

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>STEVEN M. CARR, Trustee,</b>	:	<b>CIVIL ACTION NO. 1:14-CV-1931</b>
	:	
<b>Plaintiff</b>	:	<b>(Chief Judge Conner)</b>
	:	
<b>v.</b>	:	
	:	
<b>ALAN D. LOESER and PATRICIA</b>	:	
<b>M. BRITTON,</b>	:	
	:	
<b>Defendants</b>	:	

**ORDER**

AND NOW, this 23rd day of March, 2015, upon consideration of the report (Doc. 1) of Chief Bankruptcy Judge Mary D. France, rendered following a bench trial and in accordance with the United States Supreme Court’s recent decision in Executive Benefits Insurance Agency v. Arkinson, \_\_ U.S. \_\_, 134 S. Ct. 2165 (2014),<sup>1</sup> wherein Judge France recommends the court enter judgment in favor of Alan D. Loeser and Patricia M. Britton (“defendants”) and against Steven M. Carr, trustee of the bankruptcy estate of International Auction and Appraisal Services, LLC (“IAAS”), as to the trustee’s fraudulent transfer claims based upon actual fraud in Counts I and III of the adversary complaint, and also as to the trustee’s fraudulent transfer claims based upon constructive fraud in Counts II and IV of the adversary

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<sup>1</sup> In Arkinson, the Supreme Court concluded that when the United States Constitution prohibits the bankruptcy courts from entering final judgment on a core bankruptcy claim, “[t]he bankruptcy court should hear the proceeding and submit proposed findings of fact and conclusions of law to the district court for *de novo* review and entry of judgment.” Id. at 2173 (citing 11 U.S.C. § 157(c)(1)).

complaint, and specifically finds that the trustee failed to prove by a preponderance of the evidence that defendants made any pre-petition transfer of IAAS's assets "with actual intent to hinder, delay, or defraud" creditors for purposes of avoidance under 11 U.S.C. § 548(a)(1)(A) and 12 PA. CONS. STAT. § 5104(a)(1),<sup>2</sup> and failed to prove that IAAS was insolvent at the time of the pre-petition transfers for purposes of avoidance under 11 U.S.C. 548(a)(1)(B) and 12 PA. CONS. STAT. § 5105,<sup>3</sup> and, following an independent review of the record and the parties' arguments, the court concurring with Judge France that the trustee's proof establishes neither actual nor constructive fraud, and noting that the trustee filed an objection (Doc. 1-3) to the report, see 11 U.S.C. § 157(c)(1) (providing that the district court reviews "*de novo* those matters to which any party has timely and specifically objected"), and the

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<sup>2</sup> Judge France concludes that, although several "badges of fraud" proved by the trustee give rise to a presumption of fraudulent intent, the trustee nonetheless failed to prove that any challenged transfers was made for an illegitimate purpose. (See Doc. 1 ¶¶ 19-20).

<sup>3</sup> Judge France concludes that, despite proof of IAAS's deteriorating financial condition, the trustee did not establish that IAAS was insolvent at the time of the disputed transfers as required for avoidance under either provision. (See Doc. 1 ¶¶ 21-23).

court finding the trustee's objection to be without merit and squarely addressed by Judge France's report, it is hereby ORDERED that:

1. The report (Doc. 1) of Chief Bankruptcy Judge Mary D. France is ADOPTED in its entirety.
2. Judgment is ENTERED in favor of defendants Alan D. Loeser and Patricia M. Britton and against plaintiff Steven M. Carr, as the trustee of the bankruptcy estate of International Auction and Appraisal Services, LLC.
3. The Clerk of Court shall close this case.

/S/ CHRISTOPHER C. CONNER  
Christopher C. Conner, Chief Judge  
United States District Court  
Middle District of Pennsylvania