust over half of the proceeds from both the Property and the boat.

Delaware courts utilize the equitable remedy of imposing a constructive trust when one party, by virtue of fraudulent, unfair or unconscionable conduct, is enriched at the expense of another and where other legal remedies are inadequate.²⁹ When applying a constructive trust to the recovery of money, courts will impose the trust as of the date of the wrongful act and upon the identifiable proceeds of the property in question.³⁰ Because the Dennison Lane Property and the boat are distinct marital properties, I address them separately.

In Delaware, a husband and wife generally hold title to real property in a tenancy by the entirety.³¹ Consequently, neither interest can be sold, attached, or liened except by

²⁹ *Adams v. Jankouskas*, 452 A.2d 148, 152 (Del. Super. 1982).

³⁰ *Hogg v. Walker*, 622 A.2d 648, 652 (Del. 1993).

³¹ *Stiegler v. Ins. Co. of North Am.*, 384 A.2d 398, 400 (Del. 1978); *Mitchell v. Wilmington Trust Co.*, 449 A.2d 1055, 1057-58 (Del. Ch. 1982), *aff'd*, 461 A.2d 696 (Del. 1983) (Table); *Johnson v. Smith*, 1994 WL 643131, at *3 (Del. Ch. Oct. 31, 1994) (holding that, “as a legal matter[,] creditors of a spouse have no interest in realty that is held by the entireties”).

the joint act of both spouses.³² Specifically, a judgment against the husband cannot be executed against a property interest he holds in a tenancy by the entirety.³³

Under the Uniform Fraudulent Transfer Act, a creditor may recover assets fraudulently transferred by an insolvent debtor.³⁴ WSFS contends that the transfers of interest from Henry to Sandra Kaczmarczyk challenged here fall under Section 1305, which deems a transaction fraudulent under certain specific circumstances. Therefore, I must determine whether those circumstances exist in this case.

Before doing so, however, I note that Chapter 13 of Title 6 of the Delaware Code, previously called the “Fraudulent Conveyances Act,” was repealed and reenacted as the “Uniform Fraudulent Transfer Act” or “UFTA” in 1996. Since 1996, no reported decisions have addressed Section 1305, the provision of the UFTA at issue here.³⁵ Notwithstanding this, WSFS relies on prior case law to support the proposition that a

³² See *Steigler*, 384 A.2d at 400; *Givens v. Givens*, 1986 WL 2270, at *1 (Del. Super. Feb. 4, 1986).

³³ *Mitchell*, 449 A.2d at 1058 (citing *Hurd v. Hughes*, 109 A. 418, 419 (Del. Ch. 1920)).

³⁴ DEL. CODE ANN. tit. 6, § 1307 (2005) (identifying remedies of creditors). Relevant to this case, a creditor may obtain an attachment, injunction, or other relief as the circumstances require. After judgment, a creditor, upon a court order, may levy execution on the asset transferred or its proceeds. *Id.*

³⁵ Three recent cases have addressed other aspects of the UFTA. See *Trenwick Am. Litig. Trust v. Ernst & Young, L.L.P.*, 906 A.2d 168, 197-200 (Del. Ch. 2006) (analyzing pleading requirements); *In re Transamerica Airlines, Inc.*, 2006 WL 587846, at *3-7 (Del. Ch. Feb. 28, 2006) (analyzing statute of limitations concerns); *Dryden v. Estate of Gallucio*, 2007 WL 185467 (Del. Ch. Jan. 11, 2007) (analyzing the provisions of the statute requiring “actual intent to hinder, delay or defraud” a creditor).

property transfer for nominal value after insolvency is fraudulent. Thus, as a preliminary matter, I examine the language of the former and present fraudulent conveyance laws in Delaware to determine the degree to which the pre-UFTA case law is relevant to this dispute.

A. 6 Del. C. § 1305 and its Application to the Dennison Lane Property Transfer

A fundamental premise of statutory construction is that courts “ascertain and give effect to the intent of the General Assembly as clearly expressed in the language of the statute.”³⁶ The courts may construe a statute when its language is obscure and ambiguous,³⁷ but where no ambiguity exists, the intent is clear and there is no room for statutory construction or interpretation.³⁸

At the time of its enactment in Delaware,³⁹ the Uniform Fraudulent Transfer Act had been enacted in approximately 33 other states and approved by the American Bar Association.⁴⁰ Committee notes from the Conference of Commissioners for the UFTA

³⁶ *Giuricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del. 1982).

³⁷ *Balma v. Tidewater Oil Co.*, 214 A.2d 560, 562 (Del. 1965).

³⁸ *Giuricich*, 449 A.2d at 238.

³⁹ The UFTA was part of Senate Bill 308, which became effective May 2, 1996. 70 Del. Laws 434, S.B. 308 (1996); DEL. CODE ANN. tit. 6, §§ 1301-1311 (2005). The primary source of legislative intent is the bill’s synopsis. *Carper v. New Castle County Bd. of Ed.*, 432 A.2d 1202, 1205 (Del. 1981).

⁴⁰ *Id.* See also National Conference of Commissioners on Uniform State Laws, Uniform Fraudulent Transfer Act (1984), available at <http://www.law.upenn.edu/bll/ulc/fnact99/1980s/ufta84.pdf> (providing commentary for each of the sections of the uniform act) (hereinafter “1984 Committee Notes”).

reflect a goal to “declare a transfer made or an obligation incurred with actual intent to hinder, delay, or defraud creditors to be fraudulent.”⁴¹ The Committee also intended to make any transfer made or obligation incurred without adequate consideration that met certain other conditions constructively fraudulent.⁴² Both of these overarching goals comport with the framework of the preceding Fraudulent Conveyances Act. Thus, I turn to Section 1305 of the UFTA, the section at issue in this case.

Section 1305 replaces Section 1304 of the earlier Fraudulent Conveyances Act.⁴³ The text of former Section 1304⁴⁴ is generally subsumed in subsection 1305(a) of the UFTA, while subsection 1305(b) is new. Therefore, Section 1305 of the UFTA creates two sets of circumstances under which a conveyance is deemed fraudulent. Because subsection (b) has no analog in the Fraudulent Conveyances Act, I need not consider whether the prior case law applies to new subsection 1305(b). Instead, I assess whether the case law analyzing former Section 1304 applies to subsection 1305(a) of the UFTA.

⁴¹ 1984 Committee Notes, at 3. *See* DEL. CODE ANN. tit. 6, §§ 1304, 1306, 1307, 1308 (2005).

⁴² 1984 Committee Notes, at 3.

⁴³ Both of these statutory provisions deal with constructive, rather than actual, fraud. Because WSFS has not seriously attempted to prove that the Kaczmarczyks actually intended to hinder, delay or defraud WSFS, they have proceeded on the theory that the disputed transfer was constructively fraudulent.

⁴⁴ The former Section 1304 provided that: “Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration.” DEL. CODE ANN. tit. 6, § 1304 (1993) (repealed and reenacted 1996).

Section 1305(a) “adheres to the limitation of the protection of [former Section 1304] to a creditor who extended credit before the transfer or obligation described,”⁴⁵ as well as requiring proof regarding the insolvency of the debtor and the relative value he received in the transfer. Based on the unambiguous language of the statute and the Delaware Legislature’s adoption of language mirroring the pertinent section in the uniform act,⁴⁶ I find that there are sufficient similarities between Section 1304 of the Fraudulent Conveyances Act and Section 1305(a) of the Uniform Fraudulent Transfer Act to make the prior case law relating to Section 1304 instructive in applying the current Section 1305(a).

I now turn to whether the transfer at issue satisfies either § 1305 (a) or (b). Section 1305 of Title 6 is entitled, “Transfers fraudulent as to present creditors,” and states:

⁴⁵ 1984 Committee Notes, at 24.

⁴⁶ The phrase “reasonably equivalent value” in the UFTA has replaced the term “fair consideration” in the earlier Act. *Compare* DEL. CODE ANN. tit. 6, § 1304 (1993) (repealed and reenacted 1996) (defining conveyances made or obligations incurred “without a fair consideration” fraudulent regardless of intent) *with* DEL. CODE ANN. tit. 6, § 1305(a) (providing that transfers made or obligations incurred “without receiving a reasonably equivalent value in exchange for the transfer or obligation” fraudulent regardless of intent). Delaware courts, however, have treated these phrases as interchangeable and functional equivalents. *See, e.g., In re Key3Media Group, Inc.*, 336 B.R. 87, 93-94 (D. Del. 2005) (“Courts typically use these terms interchangeably, and do not usually make a distinction between the standard required for reasonably equivalent value, on the one hand, and fair consideration on the other.”), *aff’d*, 2006 WL 2842462 (D. Del. Oct. 2, 2006). *See also* 1984 Committee Notes, *supra* note 39, at 24 cmt. 1 (“[T]his Act substitutes “reasonably equivalent value” for “fair consideration.”) and at 19 (“The transferee’s good faith is irrelevant to a determination of the adequacy of the consideration under this Act”).

- (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.
- (b) A transfer made by a debtor is fraudulent as to a creditor whose claims arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time and the insider had reasonable cause to believe that the debtor was insolvent.⁴⁷

1. Section 1305(a)

Under Section 1305(a), a creditor whose claim arose before a challenged transfer may have that transfer effectively set aside if the debtor 1) is insolvent or is made insolvent by the transfer and 2) does not receive reasonably equivalent value.⁴⁸ A debtor is insolvent under the UFTA if the sum of the debtor’s debts is greater than all of his assets, at a fair valuation.⁴⁹ The UFTA further provides that, “a debtor[, like Henry

⁴⁷ DEL. CODE ANN. tit. 6, § 1305 (2005).

⁴⁸ DEL. CODE ANN. tit. 6, §§ 1305, 1307 (2005). The prior case law also supports this interpretation. The previous statute deemed a transfer fraudulent if it met two conditions: first, if the transfer was made for less than a fair consideration; and second, if the transferor was insolvent or was rendered insolvent as a result of the transfer. See *Tri-State Vehicle Leasing, Inc. v. Dutton*, 461 A.2d 1007, 1008 (Del. 1983) (applying 6 *Del. C.* § 1304 of the previous statute); *United States v. West*, 299 F. Supp. 661, 665 (D. Del. 1969) (applying Delaware law).

⁴⁹ DEL. CODE ANN. tit. 6, § 1302(a) (2005).

Kaczmarczyk,] who is generally not paying debts as they become due is presumed to be insolvent.”⁵⁰

In situations where the transfer occurs between family members, a rebuttable presumption of fraud arises, since collusion in this type of case is difficult to prove.⁵¹ The court will scrutinize the transaction more closely “than if it were between strangers, because where such intimacy of relationship exists, fraud is more easily practiced and effectively concealed.”⁵² Thus, once a transfer by an individual debtor to a family member is proven, the burden shifts to the party asserting the validity of the transfer to establish by clear and convincing evidence that at least one of the conditions that give rise to a statutory presumption of a fraudulent conveyance does not exist.⁵³

⁵⁰ DEL. CODE ANN. tit. 6, § 1302(b) (2005).

⁵¹ *Tri-State*, 461 A.2d at 1008; *West*, 299 F. Supp. at 665. See also *Cooch v. Grier*, 59 A.2d 282, 287 (Del. Ch. 1948) (finding a need to closely scrutinize a conveyance between the allegedly fraudulent grantor and his father).

⁵² *West*, 299 F. Supp. at 664. See also 6 Del. C. § 1301(7)(a)(1); see also *Dryden v. Estate of Gallucio*, 2007 WL 185467, at *5 (Del. Ch. Jan. 11, 2007) (“[T]he transfer to his wife was a transfer to an insider.”).

⁵³ See *Tri-State*, 461 A.2d at 1008; *Cooch*, 59 A.2d at 287; *West*, 299 F. Supp. at 665. See also *Logan v. Brick*, 2 Del. Ch. 206, 1859 WL 2014, at *5 (Del. Ch. 1859) (setting aside a transfer of property between a father and son under the original fraudulent transfer statute of 13 Elizabeth). In *Logan*, the court stated:

If the grantor be indebted at the time, or is about to become indebted, and act with a view to protect his property from such debt – much more if he be on the verge of insolvency – he cannot, by a conveyance to his son, deprive his creditors of their right to proceed against his property. The insertion of a nominal consideration, however adequate, . . . does not change the character of the transaction. It is essentially a voluntary conveyance, affecting the rights of creditors, and is void as to them; and, being avoided, it

Because Defendants in this case are husband and wife, they carry the burden of showing that the transfer was not fraudulent under Section 1305(a), either by proving that Henry was solvent at that time and did not become insolvent as a result of the transfer or that he received reasonably equivalent value for the transfer. The Kaczmarczyks do not dispute that Henry conveyed his rights in the Dennison Lane Property to his wife Sandra after H. Kay Interiors experienced “a business difficulty with PUMH” and WSFS filed the Superior Court case.⁵⁴ Instead, they contend that Henry was not insolvent within the meaning of Section 1305(a) because his and H. Kay Interiors financial problems were temporary and merely a “business difficulty.”

H. Kay Interiors, however, has not commenced any business since PUMH cancelled its check in February 2004, leaving the sum of H. Kay Interiors’ debts greater than its assets. Further, WSFS adduced evidence that Henry and H. Kay Interiors had several other outstanding business debts in March 2004, totaling approximately \$30,000, some of which had been outstanding so long they had been referred to collection agencies.⁵⁵ Thus, based on all the evidence, I find that H. Kay Interiors and Henry Kaczmarczyk, in fact, were insolvent in March 2004, when the challenged transfer occurred. Therefore, the conveyance is not fraudulent only if Defendants can show that

leaves the property liable to the grantor’s debts, as if it had not been made.

⁵⁴ Defs.’ Ans. Br. at 16. In that regard, Defendants note that H. Kay Interiors is challenging the actions of PUMH that caused the overdraft condition in a co-pending action in Superior Court. *Id.*

⁵⁵ Pl.’s Reply Br. Ex A.

Sandra conveyed reasonably equivalent value for Henry's interest in the Dennison Lane Property.

Defendants identify surrounding marital discord as providing the impetus in late 2003 and early 2004 for the Kaczmarczyks to initiate the drafting of a separation agreement and divide their assets between them. Defendants argue that Sandra did convey reasonably equivalent value for Henry's interest in the Property, because she relinquished her ownership in H. Kay Interiors as part of the separation agreement and in connection with dissolving her marital relationship with Henry. In other words, even though Henry transferred his interest in the Property to Sandra on March 24, 2004 for a recited consideration of only ten dollars,⁵⁶ he also received Sandra's marital interest in the company in exchange.

Generally, conveyances of property from one spouse to another in contemplation of a divorce subsequently obtained are said to be supported by fair and valuable consideration.⁵⁷ The present situation is distinguishable from this general rule, however, in that the Kaczmarczyks never initiated or completed any legal formalities to obtain a divorce. To the contrary, Henry and Sandra Kaczmarczyk reconciled sometime in April or May 2004. Furthermore, although Sandra had a separation agreement drafted, neither

⁵⁶ JX 3; Trial Tr. at 39-40.

⁵⁷ *Mitchell v. Wilmington Trust Co.*, 449 A.2d 1055, 1060 (Del. Ch. 1982), *aff'd*, 461 A.2d 696 (Del. 1983) (Table).

she nor Henry ever signed it or formally filed it with the courts.⁵⁸ In fact, Sandra told her attorney in or around February 2004 “that [the separation agreement] was a void document at this point because [Henry] had absolutely nothing.”⁵⁹ Therefore, I find that the Kaczmarczyks have failed to prove the existence of an enforceable agreement between them as of March 24, 2004, relating to the division of their marital property.⁶⁰ Indeed, the evidence confirms not only the absence of any enforceable separation agreement, but also Henry’s insolvency during the relevant time period.⁶¹

Even if an enforceable separation agreement did exist, I do not find a reasonably equivalent exchange of value in the conveyance of Henry Kaczmarczyk’s interest in the Dennison Lane Property. Defendants argue that the separation agreement was negotiated in December 2003 or January 2004, well before Sandra knew that the business was insolvent. Because the purported agreement gave Sandra Henry’s interest in the Property in exchange for her half of her husband’s business, Defendants contend that the value of

⁵⁸ Trial Tr. at 38-39, 43, 48-49; *see also* JX 13 (unsigned Separation Agreement); Defs.’ Ans. Br. at 8.

⁵⁹ JX 12 at 42-44.

⁶⁰ Defendants also cite to Henry’s payment of \$5,000 to Sandra in early February 2004 to show that they had begun performance of the terms allegedly agreed to in the separation agreement. I consider that argument untenable, however. Although the separation agreement contemplates monthly payments beginning February 1, 2004 (JX 13), Henry’s February 2004 check bounced and he did not repay that or make any subsequent monthly payments to Sandra.

⁶¹ I note that I would reach the same conclusion even if the Kaczmarczyks did not bear the burden of proof. That is, the evidence presented by WSFS was sufficient, in my opinion, to prove by a preponderance of the evidence that no enforceable agreement existed between the Kaczmarczyks and that Henry and H. Kay Interiors were insolvent during the relevant period.

the business at the time of the agreement should count as reasonably equivalent value. According to Defendants, the value of H. Kay Interiors in early 2004 was substantial. However, a manager of the Consumer Loan Collection Department at WSFS spoke with Sandra several times in February and March of 2004 and I find that those discussions show that she knew about her husband and his company's financial difficulties with the bank.⁶² Specifically, the manager's notes demonstrate that Sandra knew and informed WSFS that the check had been returned because of alleged problems relating to the roofing portion of the construction contract.⁶³ Sandra also knew that the company's condition, at or around the time of these phone calls, was "not that great."⁶⁴ Based on all the evidence, I find that H. Kay Interiors' financial condition at the time of the transfer of Henry's interest in the Dennison Lane Property was such that the debts of H. Kay Interiors exceeded its assets, and that Sandra knew that the company had little or no value at that time.

In summary, I conclude that Henry Kaczmarczyk and H. Kay Interiors were insolvent on March 24, 2004, when Henry transferred his interest in the Dennison Lane

⁶² Trial Tr. at 146.

⁶³ *Id.* at 148-50. *See also* JX 15 (written notes documenting phone calls from WSFS, indicating that: on February 25, 2004, Sandra Kaczmarczyk was aware that PUMH claimed that Henry's company improperly constructed the roof and therefore had stopped payment of the check; as of March 17, 2004, Sandra knew that Henry was "still trying to get funds" from the cancelled check and believed it would take a long time; and on April 15, 2004, she told WSFS that Henry "is not really working, has no money.")

⁶⁴ Trial Tr. at 45-46.

Property. Further, I do not find that Henry received fair and reasonable value for his interest in the Property. Instead, I find that, apart from the nominal ten dollar payment, Sandra did not provide any significant consideration in exchange for the transfer of the Property interest.⁶⁵ Defendants have neither met their burden of rebutting the presumption of fraud that arises from transfers between insiders in similar circumstances nor shown by clear and convincing evidence that Henry Kaczmarczyk received reasonably equivalent value for his interest in the Dennison Lane Property. Under these circumstances, I conclude that the transfer from Henry to Sandra was fraudulent under 6 *Del. C.* § 1305(a).

Because assets and liabilities are shared equally by husband and wife, I find that Henry's share of the net proceeds of the sale of the Dennison Lane Property on or about November 15, 2004 was half of \$115,097.12, or \$57,548.56.

2. 1305(b)

The Uniform Fraudulent Transfer Act also provides an alternative mechanism by which preexisting creditors can avoid a fraudulent transfer by their debtor. According to the National Conference of Commissioners notes, Section 1305(b) “renders a preferential transfer – *i.e.*, a transfer by an insolvent debtor for or on account of an antecedent debt – to an insider vulnerable as a fraudulent transfer when the insider had reasonable cause to believe that the debtor was insolvent.”⁶⁶

⁶⁵ See *Cooch*, 59 A.2d at 287 (finding a deed that recited only a dollar consideration from a father to his son as invalid consideration).

⁶⁶ See 1984 Committee Notes, *supra* note 40, at 24.

In contrast to the requirement of a reasonably equivalent value under Section 1305(a), Section 1305(b) deems a transaction to be fraudulent under certain other circumstances. Under this subsection, a transfer is constructively fraudulent if (1) the transfer was made to an insider for an antecedent debt; (2) the debtor was insolvent at the time of transfer; and (3) the insider had reasonable cause to believe that the debtor was insolvent.⁶⁷ Under the UFTA, debt is defined as “liability on a claim.”⁶⁸ The UFTA also explicitly defines “insider” under Section 1301 to include a relative of the debtor.⁶⁹

The UFTA does not specify which party bears the burden of proof. As discussed earlier, prior case law held that, where a transfer occurs between family members, a rebuttable presumption of fraud arises and the burden of proof shifts to the proponent of the transfer to rebut that presumption. Because Section 1305(b) is new in the UFTA, had no parallel provision in the previous Fraudulent Conveyances Act, and explicitly addresses transfers to insiders, it is not clear whether the prior case law applies to Section 1305(b). In the circumstances of this case, however, I need not resolve that issue. Instead, I assume, without deciding, that the prior case law does not apply to Section 1305(b). Thus, a party seeking to avoid a transfer as fraudulent under that subsection, here WSFS, would have the burden of proving the existence of each of the conditions specified in Section 1305(b).

⁶⁷ DEL. CODE ANN. tit. 6, § 1305(b) (2005).

⁶⁸ DEL. CODE ANN. tit. 6, § 1301(5) (2005).

⁶⁹ DEL. CODE ANN. tit. 6, § 1301(7) (2005).

Turning to the requirements of Section 1305(b), the first is that “the transfer was made to an insider for an antecedent debt.” As Henry’s wife, Sandra meets the definition of an “insider.” The only other question is whether the transfer to her was for an antecedent debt. WSFS suggests that the phrase “antecedent debt” refers to the debts owed to it by Henry Kaczmarczyk, but that seems inconsistent with the plain and unambiguous language of the statute. For their part, Defendants do not address this point at all. Rather, they contend that Section 1305 is inapplicable because the requirements of Henry’s insolvency and Sandra’s awareness of it are not met.⁷⁰ Based on my reading of the UFTA, I construe the phrase “antecedent debt” in section 1305(b) to refer to a debt owed by the transferor to the insider transferee. In this case, that would mean a debt owed by Henry to Sandra Kaczmarczyk. Such a debt would exist if, contrary to the conclusion I reached in connection with my analysis under Section 1305(a), Henry and Sandra had entered into an enforceable contract to divide their marital assets before March 24, 2004. In that case, the transfer to Sandra arguably would have been in satisfaction of at least that antecedent obligation.⁷¹

⁷⁰ See Defs.’ Ans. Br. at 14-15.

⁷¹ A similar argument also might be made as to Defendants’ alternative theory that Sandra had a right to the net proceeds of the sale of the Dennison Lane Property to reimburse her for contributing her inheritance to the original acquisition of the Property. The Court need not address this issue because Defendants never argued that this requirement of Section 1305(b) was not satisfied and because the Court has rejected Defendants’ inheritance argument for the reasons stated in Part II(B), *infra*.

The second requirement of Section 1305(b) is that the debtor must have been insolvent at the time of the disputed transfer. For the reasons stated in the analysis under Section 1305(a), the Court has concluded that Henry Kaczmarczyk was insolvent at the relevant time here. Thus, WSFS has shown the existence of this condition.

Lastly, Section 1305(b) requires a showing that the insider had reasonable cause to believe that the debtor was insolvent. I find that WSFS has shown the existence of this requirement, as well. Sandra herself admitted in or around February 2004 that Henry “had absolutely nothing.”⁷² The evidence also shows that Sandra knew in late February and early March 2004 that Henry could not make the \$5,000 payments to her contemplated in the draft separation agreement. Sandra Kaczmarczyk’s conversations with the manager of WSFS’s Consumer Loan Collection Department between February 25 and April 15, 2004, described above, further corroborate my determination that Sandra did have reasonable cause to know that Henry was insolvent when he conveyed his interest in the Property to her.

Accordingly, I conclude that WSFS has shown the existence of each of the requirements of Section 1305(b), and that the transfer of the Dennison Lane Property is therefore fraudulent under that subsection as well.

B. Inheritance

Defendants next contend that Sandra Kaczmarczyk is entitled, as a matter of law, to all of the net proceeds of the sale of the Property, because they represent her

⁷² JX 12 at 42-44. *See* Trial Tr. at 45-46.

inheritance and may not be subject to any claim or offset.⁷³ Defendants aver that the Property was purchased and financed in 1990 with the inheritance of Sandra Kaczmarczyk⁷⁴ and that the net proceeds of the sale of the Property, which were “[n]early the exact value of [Sandra’s] inheritance,”⁷⁵ should be awarded solely to Sandra for those reasons.

The facts relevant to Defendants claim that Sandra is entitled to maintain her inheritance are as follows. For approximately four or five years, Sandra and Henry Kaczmarczyk lived in Sandra’s mother’s house, located at 2002 Wildwood Drive, Wilmington, Delaware.⁷⁶ Sandra’s mother, Thelma V. Buchanan, passed away in May, 1989 and, on or around February 9, 1990, Sandra received an inheritance bequest of the Wildwood Drive house, lien-free, from her mother.⁷⁷ Sandra then sold the Wildwood Drive house, paid her sister for amounts owed from the inheritance bequest⁷⁸ and used the remaining proceeds of approximately \$120,000 toward a down payment on the

⁷³ Defs.’ Ans. Br. at 25-26.

⁷⁴ *Id.* at 6.

⁷⁵ *Id.* at 11.

⁷⁶ JX 11 at 14-15.

⁷⁷ JX 12 at 8, 10; JX 18 (Register of Wills real estate memo).

⁷⁸ Thelma Buchanan bequeathed half of her estate to each of two daughters; Sandra received the house located at 2002 Wildwood Drive and her sister received a house located at 1806 Cleveland Avenue, Wilmington, Delaware. The market value of the Wildwood Drive house exceeded that of the Cleveland Avenue house, so the sisters agreed that Sandra would pay her sister upon sale of the Wildwood Drive house. JX 12 at 8-10.

Dennison Lane Property in or around July 1990.⁷⁹ Regarding the payment of expenses relating to the Property while they lived there as a married couple, Defendants allege that, “we paid together. We put our monies together at that time and paid bills together: mortgage, electric, insurances, things that—day-to-day things everybody has.”⁸⁰ Nevertheless, Defendants emphasize that Henry did “not contribute[] much[,] maybe a couple hundred dollars a week” to utility bills or the mortgage.⁸¹ Ultimately, Henry conveyed his interest in the Dennison Lane Property to Sandra on March 24, 2004, and Sandra sold the Property on November 15, 2004.

Section 1513(c) of Title 13 of the Delaware Code creates a presumption that all property acquired subsequent to marriage is marital property.⁸² Relevant here, the statute allows this presumption to be overcome by a showing that the property was acquired by bequest.⁸³ Delaware courts broadly construe “marital property”⁸⁴ and have held that commingling one spouse’s funds into a joint account renders the monies marital

⁷⁹ JX 12 at 9-11; JX 11 at 14-15.

⁸⁰ JX 12 at 22-23.

⁸¹ *See* Trial Tr. at 30. In the same regard, I note that Defendants have acknowledged that “[b]oth parties contributed to the marital obligations.” Defs.’ Ans. Br. at 5.

⁸² 13 *Del. C.* §1513(c).

⁸³ *Id.* Section 1513(b) states, in pertinent part, that “‘marital property’ means all property acquired by either party subsequent to the marriage except: (1) Property acquired by an individual spouse by bequest”

⁸⁴ *See, e.g., Husband T.N.S. v. Wife A.M.S.*, 407 A.2d 1045, 1047-48 (Del. 1979) (determining that the phrase “marital property” is broadly construed); *J.D.P. v. F.J.H.*, 399 A.2d 207, 210 (Del. Super. 1979) (same).

property.⁸⁵ For example, in *Fielitz v. Fielitz*,⁸⁶ a husband purchased a house before his marriage. That house was sold and the spouses used the proceeds to purchase a marital residence in their joint names. Both husband and wife then contributed to the payment of the mortgage, taxes and insurance relating to the marital home. The court concluded that the proceeds, upon the sale of the marital home, became marital property.⁸⁷

In this case, Sandra clearly received the Wildwood Drive house through an inheritance. Sandra later sold the Wildwood Drive house, but, instead of segregating the inheritance proceeds by means of an enforceable agreement with Henry or a segregation of accounts, she used those funds to purchase the Dennison Lane Property jointly with her husband, Henry. The evidence also shows that both Henry and Sandra shared expenses relating to the Property, including payments relating to mortgage, taxes and insurance for the thirteen or fourteen years they lived there. Based on the absence of any documentary evidence, such as bills, cancelled checks or other financial documents, to

⁸⁵ *Husband T.N.S. v. Wife A.M.S.*, 407 A.2d at 1047-48 (holding that monies deposited in a jointly owned fund become marital property); *Thomas v. Thomas*, 1990 Del. Fam. Ct. LEXIS 72, at *7-8 (Aug. 24, 1990) (determining that a unity of interest in the purchase of the property is sufficient to deem the net equity resulting from a house “marital property”); *Bickling v. Bickling*, 2000 Del. Ch. LEXIS 36, at *11 (Feb. 14, 2000) (citing *Klingberg v. Klingberg*, 68 Ill. App. 3d 513, 520 (Ill. App. 1979) for the proposition that pre-marital money placed in a joint bank account during the marriage becomes marital property and *Painter v. Painter*, 320 A.2d 484, 494-95 (N.J. 1974) for the determination that all property in which a spouse acquires an interest during marriage is eligible for distribution as a marital asset).

⁸⁶ 1997 Del. Fam. Ct. LEXIS 16 (Jan. 15, 1997).

⁸⁷ *Id.* at *14.

show that Sandra Kaczmarczyk separated the inheritance monies she received from the sale of the Wildwood Drive house from joint accounts and assets she held with Henry, I find that Sandra's inheritance monies were commingled, and thereby became marital property.

Defendants weakly argue that by honoring each other's responsibilities under the separation agreement, their actions reflect each Defendant's understanding that the inheritance money was solely Sandra's. As discussed previously, however, I do not find that Henry and Sandra Kaczmarczyk ever entered into a binding and enforceable separation agreement. For these reasons, I reject Defendants' argument that Sandra is entitled to all of the proceeds of the sale of the Dennison Lane Property, because they represent her inheritance.

C. The Boat

WSFS also seeks the boat sale proceeds because the boat was purchased through an equity loan secured by the Dennison Lane Property. WSFS, however, failed to cite any statutory or common law to support this aspect of its claim. In response, the Kaczmarczyks maintain the same defenses, contending that the boat proceeds cannot be taken by WSFS because the equity loan was backed, effectively, by the Property purchased with Sandra Kaczmarczyk's inheritance.

Under Delaware law, a husband and wife hold personal property as a tenancy by the entirety.⁸⁸ Assets held by husband and wife as tenants by the entirety are not

⁸⁸ See *Dryden v. Estate of Gallucio*, 2007 WL 185467, at *4 n.24 (Del. Ch. Jan. 11, 2007); *William M. Young Co. v. Tri-Mar Assocs., Inc.*, 362 A.2d 214, 215 (Del.

available, even in death, to one spouse's creditors.⁸⁹ Thus, once property is so owned by a husband and wife, the property remains a tenancy by the entirety even when the form of the asset changes.⁹⁰ Therefore, I analyze the dispute regarding the boat under the same framework as the Dennison Lane Property. In contrast to the Dennison Lane Property, however, Henry never conveyed or attempted to convey his interest in the boat to Sandra.

Under 6 *Del. C.* § 1305(a), a transfer is fraudulent as to an existing creditor if the debtor makes the transfer without receiving reasonably equivalent value and the debtor was insolvent or becomes insolvent as a result of the challenged transfer. A "transfer" under the UFTA is defined broadly as "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset"⁹¹

Delaware defines marital property as any personal property acquired subsequent to the marriage.⁹² It is undisputed that the Kaczmarczyks acquired the boat after they were married. Therefore, regardless of how the boat was titled or purchased, I find that the boat is marital property held by the Kaczmarczyks as tenants by the entirety. Although Sandra sold the boat in the last couple of years and placed the \$12,000 of proceeds in her

Super. Ct. 1976); *Widder v. Leeds*, 317 A.2d 32, 35 (Del. Ch. 1974); *DuPont v. DuPont*, 98 A.2d 493, 496 (Del. Ch. 1953).

⁸⁹ *Dryden v. Estate of Gallucio*, 2007 WL 185467, at *4 n.24.

⁹⁰ 41 AM. JUR. 2D § 27 (2006).

⁹¹ DEL. CODE ANN. tit. 6, § 1301(12) (2005).

⁹² DEL. CODE ANN. tit. 13, § 1513(b), (c); *Battaglia v. Battaglia*, 2005 Del. LEXIS 337, at *3-4 (Aug. 24, 2005).

own checking account, those proceeds continue to be marital property held jointly with Henry in a tenancy by the entirety.

WSFS has not shown that Henry conveyed title of the boat to Sandra or another third party, let alone that he made a fraudulent transfer.⁹³ As a creditor of Henry Kaczmarczyk and H. Kay Interiors, WSFS has not alleged any other basis for using its judgments against them to execute against marital property, such as the boat, held by Henry and Sandra as tenants by the entirety. Thus, WSFS has not established a basis for declaratory relief or imposition of a constructive trust over any or all of the proceeds from the sale of the boat.

To the extent Sandra Kaczmarczyk might no longer have in the MBNA Account or another account reasonably identifiable with the proceeds of the sale of the Dennison Lane Property an amount equal to \$57,548.57, plus interest that a reasonably prudent and conservative investor would have made on those funds since November 15, 2004, she would have been unjustly enriched through use of Henry's funds. In that event, WSFS would have a claim against Sandra for misuse of the proceeds subject to the constructive trust imposed by this ruling. As a further equitable remedy in those circumstances, I hold that WSFS would be able to look to the proceeds of the boat sale to make up any such shortfall.

⁹³ Because WSFS has not alleged any effort by Henry to convey all or part of his interest in the boat to Sandra or any other party, it has not asserted any basis for finding a fraudulent transfer as to the boat. Moreover, there is no evidence that the amount the Kaczmarczyks received for the boat was not reasonably equivalent to its value.

III. CONCLUSION

For the reasons stated, I hold that the transfer of Henry Kaczmarczyk's interest in the Dennison Lane Property to Sandra Kaczmarczyk was a fraudulent conveyance and that, as a consequence, WSFS is entitled to a constructive trust over Henry's one-half interest in the proceeds of the subsequent sale of that Property, which were \$57,548.56 as of November 15, 2004, and that WSFS may look to those funds in the possession or control of Sandra Kaczmarczyk to satisfy, in whole or in part, the debts owed to it by Henry Kaczmarczyk and H. Kay Interiors in the amount of \$41,930.43 plus interest, late charges, attorneys' fees and court costs. I do not find, however, that WSFS has a right to attach its default judgments to the \$12,000 boat proceeds, which remain marital property.

Neither party presented any reliable evidence as to the amount of funds present in the MBNA Account and any other relevant accounts as of the time of trial or thereafter. Sandra Kaczmarczyk apparently has used some monies from these accounts, such as a \$21,000 deposit toward the construction of a new house, which may or may not be recoverable by her.⁹⁴ Thus, the Court does not know whether the funds in that account are sufficient to cover the full amount subject to the constructive trust. If Sandra cannot make available the full amount of Henry's share of the net proceeds from the Dennison Lane Property, WSFS would have a claim in equity against Sandra (and possibly Henry)

⁹⁴ JX 12 at 35-36. In their opening brief, WSFS asserts that the MBNA Account of Sandra Kaczmarczyk then contained \$61,000. Pl.'s Op. Br. at 3. Speaking hypothetically, if that amount or more still remains in the MBNA Account and equals or exceeds the \$57,548.56 plus interest subject to the constructive trust, WSFS would not be entitled to any part of the boat proceeds.

Kaczmarczyk for any shortfall. In that limited circumstance, WSFS could recover from the proceeds of the boat sale the amount necessary to cover the shortfall and apply it toward satisfaction of the default judgments.

Counsel for WSFS shall submit promptly a proposed form of Order implementing these rulings, after providing notice to Defendants.