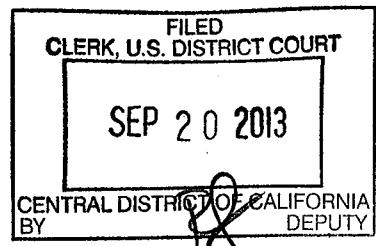


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 RICHARD A. MARSHACK

7
 8 **THE UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA
 9 **PURSUANT TO A REPORT AND RECOMMENDATION**
MADE BY THE UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT COURT:

10
 11 UNITED STATES BANKRUPTCY COURT
 12 CENTRAL DISTRICT OF CALIFORNIA

13 SANTA ANA DIVISION SACU 13-519-MWF

14 In re
 15 YAN SUI,
 16 Debtor.
 17
 18 RICHARD A. MARSHACK, Chapter 7
 Trustee,
 19 Plaintiff,
 20 vs.
 21 PEI-YU YANG,
 22 Defendant.

Case No. 8:11-bk-20448-CB
 Chapter 7
 Adv No. 8:11-ap-01356-CB
 FINDINGS OF FACT AND CONCLUSIONS OF
 LAW IN SUPPORT OF ORDER GRANTING
 CHAPTER 7 TRUSTEE'S MOTION FOR
 SUMMARY ADJUDICATION
 [DOCKET NO. 61]
 Date: March 5, 2013
 Time: 1:30 p.m.
 Ctrm: 5D

24 Plaintiff/Movant, Richard A. Marshack, Chapter 7 Trustee's ("Trustee"), Motion
 25 for Summary Adjudication ("Motion") filed as Docket No. 61 came on for hearing on March 5,
 26 2013 at 1:30 p.m. before the Honorable Catherine E. Bauer, United States Bankruptcy Judge,
 27 presiding. Trustee, appeared by and through his counsel, Marshack Hays LLP, by David M.

1 Goodrich. Defendant/Respondent Pei-Yu Yang (“Defendant”) failed to appear at the hearing on
2 the Motion. All other appearances were as noted on the record.

3 The Bankruptcy Court having reviewed the Motion, declarations, supporting
4 evidence, memorandum of points and authorities and proposed separate statement of undisputed
5 facts and conclusions of law filed by Trustee, all other pleadings and other documents filed in
6 this bankruptcy case, and having considered the arguments and representations of counsel,
7 during the hearing, submitted a Report and Recommendation to the District Court wherein it
8 recommended entry of these Findings of Fact and Conclusions of Law, which the District Court
9 enters.

10 FINDING OF FACTS

11 1. On July 27, 2011 (the “Petition Date”), Yan Sui (“Debtor”) filed a
12 voluntary petition for relief under Chapter 7 of Title 11 of the United States Code.

13 2. On November 7, 2011, Trustee filed a complaint for: (1) avoidance and
14 recovery of intentional fraudulent transfer; (2) avoidance and recovery of constructive fraudulent
15 transfer; (3) unjust enrichment; (4) declaratory relief regarding fraudulent transfer; and (5)
16 declaratory relief regarding Debtor’s community property interest in property (“Complaint”),
17 commencing this Adversary Proceeding.

18 3. On September 23, 2011, Pei-Yu Yang (“Defendant”) filed her Answer to
19 the Complaint.

20 4. On August 24, 2012, Trustee properly served on Defendant, by first class
21 United States Mail, Trustee’s: (1) First Set of Requests for Admission (“RFAs”); (2) First Set of
22 Requests for Production of Documents; (3) First Set of Interrogatories (collectively, the “Written
23 Discovery Requests”); and (4) Rule 26 Initial Disclosures.

24 5. On August 31, 2012, Trustee properly served on Defendant, by first class
25 United States Mail: Trustee’s (1) Amended First Set of Requests for Admission (“Amended
26 RFAs”); and (2) Letter regarding corrected RFAs due to an erroneous omission of the exhibits
27 referenced in the RFAs.

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2 6. On October 24, 2012, Trustee's counsel sent Defendant a letter seeking to
3 meet and confer under Local Bankruptcy Rule 7026-2(c)(1) ("First Meet and Confer Letter") to
4 resolve discovery disputes and to notify Defendant that her responses to the RFAs were late and
5 deemed admitted.

6 7. On November 8, 2012, Trustee's counsel sent Defendant a second letter
7 seeking to meet and confer under Local Bankruptcy Rule 7026-2(c)(1) ("Second Meet and
8 Confer Letter") to resolve discovery disputes.

9 8. To date, Trustee has not received responses to the Written Discovery
10 Requests or the Amended RFAs.

11 9. The Defendant failed to respond to the Trustee's RFAs and Amended
12 RFAs within thirty days from the service of the RFAs and Amended RFAs.

13 10. The Defendant has not sought any relief from this Court for the
14 admissions resulting from her failure to respond to the RFAs and Amended RFAs.

15 11. The RFAs and Amended RFAs are deemed admitted.

16 12. The Court will not relieve the Defendant from any request to be relieved
17 from the admissions resulting from the Defendant's failure to respond to the RFAs and Amended
18 RFAs, should the Defendant make such a request.

19 13. The Trustee relied on the Defendant's admissions of fact as set forth in the
20 RFAs and the Amended RFAs.

21 14. The Defendant failed to file a Separate Statement of Genuine Facts with
22 her Opposition to the Trustee's Motion.

23 15. The facts as set forth by in Trustee's Statement of Uncontroverted Facts
24 now exist without controversy and have been adopted by this Court.

25 16. The Quitclaim Deed dated May 21, 2009, and recorded with the Orange
26 County Clerk-Recorder on June 10, 2009, as instrument number 2009000301081 (the "Quitclaim
27 Deed"), purporting to transfer Debtor's interest in real property commonly known as 2176
28 Pacific Avenue #C, Costa Mesa, California (the "Property") to Defendant is genuine.

- 1 17. On or about May 21, 2009, Defendant signed the Quitclaim Deed.
- 2 18. On or about May 21, 2009, Debtor signed the Quitclaim Deed.
- 3 19. On June 10, 2009, the Quitclaim Deed was recorded with the Orange
- 4 County Clerk-Recorder.
- 5 20. On June 10, 2009, Defendant received a transfer of property from Debtor.
- 6 21. On June 10, 2009, Defendant received a transfer of the Property from
- 7 Debtor.
- 8 22. The Quitclaim Deed reflects a transfer of property from Debtor to
- 9 Defendant.
- 10 23. The Quitclaim Deed reflects a transfer of the Property from Debtor to
- 11 Defendant.
- 12 24. Defendant's receipt of the transfer shown in the Quitclaim Deed
- 13 constitutes the receipt of an interest of the Debtor in property.
- 14 25. Defendant's receipt of the transfer shown in the Quitclaim Deed
- 15 constitutes the receipt of an interest of the Debtor in the Property.
- 16 26. Debtor did not receive any value from Defendant in exchange for the
- 17 transfer shown on the Quitclaim Deed.
- 18 27. Debtor did not receive any value from Defendant in exchange for the
- 19 transfer of the Property by Debtor to Defendant.
- 20 28. Debtor transferred the Property to Defendant with the intent to hinder,
- 21 delay or defraud Debtor's creditor, Kenny Tan.
- 22 29. Debtor transferred the Property to Defendant with the intent to hinder,
- 23 delay or defraud creditors of the Debtor.
- 24 30. Debtor did not receive any money from Defendant in exchange for the
- 25 transfer of the Property by Debtor to Defendant.
- 26 31. Debtor did not receive any property from Defendant in exchange for the
- 27 transfer of the Property by Debtor to Defendant.

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1 32. Debtor did not receive anything of value from Defendant in exchange for
2 the transfer of the Property by Debtor to Defendant.

3 33. The transfer reflected in the Quitclaim Deed was made while Debtor was
4 insolvent.

5 34. The transfer of the Property by Debtor to Defendant was made while
6 Debtor was insolvent.

7 35. The transfer reflected in the Quitclaim Deed rendered the Debtor insolvent
8 by virtue of the transfer.

9 36. The transfer of the Property by Debtor to Defendant rendered the Debtor
10 insolvent by virtue of the transfer.

11 37. The transfer reflected in the Quitclaim Deed was made while Debtor owed
12 money to creditors.

13 38. The transfer of the Property by Debtor to Defendant was made while
14 Debtor owed money to creditors.

15 39. The transfer reflected in the Quitclaim Deed was made while Debtor owed
16 money to creditors and one or more of those creditors were owed money on the Petition Date.

17 40. The transfer of the Property by Debtor to Defendant was made while
18 Debtor owed money to creditors and one or more of those creditors were owed money on the
19 Petition Date.

20 41. The transfer reflected in the Quitclaim Deed was made after an arbitration
21 award was confirmed in favor of Kenny Tan and against Debtor.

22 42. The transfer of the Property by Debtor to Defendant was made after an
23 arbitration award was confirmed in favor of Kenny Tan and against Debtor.

24 43. The transfer reflected in the Quitclaim Deed was made on the same day
25 the confirmation of the arbitration award was made by the Orange County Superior Court in case
26 number 07CC07758 in favor of Kenny Tan against the Debtor.

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- 1 4. Debtor did not receive any value in exchange for the transfer.
- 2 5. Debtor transferred the Property to Defendant with the intent to hinder,
- 3 delay or defraud the Debtor's creditors and one or more creditors existed on the date the Debtor's
- 4 bankruptcy case was filed.
- 5 6. The transfer was made while Debtor was insolvent.
- 6 7. The transfer rendered Debtor insolvent.
- 7 8. The transfer was made while Debtor owed money to creditors, and that
- 8 certain of these creditors existed on the Petition Date.
- 9 9. The transfer occurred shortly after a substantial debt was incurred.
- 10 10. Debtor had been sued or threatened with suit before the transfer was made,
- 11 11. Trustee's claims are timely because the transfer was made within four
- 12 years of the Petition Date.
- 13 12. The transfer was to an insider.
- 14 13. The transfer was made while Debtor was engaged or about to engage in a
- 15 business or any transaction for which the remaining assets of Debtor were unreasonably small in
- 16 relation to the business or the transaction.
- 17 14. The transfer was made while Debtor intended to incur or believed or
- 18 reasonably should have believed that Debtor would incur debts beyond the Debtor's ability to
- 19 pay them as they became due.
- 20 15. The transfer was of substantially all of the Debtor's assets.
- 21 16. At least six badges of fraud of the Debtor exist under CCP §3439.04.
- 22 17. The transfer is subject to avoidance, recovery and preservation by Trustee
- 23 for the benefit of the bankruptcy estate.
- 24 18. Trustee may recover the avoided transfer, which was made to or for the
- 25 benefit of the Defendant
- 26 19. Trustee's avoidance, recovery and preservation of the Debtor's interest in
- 27 the Property renders the transfer property of the bankruptcy estate.
- 28

1 20. Defendant's failure to respond to Trustee's timely-served RFAs and
2 Amended RFAs prior to the response deadline constitutes admission of those facts and issues of
3 law.

4 21. Those facts and issues of law deemed admitted are conclusively
5 established as a result of Defendant's failure to respond to Trustee's timely-served RFAs prior to
6 the response deadline.

7 22. The Defendant's failure to timely respond to the Trustee's RFAs and
8 Amended RFAs, as well as her failure to seek relief from the admissions that resulted from her
9 failure to respond to such requests, are binding on the Defendant.

10 23. Defendant will not be afforded any relief from such requests as a result of
11 her delay to seek relief and the Trustee's reliance thereon.

12 24. The Defendant is an "insider" of the Debtor as that term is defined in 11
13 U.S.C. §101(31).

14 25. The Defendant was an "insider" of the Debtor, as that term is defined in
15 11 U.S.C. §101(31), on the date of transfer of the Property from the Debtor to the Defendant.

16 26. Defendant has no right to setoff.

17 27. Defendant has no right to recoupment.

18 28. Defendant has no other affirmative defenses at law.

19
20 DATE: *September 20, 2013*

Michael W. Fitzgerald

HON. MICHAEL W. FITZGERALD
U.S. District Judge

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