

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: April 22, 2024)

DAWN JACKSON,

Plaintiff

v.

J&A HOME IMPROVEMENT, LLC;
REALTY INVESTORS, LLC;
ALVELINA A. PEREZ, Individually;
ROSANNA RODRIGUEZ, Individually;
DIGNA MARY FERNANDEZ,
Individually, SERGIA LEONARDO
DE-RODRIGUEZ, Individually, and
JUAN PEREZ, Individually,

Defendants.

C.A. No. PC-2022-06754

DECISION

STERN, J. Before the Court is Plaintiff, Dawn Jackson’s (Ms. Jackson or Plaintiff), Motion for Summary Judgment against Defendants, J&A Home Improvement, LLC (J&A), Realty Investors, LLC (Realty), Alvelina A. Perez (Mrs. Perez), Juan Perez (Mr. Perez) (collectively, Defendants), seeking entry of judgment on Count I of the Complaint. Jurisdiction is pursuant to Rule 56 of the Superior Court Rules of Civil Procedure.

I

Facts and Travel

The present action concerns Plaintiff’s attempt to collect a final default judgment issued against J&A in March 2022. (Pl.’s Mem. in Supp. of Mot. for Summ. J. (Pl.’s Mem.) 1-2.) The underlying claim arose when Ms. Jackson, a tenant of the Defendants’ 144 Parade Street property in Providence, R.I., was injured when she slipped on a negligently maintained staircase in October

2018. (Pl.'s Mem. at 3-4.) Ms. Jackson provided notice to J&A on October 26, 2018 that she intended to pursue claims against J&A for her injuries and filed suit in December 2018. (Pl.'s Mem. at 4.) Throughout the pursuit of her claims, Ms. Jackson faced nonresponsive Defendants who failed to participate in discovery and did not respond to conditional orders of default. (Pl.'s Mem. at 4-5.) Ultimately, Ms. Jackson filed a motion for default judgment and a hearing was held on the issue in July 2021. (Pl.'s Mem. 5, Ex. 16.) The court granted the motion and entered default judgment against J&A for \$503,601.18 plus costs and interest in March 2022. (Pl.'s Mem. 5, Ex. 17.) While Ms. Jackson's case was ongoing, the Defendants quietly filed dissolution papers for J&A in November 2019 and only notified Plaintiff of the dissolution in March 2022, after both the default judgment was entered and J&A was dissolved. (Pl.'s Mem. 10.) Defendants Mr. and Mrs. Perez owned and controlled J&A until it was dissolved in March 2022. (Pl.'s Mem. 2-3, 10, Ex. 39.)

In addition to dissolving J&A, the Defendants took additional action to avoid satisfying judgment, when J&A "facilitated transfers aimed at frustrating the reach of this Court to make it appear as though J&A had disposed of all of its assets leaving nothing for Ms. Jackson to seize upon to fulfill the judgment." (Pl.'s Mem. 2.) Plaintiff also alleges that after she provided notice of her claim against J&A, the Perezes, in violation of the Rhode Island Uniform Voidable Transactions Act, transferred the six properties owned by J&A, ultimately leaving the entity insolvent. (Pl.'s Mem. 18-19.) G.L. 1956 § 6-16-4. Before the transfers and dissolution of J&A, the Perezes, through J&A, owned properties at 1248 Broad Street in Providence, R.I., 29 Greenwich Street in Providence, R.I., 24 Mount Vernon Street in Providence, R.I., 144 Parade Street in Providence, R.I., 232 Baker Street in Providence, R.I., and 9 Rodman Street in Providence, R.I. (Pl.'s Mem. 3, Exs. 19, 25, 30, 6, 36, and 38.)

Following Ms. Jackson's suit, J&A and the Perezes embarked on a trail of property transfers from J&A to various members of the Perez family, Perez-controlled entities, and third parties. On December 27, 2018, shortly after Ms. Jackson filed suit in her personal injury claim, J&A transferred ownership of the Broad and Greenwich Street properties to Mr. Perez's stepmother, Defendant Digna Mary Fernandez (Ms. Fernandez). (Pl.'s Mem. 6-7, Ex. 1 Dep. Tr. 17:3-7; 17:8-9, May 18, 2023, Exs. 19 and 25.) Less than a year later, Ms. Fernandez conveyed both properties to Realty (a newly created entity owned and controlled by the Perezes). (Pl.'s Mem. 6-8, Exs. 22, 27, and 14.) After the conveyance of those first two properties in December 2018, the Defendants also transferred the Mt. Vernon Street property to Mrs. Perez's niece, Rosanna Rodriguez (Ms. Rodriguez), in January 2019. (Pl.'s Mem. 8, Ex. 30.) Less than five months later, Ms. Rodriguez sold the property back to Mrs. Perez. (Pl.'s Mem. 8, Ex. 31.) In the midst of these transfers, J&A also conveyed the Parade Street property to Mrs. Perez's mother (and Mr. Perez's mother-in-law), Defendant Sergia Leonardo De-Rodriguez (Ms. De-Rodriguez), in March 2019. (Pl.'s Mem. 9, Ex. 6.) Only three months later, Ms. De-Rodriguez sold the property to third parties. (Pl.'s Mem. 9, Ex. 34.) In addition, J&A sold two properties, the Baker and Rodman Street properties, to third parties in November 2018, only weeks after receiving notice of Ms. Jackson's impending suit. (Pl.'s Mem. 9, Exs. 36 and 38.)

In this action for summary judgment, Ms. Jackson claims that four of J&A's properties were transferred to family members of the Perezes and that three of those properties were then transferred back to entities owned by the Perezes. (Pl.'s Mem. 6-9; Exs. 19, 22, 25, 27, 30, and 32.) Defendants' primary response to the summary judgment motion was an attempt to reargue the defaulted underlying personal injury case, and the Defendants did claim they were not seeking to avoid judgment and that the "decision to liquidate J&A was made prior to the incident involving

Ms. Jackson” and “was based on economic factors.” (Defs.’ Mem. in Supp. of Obj. to Pl.’s Mot. Summ. J. 7-8.) After careful consideration of the evidence, the Court issues its Decision.

II

Standard of Review

“Summary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously.” *Cruz v. DaimlerChrysler Motors Corp.*, 66 A.3d 446, 451 (R.I. 2013) (quoting *DeMaio v. Ciccone*, 59 A.3d 125, 129 (R.I. 2013)). “Summary judgment is appropriate when no genuine issue of material fact is evident from the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any, and the motion justice finds that the moving party is entitled to prevail as a matter of law.” *Swain v. Estate of Tyre ex rel. Reilly*, 57 A.3d 283, 288 (R.I. 2012) (quoting *Beacon Mutual Insurance Co. v. Spino Brothers, Inc.*, 11 A.3d 645, 648 (R.I. 2011)) (further internal quotation omitted); see Super. R. Civ. P. 56. “In deciding a motion for summary judgment, [a] [c]ourt views the evidence in the light most favorable to the nonmoving party.” *Mruk v. Mortgage Electronic Registration Systems Inc.*, 82 A.3d 527, 532 (R.I. 2013); see *Beauregard v. Gouin*, 66 A.3d 489 (R.I. 2013).

Moreover, the moving party “bears the initial burden of establishing the absence of a genuine issue of fact.” *McGovern v. Bank of America, N.A.*, 91 A.3d 853, 858 (R.I. 2014) (citation omitted). The burden then shifts to the “nonmoving party [who] bears the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions.” *Mruk*, 82 A.3d at 532. “[C]ompetent evidence[.]’ . . . is generally presented on summary judgment in the form of... ‘depositions, answers to interrogatories, . . . admissions on file, . . . [and] affidavits.’” *Flynn*

v. Nickerson Community Center, 177 A.3d 468, 476 (R.I. 2018) (quoting *Leone v. Mortgage Electronic Registration Systems*, 101 A.3d 869, 872 (R.I. 2014)).

III

Analysis

A

The Rhode Island Uniform Voidable Transactions Act

The Rhode Island Uniform Voidable Transactions Act (UVTA) makes “voidable as to a creditor” certain transactions made by a debtor. Section 6-16-4. In particular, § 6-16-4(a) provides:

“(a) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor’s claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

“(1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

“(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

“(i) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

“(ii) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor’s ability to pay as they became due.” Section 6-16-4(a).

Additionally, subsection (b) provides various factors for consideration by courts when “determining actual intent under subsection (a)(1).” § 6-16-4(b). The factors include, among others, whether the transfer was to an insider, whether the debtor retained possession or control of the property after the transfer, whether the debtor had been sued prior to the transfer, whether the debtor absconded, whether the debtor was insolvent or became insolvent shortly after the transfer

was made or the obligation was incurred, and whether the transfer occurred shortly before or after a substantial debt was incurred. *See* § 6-16-4(b).

In short, a creditor has two avenues to seek to void a transaction, either by showing that the debtor acted “[w]ith actual intent to hinder, delay, or defraud” the creditor, or that the debtor acted “[w]ithout receiving a reasonably equivalent value in exchange for the transfer” that left the debtor undercapitalized. Section 6-16-4(a).

Like many other states, Rhode Island adopted the 2014 amendments of the Uniform Law Commission’s UVTA (*see* P.L. 2018, ch.141, § 2). The 2014 amendment renamed the former Uniform Fraudulent Transfer Act (UFTA) and incorporated additional revisions to the UFTA. *See* P.L. 2018, ch.141, § 2. The UFTA was originally drafted in 1984 and has been adopted, either in its original form or through the 2014 revision, by at least forty-five states. (Kenneth C. Kettering, *The Uniform Voidable Transactions Act; or, the 2014 Amendments to the Uniform Fraudulent Transfer Act*, *The Business Lawyer*; Vol. 70, 777 at 779.) In particular, the RI UVTA notes that “[t]his chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.” Section 6-16-11.

Additionally, the Reporter for the UVTA Drafting Committee noted that the fraudulent conveyance rule of federal bankruptcy law inspired the UFTA and subsequent UVTA amendments. (Kettering, *supra* at 779.) The U.S. Bankruptcy Code allows bankruptcy trustees to void certain fraudulent transactions entered into by a debtor. 11 U.S.C. § 548. Specifically, the Fraudulent Transfers and Obligations Act provides:

“(a)(1) The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or

within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily--

“(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or

“(B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

“(ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

“(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;

“(III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor’s ability to pay as such debts matured; or

“(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.” 11 U.S.C. § 548(a)

The Federal Fraudulent Transfers and Obligations Act largely parallels Rhode Island law in the structure and wording of the statute. *See* 11 U.S.C. § 548; § 6-16-4. Both statutes provide, in virtually the same language, that creditors may void transactions in which the debtor acts “with actual intent to hinder, delay, or defraud” the creditor or in which the debtor makes transfers and receives “less than a reasonably equivalent value in exchange for such transfer or obligation.” *See* 11 U.S.C. § 548(a)(1)(A)-(B); § 6-16-4(a)(1)-(2).

Where a state law is rarely interpreted by Rhode Island courts, our Supreme Court will often find persuasive authority in the decisions interpreting those federal laws that are substantially

similar to state law. *Narragansett Electric Co. v. Rhode Island Commission for Human Rights*, 118 R.I. 457, 459-60, 374 A.2d 1022, 1023 (1977); see also, *Forte, Jr. v. Faria*, No. KC-2021-1045, 2023 WL 4539700, at *5 (R.I. Super. July 10, 2023). Similarly, our Supreme Court has explained, in the context of the rules of civil procedure, “that where the federal rule and our state rule of procedure are substantially similar, we will look to the federal courts for guidance or interpretation of our own rule.” *Smith v. Johns-Manville Corp.*, 489 A.2d 336, 339 (R.I. 1985). Although there is limited case law interpreting the Rhode Island UVTA, there is extensive case law interpreting and applying the Federal Fraudulent Transfers and Obligations Act and the UVTA by other states. As our Supreme Court notes of cases interpreting federal law, “[t]hose authorities of course are not binding on us, since the matter before this court is solely one of interpretation of state law[,]” but they may nonetheless provide guidance and persuasive authority. *Narragansett Electric Co.*, 118 R.I. at 459-60, 374 A.2d at 1023. Here, not only is the UVTA based on the federal bankruptcy code, it shares a common background with the uniform laws adopted by similar states. As called for by the RI UVTA, this Court also looks to other states to ensure conformity with the spirit of the UVTA. *See* § 6-16-11.¹

B

Debtor/Creditor Relationship

In order for the RI UVTA to apply, “a debtor/creditor relationship necessarily must exist at the time the transfer is made.” *Kondracky v. Crystal Restoration, Inc.*, 791 A.2d 482, 484 (R.I. 2002). The statute defines a “creditor” as “a person who has a claim,” (§ 6–16–1(4)), and a “debtor” as a person “who is liable on a claim.” Section 6–16–1(6). The Act defines “claim” as “a

¹ For examples of similar UFTA or UVTA state statutes, see Mass. Gen. Laws Ann. ch. 109A, § 5 and N.Y. Debtor & Creditor Law § 273 (McKinney)).

right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” Section 6–16–1(3).

Ms. Jackson’s claims here originate in the injuries she sustained at Defendants’ Parade Street Property and to which, on October 26, 2018, she provided notice to Defendants that she would pursue legal action against them. (Pl.’s Mem. 4 ¶¶ 8-9.) Ms. Jackson sued Defendants and ultimately secured judgment against them for her personal injury claim on March 17, 2022. (Pl.’s Mem. 5, Ex. 17.) Ms. Jackson was awarded \$503,601.18 plus interest and costs. (Pl.’s Mem. 5 ¶ 22.)

Our Supreme Court has previously found that a party becomes a debtor to a claimant creditor after receiving notice of a lawsuit. *Savoie v. Pion*, 52 R.I. 422, 424, 161 A. 219, 220 (1932). In *Savoie*, the party who became the debtor transferred property from their name to their spouse after receiving notice from counsel that a lawsuit was imminent. *Id.* at 424, 161 A. at 220. Additionally, given that the broad language of the statute considers a party to be a creditor with rights to payment “whether or not the right is reduced to judgment,” this Court finds that Ms. Jackson became a creditor of debtor Defendant J&A when she provided J&A with notice of her claim on October 26, 2018. (*See* § 6-16-1(3); Pl.’s Mem. 4 ¶ 9.) Therefore, § 6-16-4(a) may apply to transfers or obligations made by Defendants that fall within § 6-16-4(a)(1) or (a)(2), regardless of “whether the creditor’s claim arose before or after the transfer was made or the obligation was incurred[.]” Section 6-16-4(a).

C

Actual Intent to Hinder, Delay, or Defraud

Under Rhode Island Law, “[a] transfer made or obligation incurred by a debtor is voidable as to a creditor ... if the debtor made the transfer or incurred the obligation ... [w]ith actual intent to hinder, delay, or defraud any creditor of the debtor[.]” Section 6-16-4(a). As the statute explains, actual intent can be demonstrated by a hindrance, delay, or fraud and “[t]he validity of the conveyance is to be determined, not by the debtor’s intention, even if honest, but by the effect on the creditor’s right of recovery.” *Harriss v. Orr*, 65 R.I. 369, 14 A.2d 674, 677 (1940) (internal quotation omitted). Federal courts interpreting the Fraudulent Transfers and Obligations Act note that “[i]t is often impracticable, on direct evidence, to demonstrate an actual intent to hinder, delay or defraud creditors.” *Max Sugarman Funeral Home, Inc. v. A.D.B. Investors*, 926 F.2d 1248, 1254 (1st Cir. 1991). However, the same courts find, similar to the common law doctrine of fraudulent conveyance, that under 11 U.S.C. § 548(a)(1) courts may “infer fraudulent intent from the circumstances surrounding the transfer[.]” *Id.* Courts take “particular note of certain recognized indicia or badges of fraud” and find that while “[t]he presence of a single badge of fraud may spur mere suspicion, ... the confluence of several can constitute conclusive evidence of an actual intent to defraud, absent ‘significantly clear’ evidence of a legitimate supervening purpose.” *Id.* at 1254–55.

When determining whether a transfer demonstrates several badges of fraud, the First Circuit points to “common circumstantial indicia of fraudulent intent *at the time of the transfer*” including:

“(1) actual or threatened litigation against the debtor; (2) a purported transfer of all or substantially all of the debtor’s property; (3) insolvency or other unmanageable indebtedness on the part of the debtor; ... (4) a special relationship between the debtor and the

transferee; ... and, *after the transfer*, (5) retention by the debtor of the property involved in the putative transfer.” *Id.* at 1254.

Subsection (b) of the RI UVTA likewise indicates certain factors, among others, from which courts can infer actual intent. Section 6-16-4(b). Similar to the federal courts’ badges of fraud, the R.I. statute looks to whether the debtor had been sued or threatened with suit prior to the transfer (§ 6-16-4(b)(4)), whether the debtor transferred all or substantially all the debtor’s assets (§ 6-16-4(b)(5)), whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred (§ 6-16-4(b)(9)), whether the transfer was to an insider (§ 6-16-4(b)(1)), or whether the debtor retained possession or control of the property after the transfer (§ 6-16-4(b)(2)).

On numerous occasions, federal courts have considered the question of actual intent at the summary judgment stage. *See, e.g. In re Palladino*, 942 F.3d 55, 58 (1st Cir. 2019); *Ritchie Capital Management., LLC v. Stoebner*, 779 F.3d 857, 866 (8th Cir. 2015); *Williams v. Houston Plants & Garden World, Inc.*, 508 B.R. 19, 26 (S.D. Tex. 2014). Likewise, other states with well-developed case law interpreting the UFTA or UVTA also consider actual intent, as demonstrated by the badges of fraud, at the summary judgment stage. *See, e.g. Baker Tanks, Inc. v. C & B Construction Management Trust, Inc.*, No. 07-ADMS-10069, 2008 WL 2200259 at *3 (Mass. App. Div. 113 May 22, 2008). (The *Baker Tanks* case considered summary judgment but determined that genuine issues of material fact remained in dispute.).

Although “a single badge is generally insufficient to show actual intent,” a court may nonetheless infer actual intent when several badges “considered together ... afford a basis” to do so. *Williams v. Houston Plants & Garden World, Inc.*, 508 B.R. 19, 27-28 (S.D. Tex. 2014). An unpublished opinion by the R.I. Superior Court cited by the Defendants (Defs.’ Obj. 8) supports the notion that several badges of fraud are sufficient to prevail at summary judgment in Rhode

Island. See *Beresford-Redman v. Mancini*, No. NM920152, 1992 WL 813603, at *1 (R.I. Super. Aug. 20, 1992). In *Beresford-Redman*, the court noted that although a “strong inference could be drawn that the transfer was fraudulent,” the only indication of fraud was the transfer of the property while litigation was ongoing against the transferor. *Id.* at *1. The record in *Beresford-Redman* did not indicate the presence of any other badge of fraud, (for example, the record neither indicates to whom the property was transferred, whether the transferor retained possession, whether the transfer constituted substantially all of the debtor’s assets, or the insolvency of the debtor) and the court, with only one badge of fraud, denied summary judgment, noting that it was “unable to say that there is no genuine issue of material fact to be decided[.]” *Id.* In the *Baker Tanks* case, the Massachusetts Appellate Division found that summary judgment was improper when the party seeking to void the transfer of property was only able to produce evidence of two badges of fraud, namely that the conveyance was for little to no consideration and was transferred back to the original transferor. *Baker Tanks, Inc.*, 2008 WL 2200259 at *2-3. The Massachusetts court noted that “some of the factors are present and would certainly support a [f]inding of fraud after trial” but that ultimately “the materials presented by [the party seeking to void the transfer] were not sufficient to demonstrate that it was entitled to summary judgment as a matter of law.” *Id.* at *3.

The New York Appellate Division found summary judgment appropriate when a plaintiff demonstrated at least three badges of fraud. *214 Knickerbocker LLC v. Pan*, 217 A.D.3d 431, 432 (N.Y. App. Div. 2023). In *Pan*, the court noted how the

“Plaintiff also established entitlement to summary judgment on its Debtor and Creditor Law § 276 claim through evidence that there were badges of fraud supporting an inference of intent to defraud, including the intrafamilial nature of the transfer, the inadequacy of the consideration, and the continued benefit derived from the property by the parents after the conveyance.” *Id.*

Summary judgment is therefore appropriate as a matter of law when the moving party presents sufficient evidence to establish several badges of fraud, such as those factors enumerated within § 6-16-4(b), and thereby demonstrates that there are no outstanding genuine issues of material fact. *Max Sugarman Funeral Home, Inc.*, 926 F.2d at 1254–55. The nonmoving party can then rebut the inference of fraud drawn by the moving party by demonstrating the existence of disputed material facts through “‘significantly clear’ evidence of a legitimate supervening purpose” for the transfer of the property. *Id.*; *see also, Mruk*, 82 A.3d at 532.

D

Analysis of Defendants’ Actual Intent to Hinder, Delay, or Defraud

Here, Plaintiff alleges that Defendants transferred numerous properties after receiving notice of Plaintiff’s suit and that the transfer of those properties violated § 6-16-4. (Pl.’s Mem. 6-9.) Below is a property-by-property analysis of the transfers.

1

Broad Street Property

Ms. Jackson presents evidence of numerous badges of fraud arising from J&A’s transfer of the Broad Street property to Ms. Fernandez on December 26, 2018, shortly after J&A was served with Ms. Jackson’s Complaint. (Pl.’s Mem. 6, Ex. 19.) Plaintiff produces evidence that the transferee of the property, Ms. Fernandez, is the stepmother of Mr. Perez. (Pl.’s Mem. 6, Ex. 1 Dep. Tr. at 17:3-7.) Ms. Jackson then produces evidence by way of Ms. Fernandez’s answers to interrogatories that Ms. Fernandez did not pay anything to J&A for the purchase of the Broad Street property. (Ex. 20 at No. 5.d.) In addition, Plaintiff presented evidence that even though Ms. Fernandez had acquired the Broad Street property, the property was instead “owned, operated and maintained by Juan A. Perez and Alvelin [] Perez.” (Ex. 20 at No. 5.k.) Following the transfer of

the Broad Street property to Ms. Fernandez, the Plaintiff produced additional evidence showing that Ms. Fernandez subsequently transferred the property on November 19, 2019 to Realty, an entity controlled by Mrs. Perez. (Pl.’s Mem. 6-7, Exs. 19 and 22.) Plaintiff likewise produced evidence that Ms. Fernandez’s transfer of the Broad Street property to Realty was for no consideration. (Pl.’s Mem. 6-7, Exs. 20 No. 5(p) and 22.) The Broad Street property was later sold by Realty for \$550,000 on March 11, 2021. (Pl.’s Mem. 7, Ex. 23.) The Defendants concede an additional badge of fraud to the circumstances of the transfer, noting that J&A transferred all of its assets and “may have been insolvent even before the properties were transferred.” (Defs.’ Obj. 10.)

As it pertains to the Broad Street property, the evidence presented on the record demonstrates six of the common circumstantial indicia of fraudulent intent present at the time of the transfer. These “badges of fraud” arising from the transfer of the Broad Street property from J&A to Ms. Fernandez include (1) the transfer to an insider or party with a special relationship to the transferor (§ 6-16-4(b)(1)), (2) transfer after the debtor was sued (§ 6-16-4(b)(4)), (3) the transferee provided no consideration for the transfer (§ 6-16-4(b)(8)), (4) the transferor retained control over the property after the transfer (§ 6-16-4(b)(2)), (5) the transfer of the Broad Street property, along with the transfers of substantially all other assets from J&A left the entity insolvent (§ 6-16-4(b)(5), (9)), and (6) that the debtor transferred the property to an insider (Ms. Fernandez) who then transferred the assets again to an insider (Realty) of the debtor (§ 6-16-4(b)(11)). While the Defendants object to Plaintiff’s allegations, Defendants do not raise any “‘significantly clear’ evidence of a legitimate supervening purpose” for the transfer of the property. *Max Sugarman Funeral Home, Inc.*, 926 F.2d at 1254–55; *Mruk*, 82 A.3d at 532. Instead, Defendants rely only on conclusory statements to argue that “[i]t is ludicrous to assume that [the] Perezes panicked” and

liquidated their assets. (Defs.' Obj. 7-8.) Defendants also claim that the "decision to liquidate J&A was made prior to the incident involving Ms. Jackson" and "was based on economic factors." *Id.* "Something more than conclusionary statements must be offered by the party opposing the entry of a summary judgment." *Gallo v. National Nursing Homes, Inc.*, 106 R.I. 485, 488, 261 A.2d 19, 21 (1970). Defendants' claims fail to overcome Plaintiff's evidence that no genuine issue of material fact remains in dispute as to whether J&A intended to hinder, delay, or defraud Ms. Jackson through the transfer of the Broad Street property. Section 6-16-4(a)(1).

In short, the Broad Street property's chain of custody from the time that Ms. Jackson provided notice of her personal injury lawsuit to the filing of this action goes from J&A (an entity controlled by the Perezes), to Ms. Fernandez (Mr. Perez's stepmother), then to Realty (an entity controlled by the Perezes), and finally to a third party for \$550,000.

Based on the evidence of intent presented by the Plaintiff, the Court finds as a matter of law that Defendants exhibited actual intent to hinder, delay, or defraud the collection of judgment due to Ms. Jackson through the transfers of the Broad Street property. Therefore, the Court grants summary judgment in Count I as to the Broad Street property's transfers.

2

Greenwich Street Property

Ms. Jackson presents evidence of various badges of fraud arising from J&A's transfer of the Greenwich Street property to Ms. Fernandez on December 26, 2018, shortly after J&A was served with Ms. Jackson's Complaint. (Pl.'s Mem. 7, Ex. 25.) Plaintiff produces evidence that the transferee of the property, Ms. Fernandez, is the stepmother of Mr. Perez. (Pl.'s Mem. 6, Ex. 1 Dep. Tr. at 17:3-7.) Ms. Jackson then produces evidence by way of Ms. Fernandez's answers to interrogatories that Ms. Fernandez did not pay anything to J&A for the purchase of the Greenwich

Street property. (Ex. 20 No. 2.d.) In addition, Plaintiff presented evidence that even though Ms. Fernandez had acquired the Greenwich Street property, the property was instead “owned, operated and maintained by Juan A. Perez and Alvelin [] Perez” and that it “would be transferred back to its original owners,” Mr. and Mrs. Perez. (Ex. 20 No. 2.k, m.) Following the transfer of the Greenwich Street property to Ms. Fernandez, the Plaintiff produces additional evidence showing that Ms. Fernandez subsequently transferred the property to Realty, an entity controlled by Mrs. Perez, on November 19, 2019. (Pl.’s Mem. 8, Ex. 27.) Plaintiff also produces evidence that Ms. Fernandez transferred the Greenwich Street property to Realty for no consideration. (Pl.’s Mem. 8, Ex. 20 No. 2(p).) The Greenwich Street property was later sold by Realty for \$350,000 on May 22, 2020. (Pl.’s Mem. 8, Ex. 28.) The Defendants concede an additional badge of fraud to the circumstances of the transfer, noting that J&A transferred all of its assets and “may have been insolvent even before the properties were transferred.” (Defs.’ Obj. 10.)

Like the Broad Street property, the evidence of the Greenwich Street property transfer also demonstrates six of the common circumstantial indicia of fraudulent intent present at the time of the transfer. These “badges of fraud” arising from the transfer of the Greenwich Street property from J&A to Ms. Fernandez include (1) the transfer to an insider or party with a special relationship to the transferor (§ 6-16-4(b)(1)), (2) transfer after the debtor was sued (§ 6-16-4(b)(4)), (3) the transferee provided no consideration for the transfer (§ 6-16-4(b)(8)), (4) the transferor retained control over the property after the transfer (§ 6-16-4(b)(2)), (5) the transfer of the Greenwich Street property, along with the transfers of substantially all other assets from J&A, left the entity insolvent (§ 6-16-4(b)(5), (9)), and (6) that the debtor transferred the property to an insider (Ms. Fernandez) who then transferred the assets again to an insider (Realty) of the debtor (§ 6-16-4(b)(11)).

In regard to the transfer of the Greenwich Street property, the Defendants introduce no additional grounds to dispute Plaintiff's evidence other than those mentioned above in the discussion of the Broad Street property. Defendants therefore fail to overcome Plaintiff's evidence that no genuine issue of material fact remains in dispute as to whether J&A intended to hinder, delay, or defraud Ms. Jackson through the transfer of the Greenwich Street property. Section 6-16-4(a)(1).

In short, the Greenwich Street property's chain of custody from the time of Ms. Jackson's personal injury lawsuit to the filing of this action was from J&A (an entity controlled by the Perezes), to Ms. Fernandez (Mr. Perez's stepmother), then to Realty (an entity controlled by the Perezes), and finally to a third party for \$350,000.

Based on the evidence of intent related to the transfer of the Greenwich Street property presented by the Plaintiff, the Court finds as a matter of law that J&A exhibited actual intent to hinder, delay, or defraud the collection of judgment due to Ms. Jackson and grants summary judgment as to the Greenwich Street property's transfers.

3

Mt. Vernon Street Property

As to the transfer of the Mt. Vernon Street property to Rosanna Rodriguez, Ms. Jackson presents evidence of multiple badges of fraud. Plaintiff provides evidence that J&A transferred the Mt. Vernon Street property to Rosanna Rodriguez on January 7, 2019, shortly after J&A answered Ms. Jackson's Complaint. (Pl.'s Mem. 8, Ex. 30.) Ms. Jackson produces evidence that the transferee of the property, Ms. Rodriguez, is Mrs. Perez's niece. (Pl.'s Mem. 8, Ex. 1 Dep. Tr. at 15:1-6.) Ms. Jackson then produces evidence that Ms. Rodriguez paid \$15,000 less for the property than J&A acquired the property for in 2016. (Pl.'s Mem. 8, Exs. 29-30.) Following the transfer of

the Mt. Vernon Street property to Ms. Rodriguez, Plaintiff produces additional evidence showing that Ms. Rodriguez subsequently transferred the property to Mrs. Perez, on June 4, 2019. (Pl.’s Mem. 8, Ex. 32.) Plaintiff also produces evidence that Ms. Rodriguez transferred the Mt. Vernon Street property to Mrs. Perez for little to no consideration. (Pl.’s Mem. 8, Ex. 32.) The Mt. Vernon Street property was later sold by Mrs. Perez for \$185,000 on March 30, 2020. (Pl.’s Mem. 8, Ex. 33.) As with the other property transfers, the Defendants concede that J&A transferred all of its assets and “may have been insolvent even before the properties were transferred.” (Defs.’ Obj. 10.)

Similar to the Broad Street and Greenwich Street properties, the evidence of the Mt. Vernon Street property transfer also demonstrates five of the common circumstantial indicia of fraudulent intent present at the time of the transfer. These “badges of fraud” arising from the transfer of the Mt. Vernon Street property from Mrs. Perez to Ms. Rodriguez include (1) the transfer to an insider or party with a special relationship to the transferor (§ 6-16-4(b)(1)), (2) transfer after the debtor was sued (§ 6-16-4(b)(4)), (3) that the value provided in consideration for the transfer was less than the property was acquired for (§ 6-16-4(b)(8)), (4) that the transfer of the Mt. Vernon Street property, along with the transfers of substantially all other assets from J&A, left the entity insolvent (§ 6-16-4(b)(5), (9)), and (5) that the debtor transferred the property to an insider (Ms. Rodriguez) who then transferred the assets again to an insider (Mrs. Perez) of the debtor. Section 6-16-4(b)(11)).

In their objection to the Plaintiff’s motion, the Defendants introduced no additional grounds to dispute Plaintiff’s evidence as to the intent to transfer the Mt. Vernon Street property other than those mentioned above in the discussion of the Broad and Greenwich Street properties. Defendants therefore fail to overcome Plaintiff’s evidence that no genuine issue of material fact remains in

dispute as to whether J&A intended to hinder, delay, or defraud Ms. Jackson through the transfer of the Mt. Vernon Street property. Section 6-16-4(a)(1).

In short, the Mt. Vernon Street property's chain of custody from the time of Ms. Jackson's personal injury lawsuit to the filing of this action was from J&A (an entity controlled by the Perezes), to Ms. Rodriguez (Mrs. Perez's niece), then to Mrs. Perez, and finally to a third party for \$185,000.

Based on the evidence presented by the Plaintiff, the Court finds no genuine issue of material fact remains in dispute and that as a matter of law J&A exhibited actual intent to hinder, delay, or defraud the collection of judgment due to Ms. Jackson. The Court therefore grants summary judgment as to the Mt. Vernon Street property's transfers.

4

Parade Street Property

Ms. Jackson presents evidence of multiple badges of fraud regarding the transfer of the Parade Street property from J&A to Sergia Leonardo De-Rodriguez on March 25, 2019, after J&A answered Ms. Jackson's Complaint. (Pl.'s Mem. 9, Ex. 6.) Ms. Jackson produces evidence that the transferee of the property, Ms. De-Rodriguez, is Mrs. Perez's mother and Mr. Perez's mother-in-law. (Pl.'s Mem. 9, Ex. 1 Dep. Tr. at 15:17-21.) Following the transfer of the Parade Street property to Ms. De-Rodriguez, the Plaintiff produces additional evidence showing that Ms. De-Rodriguez subsequently sold the property for \$290,000 on June 28, 2019. (Pl.'s Mem. 9, Ex. 34.) As with the other property transfers, the Defendants concede that J&A transferred all of its assets and "may have been insolvent even before the properties were transferred." (Defs.' Obj. 10.)

Similar to the transfer of the other properties, the evidence of the Parade Street property transfer demonstrates three "badges of fraud." The evidence of intent includes (1) the transfer to

an insider or party with a special relationship to the transferor (§ 6-16-4(b)(1)), (2) transfer after the debtor was sued (§ 6-16-4(b)(4)), and (3) that the transfer of the Parade Street property, along with the transfers of substantially all other assets from J&A, left the entity insolvent Section 6-16-4(b)(5), (9).

In their objection to Plaintiff's motion, the Defendants introduced no additional evidence to dispute Plaintiff's claim of intent to transfer the Parade Street property. Defendants therefore fail to overcome Plaintiff's evidence that no genuine issue of material fact remains in dispute as to whether J&A intended to hinder, delay, or defraud Ms. Jackson through the transfer of the Parade Street property. Section 6-16-4(a)(1).

In short, the Parade Street property's chain of custody from the time of Ms. Jackson's personal injury lawsuit to the filing of this action was from J&A (an entity controlled by the Perezes), to Ms. De-Rodriguez (Mrs. Perez's mother), and then to a third party for \$290,000.

Based on the evidence presented by the Plaintiff, the Court finds no genuine issue of material fact remains in dispute and that as a matter of law J&A exhibited actual intent to hinder, delay, or defraud the collection of judgment due to Ms. Jackson. The Court therefore grants summary judgment as to the Parade Street property's transfers.

5

Baker Street Property

Plaintiff's evidence presented on the transfer of the Baker Street property shows that J&A sold the property to Francisco Valois Zapata and Jonattan Valois Gomez for \$265,000 on November 29, 2018, shortly after J&A received notice of Ms. Jackson's claim. (Pl.'s Mem. 9, Ex. 36.) Although this transfer occurred after the claim originated (§ 6-16-4(b)(4)), and the transfer of the Baker Street property, along with the transfers of substantially all other assets from J&A,

left the entity insolvent (§ 6-16-4(b)(5), (9)), the evidence presented at summary judgment is insufficient as a matter of law to establish actual intent by the Defendants to hinder, delay, or defraud Ms. Jackson through the transfer of the Baker Street property. Therefore, due to the outstanding issues of material fact, the Court cannot grant summary judgment as to the Baker Street property's transfer at this time.

6

Rodman Street Property

Plaintiff's evidence presented on the transfer of the Rodman Street property shows that J&A sold the property to Corina Garcia and Pedro Savinon for \$190,000 on November 19, 2018, shortly after J&A received notice of Ms. Jackson's claim. (Pl.'s Mem. 9, Ex. 38.) Although this transfer occurred after the claim originated (§ 6-16-4(b)(4)) and, together with the transfers of substantially all other assets from J&A, left the entity insolvent (§ 6-16-4(b)(5), (9)), the evidence presented at summary judgment is insufficient as a matter of law to establish actual intent by the Defendants to hinder, delay, or defraud Ms. Jackson through the transfer of the Rodman Street property. Therefore, due to the outstanding issues of material fact, the Court cannot grant summary judgment as to the Rodman Street property's transfer at this time.

E

Analysis of Transferee Defendants' Liabilities

Ms. Jackson asks the Court to attach Defendant J&A's liability to the insider transferees of property from J&A, (Pl.'s Mem. 22), to "[I]evy execution ... on the transferred assets or proceeds" and to appoint a "[r]eceiver to take control and sell the fraudulently transferred properties. (Compl. at 12.) In short, given the insolvent nature of Defendant J&A, the primary remedy to

which Ms. Jackson seeks to avail herself is to carry forward the judgment to the insider transferees of the properties and, where applicable, the Perezes' successor entities.

The Rhode Island UVTA provides various remedies for creditors, including avoidance of a transfer, attachment against the asset transferred, “[a]ppointment of a receiver to take charge of the asset transferred or of other property of the transferee,” or “[a]ny other relief the circumstances may require.” Section 6-16-7(a). Additionally, “[i]f a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.” Section 6-16-7(b). The statute further allows that “[t]o the extent a transfer is voidable in an action by a creditor,” “judgment may be entered against...[t]he first transferee of the asset or the person for whose benefit the transfer was made” and “[a]n immediate or mediate transferee of the first transferee” except for transfers made in “good-faith.” Section 6-16-8(b)(1).

When property has been transferred, “a money judgment may enter pursuant to a complaint for fraudulent conveyance as against a transferee, where such transferee has disposed of or dealt with property wrongfully conveyed in such fashion that a return of the property is impossible.” *Nisenzon v. Sadowski*, 689 A.2d 1037, 1044 (R.I. 1997) (quoting *Spaziano v. Spaziano*, 122 R.I. 518, 521, 410 A.2d 113, 115 (1980)). In addition, § “6–16–7(b) of the [Rhode Island UVTA] provides that ‘[i]f a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.’” *Lemoi v. Lemoi*, 713 A.2d 242, 244 (R.I. 1998) (internal quotation omitted). In *Lemoi*, our Supreme Court authorized a levy of execution against transferee insiders when the trial court had “specifically found” that transfers from a debtor to insiders were fraudulent transfers. *Id.* Here, like the circumstances of *Lemoi*, the Broad Street, Greenwich Street, Mt. Vernon Street, and Parade Street properties were transferred to insider transferees.

As established above, the Broad Street property's chain of custody from the time that Ms. Jackson provided notice of her personal injury lawsuit to the filing of this action went from J&A (an entity controlled by the Perezes), to Ms. Fernandez (Mr. Perez's stepmother), then to Realty (an entity controlled by the Perezes), and finally to a third party for \$550,000. Therefore, attachment of the liability for the first fraudulent transferee, Ms. Fernandez, is proper under § 6-16-8(b)(1)(i), and attachment of liability is proper for the next immediate fraudulent transferee, Realty, under § 6-16-8(b)(1)(ii).

The Greenwich Street property was transferred from J&A (an entity controlled by the Perezes), to Ms. Fernandez (Mr. Perez's stepmother), then to Realty (an entity controlled by the Perezes), and finally to a third party for \$350,000. Therefore, attachment of the liability for the first fraudulent transferee, Ms. Fernandez, is proper under § 6-16-8(b)(1)(i), and attachment of liability is proper for the next immediate fraudulent transferee, Realty, under § 6-16-8(b)(1)(ii).

The Mt. Vernon Street property was transferred from J&A (an entity controlled by the Perezes), to Ms. Rodriguez (Mrs. Perez's niece), then to Mrs. Perez, and finally to a third party for \$185,000. Therefore, attachment of the liability for the first fraudulent transferee, Ms. Rodriguez, is proper under § 6-16-8(b)(1)(i), and attachment of liability is proper for the next immediate fraudulent transferee, Mrs. Perez, under § 6-16-8(b)(1)(ii).

The Parade Street property was transferred from J&A (an entity controlled by the Perezes) to Ms. De-Rodriguez (Mrs. Perez's mother), and then to a third party for \$290,000. Therefore, attachment of the liability for the first fraudulent transferee, Ms. De-Rodriguez, is proper under § 6-16-8(b)(1)(i).

IV

Conclusion

For the foregoing reasons, the Court grants in part summary judgment as to Count I for the Broad Street, Greenwich Street, Mt. Vernon Street, and Parade Street properties. In addition, the Court levies judgment against Defendants Mr. and Mrs. Perez, Rosanna Rodriguez, Digna Mary Fernandez, Sergia Leonardo De-Rodriguez, and Realty for their liability as fraudulent transferees of J&A.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Dawn Jackson v. J&A Home Improvement, et al.

CASE NO: PC-2022-06754

COURT: Providence County Superior Court

DATE DECISION FILED: April 22, 2024

JUSTICE/MAGISTRATE: Stern, J.

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